Teo Seng Hoe (alias Tew Seng Hoe) *v* IDV Concepts Pte Ltd and others [2013] SGHC 269

Case Number : Originating Summons No 471 of 2013

Decision Date : 12 December 2013

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Lim Ker Sheon and Cai Enhuai Amos (Characterist LLC) for the plaintiff; Ang Chee Kwang Andrew and Tan JinJia, Andrea (PK Wong & Associates LLC) for the 2nd to 4th defendants.

Parties : Teo Seng Hoe (alias Tew Seng Hoe) — IDV Concepts Pte Ltd and others

Companies – Directors – Duties

12 December 2013

Belinda Ang Saw Ean J:

1 The plaintiff, Teo Seng Hoe alias Tew Seng Hoe ("Teo"), in Originating Summons No 471 of 2013 ("OS 471/2013") successfully obtained leave to commence a derivative action pursuant to s 216A of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") in the name and on behalf of the first defendant, IDV Concepts Pte Ltd ("IDV"), against the second to fourth defendants. The second to fourth defendants have appealed against my decision.

Facts

2 Teo and the second defendant, Chew Choon Kong ("Chew"), are the directors and equal shareholders of IDV, a company in the business of providing interior design and renovation services. The third defendant, Jen Cassia Lee Mei Mei ("Jen"), is Chew's wife and a manager of IDV. She is the sole director and shareholder of the fourth defendant, IDV Concepts Asia Pte Ltd ("IDV Asia"). For convenience, the second to fourth defendants are hereafter collectively referred to as "D2 to D4", and individually by their respective names as described.

3 In 1997, Teo and Chew decided to go into a business partnership as IDV Concepts. The partnership structure was changed to a limited liability company and IDV Concepts Pte Ltd was incorporated in 2001. Teo and Chew had separate and distinct roles in the business. Chew was in charge of marketing, design, sales and administration, and Teo was in charge of production and project management.

Difficulties between Teo and Chew

4 The relationship between Teo and Chew became strained in 2011 when each had different ideas on the business direction of IDV. Chew wanted to develop IDV as a premier design entity, boasting a one-stop in-house design, project management and production ability. Teo, on the other hand, was not keen to grow the design arm of the company. He wanted IDV to concentrate on the production side of the business. Their differences came to a head such that by August 2011, Chew and Teo announced to the staff that they would be closing down the company. However, they subsequently changed their minds about ending their business. From that point onwards, the design,

marketing and project management side of the business operated out of premises located at 8 Admiralty Street and the production team remained on the premises located at 10 Admiralty Street.

5 For a variety of reasons, the relationship between Teo and Chew continued to deteriorate in the course of 2012. It is not necessary for the purposes of this decision to explore the problems in detail; one of them, however, was that Chew felt that Teo was not pulling his weight. For example, production works for a display in Singapore had progressed at a very slow pace and Chew was perturbed at Teo's lack of concern over how IDV's reputation would be affected if the project was delayed.

6 There was a major disagreement over a project called the RISIS project in 2013. According to Chew, the IDV production team delayed the project for five months, and as a result, IDV paid a penalty of $36,000 to the client. In addition, Teo had not paid a sub-contractor who embarrassed IDV at the project site with his threats to remove items he had installed.

7 According to Teo, the crunch came around February or March 2013 when Chew informed Teo that he (Chew) did not wish to continue working with Teo in IDV. [note: 1] Chew, on the other hand, insisted that it was Teo's announcement of his intention to retire that started the discussions to close the company. [note: 2] For present purposes, it is not necessary to decide on the correct version for the upshot was a series of meetings attended by Teo, Chew and one Lim Sing Hok Mervyn ("Mervyn"), who was then a non-executive director of IDV.

8 At those meetings, various proposals were made by Chew to buy over Teo's shares in IDV but no agreement was reached. Teo and Chew then considered other proposals to fairly dispose of IDV, its business and its assets, but again no agreement was reached.

Talks of liquidation

9 Teo and Chew explored liquidation as a possible step to terminate the business relationship, and to this end they met Don Ho & Associates on 25 March 2013 and Baker Tilly TFW LLP ("Baker Tilly") on 3 April 2013.

