

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

LEE KEE CHOONG

Appellant

- and -

1. EMPAT NOMBOR EKOR (N.S.)
SDN. BHD.

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2. EMPAT NOMBOR EKOR BHD.

3. LIM CHOOI SENG

4. CHOONG WAH TAT

5. NG MEE FAH

6. LEE KUEN CHIN (f)

Respondents

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal by leave of the Federal Court of Malaysia from an Order dated the 1st October 1974 of the said Federal Court dismissing an appeal by the Appellant against an Order dated the 4th March 1974 of Mr. Justice Mohamed Azmi dismissing an application by the Appellant for the rejection of a valuation report made by Messrs. Price Waterhouse & Company, Chartered Accountants.

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2. On the 23rd January 1973 the Appellant presented to the High Court in Malaya at Kuala Lumpur a petition under the Companies Act 1965 in the matter of Empat Nombor Ekor (Negri Sembilan) Sdn. Bhd. (the first Respondent and hereinafter referred to as "the Company"). The Petition claimed relief under Section 181 of the said Act and in the alternative an Order for the winding up of the Company and was presented by the Appellant as a contributory of the Company.

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RECORD

3. The Petition was opposed by the Company and by other contributories who are Respondents to this Appeal and are hereinafter referred to as "the Respondent Contributories". By a consent order made on the 5th July 1973 Mr. Justice Mohamed Azmi ordered that all the shares in the Company of the Appellant and his brother Lee Kee Min be purchased by any or all of the remaining contributories of the Company at a fair and just price to be assessed by a firm of independent chartered accountants to be approved by the Court. 10
- p.1 4. The Appellant and the Respondent Contributories were unable to agree as to the firm to be appointed (subject to the approval of the Court) for this purpose and on the 6th August 1973 the Appellant issued a Summons for an Order that Messrs. Price Waterhouse & Company be approved to determine the price of the said shares. This application was opposed by the Respondent Contributories who favoured the appointment of a different firm of accountants but on 10th September 1973 an Order was made on the said Summons by Mr. Justice Mohamed Azmi that Messrs. Price Waterhouse & Company (hereinafter referred to as "the Reporting Accountants") be approved to determine the said price and to have access to all bills papers vouchers accounts and other documents of the Company which they considered relevant for the purpose of carrying out the valuation of the said shares. 20
- p.8 5. The valuation was made by the Reporting Accountants who in a letter dated the 1st December 1973 listed the documents examined by them for the purpose and reported that on the basis of that information they valued the shares at \$184 per share. 30
- p.9 6. On the 4th February 1974 the Appellant issued a Summons for an Order that the report of the Reporting Accountants be rejected on the ground (as stated in the Appellant's affidavit filed in support of the Summons) that the valuation was wholly erroneous and misconceived. On the 4th March 1974 Mr. Justice Mohamed Azmi ordered that the application be dismissed with costs on the grounds that 40
- p.21 (1) since the appointment of the Reporting Accountants was made at the instance of the Appellant who had vouched for their experience and impartiality it was unjust that he should now reject their 50

valuation as wholly erroneous and misconceived;

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(2) the Appellant's opinion (as stated in his said affidavit) of the value of the shares could not be accepted against the expert opinion of the Reporting Accountants;

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(3) in a valuation made by another firm of chartered accountants and giving a higher price for the shares (which was put in evidence by the Appellant and is hereinafter referred to as "the alternative valuation") there was nothing to show in what way the valuation of the Reporting Accountants was erroneous; and in the absence of any specific allegation of partiality or improper conduct by them the Appellant should be bound to accept their valuation.

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7. The Appellant appealed from this decision to the Federal Court of Malaysia. At the hearing of the Appeal an application was made on behalf of the Appellant for leave to adduce further evidence (namely an affidavit of the Appellant filed on the 30th September 1974) but by an Order of the Federal Court made on the 28th September 1974 a motion that such affidavit be admitted was dismissed with costs. If and so far as may be necessary the Respondent Contributories will contend

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(a) that the decision of the Federal Court to dismiss the motion was correct;

(b) that even if admitted in evidence such affidavit establishes no additional facts relevant to the decision of the Federal Court.

8. The grounds of the Appeal were that Mr. Justice Mohamed Azmi

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(1) misdirected himself in dismissing the Appellant's application on the grounds stated in his judgment;

(2) failed to attached sufficient importance to the alternative valuation;

(3) failed to direct his mind to and appreciate the fact that the valuation of the Reporting Accountants was so inadequately small that it could have

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been arrived at only on the erroneous principle that the Company was not a going concern;

- (4) failed to appreciate that the audited accounts of the Company were inaccurate and that the Appellant had challenged their accuracy in the Petition for winding up and that the Reporting Accountants had erred in basing their valuation on those accounts. 10

At the hearing of the appeal it was also contended that the reference to the Reporting Accountants for a valuation was made without jurisdiction since only a single person (and not a firm) may be appointed for the purposes of a valuation report. This contention was rejected by the Federal Court.

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9. The Appeal was dismissed with costs by an Order of the Federal Court dated 1st October 1974. In their judgment which was delivered on the 8th January 1975 the Court referred to the tests laid down in decided cases and to the following circumstances in the present case namely :- 20

- (1) The Reporting Accountants did not state in their valuation report the reasons which had led them to arrive at their valuation.
- (2) There was no direction to them as to valuation on a going concern basis or on the basis of a break up valuation 30
- (3) There was nothing to suggest the basis on which the valuation in the alternative report was arrived at
- (4) The relevant accounts and books were made available to the Reporting Accountants (as directed by the Order appointing them) and their valuation was based on all the accounts the accuracy of which had never been challenged by the Appellant. 40

The Court concluded that in all the circumstances of the case they could find no justification to go behind the valuation report or allow any further enquiries to be made as to the correctness or otherwise of the valuation.

10. The Respondent Contributories at all times since the report of the Reporting Accountants have

been and continue to be ready and willing to purchase the shares of the Appellant and his brother Lee Kee Min in accordance with the consent order dated the 5th July 1973 at the valuation stated in the said report.

10 11. The Respondent Contributories humbly submit that the decision of the Federal Court of Malaysia is right and should be affirmed and that this Appeal should be dismissed with costs for the following among other

R E A S O N S

1. BECAUSE the Reporting Accountants were by virtue of the Order of Mr. Justice Mohamed Azmi dated the 10th September 1973 validly appointed to determine the fair and just price of the shares in the Company of the Appellant and his brother Lee Kee Min pursuant to the consent order dated the 5th July 1973.

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20 2. BECAUSE the fair and just price of the said shares was duly and properly determined by the Reporting Accountants pursuant to and in accordance with the said Orders and that there has not been established by the Appellant any circumstance vitiating their valuation or any ground on which it is susceptible to challenge.

3. BECAUSE the reasoning in the decision and judgment of Mr. Justice Mohamed Azmi was correct.

30 4. BECAUSE the reasoning in the decision and judgment of the Federal Court of Malaysia is correct and ought to be confirmed.

STEWART BATES
L.J.MORRIS SMITH
S.Y. CHAN

No. 22 of 1975

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6. LEE KUEN CHIN (f) Respondents

CASE FOR THE RESPONDENTS

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