IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 255

Suit No 27 of 2009

Between

(1) Yeo Boong Hua
(2) Lim Ah Poh
(3) Teo Tian Seng

… *Plaintiffs*

And

(1) Turf Club Auto Emporium Pte Ltd
(2) Singapore Agro Agricultural Pte Ltd
(3) Koh Khong Meng
(4) Turf City Pte Ltd
(5) Tan Huat Chye
(6) Ng Chye Samuel
(7) Tan Chee Beng
(8) Ong Cher Keong

… *Defendants*

SUPPLEMENTARY JUDGMENT

[Tort] — [Conspiracy] — [Unlawful means]
[Tort] — [Inducement of breach of contract]

TABLE OF CONTENTS

Yeo Boong Hua and others
v
Turf Club Auto Emporium Pte Ltd and others

[2017] SGHC 255

High Court — Suit No 27 of 2009
Woo Bih Li J
24, 28 August; 19 September 2017

17 October 2017

Woo Bih Li J:

Introduction

1 This judgment is issued as a supplement to an earlier decision of this Court dated 6 August 2015 in *Yeo Boong Hua and others v Turf Club Auto Emporium Pte Ltd and others* [2015] SGHC 207 ("the HC Judgment"). The HC Judgment concerned the setting aside of the Consent Order entered into by the parties in settlement of then-ongoing litigation (*ie*, the Consolidated Suits), and the consequences arising therefrom should that order be set aside. I held that the Consent Order should be set aside on grounds of the Defendants' repudiatory breaches of that order, and that the Consolidated Suits should therefore be reinstated.

2 On 22 March 2017, the Court of Appeal in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 ("the CA Judgment") agreed with my findings on the repudiatory breaches. However, in relation to the remedies that should flow from those breaches, the Court of Appeal held that there was no basis for the Consent Order to be set aside or for the Consolidated Suits to be reinstated. The Court of Appeal requested further submissions on the consequential issues arising from the findings in the CA Judgment.

3 On 15 August 2017, the Court of Appeal heard the parties on their further submissions and reserved judgment. By a letter through the Registry dated 24 August 2017, the Court of Appeal directed that the Plaintiffs' claims in the torts of conspiracy and inducement of breach of contract were to be concurrently remitted to this Court for determination. These claims were pleaded and advanced in the Consolidated Suits, and in the HC Judgment I left them to be dealt with as part of the reinstated Consolidated Suits. I now consider these claims on the merits.

Background

4 The background facts leading to this supplementary judgment were set out in the HC Judgment after a trial of the action (at [5]–[56]) and in the CA Judgment (at [4]–[50]). I do not propose to repeat them except where necessary or desirable to provide easier understanding or context. I will also adopt the same descriptions and definitions as were used in the HC Judgment.

The Joint Venture

5 The Plaintiffs and the SAA Group represent two business groups in the Joint Venture. The Plaintiffs are the three individuals in the first group, and the latter SAA Group comprises five individual Defendants (*ie*, Roger Koh, Tan Senior, Samuel Ng, Tan CB, and Ong CK). The Joint Venture concerned the development and operation of the Site, which was a large plot of land (roughly 557,000m^2) located in Bukit Timah, Singapore.

6 In January 2001, the SLA, which was then known as the Singapore Land Office, invited tenders for the lease of the Site. The Tender Notice put up by the SLA indicated that the lease was to commence from 1 September 2001 and the tenure was described as "3+3+3 years", which referred to a term of three years with an option to renew for a three year term plus a further option for the third tranche of a three year term. By the time the tender closed on 2 March 2001, SLA had received only two bids. One was submitted by the Plaintiffs through their corporate vehicle, BTC; the other was submitted by the SAA Group through their corporate vehicle, SAA.

7 The Plaintiffs and the SAA Group came to know that the other group had placed or was planning to place a bid for the Site. Thereafter, a consensus was reached between the two groups that they would enter into the Joint Venture to develop and operate the Site regardless of which group would win the tender. While there was some dispute as to whether the two groups had had a discussion about the Joint Venture on 2 March 2001, just before the their respective bids were submitted that same day, there was no dispute that the MOU to develop and operate the Site was signed on 8 March 2001 by the Eight Individuals who comprise the Plaintiffs and the SAA Group. The MOU envisaged that a Joint Venture company, *ie*, the New Company, would be incorporated to

develop and operate the Site, and that the Plaintiffs and the SAA Group would hold 37.5% and 62.5% of the shares in the New Company respectively.

8 Eventually, instead of one company, two new companies were incorporated (*ie*, TCAE and TCPL, which collectively comprise the JV Companies) to develop and operate the Site. The business model for the Project was to use part of the Site as a used car centre and another part as a shopping mall. The plan was for the successful bidder, which turned out to be SAA, to grant a sub-tenancy to each of the JV Companies on identical terms as the head lease between the SLA and SAA. Each of the JV Companies would then rent or license out individual lots or units to the ultimate sub-tenants.

9 I set out in Annex A a table of relevant persons and their directorships and shareholdings in the various companies. In this regard, I note that there is an inaccuracy in the HC Judgment, where it is stated (at [22]) that "[o]n 25 June 2001, the Eight Individuals [defined as the Plaintiffs and the SAA Group collectively][1] were appointed as directors of TCPL." Rather, it would appear that Tan Senior and Ong CK had been directors of TCPL from 12 May 2001,[2] and that on 25 June 2001, only 6 and not 8 persons were approved as directors of TCPL (*ie*, Roger Koh, Samuel Ng, Tan CB, and the Plaintiffs).[3] Nothing in the HC Judgment is affected by this discrepancy.

10 On 10 July 2001, the SLA granted the first tranche of the head lease, *ie*, the 2001 Head Lease, to SAA for three years starting from 1 September 2001. On the same day, SAA in turn entered into the first sub-tenancies,

---

1 See HC Judgment at [13].

2 Yeo Boon Hua's AEIC at para 82.

3 2 AB 338.

ie, the 2001 STAs, with each of the JV Companies for a period of three years less one day.

Disputes and the Consent Order

11 Unfortunately, disputes then arose between the Plaintiffs and the SAA Group in relation to the Joint Venture. These disputes culminated in two actions commenced by the Plaintiffs, *ie*, OS 1634/02 and S 703/04, against various individuals and corporate entities. The two actions were consolidated on 28 January 2005 and were referred to as the "Consolidated Suits" in the HC Judgment.

12 While the court proceedings in the Consolidated Suits were pending, two sets of events occurred:

(a) The 2001 Head Lease and the 2001 STAs expired. On 10 September 2004, the SLA granted a second tranche of a three years lease to SAA in respect of the Site, *ie*, the 2004 Head Lease. On the same day, SAA granted the second tranche of the sub-tenancies, *ie*, the 2004 STAs, to each of the JV Companies for a period of three years less one day.

(b) Samuel Ng, Tan Senior, and Ong CK were adjudged bankrupts on 25 April 2003, 29 August 2003, and 5 March 2004 respectively. As a result of their bankruptcy, the three individuals could no longer hold directorships in the JV Companies. Tan CB and Roger Koh were the ones formally in charge of operations from 2004 onwards.

13 On 22 February 2006, the Consent Order was entered into. The Plaintiffs and some of the Defendants were named parties to the Consent Order, but not

Tan CB and Ong CK. As for Tan Senior, it was disputed whether he was a party to the Consent Order and whether he had been represented by Tan CB at the hearing at which the Consent Order was recorded (see CA Judgment at [28]).

14 I have set out the aim and the mechanism originally envisaged under the Consent Order in [30] to [34] of the HC Judgment. Broadly speaking, the Consent Order envisaged (a) an investigation into the Plaintiffs' allegations regarding the financial affairs of the JV Companies, (b) a valuation of the JV Companies, and (c) a closed bidding exercise, at the end of which the higher bidder would purchase the shares of the lower bidder in the JV Companies and representatives of the lower bidder would also resign from directorship positions in the JV Companies. The Joint Venture would therefore come to an end.

15 To give effect to the above, the Consent Order envisaged that the KPMG entities designated to conduct the investigation and valuation would submit the Valuation Report in relation to the JV Companies to the parties to the Consent Order by 2 July 2006, and that the bidding exercise would be carried out within 28 days thereafter. However, the Valuation Report was eventually issued on 10 August 2007, more than 13 months after the envisaged deadline.