10 At or soon after the meeting with Baker Tilly on 3 April 2013, Chew prepared a directors' resolution dated 3 April 2013 ("the Directors' Resolution") which proposed: [note: 3]

1. That the winding up of the Company via a Members' Voluntary Liquidation be hereby approved; and that with effect from Monday (08 April 2013), no new orders or related costs shall be taken into the business.

2. That Baker Tilly TFW LLP be hereby appointed as Liquidators of the Company.

11 According to Teo, Chew tried to pressure him into signing the Directors' Resolution immediately. He managed to seek legal advice on the matter from his solicitors, M/s Characterist LLC, who wrote to Chew on 4 April 2013 seeking clarification of the terms of engagement of Baker Tilly, and other proposals in respect of "resolving the Company in a way beneficial to both parties". [note: 4]

12 Chew disagreed with Teo's version of events. He explained that Teo had already agreed at the meeting with Baker Tilly to appoint the latter as IDV's liquidators. Moreover, on 5 April 2013, Teo signed and returned the Directors' Resolution to Chew. According to Chew, on 10 April 2013, Teo went to IDV's offices to sign a letter (dated 8 April 2013) appointing Baker Tilly as IDV's liquidators

("the April letter"). [note: 5] Teo also ostensibly signed a cheque dated 5 April 2013 in favour of Baker Tilly. Teo vehemently disputed Chew's assertions, claiming that his signature on the April letter was a forgery, [note: 6] and that he had not signed any cheque on 10 April 2013. [note: 7]

13 According to Chew, in anticipation of the liquidator's appointment, arrangements were made for directors' fees to be paid to Teo and Chew. Even though Teo's fee entitlement was less than that of Chew, Jen gave instructions for Teo and Chew's fee entitlements to be combined and then divided in half, so as to avoid further disagreement. Consequently, Teo and Chew each received $131,633.64.

The fourth defendant comes into the picture

14 On 10 April 2013, Teo received an e-mail from one of IDV's employees. The signature block of this e-mail reads "IDV Concepts *Asia* Pte Ltd" [emphasis added]. This was the name of IDV Asia. Upon inquiring further, Teo discovered that IDV Asia had been incorporated on 1 April 2013, with Jen as its sole shareholder and director.

15 Jen said that IDV Asia was incorporated "in view of the agreement to liquidate [IDV] …", that IDV Asia only commenced business *after* Teo had signed the Directors' Resolution, that marketing efforts for IDV Asia began only on 9 April 2013, and that IDV Asia's bank accounts only became active on 10 April 2013. On 11 April 2013, Chew sent an e-mail explaining to potential clients of IDV Asia that IDV Asia would be in charge of all new projects while IDV would remain to complete all ongoing jobs.

16 Teo disagreed with Jen's explanations. He maintained that Chew and Jen had been plotting to take over the identity, business, assets and goodwill of IDV to IDV Asia. Upon discovery of their misconduct, Teo's solicitors sent a letter to Chew and Jen on 15 April 2013 to cease and desist in their wrongful acts. Teo complained that Chew (as director) and Jen (as manager) breached their respective duties to IDV in various ways:

(a) Jen incorporated IDV Asia with Chew's assistance, and the similarity of IDV Asia's name with that of IDV was intentional.

(b) Between 10 and 11 April 2013, Chew and/or Jen instructed IDV's office staff to change the signature block of their e-mails from that of IDV to that of IDV Asia, whilst retaining the slogans used by and were identified with IDV.

(c) Contracts and business opportunities that were initially negotiated by IDV were passed to IDV Asia as the contracting party.

(d) Chew and Jen copied IDV's website in its entirety for IDV Asia's website, and this copying constituted a passing off and misrepresentation of IDV's prior portfolio of work as that of IDV Asia.

(e) Chew and Jen illegally took over IDV's office premises for the exclusive use of IDV Asia, and IDV continued to pay for rental and utilities. IDV Asia also took over IDV's computers, servers, customer and pricing data, contracts, negotiations, proposals and all other confidential information, and IDV Asia's staff were permitted to have full access to the same.

(f) Chew and/or Jen solicited the office staff of IDV to transfer their employment from IDV to IDV Asia.

17 Teo also alleged that IDV Asia had engaged in the following wrongful conduct contrary to the

interests of IDV:

(a) passing off the name and goodwill of IDV;

(b) infringement of copyright and passing off in relation to IDV's slogans and goodwill;

(c) using IDV's office premises and office equipment without approval or authorisation; and

(d) accessing IDV's confidential information without approval or authorisation.

