

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 239

Suit No 491 of 2015

Between

- (1) Winsta Holding Pte Ltd
- (2) M Development Ltd

... Plaintiffs

And

- (1) Sim Poh Ping
- (2) Sim Pei Yee
- (3) Sim Pei San
- (4) Overseas Students Placement
Centre Pte Ltd
- (5) ATAS Residence Pte Ltd
- (6) Uni-House Pte Ltd
- (7) Unihouse @ Evans Pte Ltd
- (8) Jiu Mao Jiu Hotpot Pte Ltd
- (9) ICS Catering Pte Ltd
- (10) I-Masters Air-Conditional Pte
Ltd
- (11) Kong Weijia
- (12) Ng Connie (Connie Huang)
- (13) Tan Choon Leong (Chen
Junliang)

... Defendants

And

Ng Connie (Connie Huang)
... *Plaintiff in Counterclaim*

And

Winsta Holding
... *Defendant in Counterclaim*

JUDGMENT

[Equity] — [remedies] — [equitable compensation]

[Equity] — [fiduciary relationships] — [duties]

[Civil Procedure] — [costs] — [principles] — [investigations]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Winsta Holding Pte Ltd and another
v
Sim Poh Ping and others**

[2018] SGHC 239

High Court — Suit No 491 of 2015

Chua Lee Ming J

11-12, 16-19, 23-24, 26, 30-31 January, 1-2, 6-8, 14 February 2018;

23 February 2018

Judgment reserved.

5 November 2018

Chua Lee Ming J:

Introduction

1 The first plaintiff, Winsta Holding Pte Ltd (“Winsta Holding”), is the holding company in a group of companies (“the Winsta Group”) which are in the hostel and serviced apartments business. The second plaintiff, M Development Ltd, formerly known as NTI International Limited, (“M Development”), is a public company listed on the Singapore Exchange. M Development holds 51% of the issued share capital of Winsta Holding.

2 The Winsta Group comprises Winsta Holding and the following wholly owned subsidiaries of Winsta Holding (“the Winsta Subsidiaries”):

(a) Evan Hostel Pte Ltd (“Evan Hostel”).

- (b) Carlisle Hostel Management Pte Ltd (“Carlisle Hostel”).
- (c) Katong Hostel Pte Ltd (“Katong Hostel”).
- (d) Pearl Hill Hostel Pte Ltd (“Pearl Hill Hostel”).
- (e) Queensway Student Hostel Pte Ltd (“Queensway Hostel”).
- (f) The Hill Lodge @ Mount Vernon Pte Ltd (“Hill Lodge”).
- (g) Global Residence Pte Ltd (“Global Residence”).

3 On 20 May 2015, Winsta Holding and the Winsta Subsidiaries commenced this action against the defendants claiming breach of fiduciary and other duties, knowing receipt, dishonest assistance, conspiracy to injure and/or deceit.

4 The Winsta Subsidiaries were placed under creditors’ voluntary liquidation between 3 August 2015 and 4 August 2015. By way of a Deed of Sale and Assignment dated 29 October 2015, the liquidators of the Winsta Subsidiaries assigned the claims by the Winsta Subsidiaries to M Development for \$50,000 plus 5% of the net realised proceeds of the litigation.

5 On 13 January 2016, M Development was ordered to be made a party to these proceedings in place of the Winsta Subsidiaries.

The defendants

6 The first defendant, Mr Sim Poh Ping (“Sim”) is the father of the second defendant, Ms Sim Pei Yee (“Lynn”) and the third defendant, Ms Sim Pei San (“Joyce”). In this judgment, Sim, Lynn and Joyce, together, will be referred to as “the Sim Family”. As mentioned earlier, M Development holds 51% of the

shares in Winsta Holding; the remaining 49% is held by various shareholders including Sim and Joyce.

7 Sim was at all material times a director of Winsta Holding and each of the Winsta Subsidiaries. He was also the Managing Director of Winsta Holding until 22 May 2015.

8 Lynn, who is the elder daughter, was at all material times a director of Winsta Holding and each of the Winsta Subsidiaries. Lynn was also a director of M Development until 28 April 2015.

9 Joyce was at all material times a director of Winsta Holding and each of the Winsta Subsidiaries.

10 The plaintiffs allege that at all material times, the Sim Family controlled and were the beneficial owners of the following defendants (together, “the corporate defendants”):

(a) The fourth defendant, Overseas Student Placement Centre Pte Ltd (“OSPC”). OSPC provided marketing and agency services to the Winsta Group.

(b) The fifth defendant, ATAS Residence Pte Ltd (“ATAS”). ATAS is in the business of, among other things, lodging and boarding houses and student hostels. ATAS was formerly known as OSPC Pte Ltd (a different company from OSPC which is referred to in (a) above).

(c) The sixth defendant, Uni-House Pte Ltd (“Uni-House”). It is in the business of hostel services for students and workers and chartered

bus services. Uni-House filed a counterclaim against M Development for breach of a tenancy agreement between Uni-House and Hill Lodge.

(d) The seventh defendant, Unihouse @ Evans Pte Ltd (“Unihouse @ Evans”). It is in the business of lodging and boarding house services and chartered bus services.

(e) The eighth defendant, Jiu Mao Jiu Hotpot Pte Ltd (“JMJ Hotpot”).

(f) The ninth defendant, ICS Catering Pte Ltd (“ICS Catering”), formerly known as Mumum Catering Pte Ltd. It is in the business of food catering. ICS Catering filed a counterclaim against M Development for the price of meals sold and/or services rendered to Evan Hostel (\$263,537.42) and Hill Lodge (\$79,342.95).

(g) The tenth defendant, I-Masters Air-Conditional Pte Ltd (“I-Masters”). It is in the business of manufacturing and repair of refrigerating, air-conditioning and ventilating machinery and equipment and other construction installation. I-Masters filed counterclaims for unpaid services against Evan Hostel (\$4,643), Carlisle Hostel (\$41,094.50), Katong Hostel (\$33,075), Pearl Hill Hostel (\$2,270), Hill Lodge (\$2,832) and Global Residence (\$11,692).

11 The eleventh defendant, Mr Kong Weijia (“Dave Kong”) holds 10% of the shares in ATAS. He is also the sole director of ATAS. The plaintiffs allege that he was at all material times a key accomplice and associate of the Sim Family.

12 The twelfth defendant, Ms Ng Connie (“Connie Ng”) was an employee

of Katong Hostel who was seconded to Winsta Holding on 1 November 2009. Connie Ng was in charge of financial and accounting matters of the Winsta Group. She resigned on 12 May 2015. Connie Ng filed a counterclaim against Winsta Holding or Katong Hostel claiming \$2,892.86 being compensation for unconsumed leave and unpaid salary.

13 The thirteenth defendant, Mr Tan Choon Leong (“Shawn Tan”), was at all relevant times the Operation Manager of Winsta Holding. He is also a director of I-Masters.

Default judgments entered against some of the defendants

14 ATAS, Uni-House, Unihouse @ Evans and ICS Catering failed to file their Lists of Documents. On 9 September 2017, the plaintiffs entered judgment against them for, among other things, damages to be assessed. The counterclaims filed by Uni-House and ICS Catering were dismissed.

15 As I-Masters was not present at the trial, I struck out its counterclaim and entered judgment against it for, among other things, damages to be assessed.

16 The trial proceeded against Sim, Lynn, Joyce, OSPC, JMJ Hotpot, Dave Kong, Connie Ng and Shawn Tan on both liability and damages. Both Connie Ng and Shawn Tan were unrepresented. The trial also served as the assessment of damages against ATAS, Uni-House, Unihouse @ Evans, ICS Catering and I-Masters, all of whom were notified of, but were not represented at, the trial.

Background to the dispute

17 Sim ventured into the business of property leasing in 2002 and the hostel business in 2003. Katong Hostel was incorporated on 1 July 2003 and in

December 2003, it started the first student hostel at 369 Tanjong Katong Road. The hostel business proved profitable and Sim expanded the business. The management of each hostel was placed under a separate company. Pearl Hill Hostel was incorporated on 25 May 2004 and Hill Lodge on 9 January 2006. In 2007, Sim expanded the business to the management of serviced apartments and incorporated Global Residence which started its serviced apartments business with rented apartments at Tiong Bahru.

18 Winsta Holding was incorporated on 27 February 2008 and became the holding company. On 13 March 2008, Queensway Hostel was incorporated as another subsidiary of Winsta Holding. In 2009, Winsta Holding acquired Carlisle Hostel.

19 In January 2010, M Development bought 51% of the issued share capital of Winsta Holding from a number of shareholders including Sim and Joyce. M Development completed its acquisition of the shares on 23 August 2010. The vendors represented that the consolidated net profit after tax of Winsta Holding and its subsidiaries for the period from 1 July 2008 to 31 December 2010 would not be less than \$4,000,000 (“the Profit Warranty”). Sim was invited but declined to join the Board of M Development. Lynn was appointed to the Board of M Development; the date of her appointment is unclear but it appears she had become a director of M Development by 8 September 2010.¹

20 As was required under the terms of M Development’s purchase of the shares in Winsta Holding, the Sim Family continued to manage Winsta Holding and its subsidiaries. Sim was in charge of charting the overall direction of the Winsta Group and handling key contracts with governmental authorities whilst Lynn and Joyce were the directors-in-charge of the day-to-day operations.

21 On 13 June 2011, a nominee of M Development, Mr Huang Wen-Lai (“Huang”) was appointed to the Board of directors of Winsta Holding.²

22 On 17 December 2012, Evan Hostel was incorporated as another subsidiary of Winsta Holding.

23 The consolidated net profit after tax target under the Profit Warranty (see [19] above) was achieved. However, the Winsta Subsidiaries’ profits declined between 2010 and 2012. The reasons for the decline in profits are in dispute. In 2013, the Winsta Group registered a loss of \$8.5m.³ Further losses were projected for 2014 due largely to the fact that the leases for four properties had expired or would expire in 2014.⁴ On 23 May 2014, the Board of M Development decided to appoint additional directors to the Board of Winsta Holding.⁵

24 On 29 July 2014, M Development’s nominees – Ms Huang Tzu Ting (“Tina”), Mr David Chin (“David”) and Mr Yap Kian Peng (“Yap”) – were appointed as directors of Winsta Holding.⁶ Tina is Huang’s daughter. David and Yap were independent directors of M Development. On the same day, Sim was appointed as managing director of Winsta Holding.⁷

25 The plaintiffs allege that following the appointment of the additional directors to the Board of Winsta Holdings, they began to suspect very significant interested party transactions in the Winsta Group. In April 2015, Huang, Tina, David and Chin signed a directors’ resolution authorising Tina to take the necessary steps to protect, secure and preserve the company’s records and financial information.⁸ Tina engaged KordaMentha Pte Ltd (“KordaMentha”), a company specialising in forensic accounting, review and investigation services, for this purpose.⁹ On 7 April 2015, KordaMentha secured the records

and financial information of the Winsta Group companies. On 9 April 2015, KordaMentha produced its Draft Preliminary Findings.¹⁰ The plaintiffs allege that KordaMentha uncovered fraudulent and/or wrongful activities which formed the basis for the claims in this action.

26 On 7 May 2015, KordaMentha's preliminary findings were discussed by the Board of Winsta Holding.¹¹ Many of the issues related to undisclosed interested party transactions ("IPTs") involving ICS Catering, I-Masters, Uni-House and ATAS. Sim emphasised that notwithstanding the IPT issues, the key focus should be to solve the operational problems, bearing in mind that there were some 700 students at the hostels. Huang requested Sim to provide a proposal for addressing the company's problems. Lynn said she would provide a proposal for the sale of the Winsta Group's leases.

27 It is not clear whether Sim/Lynn sent any proposals to the Board of Winsta Holding. About two weeks later, Winsta Holding and the Winsta Subsidiaries commenced this action on 20 May 2015.

28 On 22 May 2015, Sim's, Lynn's and Joyce's employment with Winsta Holding were terminated. Lynn's directorship in M Development was also terminated on the same day. However, Sim, Lynn and Joyce remained directors of Winsta Holding.

29 On 2 June 2015, Winsta Holding (presumably, the directors nominated by M Development) appointed The Uncharted Co ("TUC") to provide management services to its businesses, primarily in the student hostel segment under Katong Hostel, Evan Hostel and Hill Lodge and the serviced apartment segment under Global Residence.¹² TUC, which specialises in the management

of hotels, hostels and serviced apartments, was asked to suggest steps to turn around the business.¹³

30 On 25 June 2015, KordaMentha produced its report and detailed findings.¹⁴

31 On 1 July 2015, TUC produced its report on its observations and findings.¹⁵ TUC's report included a summary of the actions taken and to be taken to turn around the business units. On 10 July 2015, TUC presented its report to the Board of Winsta Holding; the Sim Family was not present at the meeting. At this meeting, the Board also learned, among other things, that¹⁶

(a) Katong Hostel's losses for the first half of 2015 was about \$546,000, the losses may be about \$1.8m by December 2015, and it did not have sufficient cash to meet all its obligations; and

(b) by December 2015, the Winsta Group was expected to face a shortfall of about \$11.2m.

32 On 3 August 2015, Evan Hostel, Pearl Hill Hostel and Hill Lodge were placed under creditors' voluntary liquidation. On 4 August 2015, the remaining Winsta Subsidiaries were placed under creditors' voluntary liquidation. The plaintiffs allege that this was due to the Winsta Subsidiaries having been run to the ground by the defendants' fraudulent and/or wrongful conduct. The decisions to liquidate the Winsta Subsidiaries were made by the directors nominated by M Development.¹⁷

33 Katong Hostel and Evan Hostel had leases with the Singapore Land Authority ("SLA") for properties which were used for the hostel business. Upon the Winsta Subsidiaries being placed under creditors' voluntary liquidation,

SLA called on insurance bonds issued by Liberty Insurance Pte Ltd (“the Liberty bonds”) as security in connection with the following leases:

- (a) Katong Hostel’s lease for 369 Tanjong Katong Road;
- (b) Katong Hostel’s lease for 27 Mount Vernon Road (managed by Hill Lodge); and
- (c) Evan Hostel’s lease for 26 Evans Road.

34 The value of the Liberty bonds amounted to \$2.1m. The bonds were guaranteed by the relevant lessee, Winsta Holding, the Sim Family and the four directors of Winsta Holding who were nominated by M Development (see [21] and [24] above). Sim paid Liberty \$276,666.67.¹⁸

35 In addition, ORIX Leasing Singapore Limited (“ORIX”) called on the guarantees provided by Sim, Lynn, Winsta Holding and Global Residence to ORIX for a \$2.5m loan facility given by ORIX for renovation works at 26 Evans Road. Sim paid ORIX \$681,542.20.¹⁹

36 On 29 October 2015, the liquidators of the Winsta Subsidiaries assigned their claims to M Development.²⁰ On 13 January 2016, M Development obtained an order for it to be made a party to these proceedings in place of the Winsta Subsidiaries.

The plaintiffs’ claims

37 The plaintiffs pleaded the particulars of numerous wrongful acts against the defendants in a lengthy annexure attached to their statement of claim. However, not all of the allegations of wrongful acts were pursued in the plaintiffs’ closing submissions.

38 In their closing submissions, the plaintiffs stated their claims as follows:

(a) Sim, Lynn and Joyce are liable for breach of fiduciary duties owed to the Winsta Group as directors, and alternatively, for conspiracy, in respect of OSPC, ATAS, Uni-House, Unihouse @ Evans, MJM Hotpot, ICS Catering and I-Masters.²¹

(b) Dave Kong is liable in dishonest assistance in respect of OSPC, ATAS and MJM Hotpot.²²

(c) Shawn Tan is liable in dishonest assistance in respect of I-Masters.²³

(d) Connie Ng is liable in dishonest assistance in that she handled the finances and accounting for the corporate defendants and other entities owned by the Sim Family.²⁴

The plaintiffs' case against the Sim, Lynn and Joyce

39 The Sim Family have taken the position that Lynn and Joyce ran and managed the various businesses of the corporate defendants referred to in [38(a)] above and that Sim was not involved in or consulted on the matters which form the subject matter of the plaintiffs' claim. I shall deal first with the claims against Lynn and Joyce before I deal with the claims against Sim.