The present action

16 Importantly, on 8 September 2006, while the Valuation Report was pending, SAA obtained in-principle approval for the renewal of the 2004 Head Lease for the third tranche. The formal agreement with the SLA for this third tranche, *ie*, the 2007 Head Lease, was signed on 22 May 2007. However, this time round, SAA did not grant any sub-tenancy to either of the JV Companies.

17 In the circumstances, the Plaintiffs commenced the present suit against the Defendants to set aside the Consent Order on grounds of repudiatory breach, frustration, and mistake. In particular, the Plaintiffs claimed that the non-renewal of the sub-tenancies constituted repudiatory breaches of the Consent Order. I found in their favour (see HC Judgment at [121]–[178], [227(a)]), and the Court of Appeal agreed with this finding (see CA Judgment at [112]–[148]).

18 However, while I had set aside the Consent Order and allowed the reinstatement of the Consolidated Suits as a consequence of the repudiatory breaches (see HC Judgment at [210], [227(d)]), the Court of Appeal held that the Consent Order could not be set aside *ab initio* and that the Consolidated Suits could not be reinstated by the Plaintiffs (see CA Judgment at [149]–[173]).

19 On invitation of the Court of Appeal, the parties subsequently addressed the Court of Appeal on 15 August 2017 regarding the remedies that should flow from the Defendants' repudiatory breaches of the Consent Order (see CA Judgment at [174]–[175]). Thereafter, the Court of Appeal gave directions for certain claims to be remitted to the trial judge. The directions were set out in a letter from the Registrar of the Supreme Court dated 24 August 2017. It stated that the Plaintiffs' claims in the torts of conspiracy and inducement of breach of contract were to be remitted to the trial judge for determination. In the HC Judgment, I did not make any findings in respect of these two claims as I was of the view that these claims would be subsumed under the Consolidated Suits which were to be reinstated (see HC Judgment at [228]). However, as the Court of Appeal decided that the Consolidated Suits could not

be reinstated, these claims have to be addressed by me, and I do so in the present supplementary judgment.

20 Specifically, the Court of Appeal's directions to this Court sought my determination of whether some of the Defendants, in particular, the Defendants who were not parties to the Consent Order, namely, Tan CB, Ong CK, and Tan Senior (who was arguably not a party to the Consent Order), are liable for:

(a) the tort of conspiracy (either by unlawful means or to injure) to cause or procure the contractual breaches as pleaded at para 67 of the Statement of Claim (Amendment No 2) ("the SOC"); and/or

(b) the tort of inducing the breaches of contract as pleaded at para 68 of the SOC.

21 The Court of Appeal clarified that the question is whether the Defendants in the present action, in particular, Tan CB, Ong CK, and/or Tan Senior, had conspired to procure and/or had induced the breaches of the Consent Order by the other relevant Defendants. Further, I am not required to consider or find whether any of the Defendants in the present action owed or breached any fiduciary duties under the Joint Venture, under the Consent Order, or on any other basis. I am also not required to consider whether the Plaintiffs' claims had been adequately pleaded in the SOC.

22 The Court of Appeal directed that the Plaintiffs' claims are to be decided without any further evidence being adduced by the parties, but left it to me to decide whether further submissions on any particular point should be made.

23 On 28 August 2017, I gave directions for further submissions on the law pertaining to conspiracy and inducement of breach of contract. Further submissions have been received.

The decision

Tort of conspiracy to injure by unlawful means

24 Generally, to establish a claim on conspiracy by unlawful means, the plaintiff must show the following (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

25 In respect of element (a), I note that conspiracy or combination may often, in the absence of direct evidence, be inferred from the circumstances: "[i]t is not often that the victim of a conspiracy will be able to obtain direct evidence to prove the allegation. Proof of conspiracy is normally to be inferred from other objective facts." (*Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 at [19]; *The*

Dolphina [2012] 1 SLR 992 ("*The Dolphina*") at [262]). Furthermore, since proof of a combination is usually not forthcoming, the unlawful acts being performed are often sufficient to justify the inference that their commission was the product of concert between the alleged conspirators (*The Dolphina* at [264]).

26 In the present case, element (e) is not in dispute. In respect of the other elements, these will be discussed in the context of the role and participation of each of the relevant Defendants (*ie*, Tan CB, Roger Koh, Tan Senior, and Ong CK), which I will examine in turn.

27 Before I do so, I make one observation about SAA. In view of my findings as the trial judge, which were accepted by the Court of Appeal, it can no longer be disputed that SAA is one of the Defendants who had breached the Consent Order. Under the Consent Order, if the 2007 Head Lease was granted by the SLA to SAA (as had turned out to be the case), SAA would be obliged to grant sub-tenancies to each of the JV Companies in respect of the third three year tranche of the 2007 Head Lease. In short, it was envisaged under the Consent Order that the JV Companies would have the benefit of such sub-tenancies. Accordingly, by refusing to grant the sub-tenancies to the JV Companies, SAA had misappropriated the benefit of the 2007 Head Lease, undermined the Consent Order, and caused the Plaintiffs to suffer loss.

Tan CB

28 Since SAA is a corporate entity, it must have acted through natural persons as its officers or representatives.

29 One of these officers or representatives at the material time was Tan CB. He was a director of SAA both before and after the Consent Order was made (see Annex A).[4] It was not in dispute that Tan CB was the one who had, in his own words, "decided" that SAA would not grant the sub-tenancies in question to the JV Companies, despite SAA itself having been granted the 2007 Head Lease by the SLA.[5] Tan CB's main defence was that there was no obligation under the Consent Order for SAA to grant these sub-tenancies to the JV Companies. In other words, there was no prohibition on SAA's appropriation of the whole of the benefits of the 2007 Head Lease to itself. However, as stated above (at [17]), the Courts have found to the contrary.

30 I add that this was not a case of an innocent breach of the Consent Order. Any suggestion that Tan CB had genuinely believed that SAA was not obliged to grant the sub-tenancies, and/or that he had genuinely sought and relied on legal advice to that effect,[6] must be rejected. As the Court of Appeal observed, the parties would have responded "Oh, of course!" if the officious bystander had asked them at the time the Consent Order was entered into whether SAA should be prohibited from appropriating the benefit of the 2007 Head Lease pending the performance of the Consent Order, should the 2004 Head Lease expire before then (see CA Judgment at [138]). Furthermore, as I explained in the HC Judgment (at [151]), Tan CB's claim that he had embarked on this course of conduct out of concern about the impact of a possible liquidation of the JV Companies on the ultimate sub-tenants appears to be a sham. Therefore, it was and remains clear that Tan CB must have known at all material times that if the sub-tenancies were not granted for the third tranche, this would undermine

---

4 3 AB 782–784; Tan CB's AEIC at para 1.

5 Tan CB's AEIC at para 182.

6 See Tan CB's AEIC at paras 179–182.

the bidding process for the JV Companies envisaged by the Consent Order and cause injury to the Plaintiffs.

31 Even though knowledge of a probable or certain outcome does not necessarily mean that there is intention to cause that outcome, the requisite intention can nevertheless be inferred from such knowledge (*EFT Holdings* at [101]). Indeed, it is clear on the facts that Tan CB's intention was to cause injury to the Plaintiffs. Notwithstanding Tan CB's knowledge that the business and value of the JV Companies would be undermined by his decision for SAA not to grant the third tranche of the sub-tenancies to the JV Companies, he continued with the pretence that the valuation and the bidding of the JV Companies would proceed as envisaged under the Consent Order, without informing the Plaintiffs of his intention to deprive the JV Companies of the sub-tenancies for the third tranche. This meant that the Plaintiffs would most likely overbid for the SAA Group's shares in the JV Companies, which were in truth bereft of value. Even if the Plaintiffs had realised in time that SAA would not grant the sub-tenancies to the JV Companies, they would nevertheless be deprived of the opportunity to participate in the business of the JV Companies since there would be little purpose in them submitting a bid when the existing 2004 STAs were coming to an end. Furthermore, the SAA Group would also in all likelihood not be making any meaningful bid for the Plaintiffs' shares in the JV Companies, if at all. In the circumstances, the irresistible inference from Tan CB's conduct was that he intended to injure the Plaintiffs in a targeted manner either by causing them (a) to overbid for the JV Companies' shares held by the SAA Group, or (b) to be deprived of the opportunity to continue participating in the development and operation of the Site, and to be unable to obtain fair value for their shares in the JV Companies.