18 Attempts to settle the matter amicably failed. Thereafter, Teo sent IDV and Chew the 14-day notice required under s 216A(3) of the Act ("the May Notice") on 10 May 2013. After expiry of the May Notice, Teo filed the present application (*ie*, OS 471/2013) on 27 May 2013. It should be noted that in the interim period, Chew filed an application *vide* Companies Winding Up No 78 of 2013 ("CWU 78/2013") on 21 May 2013 to wind up IDV on just and equitable grounds.

The issues

19 The criteria for determining an application under s 216A of the Act are as follows:

(a) that the requisite 14 days' notice was given ("Issue 1");

(b) that it is *prima facie* in IDV's interests that the action be brought ("Issue 2") and;

(c) that the member was acting in good faith ("Issue 3").

20 It was not seriously disputed that Issue 1 only concerns the proposed claim against IDV Asia. The main debate in the present case concerned Issues 2 and 3.

Issue 1: Was the statutory notice given to IDV Asia?

21 Counsel for D2 to D4, Mr Andrew Ang ("Mr Ang"), argued that the May Notice was ineffective against IDV Asia in that it did *not* include or mention the allegations in [17(c)] and [17(d)] above ("the Omitted Allegations"). As such, there was no compliance with s 216A(3)(*a*) of the Act in respect of the Omitted Allegations. I disagreed with Mr Ang's submissions.

22 Judith Prakash J in *Fong Wai Lyn Carolyn v Airtrust (Singapore) Pte Ltd and another* [2011] 3 SLR 980 ("*Carolyn Fong*") explained the purpose of the notice requirement under s 216A(3)(*a*) of the Act (at [14]):

> [T]his notice requirement served to give the directors a chance to consider a response to the complaint provided in the notice. … [I]t provided both practical and commercial sense. If the company would be willing to pursue the complaint on its own, the leave application would become redundant, and no further legal costs would be incurred or wasted in dealing with the issue of whether leave ought to be granted.

23 At the outset, there will be an inquiry as to whether the notice requirement has been met. If it has not been met, the court must consider whether there is any reason why those requirements ought not to be enforced. In cases where the giving of 14 days' notice is not practicable, the complainant may be allowed to give less notice or none at all if the court waives the notice requirement under s 216A(4) of the Act (see *Carolyn Fong* at [13]).

24 There is nothing in s 216A(3)(*a*) that requires the statutory notice to list down each and every allegation. Read with s 216A(2) of the Act, all that is required is that notice be given of the complainant's intention to apply for leave to bring an action in the name and on behalf of the company. Section 216A was introduced into the Act *via* the Companies (Amendment) Act 1993 (Act 22 of 1993). It was based on the equivalent provisions found in the Canada Business Corporations Act (RSC 1985, c C-44) ("the Canadian Act"). In particular, the requirement to give notice to the directors under s 216A(3)(*a*) of the Act was modelled after s 239(2)(*a*) of the Canadian Act.

25 The predecessor provision of s 239(2)(*a*) of the Canadian Act was discussed in the British Columbia Court of Appeal case of *Re Bellman et al and Western Approaches Ltd* (1981) 130 DLR (3d) 193 ("*Bellman*"). In that case, the petitioners had sent a notice letter ("the Notice Letter") to a company, Western, requesting its directors to prosecute an action in Western's name to seek certain heads of relief. After investigations, the directors resolved not to commence the action. The petitioners filed a petition under the relevant provisions in the Canadian Act for leave to commence an action in the name and on behalf of Western. The petition was allowed at first instance. Notably, one of the heads of relief sought by the petitioners in the proposed action was *not* contained in the Notice Letter. On appeal, Nemetz CJBC stated (at 201) that:

> A perusal of the [Notice Letter], when read together with the response …, leads me to conclude that the directors were *reasonably notified* of the Bellman group's intention to apply to commence a derivative action. *Failure to specify each and every cause of action in a notice does not, in my opinion, invalidate the notice as a whole.* [emphasis added]

26 These italicised statements enunciated in *Bellman* are apposite and I gratefully adopt them here. It follows that so long as the notice allows a company's directors to be *reasonably* notified of the intention to apply for leave to commence a derivative action, that is enough to satisfy the notice requirement under s 216A(3)(*a*) of the Act. Whether reasonable notice has been provided will depend on the facts and circumstances of each case. But, as Nemetz CJBC pointed out in *Bellman*, failure to specify each and every cause of action, claim or head of relief in a notice does not invalidate the notice as a whole.