Claims in respect of OSPC

40 It is not disputed that the Sim Family had full and effective beneficial control of OSPC.²⁵ Sim and Joyce have been directors of OSPC since its incorporation on 11 November 2005. Lynn has been a director since 18 June 2010. Dave Kong was employed by OSPC.

41 OSPC acted as the marketing and sales agent for the Winsta Subsidiaries. OSPC referred clients to the Winsta Subsidiaries and was paid a referral fee or commission for each client who stayed at Winsta Subsidiaries' hostels or serviced apartments. OSPC's contractual relationship with Global Residence in this regard was governed by a marketing and sales agency agreement dated 1 January 2014 ("the MSA agreement").²⁶

42 The plaintiffs accepted that the Sim Family's personal interests in OSPC were disclosed to them in 2010.²⁷

43 In 2012, OSPC started operating a serviced apartment business with units at a condominium called Illuminaire, for its own account instead of operating it under Global Residence which was the Winsta Subsidiary that was in the serviced apartment business. Starting with four units, OSPC eventually managed 32 units at Illuminaire. Lynn and Joyce were each entitled to 10% of the profits earned by OSPC from the Illuminaire project.

44 The plaintiffs claim that Sim, Lynn and Joyce breached their fiduciary duties by diverting the business opportunity at Illuminaire to OSPC and procuring OSPC to compete with Global Residence in the serviced apartment business.²⁸ The fact that OSPC was operating a serviced apartment business with units at the Illuminaire was not disclosed to the Board of Winsta Holding.²⁹

Whether Lynn and Joyce breached their fiduciary duties

45 As a fiduciary, a director is subject to strict obligations of loyalty. As a result, (a) he has to avoid putting himself in a position where his duty to the company conflicts with his own interest (the no-conflict rule), and (b) he cannot profit out of his fiduciary position (the no-profit rule): see Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015)

(“*Corporate Law*”) at para 9.050, and *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 (“*Sakae Holdings*”) at [135].

46 One consequence of the no-profit rule is that a director who receives a business opportunity because of his directorship, cannot divert the opportunity to himself or to an entity in which he has an interest. It is irrelevant that the company is not in a position to take advantage of the opportunity for practical reasons (in contrast to legal restrictions): see *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 73 at [84].

47 In the present case, in early 2014, Dave Kong was alerted to an opportunity for Global Residence or the Winsta Group to lease a number of units at Illuminaire.³⁰ According to Dave Kong, he did not think Global Residence would be interested. As he was interested in managing and marketing the Illuminaire units, Dave Kong brought this opportunity to Lynn and asked if one of her companies could take up this opportunity.³¹ Lynn testified that she decided, together with Joyce, that OSPC would take up this opportunity.³²

48 The Sim sisters argued that the Illuminaire project was a different business because it involved leasing individual units owned by different landlords within the same building and therefore required a new operations model. In contrast, Global Residence’s serviced apartment business up until then involved leasing units from a single owner in one building. According to Lynn, the Illuminaire project was directed to OSPC (instead of Global Residence) as a trial project.³³

49 Lynn and Joyce pointed out that the Illuminaire project was successful and the next two projects involving multiple landlords, Espada and Alexis, were in fact directed to Global Residence and not OSPC.³⁴

50 I reject Lynn's explanations. Even if the Illuminaire project was intended as a trial project, there was no reason why it could not have been directed to Global Residence.³⁵ OSPC had no experience dealing with multiple landlords either. Also, there was no explanation why the project (if it was indeed a trial) was not redirected back to Global Residence after the trial was successful.

51 Dave Kong tried to explain that Lynn was concerned that Global Residence's reputation could be affected if the trial of the Illuminaire project did not succeed.³⁶ However, I agree with the plaintiffs that this did not make sense. If the Illuminaire project, managed by OSPC, did not succeed, this would still affect Global Residence's reputation since OSPC handled the marketing and sales for Global Residence.

52 In my view, there was no good reason for directing the Illuminaire opportunity to OSPC other than that Lynn and Joyce wanted it that way. As Dave Kong confirmed on the stand, it was entirely possible for Illuminaire to have been a Global Residence project.³⁷ This must be so because if the Illuminaire project had been directed to Global Residence, it would still have been managed by OSPC for Global Residence. In any event, for the purposes of the no-profit rule, the reasons given by Lynn and Dave Kong were irrelevant even if true.

53 It is also clear that the serviced apartment business at Illuminaire competed with Global Residence's business. There is no doubt that there would have been substantial overlap in the clientele.

54 The Sim sisters' interest in OSPC put them in a position of conflict with their duties to Winsta Holding and Global Residence. The conflict of interests was compounded by the fact that Lynn and Joyce were each entitled to 10% of the profits earned by OSPC from the Illuminaire project. It is clear therefore that both Lynn and Joyce breached the no-conflict rule when they

- (a) directed the Illuminaire opportunity to OSPC; and
- (b) procured OSPC to compete with Global Residence,

without the informed consent of the Board of Winsta Holding. At the material time in 2012, the Board comprised the Sim Family and Huang. There was at least one director who could have made the decision to waive the conflict.

55 The evidence shows that Lynn and Joyce received the Illuminaire opportunity in their capacities as directors of Winsta Holding or Global Residence. Lynn decided, with Joyce's agreement, that Global Residence would not take up the opportunity.³⁸ Lynn and Joyce breached the no-profit.

Disclosure by Lynn and Joyce

56 As stated in [42] above, the fact that the Sim Family had personal interests in OSPC was disclosed to the Board of Winsta Holding in 2010. However, no disclosure was made regarding OSPC's subsequent involvement in Illuminaire. The disclosure in 2010 was sufficient for purposes of any contracts that OSPC might enter into with the Winsta Group. However, it cannot

be disputed that that disclosure was wholly insufficient for purposes of the conflict of interests arising from the fact that OSPC was in a business in competition with Global Residence.

57 The excuse that Lynn gave for the non-disclosure was that Joyce and she thought that the disclosure of their interest in OSPC in 2010 was sufficient and that they could thereafter do any business that they wanted through OSPC. In my view, Lynn's excuse (even if true) was irrelevant. In any event, Lynn's explanation was not credible and cannot be accepted. OSPC was going into the serviced apartment business for itself in competition with Global Residence. In addition, Lynn and Joyce were each getting a 10% share of the profits made by OSPC from the Illuminaire project. In my judgment, the conflict of interests was all too glaring for her and Joyce to have failed to appreciate.

Claims in respect of ATAS

58 In May 2014, an opportunity arose to lease apartment units at a development known as Scotts Square for purposes of providing serviced apartments. Dave Kong told Lynn about the opportunity. ATAS was incorporated on 27 May 2014 and eventually, the opportunity at Scotts Square was taken up by ATAS.

59 The plaintiffs claim that³⁹

- (a) ATAS was owned and controlled by the Sim Family; and
- (b) the Sim Family, dishonestly assisted by Dave Kong, procured the diversion of the business opportunity relating to the Scotts Square development to ATAS so as to set it up as a competing business.

Whether the Sim Family had personal interests in ATAS

60 Lynn and Joyce were the sole directors and shareholders of ATAS when it was incorporated. Initially, Lynn and Joyce each held 50,000 shares. On 9 June 2014, an additional 150,000 shares in ATAS were allotted to Lynn and Joyce (62,500 shares each) and Dave Kong (25,000 shares). On the same day, Lynn and Joyce resigned as directors of ATAS and Dave Kong was appointed as the sole director of ATAS. On 22 September 2014, Lynn and Joyce transferred their shares in ATAS to Lynn's mother-in-law, Madam Lim Ah Kow.

61 Lynn testified that⁴⁰

- (a) Dave Kong, who was an employee of OSPC, wanted to run his own business and needed a company to manage serviced apartments at Scotts Square, Singapore;
- (b) ATAS was set up for Dave Kong and Joyce and Lynn held the shares in ATAS for Dave Kong; and
- (c) Joyce and Lynn lent Dave Kong the sum of \$250,000 that was used to pay for the issued share capital of ATAS.

62 In my view, Lynn's testimony that Lynn and Joyce had no interests in the ATAS is simply not credible. First, the testimonies of Lynn, Joyce and Dave Kong regarding Dave Kong's interest were at sixes and sevens. Lynn and Joyce were the only shareholders and directors at incorporation and Lynn could not explain why Dave Kong was neither a shareholder nor a director when ATAS was incorporated. Even when 150,000 shares were subsequently allotted in June 2014, only 25,000 shares were allotted to Dave Kong. The rest of the shares

were allotted to Lynn and Joyce. Lynn said that 10% of the shares were transferred to Dave Kong because he repaid some \$34,500 of the loan. However, this did not explain why Dave Kong was allotted only 10% when he had paid more than 10% of the paid up capital. More interestingly, Dave Kong gave a completely different explanation. He testified that his 10% stake was paid for by setting off its cost against \$25,000 in outstanding commissions due to him from OSPC.⁴¹ However, Lynn denied that there were unpaid commissions owing to Dave Kong.⁴² I agree with the plaintiffs that all these conflicting testimonies can only lead to the conclusion that the alleged loan of \$250,000 to Dave Kong was untrue.⁴³

63 Second, 90% of the shares in ATAS which were held by Lynn and Joyce were transferred to Lynn's mother-in-law in 2014, instead of to Dave Kong. Lynn explained that this was done because Dave Kong said there was a conflict of interest if Lynn and Joyce held shares in his company.⁴⁴ In my view, Lynn's explanation is not credible. Dave Kong himself was an employee of OSPC and under the MSA, OSPC was required to achieve a high occupancy rate and optimise revenues for Global Residence's properties. Yet, Dave Kong apparently saw no conflict in his ownership in ATAS. Joyce could not explain the transfer of shares to Lynn's mother-in-law save to say that she had done so on Lynn's instructions.⁴⁵

64 Third, Lynn's testimony contradicted the further and better particulars of her defence, which stated that ATAS was incorporated with the intention of using it for other business ventures in future and that it was subsequently transferred to Dave Kong at his request.⁴⁶

65 Fourth, Joyce admitted that there were no documents evidencing the alleged loan of \$250,000 to Dave Kong, nor any discussion as to its

repayment.⁴⁷ Dave Kong agreed that the alleged loan was not documented but claimed that he was planning to repay the alleged loan over about two years and that this was discussed with Lynn and Joyce but not finalised.⁴⁸ \$250,000 was no small sum. It is difficult to believe that such a loan would not have been documented and that there were no discussions or agreement reached as to its repayment.

66 Fifth, Lynn and Joyce continued to be heavily involved in ATAS. Connie Ng testified that she continued to take instructions from Lynn and Joyce in relation to ATAS even after they had resigned as directors of ATAS.⁴⁹ Dave Kong himself identified Lynn and Joyce as the *de facto* controllers of ATAS.⁵⁰ Lynn made hiring and pay decisions,⁵¹ signed off as a director of ATAS on a letter appointing an ATAS employee,⁵² approved Dave Kong's reimbursements for mooncake purchases,⁵³ controlled who should have complimentary parking passes at Scotts Square,⁵⁴ kept the ATAS cheque book,⁵⁵ issued agreements for ATAS,⁵⁶ reviewed ATAS' staff listings for bonuses,⁵⁷ prepared red packets for ATAS' staff,⁵⁸ and even caused ATAS to lend \$15,000 to OSPC for cash flow purposes.⁵⁹ Lynn also tried to hide her involvement in ATAS by asking Connie Ng and Dave Kong not to send emails on ATAS matters to her Katong Hostel email account.⁶⁰

67 Finally, in his affidavit of evidence-in-chief ("AEIC"), Dave Kong said that he resigned as director of ATAS in December 2016 because of significant differences with Lynn and Joyce over business strategies.⁶¹ On the stand, Dave Kong said he left ATAS because Lynn and Joyce were getting more involved in the company.⁶² Whichever the reason, as the plaintiffs submitted, this was not behaviour consistent with that of an owner of ATAS.

68 In my judgment, the inescapable conclusion is that Lynn and Joyce controlled ATAS and were the beneficial owners of at least 90% of the shares in ATAS. Lynn and Joyce therefore had personal interests in ATAS. Dave Kong may have wanted his own company,⁶³ but as it happened, ATAS was never set up for him. All he had was a 10% shareholding in ATAS and he did not control ATAS.

69 I would add that having an interest as a shareholder in ATAS was just one way in which a conflict of interest arose. Even if Lynn and Joyce were not beneficial owners of 90% of the shares in ATAS, their involvement in managing ATAS' business would have been sufficient to put them in a position of conflict.

Whether Lynn and Joyce breached their fiduciary duties

70 Lynn asserted that Global Residence was not in a position to take up the Scotts Square opportunity. According to Lynn, Joyce and she decided to let Dave Kong take Scotts Square “under his wing” because Global Residence was short of resources having just taken over another project known as Lumiere.⁶⁴ However, Lynn’s explanation was contradicted by the fact that on 31 May 2014, Global Residence issued a cashier’s order for \$1.206m which was then kept until August 2014 when it was repaid to Global Residence. Lynn testified that the cashier’s order was purchased in case it was needed to discharge the existing corporate guarantees given by Katong Hostel and the Sim Family.⁶⁵ The use of Global Residence’s funds for the cashier’s order had not been properly authorised. I agree with the plaintiffs that but for this wrongful use of Global Residence’s resources, Global Residence would have been able to take up the opportunity at Scotts Square.

71 Dave Kong argued that ATAS was in a different class of business in that it was pitched to clients with higher budgets.⁶⁶ I reject Dave Kong's argument. I agree with the plaintiffs that the fact that the target clientele may have been those with higher budgets was no reason why the opportunity could not have been directed to Global Residence or, if it was necessary for branding and market segmentation reasons, to set up a new Winsta Group entity for that purpose. I find that the Scotts Square opportunity was directed to ATAS instead of Global Residence only because that was what Lynn and Joyce wanted.

72 It is also clear that ATAS' business was in competition with Global Residence. Both were in the serviced apartment business. Lynn's and Joyce's interests in ATAS put them in a position of conflict with respect to Winsta Holding and Global Residence. Both Lynn and Joyce breached the no-conflict rule when they

- (a) directed the Scotts Square opportunity to ATAS; and
- (b) procured ATAS to compete with Global Residence,

without the informed consent of the Board of Winsta Holding. The reasons given as to why the Scotts Square opportunity was not directed to Global Residence are also irrelevant, even if true.

73 In my view, the Scotts Square opportunity was received by Lynn and Joyce in their capacities as Global Residence's directors. As stated earlier, Lynn decided that Global Residence was not in a position to take up the opportunity. I note also that the landlord of the units at Scotts Square had initially expressed a preference for Global Residence to be the lessee or a shareholder of the lessee.⁶⁷ Both Lynn and Joyce therefore also breached the no-profit rule by diverting the opportunity to ATAS.

Claims in respect of Uni-House and Unihouse @ Evans

Uni-House

74 On 28 December 2011, Katong Hostel entered into a tenancy agreement with the Singapore Land Authority (“SLA”) for the lease of six blocks at 27 Mount Vernon Road for three years from 28 December 2011 at a monthly rental of \$151,899.⁶⁸ Hill Lodge managed the student hostel comprising these six blocks at 27 Mount Vernon Road.