32 It may be that Tan CB also desired to benefit himself, SAA, and/or members of the SAA Group. But even then, that does not mean that Tan CB could not have the requisite intention to injure the Plaintiffs. In this regard, conspirators do not have to act with the predominant purpose of causing injury (Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*Gary Chan*") at para 15.064, citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637). Furthermore, as the Court of Appeal stated in *EFT Holdings* (at [101]), injury to the plaintiff may be either an end in itself or a means to an end. Thus, even if Tan CB had also desired to benefit himself and/or his allies, that would all the more be evidence that he did intend to cause injury to the Plaintiffs, as the deprivation of the Plaintiffs of all benefit of the 2007 Head Lease was the necessary means by which Tan CB would be able to satisfy such desire.

33 Apart from the element of intention, it also cannot be disputed that Tan CB's decision for SAA not to grant the sub-tenancies to the JV Companies, which I had found and the Court of Appeal agreed constituted repudiatory breach of the Consent Order (see above at [17]), qualified as an unlawful act required to establish a claim in unlawful means conspiracy (see, generally, *Gary Chan* at para 15.068).

34 The real question now is whether Tan CB had acted alone or with other individuals in concert. While there may be a legal issue of whether SAA can conspire with its own director, a decision on this issue is unnecessary since (as will be explained) I have found a conspiracy between certain individual Defendants to injure the Plaintiffs by unlawful means.

35 However, I should mention that SAA did not act alone. Indeed, it could not have: to deprive the JV Companies of the benefit of the sub-tenancies, SAA needed the cooperation of the JV Companies themselves. When the 2004 STAs expired without SAA granting the third tranche of the sub-tenancies to the JV Companies, this did not mean that the Site ceased to have any business. In reality, what happened was that SAA took over the contractual arrangements which the JV Companies would have had with the ultimate sub-tenants for another three years. By doing so, SAA effectively reaped the benefits of this exercise while depriving the JV Companies of the corresponding benefit from a further continuation of the contractual arrangements with the ultimate sub-tenants. It is not important how SAA achieved this, *eg*, by entering into new contractual arrangements directly with the sub-tenants or by requiring the JV Companies to assign to SAA the benefits of existing contractual arrangements with the ultimate sub-tenants. What is clear is that the JV Companies must have assisted SAA on this course of action by, at the very least, acquiescing in this state of affairs. Practically speaking, Tan CB was also a director of each of the JV Companies at the material time (see Annex A), which were in fact controlled by the SAA Group, or some or one of the members in that group.

Roger Koh

36 The first individual I consider who may have acted in concert with Tan CB is Roger Koh because the facts concerning Roger Koh are clearer than those concerning Tan Senior and Ong CK.

37 On the facts, it is undisputed that Roger Koh was a party to the MOU and also a party to the Consent Order. Roger Koh was not a director of SAA but he was from June 2001 a director of TCPL, and from February 2004 a director

of TCAE (see Annex A). Although the Plaintiffs alleged that Roger Koh was doing the bidding of the Tan family (*ie*, Tan Senior and Tan CB), Roger Koh disagreed. He maintained that he was a "successful businessman in his own right".[7]

38 It does not matter for present purposes whether Roger Koh was a puppet of the Tan family or if he could make his own decisions. More importantly, Roger Koh's Affidavit of Evidence-in-Chief ("AEIC") did not dispute that he knew what Tan CB was doing through SAA and also the JV Companies. Rather, his defence was that it was ridiculous for the Plaintiffs to allege that SAA was obliged to grant the sub-tenancies to the JV Companies.[8] As the Court of Appeal has concluded that the parties to the Consent Order would obviously have known the contrary, this defence must fail. It must also follow that Roger Koh knew that what Tan CB was doing was in breach of the Consent Order, but nevertheless acted in concert with him to partake in that breach, intending thereby to cause injury to the Plaintiffs.

39 Was the conduct of Roger Koh simply one of acquiescence, *ie*, that he passively stood by and allowed Tan CB to do as he wished with the JV Companies? I do not think so. I am of the view that it was likely that Tan CB consulted Roger Koh and obtained his agreement with the course of conduct in question especially if, as Roger Koh himself alleged, Roger Koh was a successful businessman in his own right. Tan CB knew that Roger Koh was a party to the Consent Order, and he also knew that SAA's decision not to grant the sub-tenancies for the third tranche would result in a breach of the

---

7 Roger Koh's AEIC at para 30.

8 Roger Koh's AEIC at para 56.

Consent Order which would in turn mean that Roger Koh would, at the least, also be in breach of the Consent Order.

40 Furthermore, I note that Roger Koh also said in his AEIC that when the sub-tenancies for the first tranche were about to expire, he had told Tan CB not to issue fresh sub-tenancies for the second tranche to the JV Companies as Roger Koh was by then already uncomfortable with the idea of having to work with the Plaintiffs for another three years.[9] However, Tan CB decided to renew the sub-tenancies as he was hopeful that the relationship between the two groups would mend. If Roger Koh were to be believed on this point, then it was also more likely than not that he did have his say and played an active role in the decision for SAA not to grant sub-tenancies for the third tranche to the JV Companies.

41 In any event, the mere fact that an alleged conspirator did not expressly agree to or actively participate in a conspiracy does not mean that he cannot be equally liable by acquiescence. In this regard, two points are notable.

(a) A combination between conspirators need not be in the nature of an express agreement. The Court may infer the existence of a combination from the circumstances and acts of the alleged conspirators (*EFT Holdings* at [113]; *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 at [96]), so long as the alleged conspirators are "sufficiently aware of the surrounding circumstances and share the object for it properly to be said that they were acting in concert at the time of the acts complained of" (*Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER (Comm) 271 at [111];

9 Roger Koh's AEIC at para 56.

endorsed by the Court of Appeal in *EFT Holdings* at [113]). In this regard, a conspirator need not know all the details of the plot as long as he is aware of the common objective and what his role in bringing it about involves (*The Dolphina* at [282]).

(b) For the purposes of unlawful means conspiracy, the "unlawful means" could be effected through an omission (*The Dolphina* at [269]).

42 The 1st to 4th Defendants submitted that the proposition that "unlawful means" can take the form of an omission applies only where the defendant had knowledge of and was in a position to prevent the unlawful act but did not act.[10] In support, they summarised the facts of *The Dolphina* to be one where the defendant ship owner had knowledge of the fraud that the charterer was perpetuating, and was in a position to prevent the charterer from effecting the fraud by demanding the return of the bill of lading in question which was used to facilitate that fraud, but did not do so.[11]

43 It is not clear if the 1st to 4th Defendants' narrow reading of the legal proposition on conspiracy by omission in *The Dolphina* is sustainable. In any event, even taking their summary of the facts at face value, I am of the view that the conduct of the defendant ship owner in *The Dolphina* is closely analogous to that of Roger Koh in the present case. As I have explained, the JV Companies must have assisted SAA on the conspired course of conduct, at the very least, by acquiescing in the state of affairs (see above at [35]). Roger Koh, as a shareholder and a director of both the JV Companies at the material time, was

---

10 See D1–D4's Supplementary Submissions at para 14.

11 See D1–D4's Supplementary Submissions at para 15.

in a position to object when SAA declined to grant the sub-tenancies for the third tranche and when SAA took over the contractual arrangements with the ultimate sub-tenants. Instead, Roger Koh stood by and acquiesced in Tan CB's decision to appropriate to SAA the whole benefit of the 2007 Head Lease, and he was content for this to happen even though it exposed him to liability under the Consent Order. In such circumstances, Roger Koh's acquiescence (even assuming that his role was so limited) constituted "unlawful means", and by such conduct he must have intended to deprive the JV Companies of the benefits of the third tranche of the sub-tenancies, thereby causing injury to the Plaintiffs. I add that even if Roger Koh had merely acquiesced, it would not have been due to a lack of intention on his part to cause injury to the Plaintiffs but because there would have been no active role that he needed to play in order to perpetrate the unlawful breach of the Consent Order. Thus, Roger Koh would still be liable for conspiracy by unlawful means.

