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Case Note

SHARE BUY-OUT IN A DEADLOCK SITUATION

Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd
[2018] 1 SLR 763

The case note examines the significance of "unfairness" in a deadlock within a quasi-partnership being seen as stemming from the shareholder's inability to exit rather than a deadlock *per se*; and the interplay of "unfairness" so understood with a contractual exit option in the company's constitution.

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I. Introduction

1 An unhappy minority (and in a vast number of cases it is the minority) who desires a clean break from their company sometimes seeks the law's assistance. The Singapore Companies Act[1] has two provisions, namely s 216 (oppression action) and s 254(1)(*i*) (winding up on the just and equitable ground) which, if the grounds for the respective sections are established, provide statutory exit options for the minority either in the form of winding up or buy-out of the minority's shares.[2]

2 Prior to the Companies Act amendment in 2014,[3] s 254 provided for only one remedy, namely, winding up. The amendment introduced a new s 254(2A)[4] which provides:

1 Cap 50, 2006 Rev Ed.
2 In the case of s 216 of the Companies Act (Cap 50, 2006 Rev Ed), there are several other remedies which the court may, in its discretion, order in order to bring to an end to or remedy the matters complained of, and the court generally exercises its discretion to order winding up as the remedy of last resort.
3 Companies (Amendment) Act 2014 (Act 36 of 2014).
4 Section 254(2A) of the Companies Act (Cap 50, 2006 Rev Ed) was introduced to give effect to one of the recommendations of the Steering Committee appointed by the Ministry of Finance to review the Companies Act. The *Report of the Steering Committee for Review of the Companies Act* (April 2011) recommended that a court hearing a winding-up application based on s 254(1)(*i*) should have the useful additional power to order a share buy-out instead of a winding up. It explained that

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> On an application for winding up on the ground specified in subsection (1)(*f*)[5] or (*i*), instead of making an order for the winding up, the Court may if it is of the opinion that it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the company or one or more other members on terms to the satisfaction of the Court.

3 To put the two statutory exit options into context, it is observed that a minority shareholder has other means to exit the company, which includes a buy-out provision in the company's constitution or shareholders' agreement. It is also not uncommon in the period leading up to litigation that the majority shareholder makes an offer to buy the minority's shares. In other words, there may be a contractual exit option without the need to resort to the two statutory exit options.

4 While Singapore's Court of Appeal in *Ting Shwu Ping v Scanone Pte Ltd*[6] ("*Ting Shwu Ping*") was the first to consider and clarify the ambit of a shareholder's right to apply for a "just and equitable" buy-out under s 254(2A), *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd*[7] ("*Perennial*") followed closely on its heels. The Court of Appeal in *Perennial* had occasion to decide the extent to which the principles laid down in *Ting Shwu Ping* applied in a deadlock within a quasi-partnership where there was a contractual exit option in the company's constitution.

II. Facts and the decision

5 The case concerned a dispute between joint venture partners, P and C, in three companies (collectively to be referred to as "the companies"). The companies hold and manage a large integrated development project ("the Capitol Project"). P and C each held 50% of the shares in all three companies. Each of the companies' articles of association contained an Art 22, which provided that if any member desired to transfer their shares, they had to offer them to the existing members of the company at a price to be agreed upon by the member and the directors, or if there were a difference in price, at a fair value

in cases where the company is still viable, a buy-out order would be a more efficient exit option than winding up.

5 Section 254(1)(*f*) of the Companies Act (Cap 50, 2006 Rev Ed) provides the court may order winding up of a company where "the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatever which appears to be unfair or unjust to other members". It was pointed out in *Re HL Sensecurity Pte Ltd* [2006] SGHC 135 that in view of the significant overlap of its scope with s 216, this provision is seldom used. The focus of this case note is on winding up pursuant to s 254(1)(*i*).

6 [2017] 1 SLR 95.

7 [2018] 1 SLR 763.

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as between a willing seller and willing buyer, which fair value is to be determined by the company's auditors.

6 There were many disputes between P and C. P applied to wind up the companies on the "just and equitable" ground pursuant to s 254(1)(*i*). According to P, the Capitol Project had been founded on a quasi-partnership based on mutual trust and confidence. As the relationship of mutual trust and confidence had broken down, they were no longer able to work together to manage the Capitol Project. P had submitted that it would be "just and equitable" for the court to order a buy-out under s 254(2A).