75 In March 2012, Lynn updated the Board of Winsta Holding that two of the six blocks would be sublet to Uni-House to provide Winsta Group “the opportunity to move into [the] Homestay market”.⁶⁹ According to Lynn, the concept of a homestay was that of a boarding house for children who needed “guardianship type of services”.⁷⁰ The proposed sublease was at a monthly rental of \$60,000 and a 30% share of Uni-House’s net profits “due to the lower rental”. Lynn also proposed that Joyce be appointed as a director in Uni-House “to ensure that our interest of the 30% is being looked after”.⁷¹

76 On 30 October 2012, Hill Lodge entered into a tenancy agreement to lease blocks E and F at 27 Mount Vernon Road to Uni-House.⁷² The tenancy was for a term of 33 months and 27 days from 1 March 2012 to 27 December 2014, and at a monthly rental of \$60,000. Joyce was also appointed as a director of Uni-House. Connie Ng helped to set up the accounting system for Uni-House. According to Lynn, this was to ensure that Uni-House’s accounts were properly done up.⁷³

77 The main lease at 27 Mount Vernon Road was renewed for one year from 28 December 2014 at a monthly rental of \$134,971. Hill Lodge offered Uni-House a 12-month extension of its sub-lease to Uni-House. Negotiations

between Hill Lodge and Uni-House led to Hill Lodge agreeing to the 12-month extension at a reduced monthly rental of \$54,000 and no profit sharing.⁷⁴ According to Lynn, Uni-House took back the handling of its own accounts after that.⁷⁵

Unihouse @ Evans

78 By a state lease dated 31 December 2012, Evan Hostel leased the property at 26 Evans Road for use as a student hostel with a restaurant, café and food and beverage outlet refreshment area and childcare centre for three years from 1 January 2013 to 31 December 2015.⁷⁶

79 Unihouse @ Evans was incorporated on 26 July 2013 as a wholly owned subsidiary of Uni-House. In June 2013, Evan Hostel agreed to lease one block, Block D, at 26 Evans Road to Unihouse @ Evans from 1 July 2013 to 30 December 2015.⁷⁷

Plaintiffs' claims

80 The plaintiffs claim that

- (a) the Sim Family were the true owners and controllers of Uni-House and Unihouse @ Evans;⁷⁸ and
- (b) Uni-House's business was in competition with the Winsta Group's hostel business.⁷⁹

Whether the Sim Family had personal interests in Uni-House and/or Unihouse @ Evans

81 Uni-House was incorporated on 29 February 2012. Its registered shareholders were Mr Soh Kok Chye ("Soh") and Ms Gu Yue. At all material

times, Uni-House was in the business of providing boarding house services and facilities.

82 Lynn and Joyce claimed that Gu Yue managed Uni-House's business.⁸⁰ Lynn further claimed that they merely provided administrative and accounting services to Uni-House for \$2,000 a month.⁸¹

83 It is not disputed that Lynn and Joyce were appointed as bank signatories of Uni-House. Lynn and Joyce claimed that Joyce was made a bank signatory because Hill Lodge was entitled to a 30% share of Uni-House's net profits, whilst Lynn was appointed a bank signatory as a back-up to Joyce.⁸²

84 I agree with the plaintiffs that the evidence supports the conclusion that Lynn and Joyce were the real owners and controllers of Uni-House. First, Lynn and Joyce were appointed as bank signatories of Uni-House on 14 March 2012, even before the tenancy agreement for Uni-House was signed. Lynn had no credible explanation for this.⁸³

85 Second, the assertion that Gu Yue was the one managing Uni-House's business was not credible. As Lynn admitted on the stand, she was not aware of any track record or expertise that Gu Yue had in the homestay business.⁸⁴ Further, Gu Yue's evidence in examination of judgement debtor proceedings was that she never made key decisions herself, and always discussed with Joyce.⁸⁵ Joyce agreed with this.⁸⁶

86 Third, Joyce had substantial involvement in the operations and management of Uni-House. She acted as cheque signatory, provided marketing services and handled students. Gu Yue said that Joyce represented "the majority shareholder", an apparent reference to Soh.⁸⁷ Soh is the registered shareholder

of 65% of the shareholding in Uni-House.⁸⁸ However, this was inconsistent with Lynn’s evidence that Joyce was appointed as a director of Uni-House *only* for the purposes of protecting the interest of the Winsta Group.⁸⁹

87 Fourth, Lynn and Joyce did not seem concerned about ensuring that Hill Lodge received its 30% share of Uni-House’s profits. Two sets of profit statements for Uni-House for 2013 showed different profit figures - \$72,000 in one set and a mere \$8,800 in the other.⁹⁰ Lynn did not investigate which was correct or take any steps to claim the 30% share of profits.⁹¹ Joyce was aware of the discrepancy but also did not investigate.⁹²

88 Fifth, Lynn and Joyce claimed that Gu Yue required a financier and Soh filled this role. However, the Uni-House accounts for 2012 recorded loans due to “a director” of \$190,000.⁹³ The directors were Gu Yue and Joyce. Soh was not a director. Lynn had no explanation for this.⁹⁴ Joyce tried to explain that the amount should have been recorded as being due to a shareholder.⁹⁵ However, Joyce had signed the accounts without making any correction. In my view, Joyce’s explanation was an afterthought.

89 Sixth, Lynn and Joyce treated Uni-House as their own company:

(a) Joyce used a personal Bank of China account in China to collect rentals from Uni-House customers from China.⁹⁶ Lynn was aware of this and did not investigate further or find it an issue that the account was in Joyce’s name.⁹⁷

(b) In July 2013, Joyce wanted to withdraw \$50,000 from Uni-House’s account for an investment into a tuition centre.⁹⁸ She also sought to withdraw funds from the Uni-House accounts to “return to shareholders”.⁹⁹

(c) Lynn told Joyce to discuss bonus arrangements for Uni-House.¹⁰⁰

(d) Joyce sent emails to Katong Hostel staff on matters relating to Uni-House operations and promoting “our” Uni-House brand.¹⁰¹

(e) Lynn and Joyce procured their mother to take on the task of collecting cash from and on behalf of Uni-House.¹⁰²

90 Seventh, Lynn and Joyce each received a monthly salary of \$1,000 from Uni-House.¹⁰³ Lynn offered no explanation why she was paid this salary.¹⁰⁴ Joyce claimed that she was paid \$1,000 a month for providing guardianship services, although by her own evidence she had provided guardianship services to only one student.¹⁰⁵ The monthly salary paid to Lynn and Joyce was consistent with the practice in their other companies such as OSPC and ICS Catering. This pointed to Uni-House being treated the same way as other companies which they had an interest in.

91 Finally, I note that the Sim Family did not call Soh as a witness to refute the claim that he was merely their nominee.

92 As Unihouse @ Evans is wholly owned by Uni-House, Lynn and Joyce would also be the real owners and controllers of Unihouse @ Evans.

Whether Lynn and Joyce breached their fiduciary duties

93 The Sim sisters argued that Uni-House was in the homestay business, *ie*, the provision of boarding house services and facilities. According to Lynn, the homestay concept catered to children who needed “guardianship type of services.”¹⁰⁶ When Lynn updated the Board of Winsta Holding on 9 March 2012, she explained that the subletting to Uni-House would allow the Winsta

Group “the opportunity to move into the [h]omestay market.”¹⁰⁷ In her AEIC, Lynn also said that the sub-letting would guarantee a monthly rental and Katong Hostel would not need to worry about renting out to individuals.¹⁰⁸

94 I agree with the Sim sisters that Uni-House’s homestay business was not in competition with the Winsta Group’s hostel business. It seems to me that the homestay business was quite different from the hostel business that the Winsta Group was in. The nature of the service required and the customer base were clearly different. Uni-House’s homestay business therefore did not give rise to any conflict between the Sim sisters’ interests in Uni-House and their fiduciary duties to Winsta Holding or any of the Winsta Subsidiaries that operated hostels.

95 However, the tenancy agreement between Uni-House and Hill Lodge and the tenancy agreement between Unihouse @ Evans and Evan Hostel were IPTs. An IPT gives rise to an actual conflict of interests because the interested director stands on both sides of the transaction.

96 It is not disputed that the only disclosure made to the Board of Winsta Holding was the fact that Joyce would be appointed to the Board of Uni-House and even then this was pursuant to the terms of the tenancy agreement with Uni-House. Lynn and Joyce did not disclose their interests in Uni-House to Winsta Holding and Hill Lodge. Lynn and Joyce also did not disclose their interests in Unihouse @ Evans to Winsta Holding and Evan Hostel.

97 Lynn and Joyce therefore breached the no-conflict rule.

Claims in respect of JMJ Hotpot

98 JMJ Hotpot was incorporated on 7 April 2014. Its business activity is that of a hotpot restaurant. Lynn and Joyce were the initial shareholders of JMJ

Hotpot. On 7 April 2015, Lynn and Joyce transferred their shares to Dave Kong. Joyce admitted that the transfer of shares to Dave Kong was to enable JMJ Hotpot to apply for work permits.¹⁰⁹ Joyce had been blacklisted by the Ministry of Manpower and thus her name had to be removed from the company. Lynn and Joyce thus remained the beneficial owners of JMJ Hotpot.

99 Joyce admits that JMJ Hotpot is her business but asserts that Lynn did not have any investment in JMJ Hotpot and that Lynn's name was included so that she could handle the business for Joyce when Joyce was not around.¹¹⁰ I reject Joyce's explanation as to Lynn's role. There was clearly no need to include Lynn as a shareholder simply to enable Lynn to handle the business in Joyce's absence.

100 The plaintiffs' case is that¹¹¹

- (a) Winsta Group's resources were misused by the Sim Family to run JMJ Hotpot; and
- (b) JMJ Hotpot was used as a conduit by the Sim Family to divert the revenue, arising from Mongolian students attending a summer camp, from the Winsta Group to their own benefit.

Misuse of Winsta Group resources

101 Lynn admitted that Winsta Group personnel provided support and administrative services, including payroll, banking, finance and human resources, to JMJ Hotpot without any disclosure to or approval of the Board of Winsta Holding, and without any payment to the Winsta Group for such services.¹¹²

102 Joyce admitted that Shawn Tan helped out in Devonshire, a property owned by Joyce's husband,¹¹³ by arranging for a contractor and ordering bedsheets, and that other Global Residence support staff helped with the delivery of bedsheets for Devonshire.¹¹⁴

103 By misusing Winsta Group's resources, Lynn and Joyce have breached their fiduciary duties to act in the best interests of Winsta Holding and not to place themselves in a position of conflict.

Summer camp revenue

104 During the summer months from 2011 to 2013, the Winsta Group had contracted with Help International LLC to provide accommodation at either Katong Hostel and/or Queensway Hostel for up to about 200 students from Mongolia staying in Singapore for summer camps each year. However, in 2014, the students were housed at Devonshire and the monies were paid to MJ Hotpot. In 2015, accommodation for the summer camp returned to Katong Hostel.¹¹⁵

105 Joyce explained that payment was made to MJ Hotpot's account because Help International LLC needed a company's bank account to make payment to and so she gave them MJ Hotpot's account.¹¹⁶ Joyce admitted that she received \$31,250 (after payment of expenses) which was deposited into her joint account with her husband.¹¹⁷ Joyce confirmed that none of this was disclosed to the full Board of Winsta Holding.¹¹⁸

106 Joyce explained that neither Queensway Hostel nor Katong Hostel were available for the summer camp in 2014. Queensway Hostel was ceasing operations (it ceased operations by June 2014). As for Katong Hostel, Joyce claimed that its premises at Tanjong Katong Road were not available for the

summer camp in 2014 because the Sim Family's intention in February 2014 was to terminate the lease at Tanjong Katong Road.¹¹⁹ Katong Hostel's lease at Tanjong Katong Road had been renewed for three years from 3 December 2012 at a significantly higher rental, and the Sim Family was considering terminating it before its expiration.¹²⁰

107 According to Joyce, Lynn and she offered the hostels managed by Hill Lodge and Evan Hostel to Help Mongolia but these were rejected by Help Mongolia due to the high rentals.¹²¹ There is no evidence contradicting this.

108 The plaintiffs challenged Joyce's explanations as to why the Mongolian students were accommodated at Devonshire in 2014. The plaintiffs relied on Sim's testimony that Lynn, Joyce and he had ultimately decided not to surrender the Katong Hostel lease sometime in the first half of 2014 and one of the reasons was that if the lease was surrendered, SLA would claim \$1.206m being the rental for the three-month rent-free period in addition to the \$1.2m security bond.¹²² The plaintiffs also relied on chat messages between Lynn and Connie Ng in mid-March 2014.¹²³ The plaintiffs submitted that Lynn and Joyce would have known that Katong Hostel was available for the summer camp in 2014.

109 I disagree with the plaintiffs' submission. The evidence does not support the plaintiffs' submission. The chat messages between Lynn and Connie Ng in fact show that SLA's claim for the three-month rent-free period was made known to the Sim Family in mid-March 2014. There is no evidence as to when the decision not to surrender the lease was actually made but on the evidence, it would have been some time after mid-March 2014. Joyce testified that her discussions with Help International LLC were in late February/early March 2014 and that the summer camp was usually for two months between June and

August.¹²⁴ Clearly, the arrangements for the summer camp in 2014 had to be finalised in advance.

110 In my view, the evidence is consistent with Joyce’s evidence that at the time when she offered Devonshire to Help International LLC for the summer camp in 2014, the intention was to surrender the lease at Tanjong Katong Road. I accept Joyce’s evidence as to the circumstances that led to the Mongolian students being accommodated at Devonshire for the 2014 summer camp. The Winsta Group could not have taken advantage of the 2014 summer camp opportunity. I note also that accommodation for the summer camp returned to Katong Hostel in 2015.

111 Nevertheless, the 2014 summer camp opportunity came to Lynn and Joyce because of their position as directors of Winsta Holding and Katong Hostel. Clearly, Joyce had a personal interest in Devonshire and did in fact profit out of the opportunity. By reason of their relationship, Lynn too became an interested party. By directing the opportunity to Devonshire, Lynn and Joyce had breached the no-profit rule. Whether the Winsta Group had the capacity to take advantage of the opportunity is irrelevant.

Claims in respect of ICS Catering

112 ICS Catering (formerly known as Mumum Catering Pte Ltd) was incorporated on 1 November 2012. Its registered business activity is food catering. Lynn and Joyce were its directors from incorporation until 18 December 2012.¹²⁵ One Ms Zhu Ran Ran (“Zhu”) then became the sole director until May 2015, after which one Mr Kwan Kok Ting (“Kwan”) became the sole director. Kwan was the driver for ICS Catering.

113 Winsta Holding held 70% of the shares in ICS Catering from incorporation.¹²⁶ Winsta Holding's shares in ICS Catering were transferred to Soh in December 2012.¹²⁷ At the material times, the other directors of Winsta Holding (apart from the Sim Family) were not aware of Winsta Holding's shareholding in ICS Catering or Lynn's and Joyce's appointments as directors of ICS Catering.

114 ICS Catering was a vendor to the Winsta Group, providing breakfast and other catering services in 2013 and 2014.

115 The plaintiffs claim that

- (a) ICS Catering was in fact owned and controlled by the Sim Family;¹²⁸
- (b) Lynn and Joyce received personal benefits in monthly fees from assisting with ICS Catering's accounting and administrative affairs;¹²⁹
- (c) there was no disclosure to the full Board of Winsta Holding.¹³⁰

Whether ICS Catering was owned and controlled by the Sim Family

116 Lynn's and Joyce's defence pleaded that¹³¹

- (a) ICS Catering was set up because they had planned for Winsta Holding to set up and run the café at Hill Lodge; and
- (b) this proved to be too challenging and they decided to remove Winsta Holding as a shareholder and Soh then took over as shareholder and carried on with ICS Catering's business.