Tan Senior

44 I come now to Tan Senior. He was a director of SAA from 25 October 1999 to 23 February 2001 (see Annex A). He was also a shareholder of SAA until 23 February 2001. That date is of some importance because the MOU was dated 8 March 2001, about two weeks after he ceased to be a shareholder of SAA.

45 Tan Senior took various points to distance himself from the breaches of the Consent Order:

(a) First, Tan Senior's position was that in or around late 2000, when he was in his mid-50s, he wanted to let his children and in particular, Tan CB, gradually take over his business. Accordingly, on or about

23 February 2001, he sold his shares in SAA to Tan CB and ceased to be a shareholder and director of SAA (see Annex A). Thereafter, he stopped being involved in SAA's business. In relation to the JV Companies which were incorporated in April 2001, Tan Senior explained that although he held 11.25% of the shares in each of the JV Companies and was appointed chairman for the meetings of these companies, it was Tan CB who was actually in charge of the day-to-day management of these companies. It was also Tan CB who handled the Plaintiffs' enquiries on the financial affairs of the JV Companies. Furthermore, on or about 1 November 2002, Tan Senior sold his shares in TCPL and TCAE to SAA.[12] In cross-examination, he said he did so as he was tired and he wanted to let Tan CB take over.[13] As he had handed over his businesses to Tan CB before the occurrence of the breach of the Consent Order, Tan Senior was not involved in any conspiracy to injure the Plaintiffs through SAA.

(b) Secondly, Tan Senior made the point that as regards the initial tender for the Site in 2001, although SAA was interested in participating in the tender, he had a separate interest in the opportunity. This was because another of his businesses, *ie*, Kallang Auto, had a sub-lease of a site near Kallang which was due to expire in or around 2002.[14] If SAA succeeded in the tender, he would discuss with Tan CB as to when and how the existing tenants of Kallang Auto could rent spaces at the Site. Thus, Tan Senior's interest and involvement in SAA was limited to this extent.

---

12 Tan Senior's AEIC at paras 58–59.

13 NE 17/9/14 at p 52, lines 9–10.

14 Tan Senior's AEIC at para 14.

(c) Thirdly, on 29 August 2003, a creditor bank obtained a bankruptcy order against Tan Senior. He then ceased to be a director of the JV Companies. Tan Senior alleged that from the time of the bankruptcy order onwards he had no further involvement in these companies nor did he have access to their documents and accounts. He could not therefore have been complicit in the breach of the Consent Order.

46 I am of the view that none of these arguments suffices to distance Tan Senior from the conspiracy effected through SAA and the JV Companies.

47 In relation to the first point, I am of the view that, in reality, Tan Senior still had an interest and a continued involvement in SAA and the JV Companies even though he had purportedly intended to allow Tan CB to take over his businesses.

48 First, I am aware that Tan Senior did say in his AEIC that he had transferred his shares in SAA on or about 23 February 2001 to Tan CB as he wanted Tan CB to gradually take over his business interests. Whether or not this reason is true, it was not simply because he was feeling tired and wanted to cease all involvement in his business ventures. If that had been the case in February 2001, Tan Senior would not have taken a personal interest and stake in the Joint Venture subsequently in March 2001. As Tan Senior accepted, he was a party to the MOU in his own personal capacity, and under the terms of the MOU he was to have a 12.5% stake in the Joint Venture.[15]

---

15 Plaintiffs' Closing Submissions dated 24 November 2014 at para 231.

49 Second, I do not accept Tan Senior's suggestion that he was chairman of the JV Companies in name only. Whether or not Tan CB was managing these companies, Tan Senior was involved and played a role in the management of their affairs. After all, Tan Senior disagreed that he was just a robot controlled by his son, Tan CB.[16] Further, according to Tan Senior, Tan CB had explained to him the documents of each of the JV Companies before he signed them.[17] There would have been no need to do so if he was only a chairman in name. I also note that when TCPL obtained a credit facility totalling S$12.7m from DBS Bank Ltd in June 2001, Tan Senior was one of the guarantors.[18] It is unlikely that Tan Senior's involvement in the JV Companies absolutely ceased when he retained such a significant economic interest in their operation and viability.

50 Importantly, I also do not agree that when Tan Senior transferred his shares in each of the JV Companies to SAA on or about 1 November 2002, it was because he was tired and wanted to let Tan CB take over the businesses. It is not logical for someone who had been as interested and involved in the Joint Venture as Tan Senior was, and who had taken a personal stake in the Joint Venture and signed the MOU dated 8 March 2001, to transfer his shares in each of the JV Companies on or about 1 November 2002, less than two years later, just because he was tired. Tan Senior said that he was 71 years old when he was cross-examined on 16 September 2014.[19] This means that he was about 58 years of age when the MOU was signed on or about 8 March 2001 and about 59 or 60 years of age when he transferred his shares in each of the JV Companies

---

16 NE 17/9/14 at p 25, lines 2–10.

17 Tan Senior's AEIC at para 31.

18 Tan CB's AEIC at para 53; Exhibit TCB-14.

19 NE 16/9/14 at p 10, lines 18–19.

on or about 1 November 2002. No elaboration was given to explain the sudden onset of tiredness between 8 March 2001 and November 2002. It is likely that the true reason for the transfer of shares was that Tan Senior must have already been facing financial difficulties in November 2002 (keeping in mind that he was made a bankrupt on 29 August 2003, which was less than a year later), and that his transfer of shares was done in anticipation of his financial predicament.

51 In relation to the second point, I also do not agree that Tan Senior's interest in the Site was for the limited reason that he suggested, *ie*, if SAA won the initial tender, he would then discuss with Tan CB as to when and how the tenants of Kallang Auto could rent spaces at the Site. In cross-examination, Tan Senior sought to give the impression that this was SAA's project as SAA was bidding for the Site.[20] However, it was clear to me that SAA was only the corporate vehicle used to do so. It is notable that in the MOU, which was signed about two weeks after the bids for the Site's tender were submitted, Tan Senior was named personally as one of the parties to the Joint Venture, and under the MOU, Tan Senior was to have a 12.5% personal stake in the Joint Venture.[21] These facts show that Tan Senior had not told the truth about the extent of his interest in the Project. His attempt to minimise his role and distance himself from the Joint Venture is likely to be an afterthought.

52 In this regard, I add that under the MOU, the SAA Group was to hold 62.5% of the shares in the New Company to be set up. When Tan Senior was asked to explain how the 62.5% shareholding was derived, he was evasive. He was also evasive in answering whether there were in fact eight parties in the

---

20 See, *eg*, NE 17/09/14 at p 28, lines 5–24.

21 Plaintiffs' Closing Submissions dated 24 November 2014 at para 231.

Joint Venture with each party holding 12.5% or one-eighth of the shares.[22] These observations buttress the conclusion that Tan Senior was not forthcoming about his involvement and interest in the Joint Venture.

53 The more important question pertains to the third point, *ie*, whether Tan Senior ceased all involvement with the Joint Venture on 29 August 2003 when he was made a bankrupt and ceased also to be a director of the JV Companies. In my view, the answer is no: Tan Senior's bankruptcy did not materially affect his involvement with the Joint Venture.

54 At the outset, I agree that it is not clear whether Tan Senior was a party to the Consolidated Suits at the time they were consolidated. If it had been clear that Tan Senior was a party to the Consolidated Suits, that may be evidence of his continued involvement in the matters of the Joint Venture notwithstanding his bankruptcy. However, according to Tan Senior, although two of the Plaintiffs named him as a defendant in OS 1634/02 in 2002, the (three) Plaintiffs did not name him as a defendant in S 703/04 in 2004. Tan Senior suggested that this illustrated that the Plaintiffs knew that he was no longer involved in the Joint Venture after his bankruptcy. He alleged that he was also not a party to the Consolidated Suits.