27 Despite the Omitted Allegations, the May Notice (see [18] above) was clear in its terms; it was plainly a notification to Chew and IDV Asia that Teo would be applying for leave to commence an action under s 216A. There was no prejudice caused by the Omitted Allegations: Chew did not contend that he would have acted (or even considered the matter) differently had the May Notice contained the Omitted Allegations.

28 For all the reasons stated, I concluded that the May Notice was *not* invalidated by reason of the Omitted Allegations.

Issue 2: Would it be *prima facie* in the interests of IDV for Teo to bring the claim?

29 I now turn to consider Issue 2. At this leave stage, the court need not inquire whether the claims are bound to succeed, but only whether the claims are legitimate or arguable, and not frivolous, vexatious or bound to be unsuccessful (see *Urs Meisterhans v GIP Pte Ltd* [2011] 1 SLR 552 at [25]). Thus, the standard of proof is low, and only the most obviously unmeritorious claims will be shut out (see *Ang Thiam Swee v Low Hian Chor* [2013] 2 SLR 340 ("*Ang Thiam Swee*") at [55]).

30 I propose to deal with the claims against Chew and Jen first before turning to the claims against IDV Asia.

Were the claims against Chew and Jen legitimate or arguable?

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31 Teo's factual allegations against Chew and Jen are found at [16] above. Counsel for Teo, Mr Lim Ker Sheon ("Mr Lim") argued that the allegations constituted breaches of the duties that Chew owed to IDV, and that Jen in breach of her duties as a senior employee had assisted Chew in those breaches.

32 In reply, Mr Ang submitted that the allegations against Chew and Jen for breach of their respective duties to IDV were without merit. It was argued that by early April 2013, Teo had already agreed in principle to IDV's liquidation and that IDV would not take in any new orders after 8 April 2013. This was a case where Teo had reneged from his agreement to wind up the company. Mr Ang emphasised that Chew and Jen did not commence business using IDV Asia until after 8 April 2013. In addition, having repeatedly represented that he was in favour of winding up IDV, Teo would be estopped from claiming that Chew was in breach of his duties as a director when the latter commenced business through IDV Asia.

33 However, as mentioned, the threshold for leave is not high. All Teo needed to show was that the claims were legitimate or arguable. There was no challenge (direct or indirect) to Teo's factual allegations that Chew and Jen had engaged in the conduct mentioned in [16] above. Notably, their rebuttals were confined to Teo's knowledge (actual or implicit) about those matters and how Teo had sanctioned them.

34 I disagreed with Mr Ang's submissions. In my view, on the available material before the court, Teo had made out a *prima facie* case of breach of duty by a director and a senior employee. Even before the appointment of the liquidators effective 8 April 2013, Jen had already incorporated IDV Asia on 1 April 2013, and Mr Lim submitted that Chew as a director and Jen as a senior employee of the company had already planned for IDV Asia to take over IDV's design business, team and operations.

35 Specifically, it was Teo's case that IDV Asia was set up to take over IDV's entire business and goodwill. From a legal perspective, a director's statutory or common law duties to his company do not cease with the appointment of a provisional liquidator. In this context, a director must not set up a new company with a view to take over IDV's business. The same prohibition applies to a senior employee who owes obligations of fidelity, loyalty and good faith to the employer (see, *eg*, *ABB Holdings Pte Ltd and others v Sher Hock Guan Charles* [2009] 4 SLR(R) 111). By the parties' own admission, as late as 10 April 2013, there was no agreement between Chew and Teo on how IDV's business was to be wound up. It is reasonably arguable that Chew used IDV Asia to solicit IDV's potential clients, take over IDV's premises and office staff, and gain access to IDV's confidential information, and all that point to a legitimate or arguable case of a breach of duties by Chew and/or Jen.

Was the claim against IDV Asia legitimate or arguable?

36 The allegations Teo made against IDV Asia have been described at [17] above.

37 As to the passing-off claim, to make out this claim, three ingredients – goodwill, misrepresentation and damage – must be proved before a claim in passing off is established. On the first element, Mr Ang conceded that IDV possessed goodwill, but only up to 8 April 2013. After that date, IDV no longer possessed any goodwill entitled to protection since IDV had resolved in the Directors' Resolution not to take in any new orders from 8 April 2013 onwards.