117 However, Hill Lodge was then already operating a cafeteria. Why was there a need for ICS Catering? It became clear from Lynn's and Joyce's testimonies on the stand that, contrary to their defence, ICS Catering was not set up because of plans for Winsta Holding to run a café at Hill Lodge. First, both Lynn and Joyce testified that ICS Catering was set up because Soh wanted a kitchen for Uni-House.¹³²

118 Second, Winsta Holding did not pay for its 70% shareholding in ICS Catering. Instead, the incorporation costs and share capital was paid by Joyce.¹³³ When asked when she paid these costs, Joyce first said she did not know how to answer.¹³⁴ When pressed further, Joyce said she could not get Winsta Holding to pay because Winsta Holding did not know of the setting up of ICS Catering!¹³⁵

119 Third, it was not disputed that profits amounting to \$53,900 for the months from September to December 2012 were transferred to ICS Catering even though ICS Catering was incorporated only on 1 November 2012.¹³⁶ Joyce's explanation was that pursuant to discussions with Soh in July 2012, it was agreed that profits from September 2012 would be for the new company to be incorporated (*ie*, ICS Catering).¹³⁷ There was no reason to do so if, as Lynn and Joyce alleged, plans were for Winsta Holding to run a café at Hill Lodge.

120 I agree with the plaintiffs that the evidence shows that Lynn and Joyce were the beneficial owners and controllers of ICS Catering. First, as discussed above, their defence that ICS Catering was part of plans for Winsta Holding was clearly untrue. Winsta Holding was not even told of the setting up of ICS Catering. It seems to me that their defence was just an attempt to explain away their involvement in the setting up of ICS Catering when the real reason for their involvement was that they were in fact the beneficial owners.

121 Second, within less than two months after ICS Catering was incorporated, Winsta Holding's 70% shareholding in the company was transferred to Soh without any payment from Soh.¹³⁸ Although Soh ended up holding all the shares in ICS Catering, Joyce was the one who paid for them. There was no credible explanation given as to why Joyce paid for the shares if she was not the beneficial owner.

122 Third, Lynn and Joyce were the only directors of ICS Catering at incorporation. They could not have been directors because of Winsta Holding's interest. As stated earlier, Winsta Holding was not told of its shareholding in, or the setting up of, ICS Catering. Lynn and Joyce remained the directors of ICS Catering even after Winsta Holding's 70% shareholding was transferred to Soh. Joyce's explanation was simply that Soh did not want to be a director and did not nominate anyone to be a director.¹³⁹ In my view, this explanation defied belief if, as Lynn and Joyce alleged, ICS Catering was set up because Soh wanted a kitchen for Uni-House. The logical inference is that they were directors because they were the beneficial owners and controllers of ICS Catering.

123 Fourth, the evidence showed that Lynn and Joyce were actively involved in managing the operations of ICS Catering, even after Soh became the sole shareholder in December 2012:

(a) Joyce was asked to approve and/or did approve, on behalf of ICS Catering, the purchase of tables, website and menu designs, flyers and food menus.¹⁴⁰

(b) Lynn and Joyce discussed bonus payouts for ICS Catering staff.¹⁴¹

(c) Both Lynn and Joyce were listed as persons approving overtime applications for ICS Catering staff.¹⁴²

(d) A name card found on the premises of Katong Hostel described Joyce as “director” of ICS Catering and Joyce also signed off on a letter as a director of ICS Catering.¹⁴³

(e) Joyce signed a letter to ICS Catering staff as “director” in which she talked about staffing, the company’s business, applications for leave, consideration for colleagues, kitchen waste problems, maintenance of kitchen inventory records and keeping vehicles clean.¹⁴⁴ The letter was clearly a communication by management to the staff.

(f) Joyce signed off on an appointment letter from ICS Catering as “director”.¹⁴⁵

124 Fifth, Zhu, who became the sole director in December 2012, testified that she only signed documents when asked to by Joyce or Joyce’s secretary and that she tendered her resignation as director, to Joyce because Joyce was her boss and the one in control.¹⁴⁶ Joyce accepted that Zhu was not involved in the management and operations of ICS Catering.¹⁴⁷

125 Sixth, ICS Catering’s driver, Kwan, became the sole director after Zhu. Evidence as to his involvement was sketchy at best but there was no evidence that suggested that he was involved in the business in any significant manner. Zhu, who resigned in May 2015, did not know him.¹⁴⁸

126 Finally, Lynn tried to hide her involvement with ICS Catering by directing Connie Ng to remove ICS Catering cheque images bearing her name

and signature from the Katong Hostel records.¹⁴⁹ In my view, this was done to avoid questions into the beneficial ownership of ICS Catering.

127 Again, even if Lynn and Joyce were not the beneficial owners of ICS Catering, their involvement in managing the businesses of ICS Catering would have given them sufficient interests for purposes of the no-conflict rule. During closing submissions, counsel for Lynn and Joyce admitted to this.¹⁵⁰

Whether Lynn and Joyce breached their fiduciary duties

128 ICS Catering provided services to the Winsta Group; these transactions were IPTs. In addition, Lynn admitted that Joyce and she received monthly fees of \$1,500 and \$1,000 respectively, for assisting with ICS Catering’s accounting and administrative affairs.¹⁵¹ This fact also gave rise to a conflict of interest.

129 Lynn and Joyce therefore breached the no-conflict rule by not disclosing their interests in ICS Catering. They have also breached the no-profit rule by receiving the monthly fees for assisting with ICS Catering’s accounting and administrative affairs.

Claims in respect of I-Masters

130 I-Masters was incorporated on 23 April 2013. At incorporation, the shareholders were OSPC (45%), Shawn Tan (10%) and one Lee Weng Peng (“Weng Peng”) (45%). On 21 October 2014, OSPC transferred its 45% shareholding to one Zhao Feng for no consideration.¹⁵²

131 Shawn Tan was also the sole director at incorporation. On 1 July 2014, Shawn Tan transferred his directorship and shareholding in I-Masters to his wife, Wang Baoli.¹⁵³

132 Prior to the incorporation of I-Masters, the air-conditioning and general contracting and maintenance work (“ACM work”) of the Winsta Group was undertaken by Katong Hostel’s in-house team. However, after I-Masters was incorporated, all of the Winsta Group’s ACM work was exclusively awarded to I-Masters without competing quotes from other vendors.¹⁵⁴

133 The plaintiffs claim that¹⁵⁵

(a) OSPC’s divestment of its shareholding in I-Masters was a sham and the Sim Family remained the controllers of I-Masters after the alleged divestment; and

(b) the Sim Family acted in conflict of interests in awarding all the air-conditioning work to I-Masters.

Whether the Sim Family remained the controllers of I-Masters

134 The plaintiffs allege that OSPC’s divestment of its shares to Zhao Feng was to cover up the Sim Family’s interests in I-Masters. OSPC’s divestment took place in October 2014 which was around the time that M Development’s directors began investigating the affairs of the Winsta Group.¹⁵⁶

135 Lynn admitted that she was still checking I-Masters’ payroll even after OSPC had transferred its shares to Zhao Feng. However, she claimed that she was “merely helping out”.¹⁵⁷ In addition, Winsta Holding’s employees were still preparing I-Masters’ workman’s injury compensation documentation in November 2014.¹⁵⁸

136 Joyce claimed that OSPC divested its shares because it could not invest further sums and needed Zhao Feng as a new investor in I-Masters.¹⁵⁹ Joyce’s

explanation does not make any sense and in my view, it was a concoction. Joyce could not even say how much additional funding I-Masters allegedly needed at that time.¹⁶⁰ Also, as Joyce agreed during cross-examination, as a shareholder, OSPC had no obligation to inject more cash into I-Masters.¹⁶¹ More importantly, OSPC's divestment of its shares would not lead to any funds being injected into I-Masters. In any event, OSPC transferred its shares to Zhao Feng for no consideration. Joyce gave no credible explanation why OSPC would do so.¹⁶² Finally, Zhao Feng was not called as a witness for any of the defendants.

137 On balance, I agree with the plaintiffs that OSPC's divestment of its shares in I-Masters was a sham. However, although the Sim Family had an interest in I-Masters, there is no evidence that the Sim Family were controllers of I-Masters.

Award of air-conditioning works to I-Masters

138 When I-Masters was incorporated, Shawn Tan was the Operation Manager for Winsta Holding. He was responsible for the maintenance department and his responsibilities included sourcing and liaising with vendors and staff allocation of in-house security guards and wardens.¹⁶³

139 Shawn Tan testified that as the Operation Manager of Winsta Holding, he constantly faced manpower shortages and that that led to the setting up of I-Masters with Weng Peng who held 45% of the shareholding in I-Masters.¹⁶⁴ Shawn Tan knew Weng Peng because Weng Peng was involved in a Global Residence project to install air-conditioners at residence units at Tiong Bahru.¹⁶⁵ According to Shawn Tan, the understanding was that I-Masters would carry out ACM works for the Winsta Group at below-market rates.¹⁶⁶ Shawn Tan also

testified that Lynn and Joyce agreed with his approach in awarding air-conditioning works only to I-Masters.¹⁶⁷

140 Lynn and Joyce asserted that they thought the arrangement involving I-Masters would benefit the Winsta Group in getting the first hand attention and expertise that it required. The plaintiffs disputed this assertion. The plaintiffs relied first on the fact that I-Masters had billed the Winsta Group for work done by one Liang Chang Chun (“Chang Chun”) who was a Katong Hostel employee, including work done before I-Masters was incorporated. Shawn Tan confirmed that I-Masters’ invoice dated 26 April 2013¹⁶⁸ was based on service records which showed that the work was done by one Chang Chun from 1 April to 20 April 2013 (even though I-Masters was only incorporated on 23 April 2013).¹⁶⁹ It appears that I-Masters also billed the Winsta Group for work done by Chang Chun from May to December 2013.¹⁷⁰

141 However, on 28 October 2013, Lynn gave instructions for Chang Chun’s salary from April to October 2013 and thereafter to be charged to I-Masters.¹⁷¹ Lynn explained that she gave that instruction when she found out that the work billed for by I-Masters was done by Chang Chun.¹⁷² I accept Lynn’s explanation. There is no reason for her to have given that instruction if the intent was for I-Masters to charge for work carried out by Chang Chun.

142 The plaintiffs next relied on the fact that there was no contractual arrangement binding I-Masters to charge the Winsta Group below-market rates for its services.¹⁷³ That may be so. However, the Winsta Group did not have to continue engaging I-Masters’ services if its rates ceased to be below market. The plaintiffs also relied on the fact that the rates charged by I-Masters were higher than the rates charged by Katong Hostel when the ACM work was

performed by its own in-house team.¹⁷⁴ This was understandable since Katong Hostel, being part of the Winsta Group, was charging at cost.

143 Considering the manpower problems that the in-house team was facing, I am satisfied that Lynn and Joyce did believe that the arrangement with I-Masters would benefit the Winsta Group.

144 Nevertheless, the contracts with I-Masters were IPTs. By not disclosing their interests in I-Masters, Lynn and Joyce breached the no-conflict rule.

The plaintiffs' case against Sim

145 It is not disputed that Sim has an interest in OSPC. However, there is no direct evidence that Sim has an interest in and/or controlled any of the remaining corporate defendants, *ie*, ATAS, Uni-House, Unihouse @ Evans, JMJ Hotpot, ICS Catering, and I-Masters. There is also no evidence upon which I can infer any such interest or control. The mere fact that Sim is the patriarch of the Sim Family is insufficient to support such an inference. Nevertheless, the question remains whether Sim knew of this daughters' interests in the corporate defendants and/or of their wrongdoings.

146 Lynn and Joyce testified that Sim was not involved in, and they did not consult him on, any of the matters which are the subject-matter of the plaintiffs' claims against them. Sim testified that as he provided the financing and capital for the business, he was seen as the "boss" even up to 2015, but he was effectively not in charge of business operations.¹⁷⁵ All three emphasised the fact that Sim was in charge of charting the overall direction of the Winsta Group and handling key contracts with governmental authorities whilst Lynn and Joyce were in charge of the day-to-day operations (see [20] above). Huang confirmed this division of responsibilities.¹⁷⁶

147 On balance, I do not accept the denials of Sim’s knowledge and involvement for the following reasons:

(a) The inference as to Sim’s knowledge and involvement is too strong to ignore. I agree with the plaintiffs that Lynn and Joyce would not have unilaterally taken steps which would hurt Sim’s interests in the Winsta Group as a shareholder and the Managing Director. Further, Sim, Lynn and Joyce were guarantors for the Liberty bonds (see [34] above). Any steps that may hurt the Winsta Group’s businesses and the ability to pay the rentals to SLA, could result in the Liberty bonds being called upon by SLA and consequently in the guarantees being called upon. It is just unbelievable that given these circumstances, Lynn and Joyce would have acted without Sim’s knowledge and approval.

(b) The claim that Lynn and Joyce made decisions for Global Residence to forgo business opportunities at Illuminaire and Scotts Square, without consulting Sim, does not sit well with Lynn’s evidence that decisions on new businesses, properties, and leases would have to be discussed and cleared by Sim.¹⁷⁷

(c) Sim’s testimony that he approved the sub-lease to Uni-House without knowing or asking for any details of Uni-House (*eg*, who were the people behind Uni-House), is in my view unbelievable.¹⁷⁸

(d) The division of responsibilities does not necessarily lead to the conclusion that Lynn and Joyce did not consult Sim on operational matters. In fact, Sim was consulted and his approval obtained for the sub-lease of two blocks at 27 Mount Vernon Road to Uni-house although, in his words, that “related to operations”.¹⁷⁹

(e) Sim was also involved in several operational matters. He signed cheques if Lynn and Joyce were not around to do so, although he claimed that he did so only if Lynn had approved the payments by signing on the payment vouchers. Sim also signed certain letters, in particular letters of appointments and letters pertaining to salary increments and bonuses.¹⁸⁰ I do not accept Sim's claim that this was because he was seen as the boss even though he was not in charge of the business operations. According to Lynn, the award of contracts for renovation works would normally be submitted to and discussed with Sim.¹⁸¹ An email from Lynn dealing with operational matters at 27 Mount Vernon was also copied to Sim.¹⁸² Another email dealing with operational matters, this time from Dave Kong, was also copied to Sim.¹⁸³

(f) Sim was the Managing Director. Even if he did not get involved in day-to-day operational matters, it is difficult to believe that he did not know of his daughters' interests in the corporate defendants or that he was not consulted on the Illuminaire and Scotts Square opportunities especially when both opportunities could have been directed to Global Residence. Also, Lynn's evidence was that Joyce and she would approach Sim for advice on the business;¹⁸⁴

(g) A number of files labelled "Payroll" and bearing some of the corporate defendants' names were placed openly at the workstation of Winsta Holding's human resource and payroll manager.¹⁸⁵ Sim claimed that he did not notice any of these files in all his visits to the office.¹⁸⁶ Sim confirmed that had he noticed these files, he would be surprised and he would ask about them.¹⁸⁷ I find Sim's denial too incredible to believe. The fact that Sim did nothing about these files can only mean that he

knew of his daughters' interests in the corporate defendants and that he had no issues with Winsta Holding staff being used by his daughters to do work for the corporate defendants.

148 In my judgment,

(a) Sim must have known that Lynn and Joyce had interests in the corporate defendants. Sim must also have known of Joyce's interest in Devonshire. In view of their relationships, Sim would be regarded as having personal interests in the corporate defendants and in Devonshire as well; and

(b) Sim must have agreed to the actions taken by Lynn and Joyce, as set out earlier in this judgment.