55 I note that the Consent Order did specifically state that it constituted a full and final settlement of all claims that the Plaintiffs may have against the 1st to 5th defendants in OS 1634/02 and the 1st to 3rd defendants in S 703/04. The preamble of the Consent Order also stated that the Court had heard counsel for the plaintiffs and counsel for the defendants in the Consolidated Suits. Interestingly, the Consent Order went on to refer to a bidding exercise by the

---

22 NE 17/9/2014 at pp 2–11.

Plaintiffs and "the Defendants" as defined therein, which definition included Tan Senior. Perhaps this was due to poor drafting, as the definition of "the Defendants" in the Consent Order also included the JV Companies and yet there was no suggestion that either of these two companies was going to bid for shares in any of the JV Companies. Nevertheless, it is still of note that no one from the SAA Group or "the Defendants" as defined in the Consent Order or their solicitors sought to make it clear to the Court there, including in any correspondence soon after the date of the Consent Order, that Tan Senior was not to be involved at all in the bidding exercise as he had ceased to be involved in the Joint Venture ever since the bankruptcy order.

56 That said, the Plaintiffs appeared to accept that Tan Senior was not a party to the Consent Order. For example, Lim Ah Poh, who is one of the Plaintiffs, accepted that Rajah & Tann (who was acting for other Defendants then) did not act for Tan Senior when the Consent Order was entered into.[23] Unfortunately, Rajah & Tann did not elaborate as to why the Consent Order was worded as it was if, in fact, they did not represent Tan Senior for the Consent Order.

57 However, even if Tan Senior was not a party to the Consent Order, SAA was very much a party to and involved in the Consent Order. Was SAA controlled by Tan CB only, or in truth controlled by Tan Senior as well as Tan CB? Tan Senior suggested the former. The Plaintiffs suggested the latter and alleged that Tan Senior and Ong CK were the masterminds behind the conspiracy against the Plaintiffs. For present purposes, it is not necessary to specifically identify the mastermind(s).

---

[23] NE 21/01/14 at pp 69–71.

58 Nevertheless, an indication of Tan Senior's continued involvement in affairs of the Joint Venture even after his bankruptcy in August 2003 can be found in the evidence of his daughter, Tan Bee Bee. Tan CB was not the only child of Tan Senior involved in SAA or the JV Companies. Tan Bee Bee was also a director of SAA. In her AEIC which she filed for the present action, she said that from April 2001 to May 2003, she was in charge of the administration of payments and receipts for the JV Companies as they were newly incorporated companies and did not have full-time administrative staff. Thereafter, when permanent staff were employed, she supervised the administration of these two companies.[24]

59 Tan Bee Bee said that in April 2001, her father and Tan CB informed her that "they had successfully tendered for a lease of [the Site] through SAA".[25] This part of her AEIC confirmed that Tan Senior was using SAA to bid for the Site's tender,[26] and that contradicted the suggestion of a more limited interest on Tan Senior's part and the claim that he acted only out of concern for the then -existing tenants of Kallang Auto (see above at [45(b)]).

60 Later in her AEIC, Tan Bee Bee referred to the Plaintiffs' various allegations in the present action that they consistently faced obstruction in obtaining information on the financial matters of the JV Companies, and responded: "My father is an experienced and reputable businessman. He is open and aboveboard in all his corporate dealings. Furthermore, the [JV] Companies' accounts are audited on a yearly basis. There is therefore absolutely nothing to hide from the Plaintiffs in relation to the [JV] Companies' affairs".[27]

---

24 Tan Bee Bee's AEIC at para 1.

25 Tan Bee Bee's AEIC at para 4.

26 Tan Bee Bee's AEIC at para 4.

61 Unsurprisingly, the Plaintiffs submitted that Tan Bee Bee's response to the Plaintiffs' allegations revealed the true state of affairs and showed that it was Tan Senior who had been calling the shots behind the Joint Venture.

62 In my view, Tan Bee Bee's response in her AEIC to the Plaintiffs' allegations was possibly directed to allegations made before OS 1634/02 was filed. Therefore, it was arguable that Tan Bee Bee's reference to her father being open and aboveboard was in the context of that time frame and was not intended to apply to the situation *ex post* Tan Senior's bankruptcy. Nevertheless, Tan Bee Bee's AEIC did suggest that it was her father who was controlling the JV Companies at least initially. Instead of saying that it was Tan CB who was controlling the JV Companies all along and that her father did not have any say in the JV Companies, which would have been an obvious point to take had that been the case, she stressed that her father had been open and aboveboard in all his corporate dealings. Furthermore, it was also telling that although her AEIC was filed for the present action in which an allegation of conspiracy had been made against her father in the context of the breaches of the Consent Order, and even though her AEIC did address various steps taken pursuant to the Consent Order, Tan Bee Bee did not once say that her father had ceased all involvement in SAA and in the JV Companies after the bankruptcy order against him was made. In the circumstances, I agree that the suggestion from Tan Bee Bee's AEIC was that Tan Senior had been calling the shots in both SAA and the JV Companies.

63 Even if Tan Bee Bee had said that Tan Senior was not involved in the JV Companies after he was made a bankrupt, the question is whether a person who had been controlling SAA and the JV Companies had simply relinquished

---

[27] Tan Bee Bee's AEIC at paras 9–10.

all involvement in these three companies upon a bankruptcy order being made. Did Tan Senior truly relinquish all involvement, being content to leave it to Tan CB to carry on the businesses, or did Tan Senior in fact continue to be involved through and/or with Tan CB?

64 Unfortunately for Tan Senior, I find him to be an unreliable witness who pretended to be less involved in the Joint Venture before the bankruptcy order than was truly the case. Tan CB was also not a truthful witness who had pretended that he thought he was doing nothing wrong after the Consent Order was made. I do not believe the evidence of either of them that after the bankruptcy order, Tan Senior was not involved in any of these three companies at all, or in particular, the decision for SAA not to grant sub-tenancies for the third tranche to the JV Companies.

65 I add that Tan CB's date of birth is 14 November 1967.[28] He has an engineering degree and had worked initially with the Housing and Development Board. In 1994, he joined Goodland, a company which he maintained that his father and brother were founding members. Goodland was subsequently the contractor engaged to carry out works at the Site. Tan Senior said that Tan CB already had business experience in Goodland prior to Tan CB being appointed a director of SAA. According to Tan CB, SAA itself was acquired by Tan Senior, Ong CK, and himself in or around 1999.[29] Although Tan Senior did not entirely agree that he was the one who taught Tan CB about business when the latter joined Goodland, Tan Senior did say "[h]alf-half" when he was asked this question. He declined to agree that he continued to give Tan CB guidance when Tan CB joined SAA as a director.[30] Nevertheless, I am of the view that

---

28 NE 16/9/14 at p 22, lines 1–2.

29 Tan CB's AEIC at para 7.

Tan Senior did teach and guide Tan CB in business matters when Tan CB joined Goodland and that such consultation and guidance continued even later when Tan CB joined SAA. Tan Senior's role did not abruptly end when Tan CB was appointed a director of SAA or even when Tan Senior became a bankrupt.

66 In the circumstances, even though the Plaintiffs accepted that they did not have direct evidence of Tan Senior's complicity, it was likely that Tan CB still consulted Tan Senior before and after the Consent Order, and that Tan Senior and Tan CB agreed that SAA should appropriate the benefit of the 2007 Head Lease to itself even though that would mean breaching the Consent Order.

Ong CK

67 Finally, I turn to discuss the role of Ong CK. I should mention that the Plaintiffs' counsel informed the Court that they were not pursuing any claim against Ong CK although they maintained that he was part of the conspiracy. Nevertheless, I will still consider his role in the event that the issue becomes relevant.

68 Ong CK is an architect by profession. He was a shareholder and principal director of AGA which was engaged to perform architectural services for the Site pursuant to the Joint Venture. Although he and Tan CB were not named in the first page of the MOU as one of the Joint Venture parties, both of them signed on the second page of the MOU. Whether they did so to signify that they were individual and direct parties to the MOU, or they did so on behalf of SAA who was in fact a party to the MOU, was a matter of some contention in the trial. I have concluded in the HC Judgment that Tan CB and Ong CK were

[30] NE 16/9/14 at p 23, lines 18–23.

parties to the Joint Venture in their personal capacities (see HC Judgment at [211]–[218]) and this finding was undisturbed by the Court of Appeal. However, even if Tan CB and Ong CK were involved indirectly through their interest in SAA, this is not material for present purposes.