38 Mr Ang's submissions overlooked one vital consideration. Mr Lim explained that Teo had made it clear that he would not have signed the Directors' Resolution had he known at the time that IDV Asia

had been incorporated to take over IDV's business. For the same reason, Mr Ang could not be heard to argue that IDV did not have any potential customers after 8 April 2013 to whom a misrepresentation would have been made. A legitimate or arguable case of passing off was made out here.

39 As regards the copyright infringement claim in respect of IDV's slogans ("Slogans"), Teo claimed that those slogans had been used without permission by IDV Asia, as seen from the signature blocks in e-mails sent by IDV Asia's employees. [note: 8]

40 In response, Mr Ang made two submissions: (a) that there could not be copyright in slogans; and (b) that it was Chew and Jen who had come up with the Slogans [note: 9] and therefore the copyright (if any existed) belonged to them and not IDV. On the first point, Mr Ang drew my attention to the Australian decision of *State of Victoria v Pacific Technologies (Australia) Pty Ltd* [2009] FCA 737, where Emmett J observed (at [19]) that copyright was denied in advertising slogans, which had thus consistently been refused protection in Australia and England. I note, however, that a subsequent case from the same jurisdiction cited academic opinion apparently in favour of a softer approach (*Fairfax Media Publications Pty Ltd v Reed International Books Australia Pty Ltd* [2010] FCA 984 at [39]). In the context of this case, at this leave stage, it cannot be said that the claim against IDV Asia was unarguable and would definitely fail on this ground alone. As to Mr Ang's second submission, that it was Chew and Jen who had come up with the Slogans, this was an assertion the truth of which could not be ascertained conclusively at this stage. There was at least an arguable case of copyright infringement against IDV Asia.

41 In relation to IDV Asia's use of IDV's office premises and office equipment without approval or authorisation, IDV Asia conceded to this. Jen, who filed an affidavit on behalf of IDV Asia, stated that IDV Asia was willing to compensate IDV for the rental of the office premises. [note: 10] This admission gives credence to the legitimacy of the claim against IDV Asia.

42 Finally, on the complaint that IDV Asia had accessed IDV's confidential information without approval or authorisation, Jen admitted that Chew had sent an e-mail on 11 April 2013 to IDV's clients to explain that IDV Asia would be replacing IDV for all new projects. [note: 11] This e-mail was clearly addressed to IDV's existing clients: [note: 12]

> Dear Business Partner,
>
> It is with much joy and thanksgiving that I write this note to you. With immediate effect, we are officially known as IDV Concepts Asia Pte. Ltd.! *Thank you for journeying with us over the past years* towards this significant milestone in our organizational history.
>
> …
>
> … It is truly our privilege to *have your continued support* as we 'Direct our sails to the Changing winds'. Thank you.
>
> [emphasis added]

IDV Asia would have had to use or access IDV's client information in order to have sent this e-mail to IDV's clients. I was persuaded that there was a legitimate and arguable claim against IDV Asia.

Whether IDV stands to gain substantially in money or money's worth

43 On this issue, it was argued that the proposed action would not be in IDV's interests because IDV would not benefit in money or money's worth were the action be allowed to proceed. Mr Ang explained that D2 to D4 were prepared to reimburse IDV for any expenses incurred by IDV Asia that had been charged to IDV's accounts, and also for the rental payments made by IDV in respect of the office premises. [note: 13] This would adequately compensate IDV and in fact place it in a better position than if IDV had been liquidated in April 2013. Furthermore, having regard to the fact that IDV was going to be wound up and was not going to take in further orders from 8 April 2013, it had ceased to have any significant income stream. Commencing an action would incur costs disproportionate to the financial benefit IDV would receive from such an action.

44 Mr Ang's arguments cannot be sustained either in law or on the facts. Teo made several points. He had continued to operate under IDV as a going concern. It still had a reputation and considerable goodwill, and was able to remain profitable even without Chew and Jen's participation. The action would allow IDV to recover from and reverse the damage done by Chew and Jen. While the office staff had been solicited to join IDV Asia, IDV still retained its production staff (in manufacturing and renovation). In short, there was no reason why IDV would be unable to fulfil any contracts and business opportunities coming its way.