149 In the circumstances,

(a) Sim breached the no-conflict rule and the no-profit rule with respect to (i) the diversion of the Illuminaire opportunity to OSPC and (ii) OSPC being in a business in competition with Global Residence, since both were carried out without any informed consent from the Board of Winsta Holding;

(b) Sim breached the no-conflict rule and the no-profit rule with respect to (i) the diversion of the Scotts Square opportunity to ATAS and (ii) ATAS being in a business in competition with Global Residence, since both were carried out without any informed consent from the Board of Winsta Holding;

(c) Sim breached the no-conflict rule by failing to disclose his interests in Uni-House and Unihouse @ Evans in connection with the

tenancy agreement between Uni-House and Hill Lodge and the tenancy agreement between Unihouse @ Evans and Evan Hostel. Both were IPTs;

(d) Sim breached his fiduciary duties to act in the best interests of Winsta Holding as well as the no-conflict rule, with respect to the misuse of Winsta Group's personnel to provide support and administrative services to JMJ Hotpot without any approval from the Board of Winsta Holding;

(e) Sim breached the no-profit rule with respect to the diversion of the 2014 summer camp opportunity to Devonshire, without any informed consent from the Board of Winsta Holding; and

(f) Sim breached the no-conflict rule by failing to disclose his interests in ICS Catering and I-Masters in connection with the IPTs between the Winsta Group and ICS Catering and I-Masters respectively.

150 Even if Sim did not agree with the actions taken by Lynn and Joyce, as the Managing Director of Winsta Holding, Sim ought to have taken steps to protect the Winsta Group's interests once he learned of what Lynn and Joyce had or wanted to do. By taking no action, Sim would have breached his fiduciary duty to act in the best interests of Winsta Holding.

The plaintiffs' case against Dave Kong

151 The plaintiffs claim that Dave Kong is liable in dishonest assistance in respect of OSPC, ATAS and JMJ Hotpot.¹⁸⁸ I have found that Sim, Lynn and Joyce breached their fiduciary duties by

- (a) diverting the business opportunity at Illuminaire to OSPC and procuring OSPC to compete with Global Residence; and
- (b) diverting the business opportunity at Scotts Square to ATAS and procuring ATAS to compete with Global Residence.

152 Dave Kong first submitted that the plaintiffs' allegations in respect of OSPC's lease of units in Illuminaire have not been pleaded. In their statement of claim, the plaintiffs pleaded that Illuminaire was managed by ATAS.¹⁸⁹ It would appear that this was a mistake by the plaintiffs, due at least in part to the fact that ATAS was first incorporated as OSPC Pte Ltd (see [10(b)] above). The plaintiffs would have learnt of this mistake when Dave Kong stated in his AEIC that Illuminaire was managed by OSPC. Dave Kong's AEIC was affirmed on 22 November 2017. On 5 December 2017, Dave Kong applied to amend his defence to plead that Illuminaire was managed by OSPC; his amended defence (amendment no. 3) was filed on 13 December 2017.¹⁹⁰

153 The plaintiffs did not amend their statement of claim to correct their pleading with respect to Illuminaire but the trial proceeded on the basis that the Illuminaire opportunity was diverted to OSPC. No objections were raised by Dave Kong when he was cross-examined on the diversion of the Illuminaire opportunity to OSPC. In my view, the plaintiffs ought to be permitted to pursue their claim based on diversion of the Illuminaire opportunity to OSPC. The mistake in the plaintiffs' statement of claim did not result in any prejudice to Dave Kong, or indeed, to any of the other defendants. Dave Kong knew what the issues relating to Illuminaire were and he addressed them in his AEIC.¹⁹¹ Clearly, Dave Kong was not taken by surprise. I would add that there were no objections from Sim, Lynn, Joyce or OSPC either.

154 In their written reply to closing submissions, the plaintiffs accused the defendants, in particular Dave Kong, of ambushing the plaintiffs on the eve of trial by admitting that Illuminaire was a business under OSPC and not ATAS.¹⁹² This accusation had no legs to stand on. The mistake was the plaintiffs' in the first place. Further, it was clear from Dave Kong's AEIC that the units in Illuminaire were leased under OSPC.¹⁹³ The plaintiffs would have seen Dave Kong's AEIC before the trial started; they chose not to amend their statement of claim..

155 Turning to the claim for dishonest assistance, it is well established that the requisite elements are (a) the existence of a trust, (b) a breach of that trust, (c) assistance rendered by the third party toward the breach, and (d) a finding that the assistance rendered by the third party was dishonest: *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 (“*Zage III*”) at [20].

156 Dave Kong did not dispute elements (a) and (b). However, he disputed elements (c) and (d), denying that he rendered assistance and that any assistance rendered was dishonest.¹⁹⁴

157 It is clear from *Zage III* that

- (a) there must be active assistance and involvement in a broad sense - mere passive participation is not sufficient (at [43]); and
- (b) for the assistance to be dishonest, the defendant must have such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them (at [22]).

158 In my view, Dave Kong cannot be said to have actively assisted in the decision to divert the Illuminaire opportunity to OSPC.

159 Dave Kong was an employee of OSPC who was in charge of OSPC's Corporate Housing Portfolio (*ie*, serviced apartment business) which included Global Residence's serviced apartment business. While Dave Kong may have brought the Illuminaire opportunity to Lynn, it was Lynn who, together with Joyce, decided to direct this opportunity to OSPC. Although Dave Kong felt that the Illuminaire opportunity did not generally fit Global Residence's business model,¹⁹⁵ he had nothing to do with the decision to direct the opportunity to OSPC. It also did not matter to Dave Kong whether Illuminaire was under OSPC or Global Residence; he was just interested in managing the business and he could do so through OSPC even if the opportunity was directed to Global Residence.¹⁹⁶

160 Conversely, for the Scotts Square opportunity, Dave Kong brought it to Lynn. Dave Kong's own testimony was that he wanted the Scotts Square opportunity for himself. What happened however was that Lynn first decided to direct the opportunity to OSPC but later decided to incorporate ATAS to take up this opportunity. Already stated earlier, Dave Kong was given a 10% share in ATAS. In these circumstances, Dave Kong's participation in the decision to direct the opportunity to ATAS cannot be said to be merely passive.

161 Further, Dave Kong actively assisted by managing *both* OSPC's business at Illuminaire and ATAS' business at Scotts Square in competition with Global Residence.

162 In my view, Dave Kong's assistance with respect to Illuminaire and Scotts Square was dishonest. Dave Kong knew (at least from sometime in 2012)

that the shareholders of the Winsta Group and OSPC were different.¹⁹⁷ Dave Kong would also have known that ATAS was not a Winsta Group company and that the Sim sisters had an interest in and controlled ATAS. Dave Kong therefore knew that Lynn and Joyce were directing the Illuminaire and Scotts Square opportunities away from Global Residence (a Winsta Group company) to companies in which they had interests and which they controlled.

163 In addition, Dave Kong himself was placed in a position of conflict of interests. He was managing the serviced apartment business at Illuminaire and Scotts Square in competition with Global Residence's business which was also managed by him through OSPC. On top of that, Dave Kong was incentivised to prioritise OSPC's interests over those of Global Residence because his earnings from managing OSPC's Illuminaire units far exceeded that from managing Global Residence's serviced apartments.¹⁹⁸ He was also a director and a 10% shareholder in ATAS. Any ordinary honest man having knowledge of these facts would consider Dave Kong's active involvement to be a breach of standards of honest conduct.

The plaintiff's case against Shawn Tan

164 The plaintiffs claim that Shawn Tan dishonestly assisted the Sim sisters by fronting the management and operations of I-Masters for the Sim sisters who were the real owners and controllers.¹⁹⁹ However, in their closing submissions, the plaintiffs did not explain how Shawn Tan fronted the operations and management of I-Masters for the Sim sisters.

165 Between 23 April 2013 (when I-Masters was incorporated) and 21 October 2014 (when OSPC transferred its 45% shareholding in I-Masters to Zhao Feng), the Sim sisters' interests in I-Masters (through OSPC) was clear.

There was no reason for Shawn Tan to front the operations and management of I-Masters for them during this period.

166 Further, Shawn Tan was the Operations Manager of Winsta Holding until his employment was terminated in May 2015. It did not make sense to have Shawn Tan front the operations and management of I-Masters for the Sim sisters when doing so would have highlighted his own conflict of interests and led to further inquiries.

167 In any event, the evidence does not show that Shawn Tan was handling the operations and management of I-Masters. Both before and after 21 October 2014, the operations of I-Masters were handled by Weng Peng who held 45% of the shares in I-Masters (see [130] above). Shawn Tan represented the Winsta Group in awarding the Winsta Group's ACM works to I-Masters.

168 However, although Shawn Tan did not front the management and operations of I-Masters for the Sim sisters, he did actively assist the Sim sisters in their breach of duty with respect to awarding the ACM works to I-Masters. In my view, Shawn Tan's assistance was dishonest. Any ordinary honest man having knowledge of these facts would consider Shawn Tan's active involvement to be a breach of the standards of honest conduct.

The plaintiffs' case against Connie Ng

169 Connie Ng was a senior employee of Winsta Holding who was responsible for handling the Winsta Group's finances and accounting. The plaintiffs claim that Connie Ng dishonestly assisted the Sim Family in their wrongdoings by handling the finances and accounting for the corporate defendants and other entities owned by the Sim Family.

170 The plaintiffs rely on the following:²⁰⁰

(a) Connie Ng admitted that she was involved in the accounting functions for OSPC, ATAS, Uni-House and Unihouse @ Evans, and that she helped to set up the accounting systems for ICS Catering, I-Masters and MJ Hotpot.²⁰¹

(b) Chat logs of Skype conversations between Lynn and Connie Ng which show that

(i) she was fully aware which entities were part of the Winsta Group and which were not;²⁰² and

(ii) she sought to conceal her involvement in OSPC, ATAS, and ICS Catering from the directors nominated by M Development.²⁰³

(c) Connie Ng continued to take instructions from Lynn with respect to ATAS even after September 2014 when the Sim sisters had resigned as directors and transferred their shares to Lim Ah Kow (see [60] above), and despite knowing that ATAS was in a competing business with Global Residence.²⁰⁴

(d) Connie Ng admitted that she knew Uni-House was obliged to pay 30% of its net profit to the Winsta Group. However, despite knowing that Uni-House had recorded a net profit of around \$8,841 for financial year 2013, she did not process such payment to the Winsta Group because Lynn had not instructed her to do so.²⁰⁵

(e) Connie Ng refused to attend an interview with KordaMentha even though she would have a chance to explain why she was not

culpable.²⁰⁶ The plaintiffs submitted that the inference must be that she had no proper explanation and wanted to avoid incriminating herself.

171 Clearly, Connie Ng has assisted in Lynn's and Joyce's breaches with respect to OSPC, ATAS and MJM Hotspot. Connie Ng helped with the accounting functions for OSPC and ATAS and helped set up the accounting system for MJM Hotspot. She also took instructions from Lynn and Joyce.

172 It is clear that Connie Ng's assistance was dishonest. Given her close relationship with Lynn and Joyce and her role in the Winsta Group, Connie Ng had to know of Lynn's and Joyce's interests in OSPC, ATAS and MJM Hotspot. She must also have known that OSPC and ATAS were competing with Global Residence. The fact that she tried to conceal her involvement in OSPC and ATAS from the directors nominated by M Development is further evidence of her dishonesty.

OSPC and MJM Hotspot

173 As stated at [16] above, in addition to the Sim Family, Dave Kong, Connie Ng and Shawn Tan, the trial also proceeded against OSPC and MJM Hotspot. It is clear that OSPC has dishonestly assisted in Lynn's and Joyce's breaches of the no-conflict rule in respect of the diversion of the Illuminaire opportunity and OSPC competing with Global Residence (see [54] above).

174 As for MJM Hotspot, its account was used to receive payment from Help International LLC for the 2014 summer camp (see [104] above). In the circumstances, MJM Hotspot has dishonestly assisted in Lynn's and Joyce's breach of the no-profit rule in respect of the 2014 summer camp (see [111] above).

The plaintiffs' case for conspiracy

175 The claim for conspiracy is pleaded in the following manner:²⁰⁷

Further and/or in the alternative, the plaintiffs aver that each of the defendants was engaged in a combination and/or agreement with any and/or all of the other defendants in a conspiracy with intent to injure any and/or all of the plaintiffs, and that pursuant to said combinations and/or agreements certain acts which particulars are pleaded in Annex A were carried out, such acts being done with the purpose of injuring any and/or of the [plaintiffs]; alternatively, that such acts were done with the sole or dominant purpose of injuring any and/or all of the plaintiffs.

176 The addition of a conspiracy claim seems to have become common practice. There is nothing wrong with that where the plaintiff's case supports such a claim. However, such a claim, as with any other claim, must be adequately pleaded. In my view, the plaintiffs have not adequately pleaded their claim for conspiracy.

177 The tort of conspiracy may involve the use of lawful means or unlawful means. In a claim for conspiracy by unlawful means, a plaintiff must show that

- (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.

See, *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112].

178 For a claim for conspiracy by lawful means, proof of an independently unlawful act is not necessary but the alleged conspirators must have acted with the predominant purpose to injure the plaintiff: see Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016), at paras 15.053 and 15.057.

179 In the present case, the plaintiffs have pleaded (a) a combination and/or agreement between each defendant and any/all of the other defendants and (b) that certain acts as particularised in Annex A of the statement of claim were carried out pursuant to such combination and/or agreement. Annex A sets out a multitude of alleged wrongful acts which took place at different times and not all of which involved the same defendants. In my view, the plaintiffs need to plead when the combination and/or agreement to carry out *all* the alleged wrongful acts particularised in Annex A arose and which of the defendants were parties to the combination and/or agreement.

180 The plaintiffs' closing submissions do not throw any light on their conspiracy claim. Apart from merely stating that the plaintiffs' alternative case against the Sim Family is for conspiracy,²⁰⁸ the plaintiffs have not made any submissions in their closing submissions as to how this alternative claim is made out.

181 In any event, the evidence does not show that there was any combination or agreement amongst all or some of the defendants to carry out all the acts particularised in Annex A. There is no evidence, *eg*, that Dave Kong was party

to any combination and/or agreement to carry out those acts particularised in Annex A which did not involve him.

182 For the above reasons, the claim for conspiracy is dismissed.

The plaintiffs' remedies

183 The plaintiffs confirmed at the start of the trial that they are not seeking an account of profits.²⁰⁹ Instead, the plaintiffs seek the following by way of equitable compensation:

(a) compensation in order to place each of the Winsta Subsidiaries in the position that they would have been had the defendants not breached their duties and the Winsta Group continued its operations past August 2015 (the date of liquidation);²¹⁰ and

(b) the sum of \$445,641.70 being the expenses incurred for KordaMentha's services in conducting the review of the Winsta Group's records (see [25] above). This amount was allegedly borne by Winsta Holding, Evan Hostel, Global Residence, Hill Lodge and Katong Hostel equally, each paying \$89,128.34.²¹¹

184 M Development is seeking equitable compensation in the sum of \$582,191.14 being the deposits and pre-payments ("the Deposits") which the Winsta Subsidiaries had to pay to each of the various tenants but were unable to because the funds had been spent, diverted or otherwise appropriated by the defendants as a result of their wrongdoings.²¹²

The law on causation in claims for equitable compensation

185 It would be useful to start with the law on causation in claims for equitable compensation. The controversy on this issue started with the Privy Council’s decision in the Canadian case of *Brickenden v London Loan & Savings Co of Canada* [1934] 3 DLR 654 (“*Brickenden*”). *Brickenden* stands for the proposition that but-for causation is not essential for liability for breach of fiduciary duty. Although couched in terms of liability, the effect of that proposition is that in the context of equitable compensation, it is not necessary to show a causal link between the breach and the loss claimed.

