IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 19

Civil Appeal No 49 of 2022

Between

Bhavin Rashmi Mehta

… *Appellant*

And

(1) Chetan Mehta
(2) Sanjiwan Sahni
(3) Quek Hung Guan
(4) Arpee Gem Pte Ltd

… *Respondents*

In the matter of Originating Summons No 1267 of 2021

Between

Bhavin Rashmi Mehta

… *Plaintiff*

And

(1) Chetan Mehta
(2) Sanjiwan Sahni
(3) Quek Hung Guan
(4) Arpee Gem Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Companies — Directors — Resignation]

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v
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14 March, 27 April 2023

15 May 2023

Woo Bih Li JAD (delivering the grounds of decision of the court):

Introduction

1 This appeal centred around the question of whether one of the respondents had withdrawn his resignation from his directorship of a company, which would in turn affect whether he could have validly voted on resolutions passed by the company's board. We dismissed the appeal on 27 April 2023 and issue our grounds of decision as follows.

2 The appellant, Mr Bhavin Rashmi Mehta ("Mr Bhavin"), and the first respondent, Mr Chetan Mehta ("Mr Chetan") were cousins. Mr Bhavin's father, Mr Rashmi Mehta ("Mr Rashmi"), and Mr Chetan's father, Mr Prabodh Mehta ("Mr Prabodh") had incorporated the fourth respondent company, Arpee Gem Pte Ltd ("Arpee Gem"). Though patriarchs, the two fathers were not directors or direct shareholders at the material times. The board of Arpee Gem comprised

Mr Bhavin, Mr Chetan, Mr Sanjiwan Sahni ("Mr Sahni") who was the second respondent, Mr Quek Hung Guan ("Mr Quek") who was the third respondent and one Mr Pradipkumar Modi ("Mr Modi").

3 Mr Bhavin and Mr Chetan were also shareholders of Arpee Gem holding one share each. Arpee Gem was controlled by companies owned by Mr Bhavin and Mr Chetan's families, namely Burma Ruby Inc and BC Manufacturing Inc respectively, each with 18,000 shares. The only other shareholder, Lotus Global Investments Pte Ltd, held preference shares and did not exercise control over Arpee Gem: *Bhavin Rashmi Mehta v Chetan Mehta and others* [2022] SGHC 173 ("*GD*") at [5]–[7].

4 Arpee Gem was a majority shareholder and in direct control of two subsidiaries: Kay Diamonds NV ("Kay Diamonds") and Gembel European Sales NV ("GES"). Kay Diamonds and GES owned another subsidiary, Menamani Investment Corporation NV ("MIC"): *GD* at [8]–[11].

5 There were three events of note in this dispute. First, Mr Sahni submitted a notice of resignation via email on 14 December 2015 (the "2015 Resignation"). Second, he gave a second notice of resignation by way of a letter dated 4 December 2018 to Arpee Gem, which he had attached to an email sent on the same date (the "2018 Resignation"). The 2015 Resignation and the 2018 Resignation will be collectively referred to as the "Resignations". Third, in 2020, Mr Bhavin disagreed with Mr Chetan's proposal to sell a property (the "Property") belonging to MIC as the buyer was an acquaintance of Mr Chetan.

6 On 16 July 2021, Mr Chetan issued notices calling for board meetings of Kay Diamonds and MIC, for the purpose of convening annual general meetings ("AGMs") of the two companies. For the Kay Diamonds AGM,

Mr Chetan sought to add to the agenda the determination of who was authorised to vote on behalf of Kay Diamonds in MIC's affairs. For the MIC AGM, Mr Chetan sought to add to the agenda the decision to sell the Property. The AGMs were fixed for 6 October 2021 (the "October 2021 AGMs").

7 On 22 September 2021, Mr Bhavin received notice of the October 2021 AGMs via email. The email also contained draft directors' resolutions dated 21 September 2021 (the "Draft Resolutions"), which sought to appoint Mr Chetan as Arpee Gem's proxy for MIC's and Kay Diamond's AGMs. Mr Bhavin's evidence was that he had not been consulted in the preparation of these Draft Resolutions.

8 On 3 October 2021, Mr Bhavin received signed copies of the Draft Resolutions (the "Purported Resolutions"). The signatures of Mr Chetan, Mr Sahni and Mr Quek were on the Purported Resolutions, constituting the requisite majority of the board for the resolutions to pass. On 5 October 2021, Mr Bhavin objected by email to the validity of the Purported Resolutions on various bases, including that Mr Sahni was no longer a director of Arpee Gem.