45 With the opposing arguments before the court, the observations of the Court of Appeal in *Pang Yong Hock v PKS Contracts Services Pte Ltd* [2004] 3 SLR(R) 1 ("*Pang Yong Hock*") (at [21]) are apposite:

> [T]he court must nevertheless weigh all the circumstances and decide whether the claim ought to be pursued. *Whether the company stands "to gain substantially in money or in money's worth" … relates more to the issue of whether it is in the interests of the company to pursue the claim rather than whether the claim is meritorious or not*. [emphasis added]

46 In my view, the proposed action sought to be brought by Teo on behalf of IDV would have to be considered as though IDV were a going concern, unaffected by the original proposal for IDV to be put into members' voluntary liquidation. Indeed, by conduct the parties all but abandoned the idea of a members' voluntary liquidation. Whilst Teo was initially agreeable to IDV being liquidated (as seen from the Directors' Resolution as well as certain text messages passing between Teo and Chew), he changed his mind after he discovered Chew and Jen's alleged breaches, and he rejected the idea of a members' voluntary liquidation by refusing to sign papers required to put the liquidation in motion. Chew also abandoned the members' voluntary liquidation when he filed the application *vide* CWU 78/2013 for IDV to be wound up on just and equitable grounds.

47 On the basis of the available information, I considered that the claims for diversion of business opportunity, misuse of funds and the occupation of IDV's premises and use of office equipment and confidential information had sufficient merit to justify the grant to leave to bring a derivative action. In other words, the derivative action against Chew, a director, and Jen, a senior employee, would be in the "practical and commercial interests" of IDV (see *Ang Thiam Swee* at [56]). It is unclear whether it has significant value (that is frequently the position with such claims at an early stage of proceedings). I agree with Teo that with IDV's manufacturing and renovation capabilities, it could, at the very least, continue operating in those areas and could have fulfilled the opportunities that were diverted. IDV stood to gain in money or money's worth if the action was permitted to proceed. In this case, the object of the derivative litigation is to obtain for IDV repayment of monies and compensation for breach of duty. The further point is that if the claims succeed, the company would continue in business and not cease operations. In fact, e-mails passing between IDV and IDV Asia in May 2013 showed that IDV's manufacturing and renovation team was still involved in projects. [note:

14]

Was there an alternative viable remedy?

48 It was argued that there was an alternative remedy available, and as such the action under s 216A of the Act would not be in IDV's interests. This alternative remedy has to do with the winding up application filed by Chew on 21 May 2013 (see [18] above).

49 The Court of Appeal in *Pang Yong Hock* stated that the existence of an alternative and adequate remedy, such as the winding up of the company, had to be considered when deciding whether the proposed action was in the interests of the company. However, in a subsequent case *Ting Sing Ning (alias Malcolm Ding) v Ting Chek Swee (alias Ting Chik Sui) and others* [2008] 1 SLR(R) 197, the Court of Appeal clarified (at [28]) that *Pang Yong Hock* did not establish the principle that when the remedy of a winding up was available, the court should not entertain any application to pursue a s 216A action, however meritorious it might be.

50 The question therefore is whether it would be more beneficial for IDV to be wound up or for the proposed derivative action to be brought against D2 to D4. In this regard, Mr Ang argued that a liquidator, having the powers and duties stipulated under the Act, would be in a better position to: (a) determine whether it would be reasonable to bring an action against Chew and Jen; and (b) quantify the amount Chew, Jen and IDV Asia would have to reimburse IDV. If Teo was unhappy with the amount of reimbursement, he was entitled to apply to court. Moreover, Chew said that since the parties had reached a deadlock in the management of IDV, it would be more appropriate to wind the company up.

51 I disagreed that winding up would be the more beneficial course of action for IDV. The company was solvent and a going concern, and I have already mentioned at [47] above that there were indications that it could still continue to operate profitably in the manufacturing and renovation fields. The case is distinguishable from *Pang Yong Hock*, where the company had been losing money and faced an impasse in management. The object of the derivative litigation is to obtain for IDV repayment of monies and compensation for breach of duty. The claims may fail, but if they succeed, they will vindicate the company's rights in these respects. In the circumstances, and having regard to the fact that Teo had raised legitimate claims which would benefit IDV in money or money's worth, I think that pursuing an action under s 216A of the Act would *prima facie* be in the interests of IDV.