186 Subsequently, in *Target Holdings Ltd v Redferns (a firm)* [1996] 1 AC 421 (“*Target Holdings*”), the House of Lords held that the plaintiff finance company had not sustained any compensable loss because it had obtained precisely what it would have acquired had no breach of trust occurred. In other words, the House of Lords held that but-for causation was essential for liability. As Lord Browne-Wilkinson observed (at 439): “Equitable compensation for breach of trust is designed ... to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach.”

187 The decision in *Target Holdings* was followed by much academic discussion. Suffice it to say that *Brickenden* has been described as a “perplexing authority”: Tan Ruo Yu, “Causation in Equitable Compensation: The *Brickenden* Rule in Singapore” (2014) 26 SAcLJ 724 at para 25.

188 More recently, the UK Supreme Court reviewed this issue in *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2014] 3 WLR 1367 (“*AIB*”) and applied *Target Holdings*. The UK Supreme Court made it clear that in a claim

for breach of trust, the trustee is required to make good the breach either by restoring the trust fund (if still in existence) or by paying monetary compensation (if the trust were no longer subsisting) so that the beneficiary is restored to the position he would have been but for the trustee's breach. The UK Supreme Court also held that the measure of compensation was to be assessed at the date of the trial, with the benefit of hindsight and on a common sense view of causation so as to establish that the losses had in fact been caused by the breach, but that foreseeability of loss was irrelevant. Lord Reed explained the causation requirement as follows (at [135]): "... the loss must be caused by the breach of trust, in the sense that it must flow directly from it."

189 The UK Supreme Court in *AIB* explained that the rules applicable to the measurement of loss resulting from a breach of duty depends on the nature of the obligation breached (see [76] and [92]). Foreseeability was held to be irrelevant in assessing the compensation to be paid for breach of fiduciary duty because a breach of fiduciary duty was a wrong in itself, regardless of whether a loss could be foreseen (at [86]). In contrast, foreseeability is relevant in assessing loss resulting from a negligent act because the tort of negligence involves the duty to take reasonable care to guard against a reasonably foreseeable risk (at [92]).

190 In Singapore, *Brickenden* was followed by the High Court in *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631 ("*QAM*") and in *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 ("*Then Khek Koon*"). The learned Judge (who presided over both cases) reconciled *Brickenden* and *Target Holdings* by limiting *Brickenden* (but-for causation not required) to cases involving fiduciaries in one of the well-established categories of fiduciaries and culpable breaches of core duties of honesty and fidelity, and leaving *Target*

Holdings (but-for causation required) to cases involving fiduciaries in one of the well-established categories of fiduciaries and innocent breaches (see *Then Khek Koon* at [108]).

191 The decision in *Then Khek Koon* went on appeal. However, the Court of Appeal did not find it necessary to decide this particular issue on the facts although it did note that this area of the law must now be considered in the light of the decision in *AIB* – see, *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 at [9] and [11].

192 The issue came up again in *Beyonics Technology Ltd and another v Goh Chan Peng and others* [2016] 4 SLR 472 (“*Beyonics*”). In *Beyonics*, the High Court adopted the propositions in *QAM* and *Then Khek Koon* (at [137]). The learned Judge explained *Brickenden*, *QAM* and *Then Khek Koon* as follows (at [136]):

- (a) *QAM* clarified the burden-shifting function of the *Brickenden* decision, *i.e.* once the principal adduces some evidence to connect the breach to the loss, the evidential burden shifts to the fiduciary to prove that “but for” his breach, the loss would still have occurred; and
- (b) bearing in mind this burden-shifting function of the *Brickenden* rule, *Then Khek Koon* should not be understood as dispensing with the need for “but for” causation altogether.

There was an appeal to the Court of Appeal. However, the issue of causation in claims for equitable compensation was not one of the issues before the Court of Appeal.

193 In my view, *Brickenden* should not be followed in Singapore. I respectfully agree with the decision in *AIB*. Equitable compensation for breach of trust aims to provide the pecuniary equivalent of performance of the trust (see *AIB* at [93]). It should not matter whether a fiduciary belongs to a well-established category of fiduciaries or not, or whether the breach is of a core duty or is innocent. If there is a breach of fiduciary duty, as a matter of principle, the beneficiary should be compensated for loss suffered as a result of that breach and no more. Justice demands that the law does not punish the wrongdoer by making him liable for loss not causally linked to his breach. As Lord Toulson put it in *AIB* (at [64]):

... Where there has been a breach of [the trustee's] duty, the basic purpose of any remedy will be either to put the beneficiary in the same position as if the breach had not occurred or to vest in the beneficiary any profit which the trustee may have made by reason of the breach ... Placing the beneficiary in the same position as he would have been in but for the breach may involve restoring the value of something lost by the breach or making good financial damage caused by the breach. But a monetary award which reflected neither loss caused nor profit gained by the wrongdoer would be penal.

194 In my view, there is also no reason in principle why the evidential burden on causation should shift to the fiduciary on the mere ground that the principal proves that the breach “is in some way connected” to the loss. If (as I have decided) the principal has to prove but-for causation, the legal burden of proof remains squarely on the principal to prove that his loss is causally linked to the fiduciary’s breach of duties. The principal’s evidential burden is to adduce evidence of loss that is causally linked to the breach. Simply proving that the breach “is in some way connected” to the loss does not discharge the principal’s evidential burden and is, in my view, insufficient to shift the evidential burden to the fiduciary.

The plaintiffs' submissions on causation

195 In their closing submissions, the plaintiffs referred to *Brickenden*, *QAM*, *Then Kek Koon* and *Beyonics* and submitted that the plaintiffs do not have to show that the defendants' acts were the but-for cause of their loss and that where a defendant has breached core duties of fidelity and honesty, the principal needs only to prove that the fiduciary's breach is in some way connected to the loss even if it was simply to set the occasion for the loss.²¹³ However, in their written reply to closing submissions, the plaintiffs submitted that their claim for equitable compensation was on a "but-for" analysis.²¹⁴

196 During oral closing submissions, the plaintiffs referred to *AIB* and submitted that it is necessary to show a causal connection between the breach of fiduciary duty and the loss occasioned but that it is not the usual test of causation applicable under contract law or tort law.²¹⁵

197 The plaintiff referred me to the following observations by Lord Reed in *AIB* (at [87] and [89]):

87 Liability was however not unlimited. There was in the first place a requirement of causation... A further limitation arose from the plaintiff's responsibility not to act unreasonably. When the plaintiff, after due notice and opportunity, failed to take the most obvious steps to alleviate his or her losses, then it could rightly be said that the plaintiff had been the author of his own misfortune. I would comment that, rather than being a distinct principle, this might be regarded as following from the requirement of a direct causal connection.

88 ...

89 McLachlin J summarised her conclusions in another passage [in *Canson Enterprises Ltd v Boughton & Co* (1991)] 85 DLR (4th) 129, 163 which was cited with approval in *Target Holdings*:

"...The plaintiff's actual loss as a consequence of the breach is to be assessed with the full benefit of hindsight. Foreseeability is not a concern in assessing

compensation, but it is essential that the losses made good are only those which, on a common sense view of causation, were caused by the breach. ...”

198 The plaintiffs submitted that it follows from the above that the burden is on the defendant to show that the plaintiff somehow took an unreasonable decision or committed an unreasonable act and allowed the Winsta Group to cease to do business.²¹⁶

199 I agree with the plaintiffs that where the defendant/trustee asserts that the plaintiff/beneficiary has acted unreasonably and failed to alleviate his losses, then the defendant bears the burden of proving that assertion. There is nothing exceptional in this proposition. However, this must not be confused with the principle that, in the first place, the burden remains firmly on the plaintiff to prove that his loss is causally linked to the defendant’s breach of duty. Paragraph 87 of the judgment in *AIB* (which the plaintiffs referred to) in fact expressly stated that liability for breach of fiduciary duty was not unlimited and “[t]here was in the first place a requirement of causation...”. Lord Reed then referred to the plaintiff’s duty not to act unreasonably as a “further limitation” to liability for breach of fiduciary duty (causation being the first limitation).

Plaintiffs’ claim for equitable compensation in respect of the businesses of the Winsta Group

200 Applying *AIB*, the plaintiffs are entitled to monetary compensation so that they are restored to the position they would have been but for the breaches of fiduciary duties. The plaintiffs claim compensation in the form of loss of profits suffered by the Winsta Subsidiaries which they say have been caused by the breaches of fiduciary duties.

201 The plaintiffs' expert ("the Expert") produced a report ("the Expert Report")²¹⁷ in which he estimated the loss of profits suffered by the Winsta Subsidiaries at between \$16.3m and \$39.8m based on the assumptions that (a) the defendants had not engaged in the alleged wrongful conduct and (b) the Winsta Subsidiaries would not have gone into liquidation in August 2015.²¹⁸

202 The plaintiffs' claim therefore comprises loss of profits by the Winsta Subsidiaries before the Winsta Subsidiaries were placed under liquidation ("pre-liquidation loss of profits") as well as loss of profits after liquidation ("post-liquidation loss of profits").

Post-liquidation loss

203 Obviously, the plaintiffs' decision in August 2015 to liquidate the Winsta Subsidiaries brought the businesses to an end. To prove but-for causation in respect of the post-liquidation loss of profits, the plaintiffs argued that the defendants' wrongdoings caused such significant losses to the Winsta Subsidiaries that there was no alternative but to liquidate them.²¹⁹ As the plaintiffs submitted in their oral closing submissions, the main issue is whether the cessation of the businesses was caused by the defendants' wrongdoings.²²⁰

204 The plaintiffs therefore have to prove that the decision to liquidate the Winsta Subsidiaries was causally linked to the defendants' wrongdoings. This depends on the reasons for the decision.

205 In his AEIC, Huang alleged as follows:

- (a) Following the review of KordaMentha's findings, the employment of the Sim Family in the Winsta Group and Lynn's directorship in M Development were terminated. The plaintiffs tried to

continue the business of the Winsta Group but lacked the necessary expertise and experience. Further the fraud committed by the Sim Family had progressed to such a stage that the whole Winsta Group was in very poor financial health.²²¹

(b) In June 2015, M Development appointed TUC to review the internal processes of the Winsta Group and to suggest steps to turn the business around. TUC's report cited a general lack of maintenance of the Winsta Group's infrastructure and grounds and an overall inefficient system of sales and operations. The TUC report also noted that Winsta Holding "did not have sufficient cash to meet all its obligations".²²²

(c) Given the state of affairs, there was no choice but to liquidate the Winsta Group.²²³

Although Huang said that M Development appointed TUC to review the internal processes of the Winsta Group, it is clear that TUC was appointed by Winsta Holding and the scope of its review was primarily the hostel businesses under Katong Hostel, Evans Hostel and Hill Lodge, and the serviced apartment business under Global Residence.²²⁴

206 TUC presented its report to the Board of Winsta Holding on 10 July 2015. Sim, Lynn and Joyce were not present at this meeting. In summary, TUC's findings were as follows:²²⁵

(a) The main issues with Katong Hostel, Evan Hostel and Hill Lodge included a general lack of maintenance on the infrastructure and grounds and an inefficient system of sales and operations.

(b) Global Residence relied heavily on OSPC as its sole marketing agent but OSPC's interests were not aligned closely with Global Residence's. In addition, the commercial viability of Global Residence was in doubt given the high rental rates at which most of the units were locked in and the existing market conditions.

(c) The financial position of the Winsta Group was not immediately apparent and the accounts for the period starting from April 2015 were being finalised.

TUC's report also made several recommendations including implementing new room allocation software, improving the WIFI network, taking steps to recover debts, and establishing in-house sales capability.²²⁶

207 After listening to TUC's presentation, Huang noted that with the present problems, it was difficult for TUC to carry out its tasks. Huang then asked for the company's financial status if the present performance continued to December 2015. The Board was told that by December 2015, the total projected shortfall for Katong Hostel, Evan Hostel, Hill Lodge and Global Residences would be about \$11.2m.²²⁷ The Board was also told that as of 30 June 2015, the company's cash balance was \$700,000.²²⁸

208 The discussion at the Board meeting on 10 July 2015 dealt only with Katong Hostel, Evan Hostel, Hill Lodge and Global Residence. As noted earlier, these were also the subsidiaries that TUC was asked to review. The reason why the other subsidiaries were not discussed was that the businesses that were operated under Carlisle Hostel, Pearl Hill Hostel and Queensway Hostel had ceased by then. In the case of Carlisle Hostel and Pearl Hill Hostel, their leases from SLA ended in October 2014 and January 2015 respectively; SLA did not

offer any renewals.²²⁹ As for Queensway Hostel, its business catered to students attending the Management Development Institute of Singapore (“MDIS”); that business was terminated in February 2014 after MDIS set up its own hostel in 2012 and 2013 and required its students to stay at its hostel.²³⁰ In May 2014, the Board of M Development was apprised of these matters as well as the fact that Global Residence’s serviced apartments at Tiong Bahru would be returned to the landlord on 31 May 2014.²³¹

209 At the 10 July 2015 Board meeting, Huang commented that²³²

- (a) it was difficult to cover the shortfall taking into consideration the difficulties presented in the operational aspects of Winsta Holding; and
- (b) Winsta Holding’s business would not be viable and that it was difficult to expect the shareholders to inject cash into the company.

Huang then proposed that the company be liquidated and that the proposal be circulated to the Board for the Board’s decision. Tina pointed out that the decision should be made promptly as SLA had served an eviction notice to vacate the premises by 16 July 2015, failing which the outstanding rental of \$1.2m would need to be paid in cash.²³³

210 The decision to liquidate the Winsta Subsidiaries was subsequently made in early August 2015.²³⁴

211 In my view, it is abundantly clear from the evidence that the reason for the decision to liquidate the Winsta Subsidiaries was the projected shortfall of \$11.2m by December 2015 if the businesses of Katong Hostel, Evan Hostel, Hill Lodge and Global Residence were to continue, and M Development’s

unwillingness to provide further funding. The question then is whether this shortfall was causally linked to the defendants' wrongdoings.

212 As explained at the Board meeting on 10 July 2015, the projected shortfall of \$11.2m comprised a shortfall of \$4.7m for Katong Hostel, \$2.8m for Evan Hostel, \$865,000 for Hill Lodge and \$2.8m for Global Residences.²³⁵

213 The minutes of the Board meeting on 10 July 2015 show that²³⁶

- (a) the rental of over \$400,000 per month payable by Katong Hostel was the main reason for its expected shortfall of \$4.7m;²³⁷
- (b) the rental payable by Evan Hostel was also the main reason for its expected shortfall of \$2.8m;²³⁸ and
- (c) the expected shortfall for Global Residence was due to the fact that the rental rates that it could charge had decreased significantly since June 2015.²³⁹

214 Katong Hostel's lease at 369 Tanjong Katong was renewed for three years from 3 December 2012, after an auction in September 2012.²⁴⁰ The rental for the new lease was \$402,000 per month which was a very huge increase compared to the previous monthly rental of \$80,000. Lynn pointed out that the next highest bid for the premises was \$401,000 per month; this showed that Katong Hostel's bid at \$402,000 per month was necessary if Winsta Holding wanted to retain its lease. Lynn explained that the decision to bid to renew the lease was because Katong Hostel was the Winsta Group's flagship. It was the biggest hostel in Singapore at the time, well located near schools and institutions and there was a ready supply of students staying at the hostel.²⁴¹

215 Evan Hostel's lease with SLA for the premises at 26 Evans Road started on 1 January 2013 and was due to expire only on 31 December 2015.²⁴² Hill Lodge was managing the hostel at 27 Mount Vernon Road; the lease, under Katong Hostel's name, had been renewed for one year from 28 December 2014 (see [77] above).