Pleadings below

9 In HC/OS 1267/2021 ("OS 1267"), Mr Bhavin alleged that Mr Sahni had ceased to be a director of Arpee Gem when the Purported Resolutions were signed by him because of the Resignations. Hence, Mr Sahni's approval of the Purported Resolutions was invalid with the result that the resolutions were not passed with the required majority.

10 OS 1267 was filed in reliance on ss 399(2) and 409A Companies Act (the "CA"). As the action was filed on 13 December 2021, the applicable edition of the CA was Cap 50, 2006 Rev Ed. This was because the 2020 Rev Ed came

into operation on 31 December 2021. As ss 399(2) and 409A of the CA required an act that contravened the CA or related to a requirement necessitated by the CA, Mr Bhavin sought to rely on a contravention of s 173A CA (as Arpee Gem did not regularise matters following Mr Sahni's alleged resignation as director) and s 39 CA (as Arpee Gem sought to retain Mr Sahni as director after he had vacated his office).

11 The respondents in turn submitted that a notice of resignation by a director may be withdrawn by either the company or the director as long as both consented, and that the conduct of Arpee Gem, Mr Bhavin and Mr Sahni sufficed to amount to consent to the withdrawal of the Resignations. They relied on the following conduct:

(a) calls which Mr Sahni had with Mr Rashmi, Mr Prabodh and Mr Chetan as a result of which the 2015 Resignation was withdrawn;

(b) calls and/or meetings which Mr Sahni had with Mr Rashmi, his wife Mdm Swati Mehta, Mr Prabodh and Mr Chetan as a result of which the 2018 Resignation was withdrawn;

(c) payment of directors' fees to Mr Sahni from 2015 to 2021;

(d) active involvement of Mr Sahni in communications with external professionals such as the auditors of Arpee Gem, Mr Sahni's execution of documents in his capacity as a director of Arpee Gem and his responsibility in the liquidation of the affairs of Arpee Gem;

(e) Mr Sahni's execution of financial statements of Arpee Gem for the financial years ending 31 March 2014 and 31 March 2015, alongside Mr Bhavin, as director; and

(f) the failure by Mr Bhavin or the other directors of Arpee Gem to give instructions to record the Resignations in the records of the Registrar of Companies and to prohibit Mr Sahni from making any filings with the Registrar of Companies.

12 Further and/or alternatively, the respondents submitted that Mr Bhavin was estopped by convention from denying that Mr Sahni continued to be a director of Arpee Gem.

Decision below

13 The Judge below (the "Judge") found that the dispute was essentially a shareholder dispute between two factions of Arpee Gem, and the question of whether Mr Sahni was a director should be asserted by Arpee Gem and not Mr Bhavin (*GD* at [81]).

14 In particular, the Judge found that Mr Bhavin's prayers for declaratory relief lacked basis as they did not pertain to Mr Bhavin's personal rights, and in any case would be superfluous given the other remedies sought by Mr Bhavin (*GD* at [81] and [81(a)]).

15 As for Mr Bhavin's prayers for injunctive relief pursuant to ss 399(2) and 409A CA, the court found that there could not have been a breach of s 39 CA, which enshrined the common law rule that a company's constitution was a contract between the shareholders and the company as well as the shareholders *inter se* but did not impose any obligation to observe the terms of a company's constitution (*GD* at [31]). Also, as the facts were insufficient to conclude that Mr Sahni had resigned, it was not shown that the failure to register Mr Sahni's resignation was a contravention of s 173A CA (*GD* at [80] and [81(b)]).

16 During the hearing below, counsel for Mr Bhavin applied to amend OS 1267 to rely on s 18 read with the First Schedule of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") so as to enforce ss 145(4A) and 145(4B) CA as an alternative basis for his claims (the "Amendment Application"): *GD* at [32]. The Judge refused the Amendment Application as any purported infringement of rights and harm would have been suffered by Arpee Gem: *GD* at [81(c)].

Parties' cases on appeal

17 On appeal, Mr Bhavin submitted that Mr Sahni did not withdraw the Resignations, and in any event could not have done so as the Resignations were immediately valid and effective upon their receipt. To continue acting as a director, he would have had to be re-appointed. Mr Bhavin also contended that the Judge had erred in finding him estopped from claiming that Mr Sahni had resigned. Alternatively, the Judge should have granted the Amendment Application.