7 The High Court found the relationship between the shareholders was akin to a quasi-partnership built on mutual trust and confidence. The breakdown of relations precipitated a deadlock which stalled the Capitol Project. The High Court held that any unfairness was negated by Art 22 since it allowed P an exit mechanism to escape the unfairness. Kannan Ramesh J had also concluded that P's true objective was not to wind up the companies, but made the application to circumvent Art 22 in order to obtain a buy-out on their terms.

8 On appeal, the Court of Appeal held that notwithstanding P and C being deadlocked in a quasi-partnership, the existence of Art 22 precluded P from relying on the just and equitable ground to wind up the companies; and whether the winding-up application was an abuse of process is closely connected with the issue of whether the applicant was entitled to obtain a winding-up remedy.

III. Unfairness in a deadlock within a quasi-partnership

9 Judith Prakash JA, who delivered the grounds of decision of the Court of Appeal, reiterated that unfairness is the foundation of the court's jurisdiction under s 254(1)(*i*)[8] and that it is a jurisdiction permitting the court to superimpose equitable considerations to the exercise of legal rights.[9] The Court of Appeal had accepted the High Court's finding that the parties' relationship was a quasi-partnership and the breakdown in trust and confidence between the shareholders precipitated a deadlock.

10 In its earlier decision *Chua Kien How v Goodwealth Trading Pte Ltd*,[10] the Court of Appeal had held: "If the only two directors of

8 Citing *Chow Kwok Chuen Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR(R) 362 at [40].

9 Citing with approval *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at [41].

10 [1992] 1 SLR(R) 870.

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a company cannot agree with each other, and neither can overrule the other, there is a deadlock which, if it occurs in a partnership [or quasi-partnership], justifies the court in winding up the partnership."[11]

11 What is meant by "deadlock" is not entirely clear from the cases. In most cases the courts will hold that there is no deadlock if a legal means exists to get decisions made, using some procedure under either the company's constitution or the general law.[12] What appears from early jurisprudence is that an *impasse in the corporate decision-making process of a quasi-partnership*, which cripples the company's business, is *in itself* sufficient basis to wind up the company.

12 In *Chow Kwok Chuen v Chow Kwok Chi*[13] the Court of Appeal had wound up a group of family companies[14] which presented an actual deadlock because the relationship between all three brothers had deteriorated to the point where no two of them could agree on anything regarding the companies' operations. Chao Hick Tin JA had explained the court's decision to wind up the family companies as follows:[15]

> We also recognise that there is no lack of probity among the three brothers, but there is nevertheless a practical deadlock in the management due to the brother directors' conduct, which, because of their acrimonious relationships, tended to be irrational, emotional, unreasonable and non-objective. Their private affairs were inextricable from the conduct of the company's business because they are incapable of interacting civilly and separating their personal hostility from their business obligations … Indeed, the acrimonious situation was equally created by all three brothers, with the result that now the majority of the family members want to have a clean break from each other. Given that the brothers have no desire to co-operate with each other and that all the siblings, other than Chuen, want the Companies wound up so that their assets may be liquidated and each sibling can deal with his or her share as they wish, we see little reason to keep the Companies a going concern and to force the siblings to work together when they really cannot.

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11 *Chua Kien How v Goodwealth Trading Pte Ltd* [1992] 1 SLR(R) 870 at [25]. See also *Ng Sing King v PSA International Pte Ltd* [2005] 2 SLR(R) 56 where Rubin J wound up the company under s 254(1)(*i*) of the Companies Act (Cap 50, 2006 Rev Ed) because the parties' inability to work together had crippled the company's business.

12 See, for instance, *Re Ah Yee Contractors (Pte) Ltd* [1987] SLR 383; *Tien Ik Enterprises Sdn Bhd v Woodsville Sdn Bhd* [1995] 1 MLJ 769; *Chua Kien How v Goodwealth Trading Pte Ltd* [1992] 1 SLR(R) 870; and *Chan Siew Lee v TYC Investment Pte Ltd* [2015] 5 SLR 409.

13 [2008] 4 SLR(R) 362.

14 The family companies were considered as being "akin to quasi-partnerships because of their private, domestic nature and the inherent assumption, in the setting up of the companies, that the shareholders and directors, as descendants of the patriarch, would work in concert to … enhance the family fortune and perpetuate the legacy": *Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR(R) 362 at [33].

15 *Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR(R) 362 at [35].