216 It can be seen from the above that the reasons for the projected shortfall with respect to Katong Hostel, Evan Hostel and Global Residences were all commercial. It is true that it is not clear from the minutes of the 10 July 2015 Board meeting what the reasons for the shortfall for Hill Lodge was. However, that expected shortfall of \$865,000 was not that significant in the context of the total expected shortfall of \$11.2m.

217 It is also instructive to look at the analysis of the historical performance of the Winsta Subsidiaries that was performed by the Expert. In my view, the Expert's analysis confirms that the financial situation of the Winsta Subsidiaries in 2015 was due to commercial reasons. The Expert Report established the following:

- (a) Carlisle Hostel:²⁴³
 - (i) Revenue was stable for the period 2010 to 2013.
 - (ii) The profit margin before tax dropped in 2013 largely due to an impairment expense for fixed assets and higher depreciation expenses.
 - (iii) Revenue and occupancy rate decreased substantially in 2014, leading to a loss before tax in 2014. However, the main reason for the loss was an impairment charge for intercompany receivables.

As noted at [208] above, Carlisle Hostel's lease ended in October 2014 and SLA did not offer a renewal.

(b) Pearl Hill:²⁴⁴

(i) Revenue was stable for the period from 2008 to 2014, before decreasing in December 2014 and ending in January 2015.

(ii) There was a \$2.4m impairment charge for intercompany receivables relating mainly to loans to Katong Hostel and to Winsta Holding.

As noted at [204] above, Pearl Hill's lease ended in January 2015 and SLA did not offer any renewal.

(c) Queensway Hostel:²⁴⁵

(i) Revenue was stable from 2009 to 2012.

(ii) The low profit margin appears to be due to the relatively high monthly rental cost.

(iii) The loss in 2012 was due largely to a decrease in occupancy. For a hostel with high fixed rental costs, a relatively small decrease in occupancy rate is evidently likely to result in losses.

(iv) The occupancy rate decreased in 2013 and the loss before tax was due primarily to a provision for an onerous contract (which was reversed in 2014), depreciation expenses and impairment expenses for fixed assets.

(v) Queensway Hostel's loss in its lifecycle was due to the high rental rate.

The decrease in occupancy in 2012 and 2013 has been explained – see [208] above. Queensway Hostel's business was subsequently terminated in February 2014.

(d) Hill Lodge.²⁴⁶

(i) Hill Lodge's tenancy at 155 Owen Road ended in March 2010.

(ii) The first year of operations at 27 Mount Vernon (in 2012) registered a loss before tax. In 2013, there was a small profit before tax on the back of an 80% occupancy rate.

(iii) 2014 registered a small loss after a provision for an onerous contract. The occupancy rate in 2014 was 82%.

(e) Evan Hostel.²⁴⁷

(i) The tenancy started on 1 January 2013. The average monthly revenue for 2013 to 2014 was approximately \$215,000 against a monthly rental cost of approximately \$172,000.

(ii) Gross margin increased in 2015 giving an indication of improved occupancy rates. Evan Hostel could have made a profit in 2015 if not for its liquidation in August 2015.

(f) Katong Hostel.²⁴⁸

(i) There was stable revenue from 2008 to 2012, and average profit before tax per annum for this period was \$458,000.

(ii) The loss before tax in 2013 was \$6.2m. The major contributing factors were rental cost of approximately \$4.6m, a provision for onerous contract (partially written back in 2014) and impairment of fixed assets possibly due to renovations carried out in January to March 2013.

(iii) The loss in 2014 was lower due to higher average rental rates, increased occupancy, a lower level of expenses and the partial write back of the provision for onerous contract. There was a \$1.4m impairment of intercompany receivables.

As noted at [214] above, Katong Hostel's lease at 369 Tanjong Katong increased from \$80,000 per month to \$402,000 per month after 2012.

(g) Global Residence:²⁴⁹

(i) From 2008 to 2011, Global Residence operated only at the Tiong Bahru property. The lease ended in May 2014.

(ii) After 2011, revenue continued to increase as new commercial properties were added. However, gross profits margins and profit margin before tax declined between 2012 and 2014.

(iii) Despite the closure of the business at the Tiong Bahru property in May 2014, Global Residence obtained leases from other private developments to maintain and even increase the overall levels of revenue through 2014 and also to increase occupancy rates on an overall basis.

(iv) 2013 and 2014 registered losses before tax due to increased expenses, in particular rental expenses (from \$4.1m in 2012 to \$7.8m in 2014), operating expenses (due to increases in key expenditure items such as agents' commission), and impairment of intercompany receivables.

218 It is clear from the Expert's analysis that the reasons for the decrease in revenue or decrease in profits or for losses were all commercial. In particular, the Expert noted the high rentals payable by Evan Hostel and Katong Hostel. In this regard, the Expert also opined that the increase in rental for 369 Tanjong Katong did not appear to be reasonable.²⁵⁰ It seems to me that that opinion went beyond the scope of his expertise as a forensic accountant. Besides, the rate to bid for the renewal of the lease at Tanjong Katong was a business decision which has been explained (see [214] above). As Lynn pointed out, the next highest bid was at \$401,000 per month. Further, there is no alleged wrongdoing in respect of the decision to bid for the lease at \$402,000 per month

219 In my judgment, the evidence clearly shows that there was no causal link between the defendants' wrongdoings and either the expected shortfall of \$11.2m or the general financial situation that the Winsta Subsidiaries were in in 2015. As set out earlier in this judgment, the defendants' wrongdoings relate to the following:

- (a) the diversion of the Illuminaire opportunity to OSPC and consequently, OSPC's business in competition with Global Residence;
- (b) the diversion of the Scotts Square opportunity to ATAS and consequently, ATAS' business in competition with Global Residence;

- (c) the IPTs (*ie*, the tenancy agreements) between Uni-House and Hill Lodge and between Unihouse @ Evans and Evan Hostel;
- (d) the misuse of Winsta Group's resources to provide support and administrative services to MJM Hotpot;
- (e) the diversion of the 2014 summer camp opportunity to Devonshire;
- (f) the IPTs between ICS Catering and the Winsta Group; and
- (g) the IPTs between I-Masters and the Winsta Group.

220 It cannot be said that but for the above wrongdoings, there would not have been a projected shortfall of \$11.2m or that the Winsta Subsidiaries would not have been in the financial situation that they were in. The reasons for the expected shortfall of \$11.2m or the Winsta Subsidiaries' general financial situation had nothing to do with the defendants' wrongdoings.

221 The evidence strongly suggests that M Development did not want to inject more funds into the Winsta Group and saw the defendants' misconduct as an opportunity for it to exit its investment in Winsta Holding profitably. There can be no denying that the defendants have miscondacted themselves and that their wrongdoings must have caused the plaintiffs loss which the plaintiffs are completely entitled to recover. However, the plaintiffs have to prove their loss. The plaintiffs have not proved that the decisions to liquidate the Winsta Subsidiaries were causally linked to the defendants' wrongdoings. Any post-liquidation loss of profits suffered by the Winsta Subsidiaries was the result of the decisions in August 2015 to liquidate them. Since the reasons for those

decisions were not causally linked to the defendants' wrongdoings, it follows that the defendants cannot be held liable for any loss of profits post-liquidation.

Pre-liquidation loss

222 The defendants remain liable to compensate the plaintiffs for pre-liquidation loss suffered by the Winsta Subsidiaries provided that such loss can be shown to be causally linked to the defendants' wrongdoings. However, the plaintiffs still bear the burden of proving what that loss is and how the loss is causally linked to the defendants' wrongdoings. On the evidence before me, the plaintiffs have not discharged that burden except with respect to the diversion of the Illuminaire and Scotts Square opportunities.

223 Based on the Expert Report,

- (a) the income from Illuminaire from 2011 to July 2015 amounted to \$6,205,817;²⁵¹ and
- (b) the income from Scotts Square from 2014 to July 2015 amounted to \$3,089,736.²⁵²

But for the breaches of fiduciary duty, the Illuminaire and Scotts Square opportunities would have been directed to Global Residence instead of OSPC and ATAS respectively. Global Residence would then have earned the above income.

224 The Expert assumed profits before tax to be 15% of the income from Illuminaire and Scotts Square.²⁵³ This assumption was based on Global Residence's actual profit margin before tax for 2011 which was also comparable to the average profit margin before tax earned by Global Residence before M

Development invested into Winsta Holding.²⁵⁴ I accept this assumption as reasonable, in particular since the defendants have not adduced any evidence to the contrary.

225 Therefore, Global Residence suffered loss of profits before tax (up to July 2015) amounting to \$930,872.55 in respect of Illuminaire²⁵⁵ and \$463,460.40 in respect of Scotts Square.²⁵⁶ These amounts represent the equitable compensation to be paid for the breaches of fiduciary duty in respect of Illuminaire and Scotts Square.

226 The Sim Family, Dave Kong and OSPC are liable to M Development (as the assignee of the claims by the Winsta Subsidiaries) in the sum of \$930,872.55 in respect of Illuminaire. The Sim Family, Dave Kong and ATAS are liable to M Development in the sum of \$463,460.40 in respect of Scotts Square.

227 As for Winsta Holding, the defendants submitted that it was not entitled to claim for losses suffered by the Winsta Subsidiaries. The defendants relied on the Court of Appeal's decision in *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 at [71]–[72] for the proposition that each incorporated entity within a group of companies is a separate legal entity and the rights and assets of a parent company and its subsidiary are treated as belonging to each discrete company. In that case, the Court of Appeal also confirmed that the single economic entity concept was not recognised by Singapore law or by the common law generally.

228 I agree with the defendants' submission. It would seem that the plaintiffs also agree that Winsta Holding cannot claim the losses suffered by the Winsta Subsidiaries.²⁵⁷

229 As for the other breaches of fiduciary duty, the plaintiffs have not proved that they have suffered any loss. In fact, the evidence shows that the plaintiffs could not have suffered any loss in respect of (a) the diversion of the 2014 summer camp opportunity and (b) the IPTs between Uni-House and Hill Lodge and between Unihouse @ Evans and Evan Hostel.

230 Unlike the Illuminaire and Scotts Square opportunities, the Winsta Group could not have taken advantage of the 2014 summer camp opportunity (see [110] above). This fact is irrelevant for purposes of determining whether the no-profit rule was breached and would afford no defence to a claim for an account of profits. However, the plaintiffs are seeking equitable compensation, not an account of profits. In my view, since the Winsta Group could not have taken advantage of the 2014 summer camp opportunity, it could not be said to have suffered loss.

231 As for the IPTs between Uni-House and Hill Lodge and between Unihouse @ Evans and Evan Hostel, these involved tenancy agreements. The rentals paid by Uni-House and Unihouse @ Evans to Hill Lodge and Evan Hostel respectively were no less than what Hill Lodge and Evan Hostel could have earned from letting out the tenanted premises themselves. Hill Lodge and Evan Hostel therefore suffered no loss. On the contrary, had Hill Lodge and Evan Hostel let out the tenanted premises themselves, there was no assurance that they could have achieved 100% occupancy for the entire duration of the tenancy agreements.

232 I note that it is said to be not entirely clear whether equitable compensation is available for a pure breach of the no-conflict rule, *ie*, where the breach consists simply a failure to disclose a conflict of interest: *Corporate Law* at para 9.106. No submissions were made before me on this issue. However, I

need not decide this issue since the plaintiffs have not proved any loss that can be said to be causally linked to any such non-disclosure of conflict in any event.

Nominal compensation

233 Liability on the part of the defendants have been established. However, the plaintiffs have failed to prove its loss except for pre-liquidation loss of profits in respect of Illuminaire and Scotts Square. Accordingly, I award nominal compensation which I fix at \$10,000 for loss suffered in respect of the wrongful acts other than those relating to Illuminaire and Scotts Square. The Sim Family, Shawn Tan, Connie Ng and MJM Hotpot are liable to the plaintiffs for this amount.

234 As mentioned earlier, judgment has been entered against Uni-House, Unihouse @ Evans, ICS Catering and I-Masters (see [14] and [15] above). The damages awarded in this trial would be applicable to these defendants. None of these defendants were involved in the breaches, and so have no liability for loss, in respect of Illuminaire and Scotts Square. However, they are liable, together with the Sim Family, Shawn Tan, Connie Ng and MJM Hotpot, for the nominal compensation which I have awarded.

Some observations on the Expert's assessment of loss

235 The Expert assessed damages based on the assumptions that (a) the defendants had not engaged in the alleged wrongful acts and (b) the Winsta Subsidiaries would not have gone into liquidation in August 2014. The Expert estimated the plaintiffs' losses using two alternative scenarios.²⁵⁸ The first, Scenario 1, was a "bottom-up" approach in which the Expert started with the actual historical financial performance (as recorded) of each of the Winsta

Subsidiaries and adjusted the results (where possible) for the effect of the specific wrongful acts. The second, Scenario 2, was a “top-down” approach in which the Expert estimated the financial performance of Winsta Holding (including the Winsta Subsidiaries) as a whole. The estimated loss under Scenario 1 was between \$16.3m and \$18.3m.²⁵⁹ The estimated loss under Scenario 2 was between \$32.5m and \$39.8m.²⁶⁰

236 Given my conclusions set out earlier, it is not necessary for me to deal with the Expert’s assessment of loss. However, I have the following observations that relate to the reliability of the Expert’s assessment of loss in the following respects:

(a) The Expert’s assessment of loss, under the Scenario 1 approach, took into account (as instructed by the plaintiffs) all the wrongdoings alleged by the plaintiffs. As a result, the assessment included alleged wrongdoings which were not pursued in the plaintiffs’ closing submissions.

(b) Under his Scenario 1 approach, the Expert assumed (wrongly) that Carlisle Hostel could have extended its lease until 30 September 2017 and included in his assessment (under Scenario 1) profits which he assumed Carlisle could have made until 2017.²⁶¹ Despite noting that Carlisle Hostel had ceased operations in late 2014, the Expert did not check but simply assumed based on the fact that the site was still unoccupied in December 2017, that Carlisle Hostel could have extended the lease for “at least three years”.²⁶² As noted earlier, Carlisle Hostel’s lease ended in October 2014.

(c) The Expert’s own analysis showed that Global Residence would have incurred losses for 2014 and 2015 even after adjusting for the

effects of any wrongdoing.²⁶³ However, for purposes of calculating Global Residence's average "but for" profit before tax (*ie*, the profit before tax after adjusting for the effects of any wrongdoing), the Expert chose to use the figures for 2012 and 2013 (which were positive) and ignored the figures for 2014 and 2015 (which were negative).²⁶⁴ The average "but for" profit before tax figure was relevant to the Expert's computation of post-liquidation loss. The Expert's reasons for doing so were that (i) Global Residence started leasing private apartments only in 2012 and (ii) in 2014, three out of eight of Global Residence properties would have closed.²⁶⁵ These reasons are not in the least persuasive. There was no reason for the Expert to ignore the loss figures in 2014 and 2015; they reflected the actual difficulties that Global Residence was facing in its business and these difficulties had nothing to do with the alleged wrongdoings.

(d) The Expert assumed that Katong Hostel would have renewed its lease at 369 Tanjong Katong for two years upon its expiry in December 2015.²⁶⁶ On the stand, the Expert agreed that if the rental remained at \$402,000 per month, this assumption would not hold.²⁶⁷ What the Expert did, however, was that he simply ignored the rental of \$402,000 per month that Katong Hostel was contractually bound to pay after 2012 and instead assumed that the rental was \$176,400 per month.²⁶⁸ The Expert took the view that the contractual rental was unreasonable and that his reduced rental was in line with the average increase in rental based on SLA historical tender results. As I stated earlier, the Expert's opinion on the reasonableness or otherwise of the contracted rental was outside the scope of his expertise. More importantly, there was absolutely no justification whatsoever for the Expert to ignore the fact that the rental

of \$402,000 had been agreed between SLA and Katong Hostel and to impose his own view of what the rental should have been!