18 The respondents maintained that the Resignations were withdrawn by consent and that the elements of estoppel by convention had been made out. The respondents also submitted that Mr Bhavin had no *locus standi* to seek the relief in OS 1267. The respondents further submitted that not only was the Judge correct in refusing the Amendment Application, ss 145(4A) and (4B) CA were in any event provisions which could not be breached.

Decision on appeal

19 The Judge based her decision on a narrow ground, *ie*, the legal question of whether it was open to Mr Bhavin to seek relief for the Resignations. She was of the view that it was for Arpee Gem to seek relief with respect to Mr Sahni

being a non-director. It appeared that she did not make any finding on whether the Resignations were withdrawn by consent or whether estoppel by convention applied, as she considered that a proper resolution of those issues would require trial (*GD* at [81]).

20 We needed only to rest our conclusion on the facts even though counsel for the respondents did not explicitly say that the Judge's conclusion should also be supported on the facts. Rather, counsel for the respondents assumed that the Judge had made factual findings, as did counsel for Mr Bhavin.

21 We agreed that the evidence about the phone calls or meetings in 2015 and 2018, which were purportedly made to persuade Mr Sahni to stay on as director after each notice of resignation was sent, would have to be resolved, if necessary, by trial. Separately, we noted that some persons who purportedly agreed to the withdrawal of the Resignations were neither directors nor shareholders and their consent would not have been binding upon Arpee Gem. However, there was other evidence which did not need to be resolved by trial.

22 The first piece of evidence which did not need to be resolved by trial was the financial statements of Arpee Gem for the financial years ending 31 March 2014 and 31 March 2015. Mr Bhavin had co-signed on the statements with Mr Sahni as co-directors. Mr Bhavin contended that he had mistakenly thought that the financial statements recognised Mr Sahni as a director for the relevant financial period, *ie*, prior to the 2015 Resignation and not as of the date of signing, and that he had not accepted any withdrawal of the Resignations.

23 We noted that Mr Bhavin's explanation was not consistent as to whether Mr Sahni's co-signing as a director had "escaped his attention" or whether he had been under the "misimpression" that Mr Sahni was signing for the period

prior to his 2015 Resignation (*GD* at [72]). Moreover, his alleged oversight, even if true, could not have been confined to the year of 2015 as the two statements were respectively dated 20 September 2018 and 5 July 2019. The latter date fell after the second notice of resignation dated 4 December 2018. Moreover, Mr Bhavin's position on the financial statements became even less credible given that both signed statements listed on the first page the directors of the company and expressly stated that these directors were "in office at the date of this report".

24 Secondly, Mr Sahni invoiced for and was paid director's fees for Arpee Gem until Mr Bhavin's email on 5 October 2021 alleging that Mr Sahni was not a director. Counsel for Mr Bhavin argued that Mr Bhavin had long taken issue with Arpee Gem's accounts which recorded directors' fees paid to Mr Sahni. Yet there was no contemporaneous evidence of his objection. While counsel for Mr Bhavin attempted to rely on Mr Bhavin's affidavit in the hearing below, the evidence they pointed this court to merely asserted that Mr Sahni was an outsider to Arpee Gem who handled administrative and regulatory aspects of the company. It did not suggest that Mr Bhavin had objected to the payment of directors' fees to Mr Sahni at any point. On the contrary, the fact that Mr Bhavin had signed the financial statements, which presumably included the payment of such fees, suggested that he had agreed to the payments to Mr Sahni. As submitted by the respondents, the invoices for various years including 2020 to 2021 were sent to Arpee Gem and addressed to Mr Bhavin (and others), which must mean that Mr Bhavin knew about them and did not object. Furthermore, counsel for the respondents alleged that payments were made by companies controlled by Mr Bhavin. It appeared that Mr Bhavin did not dispute that he controlled the entities which paid the fees.

25 Thirdly, there was an undated Indemnity and Undertaking (the "Indemnity") apparently signed in response to a letter dated 7 March 2019 from Enterprise Management Pte Ltd to Arpee Gem about the winding up of Arpee Gem. By way of context, it appeared that Mr Sahni had been asked to take steps to place Arpee Gem in a member's voluntary liquidation, and Enterprise Management Pte Ltd had written to set out procedures and the scope of services for the proposed winding-up and to require that the appointed liquidator be indemnified by the shareholders of the company. The Indemnity was signed by Mr Sahni as director and Mr Bhavin was a co-signatory to it. Mr Bhavin's argument was only that he was not given a chance to respond to this on affidavit but yet he said the matter was purely administrative. This did not answer the point that Mr Sahni signed as a director and Mr Bhavin knew this.