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13 The Court of Appeal in *Perennial* had referred to its own decision in *Sim Yong Kim v Evenstar Investments Pte Ltd*[16] ("*Sim Yong Kim*") for the principle that "in situations of deadlock between the shareholders of a company, unfairness stems from the shareholders' *inability to exit* rather than the deadlock *per se*" [emphasis in original].[17]

14 *Sim Yong Kim* concerned a minority shareholder who was treated unfairly by the controlling shareholder, who also managed the company.[18] In that case, SYK was a minority shareholder in Evenstar Investments Pte Ltd while his older brother, SYT, held the rest of the issued share capital. SYT had assured SYK that if he wanted to withdraw his investment from Evenstar Investments Pte Ltd, SYT would buy him out. SYT did not honour his promise although he did eventually offer an unreasonable price of SYK's shares. The Court of Appeal granted the winding-up order under s 254(1)(*i*). The basis of the court's decision was that SYK had "legitimate expectation" that SYT would buy out his shares on reasonable terms[19] and SYT's breach of promise had "put an end to the basis upon which the [brothers] entered into association with each other, making it unfair that one shareholder should insist upon the continuance of the association".[20] In arriving at its decision, the court in *Sim Yong Kim* had referred to Lord Hoffmann's carefully worded passage in *O'Neill v Phillips*[21] ("*O'Neill*") in which his Lordship had opined: "But I think that one useful cross check in a case like this is to ask whether the exercise of the power in question would be contrary to what the parties, by words or conduct, have actually agreed."[22]

15 *O'Neill* was decided at a time when the UK "unfair prejudice" remedy[23] was often seen as dispensing "palm tree justice"[24] and Lord Hoffmann thought it was important that in the commercial

16 [2006] 3 SLR(R) 827.
17 *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd* [2018] 1 SLR 763 at [45].
18 There are other cases where the loss of confidence in the directors could be on account of their lack of probity, for instance, *Loch v John Blackwood Ltd* [1924] AC 783; *Re Wondoflex Textiles Pty Ltd* [1951] VLR 458; *Chong Choon Chai v Tan Gee Cheng* [1993] 2 SLR(R) 685; *Summit Co (S) Pte Ltd v Pacific Biosciences Pte Ltd* [2007] 1 SLR(R) 46; *Ma Wai Fong Kathryn v Trillion Investment Pte Ltd* [2019] 1 SLR 1046; and *Foo Peow Yong Douglas v ERC Prime II Pte Ltd* [2018] 2 SLR 1337.
19 *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [40]–[42].
20 *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [43].
21 [1999] 1 WLR 1092.
22 *O'Neill v Phillips* [1999] 1 WLR 1092 at 1101.
23 Companies Act 2006 (c 46) (UK) s 799.
24 The phrase as applied to Lord Denning seems to date from an article by J H C Morris, "Palm Tree Justice in the Court of Appeal" (1966) 82 LQR 196.

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context, the law should be as certain and predictable as possible.[25] The "cross-check" mentioned above was not the only cross-check, and in any event it was a cross-check that could usefully be applied on the facts of *O'Neill*. Applying the cross-check to *Sim Yong Kim*, SYT had breached his promise to let SYK withdraw, which is why it was so essential for the court to rule that the unfairness in that case was about SYK being "trapped" in the association; and it was just as critical that conversely, if SYK could withdraw from the company, there would be no unfairness.

16 It is observed that the Court of Appeal's definition of unfairness in *Perennial* as stemming from the *inability to exit rather than* a *deadlock per se* is a significant shift from the earlier cases on deadlock, where *deadlock per se* which crippled the businesses of several quasi-partnerships[26] resulted in winding up of the companies concerned. In contrast, the notion that unfairness was derived from the *inability to exit* traditionally finds its support in cases of *unfair treatment* where there is a justifiable lack of confidence in the management of the company's affairs such that it is unjust and inequitable to require the minority shareholder to remain a member – hence, in such cases it is the insistence of the continued association by the majority shareholder and the inability of the minority shareholder to extricate themselves which make the association untenable.

17 It may perhaps be helpful to consider why conventional wisdom permitted winding up on the basis of a deadlock in quasi-partnerships. Warrington LJ had explained as follows:[27]

> I am prepared to say that in a case like the present, where there are only two persons interested, where there are no shareholders other than those two, where there are no means of overruling by the action of a general meeting of shareholders the trouble which is occasioned by the quarrels of the two directors and shareholders, the company ought to be wound up if there exists

25 Lord Hoffmann cited with approval Warner J's comment in *Re JE Cade & Son Ltd* [1992] BCLC 213 at 227 about the importance of certainty in commercial transactions: see [1999] 1 WLR 1092 at 1093. His Lordship also famously enunciated the "bargain" analysis and recanted his use of "legitimate expectations" in *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 at 19. It was clear in *O'Neill v Phillips* [1999] 1 WLR 1092 ("*O'Neill*") that Lord Hoffmann wished to introduce certainty to claims of unfair prejudice, thereby significantly narrowing its scope, and his reasoning had to be read in the light of the facts of the case before him in *O'Neill*.