Issue 3: Good faith

52 I turn lastly to consider the requirement of good faith under s 216A(3)(*b*) of the Act. The onus is on Teo to prove that he is acting in good faith by instituting the action against D2 to D4 (see *Ang Thiam Swee* at [23]). The best way of demonstrating good faith is to show a legitimate claim which the directors are unreasonably reluctant to pursue with the appropriate vigour or at all. Moreover, hostility between the factions involved is generally insufficient evidence of a lack of good faith on the part of the applicant, unless it is shown that the applicant is so motivated by vendetta, perceived or real, that his judgment will be clouded by purely personal considerations (see *Pang Yong Hock* at [20]).

53 At the core is an assessment of whether the applicant honestly or reasonably believes there is a good cause of action (see *Ang Thiam Swee* at [29]).

54 Mr Ang submitted that Teo could not have had such an honest or reasonable belief. Teo had been prepared to liquidate IDV since at least March 2013, and so his displeasure arose not from the

purported breaches of duty by Chew and Jen, but rather from Chew's commencement of business under IDV Asia after Teo signed the Directors' Resolution. Even accepting for the sake of argument that Teo's grouse was that he had signed the Directors' Resolution without fully understanding the import of the document or been coerced into signing the same, the fact remained that Teo's remedy lay elsewhere and not in an action under s 216A. Thus, the current application (so the argument developed) had been brought for a collateral purpose, which amounted to an abuse of process. Teo was not a genuinely aggrieved party, but really a disgruntled business partner who was unwilling to let Chew carry on business in the industry.

55 I was not persuaded by Mr Ang's submissions. On Teo's case, he had not known that IDV Asia had been incorporated for Chew and Jen to take over IDV's business. Teo's lack of knowledge of the incorporation was an undisputed fact. There was no merit to the argument that Teo's remedy lay elsewhere, especially where the allegation was that Chew (assisted by Jen) had breached the duties he owed to IDV – precisely the type of matter ordinarily brought up in an action under s 216A of the Act.

56 There was a breakdown in the business relationship between Teo and Chew. However, and importantly, there is no evidence to show that Teo was so motivated by vendetta, perceived or real, that his judgment would be clouded by purely personal considerations. Instead, I have already found that there were legitimate and arguable claims against Chew, Jen and IDV Asia which Teo believed existed and which Chew was, for obvious reasons, not inclined to pursue. In my judgment, Teo has shown that he brought the present proceedings in good faith.

Conclusion

57 For the reasons stated, I granted leave to Teo to bring an action in the name and on behalf of IDV against D2 to D4. Teo was also authorised to control the conduct of the action and any execution proceedings thereafter. IDV was ordered to pay Teo's costs of the action on an indemnity basis. Costs of this leave application were fixed at $5,000 plus reasonable disbursements, to be paid to Teo by D2 to D4 jointly and severally.

[note: 1] Teo Seng Hoe's 1st affidavit, 23/5/13, para 16; Teo Seng Hoe's 2nd affidavit, 28/6/13, para 8.

[note: 2] Chew Choon Kong's 1st affidavit, 14/6/13, p 56, para 42.

[note: 3] Teo Seng Hoe's 1st affidavit, 23/5/13, p 77.

[note: 4] Chew Choon Kong's 1st affidavit, 14/6/13, p 228.

[note: 5] Chew Choon Kong's 1st affidavit, 14/6/13, p 327.

[note: 6] Teo Seng Hoe's 2nd affidavit, 28/6/13, para 30.

[note: 7] Teo Seng Hoe's 3rd affidavit, 18/7/13, para 12.

[note: 8] Teo Seng Hoe's 2nd affidavit, 28/6/13, paras 31–32.

[note: 9] Jen Cassia Lee Mei Mei's affidavit, 14/6/13, para 24.

[note: 10] Jen Cassia Lee Mei Mei's affidavit, 14/6/13, para 34.

[note: 11] Jen Cassia Lee Mei Mei's affidavit, 14/6/13, para 13.

[note: 12] Jen Cassia Lee Mei Mei's affidavit, 14/6/13, p 23.

[note: 13] Chew Choon Kong's 1st affidavit, 14/6/13, paras 25 and 32; Jen Cassia Lee Mei Mei's affidavit, 14/6/13, para 34.

[note: 14] Jen Cassia Lee Mei Mei's affidavit, 14/6/13, pp 45–49.