26 The above evidence established that Mr Bhavin had consented to the withdrawal of each notice of resignation. If he had not, then the next question was whether estoppel by convention would apply. At the hearing of this appeal, counsel for Mr Bhavin submitted that the doctrine of estoppel by convention was not open to the respondents as this doctrine was only applicable where parties were in a contractual relationship. In our view, the scope of the doctrine of estoppel by convention has not been fully settled in Singapore. We briefly considered the development and state of this doctrine at present.

27 As a starting point, the case of *Singapore Island Country Club v Hilborne* [1996] 3 SLR(R) 418 has laid out three criteria (the "*Hilborne* requirements") for the making out of estoppel by convention (at [27], citing *Amalgamated Investment and Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1981] 3 All ER 577 ("*Amalgamated Investment*")):

> (a) that there must be a course of dealing between the two parties in a *contractual relationship*;
>
> (b) that the course of dealing must be such that both parties must have proceeded on the basis of an agreed interpretation of the contract; and
>
> (c) that it must be unjust to allow one party to go back on the agreed interpretation.
>
> [emphasis added]

The *Hilborne* requirements have been endorsed in subsequent jurisprudence (see, for example, *MAE Engineering Ltd v Fire-Stop Marketing Services Pte Ltd* [2005] 1 SLR(R) 379 ("*MAE Engineering*") at [45]).

28 In light of the above criteria, it appeared to us that the doctrine of estoppel by convention in Singapore, strictly understood, is an evidential doctrine applied specifically to aid in the construction of agreements (*The Law of Contract in Singapore* vol 1 (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*Law of Contract in Singapore*") at para 4.122). However, it has also been noted that this proposition is not uncontroversial in light of English high judicial authorities suggesting that estoppel by convention is a manifestation of a unified and broader principle that where parties had proceeded on an underlying assumption, neither of them would be entitled to subsequently deny that assumption if it was unjust to do so (*Law of Contract in Singapore* at para 4.122).

29 In English law, estoppel by convention has often been regarded as a variant of equitable estoppel and as defining a particular set of circumstances where it would be unjust or unconscionable for a party to go back on an underlying assumption that formed the basis of the transaction. This doctrine can be invoked not only where the convention or understanding relates to

contractual rights and obligations, but also where it relates to proprietary rights. There remains, however, some uncertainty as to whether the convention can relate purely to a matter of general law or legal principle (John McGhee and Steven Elliott, *Snell's Equity* (Sweet & Maxwell, 34th Ed, 2020) at paras 12-012 and 12-015–12-016).

30 In *Revenue and Customs Commissioners v Benchdollar Ltd and others* [2010] 1 All ER 174 ("*Benchdollar*") at [52] (citing *Keen v Holland* [1984] 1 WLR 251), the following principles were considered to be applicable to the assertion of estoppel by convention arising out of non-contractual dealings:

> (i) It is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them.
>
> (ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it.
>
> (iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.
>
> (iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.
>
> (v) Some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position.

31 It was subsequently held that with respect to the first principle of a common assumption expressly shared between parties, there did not need to be an expression of accord. Agreement to the assumption may be inferred from

conduct, or even silence: *Blindley Heath Investments Ltd and another v Bass and others* [2017] Ch 389 ("*Blindley*") at [92]–[93].

32 These five principles in *Benchdollar* read together with the subsequent amendment in *Blindley* (the "*Benchdollar* and *Blindley* principles") were affirmed by the UK Supreme Court in *Tinkler v Revenue and Customs Commissioners* [2021] 3 WLR 697 at [48], which also considered it to be the correct statement of estoppel by convention for *both* contractual and non-contractual dealings (*Chitty on Contracts* vol 1 (Hugh Beale gen ed) (Sweet & Maxwell, 34th Ed, 2021) at para 6-116A).

33 The Singapore landmark case on estoppel by convention, *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 ("*Travista*"), has laid out the following elements for estoppel by convention to operate (at [31]):

> (a) The parties must have acted on "an assumed and incorrect state of *fact or law*" [emphasis added] (*per* Bingham LJ in *The Vistafjord* [1988] 2 Lloyd's Rep 343 at 352) in their course of dealing.
>
> (b) The assumption must be either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other.
>
> (c) It must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption.
>
> [emphasis in original]

34 It should be noted that unlike the *Hilborne* requirements, the requirements in *Travista* do not expressly limit the operation of estoppel by convention to the domain of contractual dealings only. That being said, *Travista* itself was a case concerning a contractual relationship between the parties, and also made reference to *Hilborne* and *MAE Engineering* as examples of an increasing reliance on the defence of estoppel by convention in the local courts

(at [30]). The question then is whether the *Travista* requirements should be applied exclusively to parties to a contract (the "Contractual Approach") or whether they could be extended more broadly to parties in other dealings and transactions (the "Broad Approach").