26 And later extended to family companies such as those in *Chow Kwok Chuen v Chow Kwok Chi* [2008] 4 SLR(R) 362. On a separate note, the Singapore courts' recognition of the need for Companies Act (Cap 50, 2006 Rev Ed) s 216 to extend beyond quasi-partnerships may also be seen in *Thio Syn Kym Wendy v Thio Syn Pyn* [2018] 2 SLR 788.

27 *In re Yenidje Tobacco Co, Ltd* [1916] 2 Ch 426 at 435.

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> such a ground as would be *sufficient for the dissolution of a private partnership at the suit of one of the partners against the other*. [emphasis added]

Lord Wilberforce[28] too had in mind partnership cases[29] which established that in general, a partner cannot be excluded from management participation. The same quasi-partnership considerations may not necessarily apply in unfair treatment cases, where a distinction often has to be drawn between: a loss of confidence arising out of the minority shareholder's dissatisfaction at being outvoted, for which no remedy ought to be given; and a loss of confidence arising out of some lack of probity of the majority shareholder such that it would be unjust and inequitable for the minority shareholder to remain bound to the association.

18 It is very significant that the Court of Appeal appears to regard unfairness *both* in a deadlock within a quasi-partnership and in an unfair treatment situation as stemming from the inability to exit. It is unclear if, had P specifically pleaded the fact that because of the deadlock they were *de facto* excluded from participation in management, the outcome may be different.

IV. Contractual exit option

19 The Court of Appeal in both *Ting Shwu Ping*[30] and *Perennial*[31] had taken the position that the presence of a buy-out provision in a company's constitution would be a significant consideration to negate unfairness and in the usual case,[32] the court is unlikely to invoke its just and equitable jurisdiction to wind up the company. This is reminiscent of the grave concern of Lord Hoffmann in *O'Neill* that the UK unfair prejudice option was not intended to create "a stark right of unilateral withdrawal".[33]

28 *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 at 380.

29 See Nathaniel Lindley & Ernest Scamell, *Lindley on the Law of Partnership* (Sweet & Maxwell, 13th Ed, 1971) at pp 331 and 595.

30 *Ting Shwu Ping v Scanone Pte Ltd* [2017] 1 SLR 95 at [107].

31 *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd* [2018] 1 SLR 763 at [56].

32 Both cases referred to unusual cases such as (a) where the disaffected shareholder legitimately did not expect to have their shares valued according to the exit mechanism; (b) where the defendant shareholders had acted improperly or in bad faith; and (c) where the valuation mechanism was defective.

33 *O'Neill v Phillips* [1999] 1 WLR 1092 at 1104. Lord Hoffmann's prohibition of a "stark right of unilateral withdrawal" was made in the context of the UK fault-based unfair prejudice, that short of proving unfair prejudice, a minority shareholder should not use the unfair prejudice avenue to obtain a higher price had he gone through the usual process of selling his shares to the remaining shareholders.

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20 On the one hand, it is an intuitively attractive proposition that if there were a contractual exit option, the disaffected shareholder should use it, because the law should uphold sanctity of contract in commercial relations and leave the parties to their contractual bargain. In the context of a deadlock situation (where unfairness is now predicated upon the inability of the shareholder to exit), it accords with logic that unfairness is absent where there is a contractual exit option. In addition, it is also pragmatic to take a strict "contractual" approach to the just and equitable jurisdiction. Why should the court preside over "a protracted and expensive contest of virtue between the shareholders and to award the company to the winner"[34] when the parties have recourse to a contractual exit option? It is often said that everything can be bought and sold – it is a matter of price. Unfairness should disappear as long as the unhappy shareholder is offered a fair price for his shares, which a suitably worded contractual provision will achieve.