69 Based on Ong CK's AEIC, it was Tan Senior (and not Tan CB) who had asked him about the Site in or about February 2001.[31] Ong CK involved Tan CB in early meetings and discussions about plans for the Site.[32] However, it was Tan Senior who later told Ong CK and Tan CB that he wanted to involve Roger Koh and Samuel Ng in the plan to bid for and develop the Site.[33] Furthermore, Ong CK said that on or about 2 March 2001, he received a call from Tan Senior who informed him about the Plaintiffs, whom Tan Senior believed could contribute about 80 used car tenants and wanted to include in the development of the Site.[34]

70 These allegations show two things. First, that Tan Senior's interest in the Site was not limited to asking for space for the tenants of Kallang Auto should SAA win the bid for the Site, as he had suggested. Secondly, Ong CK had a closer relationship with Tan Senior than with Tan CB, and this relation was not just a professional one where only Ong CK's professional services were engaged, but also and more importantly a business relationship. It may be true that Ong CK and Tan CB were discussing details of the intended Joint Venture with the Plaintiffs. However, the main business decisions including who was going to participate in the Joint Venture were discussed between and

---

31 Ong CK's AEIC at para 13.

32 Ong CK's AEIC at para 15.

33 Ong CK's AEIC at para 19.

34 Ong CK's AEIC at para 26.

substantially decided by Ong CK and Tan Senior. Furthermore, insofar as Ong CK maintained that Tan Senior had been planning to retire from SAA for some time and actually retired in February 2001 (when Tan Senior transferred his shares in SAA to Tan CB),[35] Ong CK back-pedalled in cross-examination to say that he did not know the details of Tan Senior's retirement plans.[36] Indeed, Ong CK also said that SAA could still tap on Tan Senior's experience and seek his advice.[37]

71 It is not disputed that Ong CK was involved in discussions with Tan Senior, as mentioned above, and with Tan CB on details of the Joint Venture. Therefore, Ong CK was not involved solely in his capacity as a professional architect but also as a business partner. That is why he drafted a business plan for discussion with the Plaintiffs (either before or after the MOU was signed) and it was he who drafted the MOU. He was also a director and a shareholder of each of the JV Companies although he alleged that he was holding his shares in these companies on behalf of SAA. These facts show the extent of Ong CK's involvement in the Joint Venture from the business point of view.

72 On 8 March 2001, when the MOU was signed, the shareholders of SAA were Tan CB and OCK International Pte Ltd ("OCK International"). Tan Senior had ceased to be a shareholder of SAA as he had transferred his shares to Tan CB on 23 February 2001. The shareholders of OCK International were Ong CK himself and Novelty Department Store Pte Ltd, with each of them holding respectively 75% and 25% of the shares of OCK International.[38]

---

35 Ong CK's AEIC at paras 15 and 21.

36 NE 3/9/14 at p 34, lines 1–24.

37 NE 3/9/14 at p 35, lines 8–18.

73 Ong CK participated in the business of the Joint Venture as a business partner and as an architect providing professional services at least until the date he became a bankrupt on 5 March 2004. Prior to his bankruptcy, Ong CK transferred his shares in OCK International to his brother. He said this was because he needed money. He alleged that since his bankruptcy, he ceased to be involved with the Joint Venture except to provide assistance to the successor architect for the renewal of the relevant planning permissions in 2004 and in 2009.

74 The Plaintiffs relied on some evidence to show that Ong CK was still rendering assistance to SAA even after his bankruptcy, but Ong CK maintained that such assistance was rendered only because of his professional involvement in the past with the Project. As the evidence was equivocal, it does not assist and I need not elaborate on it.

75 However, the question still remains whether it is true that Ong CK ceased to have any involvement in the Joint Venture as a business partner since his bankruptcy. As he had transferred his shares in OCK International to his brother before his bankruptcy, this suggested that Ong CK and his brother believed that there was value in such shares worth preserving and, consequently, value in the business of SAA. The question is whether this was a genuine transfer to his brother, who had thereafter taken over his shares and business interest in the Joint Venture or whether the brother was really holding the shares in trust for, as a nominee for, or otherwise on behalf of Ong CK. Ong CK suggested the former.

---

[38] Ong CK's AEIC at para 56.

76 Significantly, there was no further elaboration of Ong CK's brother's interest in the Joint Venture after the transfer of shares to him. It appeared that Ong CK's brother was uninterested in the Joint Venture after having received Ong CK's shares. There was no evidence from the brother, and Tan CB was trying to give the impression that he acted alone after the bankruptcies of Tan Senior and Ong CK.[39]

77 In my view, Ong CK's interest and involvement in the Joint Venture did not simply evaporate upon his bankruptcy. This is because his brother did not truly take over his interest. His brother was holding the shares transferred to him on behalf of Ong CK, and Ong CK was still involved as a business partner in the Joint Venture. It was likely that both Tan Senior and Ong CK continued to discuss and be involved in major affairs of the Joint Venture both before and after their respective bankruptcy orders and also both before and after the Consent Order was made. They also discussed with Tan CB (who was the person executing the decisions) matters relating to the Joint Venture, in particular, the issue of whether SAA should extend the sub-tenancies for the third tranche to the JV Companies in accordance with the Consent Order. As was the case for Tan Senior and Tan CB, Ong CK intended by the course of conduct to cause injury to the Plaintiffs. It is immaterial whether Tan Senior and Ong CK were the masterminds, or if all three of them were the co-masterminds.

78 I add that I find Ong CK not to be credible on some contentious issues. For example, he said that the MOU was meant to cover a three year period only and not "3 years + 3 years + 3 years". Yet a business plan that he had himself prepared referred to a head lease from the SLA for a period of "3 years + 3 years + 3 years". When this was pointed out to him, he tried to shift the blame by

---

[39] See, *eg*, Tan CB's AEIC at para 182.

saying that his personal assistant had put together part of the plan.[40] This was incredulous.

79 Furthermore, when it was pointed out to Ong CK that the sub-tenancies to each of the JV Companies for the first tranche had express provisions for two options for renewal for a period of three years each, he initially said that he took issue with a lawyer regarding this provision, but then said he did not pay attention to the provision. He could not explain the existence of these options if the JV Companies were supposed to be given single three-year sub-tenancies only.[41]

80 As another example, Ong CK also suggested that the Joint Venture was in respect only of certain premises on the Site pertaining to the used car centre, and therefore did not include the retail component, even though it was quite clear that the MOU was not so restricted.[42]

81 In my view, the extent to which Ong CK was prepared to tell untruths at the trial of the present action suggested that he was not merely attempting to help a friend, *ie*, Tan CB, in his dispute with the Plaintiffs, but that he was not forthcoming about his actual involvement and interest in the Joint Venture.

82 Accordingly, I conclude that Ong CK was a party to a conspiracy, which included Tan Senior and Tan CB, to injure the Plaintiffs by denying sub-tenancies for the third tranche to the JV Companies and appropriating the benefit of the 2007 Head Lease to SAA instead.

---

40 NE 3/9/14 at pp 110-114

41 NE 4/9/14 at pp 83–93.

42 NE 4/9/14 at pp 2–6.

Tort of inducement of breach of contract

83 Generally, to establish the tort of inducement of breach of contract, the plaintiff must prove the following elements (see *Gary Chan* at paras 15.005–15.025; *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") at [17]–[18]):[43]

(a) the alleged tortfeasor knew of the existence of the contract;

(b) the alleged tortfeasor intended to interfere with the plaintiff's contractual rights;

(c) the alleged tortfeasor directly procured or induced a third party to breach the contract;

(d) the contract was in fact breached; and

(e) the plaintiff suffered injury as a result of the breach of contract.

84 This cause of action concerns only those who were not parties or arguably not parties to the Consent Order, *ie*, Tan CB, Tan Senior, and Ong CK. Roger Koh is a party to the Consent Order and therefore the issue of inducing a breach of the Consent Order does not arise.

85 In my view, Tan CB, Tan Senior, and Ong CK knew of the existence of the Consent Order at all material times. There was no suggestion to the contrary. It is also not disputable, at this stage of the proceedings, that elements (d) and (e) are satisfied, *ie*, that the Consent Order had in fact been breached and that the Plaintiffs suffered injury as a consequence. Accordingly, the focus of the

[43] Plaintiffs' Supplementary Submissions at para 19; D1–D4's Supplementary Submissions at para 17.

analysis is on elements (b) and (c), which I analyse in relation to Tan CB, Tan Senior, and Ong CK in turn.