35 It appeared to us that the applicability of estoppel by convention to non-contractual dealings has not yet been fully settled in Singapore. In some cases, it was clearly held that estoppel by convention operated only where parties were in a contractual relationship, such that the courts declined to consider this doctrine where there was no contract (*Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 ("*De Beers*") at [44]; *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 ("*Ashley Francis*") at [200]).

36 That being said, counsel for the respondents sought to rely on the case of *Chan Yun Cheong (trustee of the will of the testator) v Chan Chi Cheong (trustee of the will of the testator)* [2021] 2 SLR 67 ("*Chan Yun Cheong*"), where the parties were co-trustees appointed pursuant to a deed of appointment (at [6]). In that case, the appellant and respondent were trustees of a trust arising out of the will of their late grandfather. By June 2003, the trust only had three trustees. Thereafter, one of the trustees ("CFC") resigned without executing a deed of retirement and the other passed away. The only remaining trustee appointed the respondent and appellant to be co-trustees alongside him (at [5]–[6]). The respondent subsequently sought to retire as trustee by deed but the appellant did not consent. The appellant himself then sought to resign by letter but was told by the respondent's solicitors that he was still a trustee and would remain so until a proper deed of retirement was executed (at [7]–[8]). The appellant contended, *inter alia*, that he had effectively retired and the doctrine of estoppel by convention would apply to estop the respondent from asserting

that the appellant could not resign by way of letter (at [19]). The Court of Appeal did not ultimately have to address the argument on estoppel by convention raised by the appellant in view of its conclusion that the appellant could not be compelled to sign a deed of retirement. However, as CFC had resigned without executing a deed of retirement, the Court of Appeal then concluded that there was a shared assumption between the current trustees that CFC was not a trustee and that it would be inequitable for the current trustees to assert that CFC was still a trustee (at [76]–[79]).

37 Having reviewed the above authorities, we were of the view that while there were cases that appeared to have adopted either the Contractual Approach or the Broad Approach, the courts have not yet undertaken an in-depth consideration of which approach would be more appropriate. We noted that in *Ashley Francis*, the court's articulation of the Contractual Approach was made in reliance on *Hilborne* and *MAE Engineering* without further elaboration. As for *De Beers*, the point on estoppel by convention was raised only on appeal (at [38]). Also, the court had relied on a single-sentence definition of estoppel by convention in *Halsbury's Laws of England* vol 16 (Butterworths, 4th Ed) (1992 Reissue) at para 1070 without further elaboration (at [44]). Further, we noted that the precise definition provided in a subsequent edition of *Halsbury's Laws of England* vol 47 (LexisNexis, 5th Ed, 2014) at para 368 now defined estoppel by convention (also with reference to *Amalgamated Investment*) as applying to a wider range of dealings:

> Where two parties act, or negotiate, or operate a contract, each to the knowledge of the other on the basis of a particular belief, assumption or agreement (for example about a state of fact or of law, or about the interpretation of a contract), they are bound by that belief, assumption or agreement.

This, taken together with the present English approach to estoppel by convention (see above at [29]–[32]), suggested that English law no longer provided support for the Contractual Approach.

38 Similarly, while *Chan Yun Cheong* appeared to apply the doctrine of estoppel by convention to parties to a deed, the Court of Appeal's findings on the doctrine of estoppel were *obiter* as it had held that the appellant could not be compelled by the court to sign the deeds and hence the argument on estoppel was moot (at [76]). Hence, it might not be correct to read *Chan Yun Cheong* as a definitive endorsement of the Broad Approach. Further, there was no discussion in *Chan Yun Cheong* as to whether the Contractual Approach should or should not be maintained. Neither was the case of *De Beers* considered.

39 Insofar as we had concluded above that Mr Bhavin had consented to the withdrawal of each notice of resignation, it was not necessary for this court to go further and consider whether estoppel by convention should apply beyond the contractual context or apply to persons who act as shareholders or co-directors of a company. We make only the observation that *Chan Yun Cheong* concerns the specific context of trusteeship which the court highlighted was a "serious appointment", whereby a trustee could not simply relinquish duties except in accordance with the law and the terms of the trust instrument (at [1]).