21 On the other hand, if it had been pleaded that the deadlock excluded the winding-up applicant from management, would the argument for a strict "contractual" approach to a contractual exit option be slightly less compelling? Where a quasi-partnership is in a deadlock, the shareholders are arguably entitled to a winding up on the just and equitable ground – not because it is unfair to force the shareholder to remain in the company as seen in those cases on unfair treatment, but it is unfair because the fundamental agreement of a quasi-partnership that all of them manage the company together has come to an end.[35] In a case where the unfairness is about being unable to manage the company, it may not be curable by an ability to exit. Indeed, requiring the disgruntled shareholder to invoke the contractual exit option may serve to hasten, as opposed to remedy, their inability to manage.

V. Two-stage approach

22 The Court of Appeal in *Perennial* provided further clarity to the *Ting Shwu Ping* test[36] by setting out a two-stage test for

34 Lord Hoffmann made this observation in the context of an unfair prejudice application in *Re a Company (No 006834 of 1988), ex parte Kremer* [1989] BCLC 365 at 368.

35 Lord Wilberforce's reasoning in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 takes this tack: A partnership converts into a company. Before the conversion, each partner had the right of management participation. That right survived the conversion because that reflected the substance of the parties' relationship. The right of each party to terminate the relationship at will, however, did not survive the conversion because that would be inconsistent with the new corporate structure.

36 The Court of Appeal in *Ting Shwu Ping v Scanone Pte Ltd* [2017] 1 SLR 95 had accepted that, although s 254(2A) of the Companies Act (Cap 50, 2006 Rev Ed)

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s 254(1)(*i*) applications.[37] Stage 1 is concerned with the court's power to order a winding up if it is of the opinion it is just and equitable that the company be wound up – namely the "grounds" stage. Stage 2 is concerned with whether the court also takes the view that winding up is the appropriate relief – namely the "relief" stage.

23 Prior to the introduction of s 254(2A), the courts had ameliorated the harshness of the then sole remedy of winding up in s 254(1)(*i*) by, in some cases, exercising their discretion *not* to make a winding-up order even if the ground for invoking the court's just and equitable jurisdiction was proven. It is well established that the courts, in an exercise of their inherent or statutory jurisdiction, have a discretion whether to make a winding-up order. They may strike out an application as an abuse of process;[38] where the applicant did not act reasonably in seeking a winding-up order when an alternative remedy is available;[39] or where the application was brought for a collateral or improper purpose.[40] Thus, in the context of a deadlock in a quasi-partnership, where proving *deadlock per se* used to be a fairly low threshold to cross, the courts exercise caution in granting the winding-up order, lest the remedy of winding up is worse than the deadlock itself.

24 As mentioned above, one the considerations that feature in stage 2 is: Where a shareholder has recourse to a share buy-out remedy under s 216, should the decision to present a winding-up application – for the purpose of obtaining a s 254(2A) remedy – be considered an abuse of process? On the one hand, the *prima facie* answer is "no", because resorting to s 254(2A), which is a specific remedy provided by the law, cannot be an abuse of process.[41] On the other hand, there is the real and serious concern that "the very commencement of a winding-up petition

only requires that there be "an application for winding up on the ground specified in subsection 1(*i*)" and the section does not explicitly require that the ground for ordering a winding up under s 254(1)(*i*) must first be satisfied before the court may make a buy-out order, the court has to "first form the view that the requirements for winding up had been satisfied before invoking its jurisdiction": at [58].

37 *Perennial (Capitol) Pte Ltd v Capitol Investment Holdings Pte Ltd* [2018] 1 SLR 763 at [82], with the court using "grounds" and "relief" to refer to the two distinct stages.

38 See, for instance, *Charles Forte Investments Ltd v Amanda* [1964] Ch 240 and *Tang Choon Keng Realty (Pte) Ltd v Tang Wee Cheng* [1991] 2 SLR(R) 1.

39 See, for instance, *Re Chong Lee Leong Seng Co (Pte) Ltd* [1989] 2 SLR(R) 9; *Kuah Kok Kim v Chong Lee Leong Seng Co (Pte) Ltd* [1991] 1 SLR(R) 795; and *Low Peng Boon v Low Janie* [1999] 1 SLR(R) 337. In England, the English court has a statutory discretion under s 125(2) of the UK Insolvency Act 1986 (c 45) to refuse the application if some other remedy is available.

40 See, for instance, *Re Surrey Garden Village Trust Ltd* [1995] 1 WLR 974 and *Lai Shit Har v Lau Yu Man* [2008] 4 SLR(R) 348.