Tan CB

86 There is no question that Tan CB intended to interfere with the Plaintiffs' contractual right represented by the Consent Order by deciding that SAA would not grant the sub-tenancies for the third tranche to the JV Companies, and would thereby appropriate the whole benefit of the 2007 Head Lease to itself in breach of the Consent Order.[44] Indeed, as discussed above (at [29]–[31]), interference with the contractually envisaged mechanism and outcome under the Consent Order was precisely Tan CB's object.

87 As for the element of procurement, there is no question that Tan CB, as the person who admitted that he had made the decision for SAA not to grant the sub-tenancies to the JV Companies, directly procured SAA's breach of the Consent Order.

88 The issue, however, is whether the *Said v Butt* exception applies to exonerate Tan CB from liability for the tort.[45] This exception was concisely stated by Vinodh Coomaraswamy J as follows: "[a] director is not liable to a third party for inducing or procuring the breach of contract [by] the company of which he is a director if: (i) he is acting *bona fide* in the discharge of his office as a director; and (ii) he is acting within the scope of his authority" (*Tembusu Growth Fund Ltd v ACTAtek, Inc and others* [2015] SGHC 206 at [117]; citing *Said v Butt* [1920] 3 KB 497 at 506 and *Chong Hon Kuan Ivan v Levy Maurice*

---

44 Tan CB's AEIC at para 182.

45 D1–D4's Supplementary Submissions at paras 39–42; D5&D7's Supplementary Submissions at paras 15–62.

(No 2) [2004] 4 SLR 801). One view of the exception is that it is premised on the reasoning that "the director [who induced a breach by the company] is the company's *alter ego* and his acts are in law those of the company" (*Ng Joo Soon (alias Nga Ju Soon) v Dovechem Holdings Pte Ltd and another suit* [2011] 1 SLR 1155 at [76]; *cf Gary Chan* at para 15.013).

89 In my view, Tan CB's conduct cannot be said to be *bona fide* in the discharge of his office as a director of SAA. In *Otech Pakistan Pvt Ltd v Clough Engineering Ltd and another* [2005] SGHC 98, Kan Ting Chiu J explained (at [25]), in the context of the *Said v Butt* exception, that:

> … [*bona fide*] is to be taken to mean that the defendant was acting in good faith in the discharge of his office, and not that he was acting in good faith in the action complained of; a director may believe that it is for the good of the company to breach a contract intentionally. In such a situation, the principle would operate to defeat the claim … as a matter of law.

90 However, even if I examine only Tan CB's conduct in relation to SAA, I am not satisfied that Tan CB decided to procure SAA's breach of the Consent Order *bona fide* in the interests of SAA. There is a clear degree of dishonesty on the part of Tan CB, who had not just intended to procure a breach of the Consent Order but indeed sought to deceive the Plaintiffs into a course of conduct that ran contrary to the letter and spirit of the Consent Order and would lead to the SAA Group benefiting from an unmerited windfall (see above at [30]–[31]). Against this backdrop, Tan CB had no qualms in making use of his directorship to abuse SAA as the vehicle for his questionable conduct. In the circumstances, Tan CB clearly did not pursue this course of conduct in the interest of SAA. In any event, it was Tan CB's own position that he had procured the breach of the Consent Order not for the interest of SAA, but because he was purportedly concerned about the impact of a possible liquidation

of the JV Companies on the ultimate sub-tenants at the Site. It is apparent, in my view, that if Tan CB could be said to be acting *bona fide* in the interest of SAA and thus be exculpated from liability, that would render the concept of *bona fides* meaningless.

91 I add that it is doubtful that, as a matter of law, the *Said v Butt* exception will be satisfied whenever a director procures the company of which he is a director to breach a contract, so long as there is some benefit that accrues to the company. If that is the case, the exception would appear to be too broad, since it is likely that all or most breaches of contract will lead to some benefit accruing to the party-in-breach in the sense that he will thenceforth be released from his contractual obligations. It may be that there must be something more. In the absence of full arguments, I will leave these nuances to be addressed in a subsequent appropriate case.

92 Separately, counsel for Roger Koh also raised the defence of justification, which I consider here in relation to all of the Defendants concerned, *ie*, Tan CB, Tan Senior, and Ong CK.[46] According to *Gary Chan*, justification is a "little-known defence not given to any precise definition" (at para 15.023). It would appear that the existence of this defence is consistent with the Court of Appeal's statement of the law on inducement of breach of contract in *Tribune Investment*: "[t]o knowingly procure or induce a third party to break his contract to the damage of the other contracting party *without reasonable justification or excuse* forms the basis of the tort of inducing a breach of contract" [emphasis added] (at [16]).

---

[46] D1–D4's Supplementary Submissions at paras 43–45.

93 However, even assuming the existence of such a defence in local jurisprudence, it is clearly not satisfied on the facts in relation to any of the three Defendants concerned. In *Gary Chan*, two instances are raised in which the defence may be invoked: (a) where the alleged tortfeasor acted pursuant to his moral duty and not for the protection of his personal interests, and (b) where the alleged tortfeasor acted to protect a legal right which is equal or superior to that of the plaintiff (at paras 15.024–15.025). In this case, neither of these are satisfied. None of the Defendants acted to interfere with the Plaintiffs' contractual right in the Consent Order out of moral duty. Nor is there any equal or superior right, such as a pre-existing contractual right, which the Defendants were seeking to protect. There is no other conceivable justification for the Defendants' breach of the Consent Order.

94 Accordingly, neither the *Said v Butt* exception nor the defence of justification applied to exonerate Tan CB from liability for the tort of inducement of breach of contract.

Tan Senior

95 Tan Senior clearly intended to interfere with the Plaintiffs' contractual rights represented by the Consent Order. Indeed, as I have found above, Tan Senior agreed with Tan CB to procure SAA not to grant the sub-tenancies to the JV Companies (see above at [66]).

96 The element of direct procurement or inducement, however, is less obvious here.

97 The first question is whether there was in fact inducement or procurement by Tan Senior of the breach of the Consent Order. On this issue, I

have concluded that Tan Senior had agreed with Tan CB for SAA to breach the Consent Order (see above at [66]). In my view, this agreement would constitute inducement by Tan Senior. In this regard, the fact of inducement can be inferred from relevant circumstantial evidence and need not necessarily be proved by direct evidence (see *Gary Chan* at para 15.014). In *Abani Trading Pte Ltd v P T Delta Karina Mandiri and another* [2001] 3 SLR(R) 404, Kan Ting Chiu J explained as follows (at [36]):

> There was no direct evidence here that [the alleged tortfeasor] induced [the party-in-breach] to cancel the [contract], but the inquiry does not stop here. Direct evidence cannot and need not be shown in every case. Where one party sets out to subvert another's contract, it may not leave direct evidence of its actions. In such a situation, the target should not be without remedy. All the relevant facts should be considered, and where appropriate, inducement can be inferred.

98 The second question relates to the directness of the procurement or inducement. Generally, direct inducement is necessary to establish the tort of inducement of breach of contract. Indirect inducement, on the other hand, will not suffice. In this regard, an inducement may be considered "indirect" if it is directed by the alleged tortfeasor at a third party (who is not privy to the contract intended to be breached), and that third party in turn procures or induces a contracting party to breach the contract. In these cases, the question is whether the interposition of an additional party between the alleged tortfeasor and the contracting party whose breach was ultimately induced will necessarily mean that the alleged tortfeasor's inducement is not sufficiently "direct" to establish the tort. In the absence of full arguments, I make no comment on the general position, if any, that should be adopted.

99 However, it is clear that where the contracting party who ultimately committed the breach of contract is a corporate entity, it would suffice if the

inducement of the breach "is addressed [by the alleged tortfeasor] to the managing director or *alter ego* of the company" (*Gary Chan* at para 15.013). In other words, in the corporate context, the alleged tortfeasor in a claim for the tort of inducement of breach of contract by the company may be liable if the inducement was made to the company's managing director or *alter ego*. This must be so since a company acts through its officers and any inducement would have to be made to one or some of its officers. Whether the inducement must be made to an officer who holds at least the position of managing director or is the *alter ego* of the company is a point I need not decide since, in the present case, it is not disputed that Tan CB was making decisions for SAA and there was no suggestion of any other more senior officer in SAA than Tan CB.