40 If estoppel by convention could have been invoked by the respondents (which we took no position on at the present time), we would have been of the view that Mr Bhavin would be estopped from denying Mr Sahni's directorship because he had remained silent and acted on the basis that Mr Sahni was still a director, allowing Mr Sahni, the other directors and Arpee Gem to proceed on the mistaken assumption that there was consent to the withdrawal of Mr Sahni's Resignations from Arpee Gem. There was prejudice in that other directors or

shareholders could have taken steps to appoint a new director or re-appoint Mr Sahni for the avoidance of doubt if they had known that Mr Bhavin was taking a different position with regards to the validity of the 2015 and 2018 Resignations. There might also have been prejudice to Mr Sahni in that he had continued to act as a director when he was not supposed to which could have exposed him to liability.

41 For completeness, Mr Bhavin also submitted that the following points of evidence should have been considered by the Judge in determining whether Mr Sahni had continued to remain as a director. First, the respondents had not produced any other directors' resolutions signed by Mr Sahni after the Resignations, or any other documentation (save for the Indemnity and the 31 March 2014 and 31 March 2015 financial statements) to establish that Mr Sahni had continued as a director with Arpee Gem's consent. Second, the respondents passed a resolution to re-confirm Mr Sahni's status as a director on 24 December 2021, in the midst of the proceedings in OS 1267. We considered these arguments to have a neutral impact on Mr Bhavin's case. While such resolutions or additional documentation might have served as evidence in the respondents' favour, they were not indispensable towards establishing that Mr Sahni was still a director. Even without such resolutions, the available evidence sufficed to establish on a balance of probabilities that Mr Sahni had continued to act and had been permitted to continue to act as a director. In light of the evidence, it appeared that the 24 December 2021 resolution was simply to further confirm his directorship to avoid argument; it did not tell any other "truth of the matter" as suggested by Mr Bhavin.

42 While Mr Bhavin also contended that Mr Sahni had not mentioned the withdrawal of the Resignations in his email when responding to Mr Bhavin's objection to his directorship, we did not think that was a reasonable

interpretation of the evidence at hand. What Mr Sahni had stated was that "[t]here was no acceptance of the resignation by any of the directors" and that his "activities as a Director continued". This sufficed to indicate his belief and position that he remained a director of Arpee Gem.

43 The point that a resignation is effective when a notice of resignation is sent did not preclude the withdrawal of the notice by consent. Otherwise, there could never be a withdrawal in most situations where notice of resignation is given. Contrary to what counsel for Mr Bhavin submitted, the case of *Glossop v Glossop* [1907] 2 Ch 370 did not suggest that a resignation could only be withdrawn before the notice of resignation comes into effect (*eg*, where the director's resignation is subject to a further event). The case should instead be properly read as authority for the position that a director's resignation may be withdrawn with the consent of the company's directors, albeit subject to the terms of any contract between the director and the company, and the memorandum and articles of association of the company.

44 With respect to the Amendment Application, we also held that Mr Bhavin's reliance on ss 145(4A) and (4B) of the CA was misplaced. These provisions were to facilitate the resignation of a director even without the consent of the company. They did not preclude the company and the director from agreeing to the withdrawal of his resignation notice. Hence, the attempt to amend OS 1267 to rely on s 18 and the First Schedule of the SCJA to enforce these two provisions was misplaced.

Conclusion

45 In the circumstances, we dismissed the appeal on the facts.

46 For the avoidance of doubt, we also discharged the injunction orders granted on 27 February 2023 in paragraphs 1(a) to 1(f) of HC/ORC 1009/2023, which were granted in HC/OA 342/2022. We took the view that any application for a further Erinford injunction pending any application for permission to appeal and, if permission was granted, pending any appeal to the Court of Appeal, would be a separate matter.

47 Mr Bhavin was ordered to pay costs of the appeal and also of HC/OA 342/2022 to the first to third respondents fixed at $50,000 all in. The usual consequential orders applied.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Quentin Loh Sze-On
Senior Judge

Jerald Foo and Luis Inaki Duhart Gonzalez (Selvam LLC) for the appellant;
Koh Swee Yen SC, Ang Shunli Alanna Suegene Uy and Teo Wei Kiat Samuel (WongPartnership LLP) for the first to third respondents;
The fourth respondent absent and unrepresented.