41 *Ting Shwu Ping Scanone Pte Ltd* [2017] 1 SLR 95 at [51]. See also earlier cases dealing with alternative remedy, such as *Tang Choon Keng Realty (Pte) Ltd v Tang Wee Cheng*

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may be detrimental to a company, especially if the company is otherwise a going concern and in little danger of being wound up".[42] Each court, when confronted with the issue of abuse of process, will doubtless seek to achieve a delicate balance between the two competing demands based on the specific facts of the case. If the concern is that applicants take tactical advantage of the winding-up application, should the companies' winding-up rules be reviewed to delineate when a company may be *excluded* from the usual statutory disabilities[43] where the application is under s 254(1)(*i*)? It is suggested that in the effort to weed out applicants who abuse process, we should not allow the concern with the tail (of procedural winding-up rules) to wag the dog (of substantive just and equitable remedy). It is submitted respectfully that the clarification by Prakash JA in *Ting Shwu Ping* that "the abuse of process inquiry should still be a fact specific one and the court should not automatically infer that there is an abuse of process from the fact that a share buy-out remedy is pursued under s 254(2A) when it could have been pursued under s 216"[44] is much welcomed.

25 It is a pity that the Court of Appeal in *Perennial* did not have the opportunity to proceed to stage 2 to consider issues concerning the court's exercise of discretion. P in *Perennial* had claimed a breakdown in relations in a quasi-partnership, which would not have satisfied the requirements of s 216, and therefore could not be faulted for commencing a winding-up application under s 254(1)(*i*). The rub to their hypothetical[45] stage 2 argument is this – they appeared to have applied for winding up without

[1991] 2 SLR(R) 1 at [39] and *Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 3 SLR(R) 827 at [38].

42 *Ting Shwu Ping v Scanone Pte Ltd* [2017] 1 SLR 95 at [54].

43 See the danger elaborated on by the Steering Committee in *Report of the Steering Committee for Review of the Companies Act* (April 2011) at p 2-35, para 133(c):

> [Section 254(2A)] might result in unintended procedural problems caused by inserting a buy-out remedy into a part of the Companies Act that was primarily intended to deal with winding-up. In many of the claims under the proposed section 254(1)(*i*), particularly where large viable companies are involved, the aggrieved shareholder will be seeking a buy-out remedy and not a winding-up. However, even in such cases, where there will be a small chance of a winding-up being ordered, the section 254(1)(*i*) petition will be considered a winding-up petition and trigger the procedural requirements of such a petition (e.g. advertising of the winding-up). This will result in unfair and costly consequences (e.g. the disruption of credit) for companies that are the subject of s 254(1)(*i*) oppression-style claims but are unlikely to be wound up.

44 *Ting Shwu Ping v Scanone Pte Ltd* [2017] 1 SLR 95 at [59].

45 P had failed to establish unfairness at stage 1.

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the intention to wind up the companies[46] and only wanted a share buy-out order, and specifically a buy-out order where they buy out C's shares.[47]

VI. Concluding thoughts

26 It is significant that Prakash JA has clarified that unfairness in the context of a deadlock in a quasi-partnership stems from the inability to exit rather than deadlock *per se*. The decision suggests that the strict "contractual" approach towards a contractual exit option will in future feature prominently in the courts' exercise of its just and equitable jurisdiction. Given that pre-emption provisions in the form of Art 22 may be fairly commonplace, a shareholder who is bound by a contractual exit option may be circumspect when considering whether to apply under s 254(1)(*i*) – this may be so even if their claim does not satisfy the requirements of s 216. It will be interesting to see if parties who entertain the prospect of exiting a viable company through a court ordered share buy-out may deliberately *not* agree on a contractual exit option.[48] When exercising their discretion under stage 2, it is envisaged that the courts will seek a Goldilocks balance, such that s 254(2A) which is aimed at providing a flexible remedy does not become moribund, and at the same time and among other things, sift out applicants who abuse the process of courts.

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46 P explained that the Capitol Project remained a viable venture and a winding up would have undesirable consequences on the companies' creditors and employees.

47 In the case, P had sought a buy-out order for P to buy out C's shares (rather than *vice versa*) or in the alternative, to have the court order the shareholders to submit sealed bids for the other's shares in the companies under s 257(1) of the Companies Act (Cap 50, 2006 Rev Ed). See the High Court decision in *Ting Shwu Ping v Scanone Ptd Ltd* [2017] 1 SLR 95.

48 Invoking a contractual exit provision may sometimes not be as advantageous as a court-ordered share buy-out where it is possible there may be no discounts for lack of control and/or lack of marketability in the valuation of the shares.

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