100 In their submissions, the 1st to 4th Defendants suggested that the present case was a "prevention" case, and that a distinction should be drawn between cases involving an inducement to breach a contract and those involving conduct to prevent the contract from being performed.[47] According to the 1st to 4th Defendants, the latter category of cases are "prevention" cases, which are "wholly incompatible" with the tort of inducement of breach of contract.[48]

101 In a typical "prevention" case, the alleged tortfeasor either by his own conduct prevents or disables the contracting party from performing the contract, or addresses the inducement to a third party (who is not privy to the contract intended to be breached) and that third party in turn does an act which prevents or disables the contracting party from performing the contract. In either situation, there is no inducement by the alleged tortfeasor of the contracting party committing the breach of contract. Thus, rather than the tort of inducement

47 D1–D4's Supplementary Submissions at para 37.

48 D1–D4's Supplementary Submissions at para 38.

of breach of contract, the appropriate cause of action for such "prevention" cases is the tort of causing loss by unlawful means (see *OBG Ltd and another v Allan and others* [2008] 1 AC 1 ("*OBG*") at [34]–[38] (per Lord Hoffmann), [178] and [180] (per Lord Nicholls)).

102 The 1st to 4th Defendants cited *GWK Ltd v Dunlop Rubber Co Ltd* (1926) 42 TLR 376 ("*GWK*"). In that case, GWK, a car manufacturer, agreed with a tyre manufacturer, ARM, that the latter's tyres would be fitted on all GWK cars exhibited for sale. Two of GWK's cars were exhibited at a motor show. However, on the eve of the show, Dunlop removed ARM's tyres from these two cars and replaced them with its own tyres.

103 It is clear that the facts of *GWK* are very different from the present case. There, it did not matter whether GWK as the contracting party intended to exhibit ARM's tyres as contracted, or if GWK would otherwise have fulfilled its contractual obligations. Dunlop unilaterally acted to interfere with the contract. Thus, Dunlop could not be said to have induced GWK to breach GWK's contract with ARM. The tort of inducement of breach of contract in that case would not apply, even though it may be that Dunlop would nevertheless be liable to GWK and/or ARM for other torts. In the present case, however, Tan Senior's inducement was in the form of influence or persuasion targeted at SAA (through Tan CB) to cause SAA to breach the Consent Order. It was not the case that Tan Senior had unilaterally acted in a manner such as to prevent SAA from performing its obligations under the Consent Order.

104 Insofar as the 1st to 4th Defendants cited Lord Nicholls's dictum in *OBG* at [178],[49] they omitted to cite it in full. After setting out the facts in *GWK*, Lord Nicholls went on to explain (at [178]):

> 178 With hindsight it is evident that the application of the *Lumley v Gye* tort [of inducement of breach of contract] to a "prevention" case was unfortunate. There is a crucial difference between cases where the defendant induces a contracting party not to perform his contractual obligations and cases where the defendant prevents a contracting party from carrying out his contractual obligations. In inducement cases the very act of joining with the contracting party and inducing him to break his contract is sufficient to found liability as an accessory. *In prevention cases the defendant does not join with the contracting party in a wrong (breach of contract) committed by the latter. There is no question of accessory liability. In prevention cases the defendant acts independently of the contracting party. The defendant's liability is a "stand-alone" liability.* Consistently with this, tortious liability does not arise in prevention cases unless, as was the position in *GWK*, the preventative means used were independently unlawful.
>
> [emphasis added]

105 Lord Nicholls's dictum makes clear that in "prevention" cases, the tortfeasor acts independently of the contracting party. It also buttresses the conclusion that the present case is not a "prevention" case, since none of the Defendants in question "acted independently of the contracting party [*ie*, SAA]" (*OBG* at [178]). The submission made by the 1st to 4th Defendants in this regard is therefore not applicable to the present case.

106 For completeness, I add that the *Said v Butt* exception does not apply in relation to Tan Senior since he was no longer a director of SAA by the time of the inducement or the breach (see Annex A). In any event, this exception may be inconsistent with Tan Senior's defence, which was not that he had acted *bona fide* in his office as a director of SAA, but rather that he had not been involved in the affairs and decisions of SAA at all.

---

[49] D1–D4's Supplementary Submissions at para 37.

Ong CK

107 I will address Ong CK's role in respect of the tort of inducement of breach of contract in case it becomes relevant, even though the Plaintiffs' counsel said that they were not pursuing any claim against him.

108 Based on my finding above that Ong CK intended to injury the Plaintiffs by conspiring to ensure that SAA did not grant the sub-tenancies for the third tranche to the JV Companies (see above at [77]), it follows that Ong CK also had the requisite intention to interfere with the Plaintiffs' contractual rights represented by the Consent Order.

109 As for the element of direct procurement and inducement, I have found that Ong CK had discussed important matters relating to the Joint Venture with Tan CB and, in particular, regarding Tan CB's decision for SAA not to grant the sub-tenancies to the JV Companies (see above at [77]). Accordingly, there is a sufficiently direct nexus between Ong CK's persuasion of Tan CB and SAA's breach of the Consent Order.

110 The *Said v Butt* exception does not apply as Ong CK was not a director of SAA at the material time of the inducement or of the breach.

Conclusion

111 For the foregoing reasons, I find Tan CB, Roger Koh, Tan Senior, and Ong CK liable for conspiracy to injure the Plaintiffs by unlawful means, *ie*, by procuring or otherwise enabling the breach of the Consent Order. I also find Tan CB, Tan Senior, and Ong CK liable for the tort of inducing the breach of the Consent Order by SAA.

112 I will leave the question of costs to be decided by the Court of Appeal.

Woo Bih Li
Judge

Adrian Tan, Ong Pei Ching, Yeoh Jean Wern, Lim Siok Khoon, Joel Goh and Hari Veluri (Morgan Lewis Stamford LLC) for the plaintiffs;
Kelvin Poon, Alyssa Leong and David Isidore Tan (Rajah & TannSingapore LLP) for the 1st, 2nd, 3rd and 4th defendants;
Irving Choh, Melissa Kor and Christine Chuah (Optimus Chambers LLC) for the 5th and 7th defendants;
8th defendant unrepresented.

Annex A

Party	**Capacity**
SAA (2nd Defendant)	TCPL shareholder (25 Jun 2001 – present) TCAE shareholder (Nov 2002 – present)
Tan CB (7th Defendant)	SAA director (25 Oct 1999 – present) SAA shareholder (25 Oct 1999 – present) TCPL director (25 Jun 2001 – present) TCAE shareholder (22 Oct 2001 – before 22 Mar 2002) TCAE director (9 Feb 2002 – present)
Roger Koh (3rd Defendant)	TCPL shareholder (26 Jun 2001 – present) TCPL director (25 Jun 2001 – present) TCAE shareholder (22 Oct 2001 – present) TCAE director (28 Feb 2004 – present)
Tan Senior (5th Defendant)	SAA director (25 Oct 1999 – 23 Feb 2001) SAA shareholder (unknown – 23 Feb 2001) TCPL shareholder (12 May 2001 – Nov 2002) TCPL director (12 May 2001 – 29 Aug 2003) TCAE shareholder (27 Apr 2001 – Nov 2002) TCAE director (27 Apr 2001 – 29 Aug 2003)
Ong CK (8th Defendant)	SAA director (25 Oct 1999 – 5 Mar 2004) TCPL shareholder (12 May 2001 – 25 Jun 2001) TCPL director (12 May 2001 – 5 Mar 2004) TCAE shareholder (27 Apr 2001 – 26 Nov 2002) TCAE director (27 Apr 2001 – 5 Mar 2004)
Samuel Ng (6th Defendant)	TCPL shareholder (26 Jun 2001 – 20 Nov 2002) TCPL director (25 Jun 2001 – 25 Apr 2003) TCAE shareholder (22 Oct 2001 – 26 Nov 2002)