(e) The Expert's assessment under Scenario 2 assumed that the Winsta Group would have been able to achieve the same financial performance it achieved in 2010 (when M Development acquired its 51% shareholding in Winsta Holding) and that that level of profit before tax could have continued into the future in perpetuity.²⁶⁹ It seems to me that the following assumptions²⁷⁰ that were necessary for the Scenario 2 approach, were not justified:

- (i) the assumption that the business and market conditions in 2010 would continue unchanged in the subsequent years;
- (ii) the assumption that the level of profitability in 2010 would have been sustainable in subsequent years, in particular,
 - (A) that Global Residence would have been able to maintain the profitability level achieved historically up to 2010 (with the apartments at Tiong Bahru), for private apartments leased in subsequent years;
 - (B) that Katong Hostel's monthly rental cost would have remained at the same level as it was in 2010; and
 - (C) other hostels would have been able to maintain the same profitability levels as they were achieving in 2010.

Expenses incurred for KordaMentha's services

237 As stated in [183(b)] above, Winsta Holding, Evan Hostel, Global Residence, Hill Lodge and Katong Hostel allegedly paid (in equal shares) the

sum of \$445,641.70 to KordaMentha for their services in conducting the review of the records obtained from the Winsta Group. The plaintiffs claimed that these were caused by the defendants' wrongdoings.

238 The defendants submitted that this amount could only be recovered by the plaintiffs as part of their costs of the action. The defendants referred me to *Bolton v Mahadeva* [1972] 1 WLR 1009 at 1014H for the proposition that fees for an expert's report obtained with a view to being used in evidence if proceedings become necessary, would be recoverable only under an order for costs.

239 The plaintiffs argued that investigation expenses are recoverable as a pecuniary loss in the tort of conspiracy: *Li Siu Lun v Looi Kok Poh and another* [2015] 4 SLR 667 ("*Li Siu Lun*") at [57]–[59]. However, as I have dismissed the plaintiffs' claim for conspiracy, *Li Siu Lun* does not help them.

240 The plaintiffs' claim for the sum of \$445,641.70 is therefore dismissed. However, the plaintiffs are entitled to recover this sum under an order for costs. In many cases, it probably will not make a difference whether investigation expenses are recovered as damages or under a costs order.

Refund of Deposits

241 M Development's claim in this regard is as follows:²⁷¹

- (a) The existing leases for hostels run by Evan Hostel, Katong Hostel and Hill Lodge were terminated as a result of the Winsta Subsidiaries being placed under liquidation.

(b) As a result, the sub-tenancy agreements with the students staying at the hostels had to be terminated and the students evicted. Most of these students were minors from foreign countries.

(c) SLA was prepared to let the students continue staying at the hostels only if Evan Hostel, Katong Hostel and Hill Lodge respectively paid their students their deposits, prepayments and other such sums (“the Deposits”). The Deposits amounted to a total sum of \$582,191.14.

(d) Evan Hostel had to refund \$207,062 to its students, Katong Hostel had to refund \$259,321.64 and Hill Lodge had to refund \$115,807.50. They were unable to do so because the funds had been spent, diverted and/or otherwise appropriated by the defendants through their fraudulent and/or wrongful conduct as pleaded.

(e) Evan Hostel, Katong Hostel and Hill Lodge had to obtain funding from M Development to refund their respective share of the Deposits to the students and they have therefore suffered loss and damage.

242 There is nothing in the statement of claim (including Annex A) that explained how each of the defendants’ wrongful acts as alleged in Annex A led to the Deposits being spent, diverted and/or otherwise appropriated by the defendants. Further, the claim was pleaded against *all* the defendants; there was nothing to explain how every one of the defendants spent, diverted or otherwise appropriated the Deposits. On the face of it, some of the defendants had nothing to do with the Deposits.

243 In any event, in my view, there was no evidence which showed how the relevant funds had been spent, diverted and/or otherwise appropriated by the

defendants through their fraudulent and/or wrongful conduct as pleaded in the statement of claim including Annex A. M Development's closing submissions threw no light on this claim at all.

244 M Development's claim for \$582,191.14 is therefore dismissed.

Connie Ng's counterclaim against Winsta Holding

245 In her counterclaim, Connie Ng pleaded as follows:²⁷²

(a) She was employed by Katong Hostel in 2006 and seconded to Winsta Holding on 1 November 2009.

(b) She tendered her resignation with immediate effect on 11 May 2015 and paid Winsta Holding one month's salary in lieu of notice.

246 Connie Ng's counterclaim is for the sum of \$2,892.86 being compensation for unconsumed leave and unpaid salary from 1 to 10 May 2015. Connie Ng claimed that Winsta Holding, alternatively Katong Hostel, is liable as her employer.²⁷³

247 In their defence to the counterclaim, the plaintiffs denied the counterclaim.²⁷⁴ The plaintiffs also pleaded that Katong Hostel remained Connie Ng's employer throughout her secondment to Winsta Holding. In the alternative, the plaintiffs claimed that they were entitled to set off the payments claimed by Connie Ng against her liability for her wrongful acts.

248 Katong Hostel was placed under creditors' voluntary liquidation on 4 August 2015 and indeed is no longer a party in this action. In any event, in her AEIC, Connie Ng did not offer any evidence in support of her counterclaim. Accordingly, I dismiss her counterclaim.

Conclusion

249 Sim, Lynn and Joyce are liable for breach of their fiduciary duties and Dave Kong, Shawn Tan and Connie are liable for dishonest assistance, as set out above.

250 Sim, Lynn, Joyce, Dave Kong and OSPC are liable to M Development in the sum of \$930,872.55 in connection with the diversion of the Illuminaire opportunity to OSPC.

251 Sim, Lynn, Joyce, Dave Kong and ATAS are liable to M Development in the sum of \$463,460.40 in connection with the diversion of the Scotts Square opportunity to ATAS.

252 All the defendants are liable to pay equitable compensation to the plaintiffs in the nominal sum of \$10,000.

253 The plaintiffs' claim for the sum of \$445,641.70 paid to KordaMentha for their services in conducting the review, is dismissed but the plaintiffs are entitled to recover this sum under an order for costs.

254 M Development's claim for \$582,191.14 in respect of the refund of deposits, is dismissed.

255 Connie Ng's counterclaim is dismissed.

256 I will hear parties on costs.

Chua Lee Ming
Judge

Lee Eng Beng SC, Cheng Wai Yuen Mark, Chew Xiang, and
Ho Zi Wei (Rajah & Tann Singapore LLP)
for the first and second plaintiffs by original action and
the defendant in the counterclaim;
Christopher Anand s/o Daniel, Ang Si Yi (Advocatus Law LLP)
for the first defendant;
Narayanan Sreenivasan SC, Ang Mei-Ling Valerie Freda, and
Hiren George Jonas (Straits Law Practice LLC)
for the second and third defendants;
Ng Wan-E Cheryl and Li Wanchun (TSMP Law Corporation) for the
eleventh defendant;
The twelfth defendant by original action and
plaintiff in counterclaim in person;
The thirteenth defendant in person.

- 1 Agreed Bundle of Documents, Vol. 1 (“1 AB”) 577.
- 2 Sim Poh Ping’s AEIC, at p 61.
- 3 Notes of Evidence (“NE”) (11 January 2018) at 42:25–43:1.
- 4 Agreed Bundle of Documents, Vol. 2 (“2 AB”) 1816.
- 5 2 AB 1822–1824.
- 6 Sim Poh Ping’s AEIC, at p 61.
- 7 Sim Poh Ping’s AEIC, at p 61.
- 8 Agreed Bundle of Documents, Vol. 3, (“3 AB”) 2694–2695; Huang Tzu Ting’s (“Tina
Huang”) AEIC, dated 8 December 2017, at para 37.
- 9 Tina Huang’s AEIC, at para 37.
- 10 Agreed Bundle of Documents, Vol. 4 (“4 AB”) 2751–2767.
- 11 Agreed Bundle of Documents, Vol. 5 (“5 AB”) 4164–4169, at Items 1.29-1.30 and
1.37-1.38.
- 12 5 AB 4293.
- 13 Huang Wen-Lai’s AEIC, at para 34.
- 14 4 AB 2768 – 5 AB 3971.
- 15 5 AB 4293–4314.
- 16 5 AB 4325–4332, at paras 1.4(xxi) and 1.30(v)..
- 17 Statement of claim (Amendment No 2), dated 11 March 2016, at para 58; Huang Wen-
Lai’s AEIC, at paras 33 and 35.
- 18 Sim Poh Ping’s AEIC, at para 133.
- 19 Sim Poh Ping’s AEIC, at para 135.
- 20 5 AB 4499 - 4510
- 21 Plaintiffs’ Closing Submissions, at para 17.

22 Plaintiffs’ Closing Submissions, at paras 82–83.
23 Plaintiffs’ Closing Submissions, at para 84.
24 Plaintiffs’ Closing Submissions, at para 85.
25 Sim’s Defence (Amendment No 1), dated 28 March 2018, at para 23(3).
26 2 AB 1538–1539.
27 NE (11 January 2018), at 99:5–15.
28 Plaintiffs’ Closing Submissions, at paras 18–19.
29 NE (31 January 2018), at 59:3–5.
30 NE (7 February 2018), at 39:9–16.
31 Dave Kong’s AEIC, at paras 69–73.
32 NE (31 January 2018), at 63:6–11.
33 NE (31 January 2018), at 65:20–67:10.
34 Lynn Sim’s AEIC, at para 67.
35 NE (31 January 2018), at 76:4–26.
36 NE (7 February 2018), at 41:1–16.
37 NE (7 February 2018) at 77:11–14, 19–23.
38 NE (31 January 2018), at 62:24–63:11.
39 Plaintiffs’ Closing Submissions, at para 27.
40 Lynn Sim’s AEIC, at paras 98–99; NE (31 January 2018), at 139:6–20.
41 NE (7 February 2018), at 212:20–24.
42 NE (31 January 2018), at 143:2–5.
43 Plaintiffs’ Closing Submissions, at para 35.
44 NE (31 January 2018), at 154:4–8.
45 NE (6 February 2018), at 60:15–61:1.
46 Further and better particulars of the defence (Amendment No 2) and counterclaim of
the 2nd, 3rd, 4th and 8th defendants, dated 26 August 2016 (Plaintiffs’ Bundle of
Pleadings, tab 17, at para 5(d)).
47 NE (6 February 2018), at 55:9–12.
48 NE (7 February 2018), at 200:17–19; 202:6–18.
49 NE (24 January 2018), at 118:15–24.
50 Plaintiff’s Bundle of Documents Vol. 3 (“3 PBD”) 2365.
51 3 PBD 2445–2446.
52 Plaintiff’s Bundle of Documents Vol. 1 (“1 PBD”) 551–553.
53 1 PBD 394.
54 1 PBD 918.
55 1 PBD 591.
56 1 PBD 607.
57 1 PBD 555.
58 1 PBD 562.
59 1 PBD 570.
60 NE (31 January 2018), at 165:3–22; 1 PBD 506.
61 Dave Kong’s AEIC, at para 115.
62 NE (8 February 2018), at 103:18–104:4.
63 Dave Kong’s AEIC, at para 92.
64 Lynn Sim’s AEIC, at paras 99–100.
65 NE (31 January 2018), at 96:14–99:4.
66 NE (8 February 2018), at 111:23–113:4.
67 5 AB 3861.
68 1 AB 655–668.

69 Lynn Sim's AEIC, exh SPY-27 (at pp 700–701).
70 Lynn's AEIC, para 79.
71 Lynn Sim's AEIC, exh SPY-27 (at p 700).
72 Lynn Sim's AEIC, exh SPY-30 (at pp 709–725).
73 Lynn Sim's AEIC, at paras 81-82.
74 Lynn Sim's AEIC, at para 83, exh SPY-33 (at pp 754-756).
75 Lynn Sim's AEIC, at para 84.
76 Lynn Sim's AEIC, at para 86.
77 Lynn Sim's AEIC, at para 88.
78 Plaintiffs' Closing Submissions, at paras 40 and 49.
79 Plaintiffs' Closing Submissions, at para 50.
80 Defence (Amendment No 3) and Counterclaim of 2nd, 3rd, 4th and 8th defendants
(Plaintiffs' Bundle of Pleadings, tab 19, at para 59).
81 NE (26 January 2018), at 114:17–24.
82 NE (26 January 2018), at 56:18-21.
83 NE (26 January 2018), at 97:11–105:23.
84 NE (26 January 2018), at 89:6–8.
85 4 PBD 3302–3303.
86 NE (2 February 2018), at 40:24–41:9.
87 4 PBD 3304, lines 1–4,
88 Sim Poh Ping's AEIC, at p 147.
89 NE (26 January 2018), at 90:21-24.
90 5 AB 3788 and 3793.
91 NE (26 January 2018), at 134:11–137:12.
92 NE (1 February 2018), at 110:14–112:14.
93 2 PBD 1208.
94 NE (30 January 2018), at 24:9–26:1.
95 NE (1 February 2018), at 116:20–24.
96 NE (1 February 2018), at 105:18–20.
97 NE (26 January 2018), at 141:11–143:25, 145:10–12, 146:12–147:21.
98 5 AB 3824.
99 NE (2 February 2018) at 2:20–6:25, 18:5–21:19.
100 1 PBD 670.
101 1 PBD 644 and 647.
102 NE (30 January 2018) at 67:9–68:22.
103 5 AB 3834.
104 NE (26 January 2018) at 153:13–23.
105 NE (1 February 2018) at 136:22–23 and 162:4–7.
106 Lynn Sim's AEIC, at para 79.
107 Lynn Sim's AEIC, exh SPY-27 (at p 700).
108 Lynn Sim's AEIC, at para 78.
109 Joyce Sim's AEIC, at para 11.
110 Joyce Sim's AEIC, at para 10.
111 Plaintiffs' Closing Submissions, at para 54.
112 NE (31 January 2018), at 176:1–21.
113 Joyce Sim's AEIC, at para 14.
114 NE (6 February 2018), at 86:18–87:1 and 93:8–94:10.
115 Joyce Sim's AEIC, at para 15.
116 NE (6 February 2018), at 76:12–15.

117 NE (6 February 2018), at 76:25–77:4; 80:13–16 and 82:21–24.
118 NE (6 February 2018), at 76:7–11.
119 NE (6 February 2018), at 77:20–77:25.
120 1 AB 924.
121 Joyce Sim’s AEIC, at para 13.
122 NE (23 January 2018), at 71:8–72:3.
123 Exh P10 at p 821 – 822, records 6281–6284.
124 NE (6 February 2018), at 77:11–15.
125 4 AB 2807–2810.
126 4 AB 2809.
127 NE (30 January 2018), at 112:6–7.
128 Plaintiffs’ Closing Submissions, at para 58.
129 Plaintiffs’ Closing Submissions, at para 67.
130 Plaintiffs’ Closing Submissions, at para 67.
131 Defence (Amendment No 3) and counterclaim of 2nd, 3rd, 4th and 8th defendants
(Plaintiffs’ Bundle of Pleadings, tab 19, at para 71).
132 NE (30 January 2018), at 106:2–24; NE (2 February 2018), at 83:22–84:12.
133 Further and better particulars of the defence (Amendment No 2) and counterclaim of
the 2nd, 3rd, 4th and 8th defendants (Plaintiffs’ Bundle of Pleadings, tab 17, at para 8);
NE (2 February 2018), at 94:21–95:18.
134 NE (2 February 2018), at 95:22–24.
135 NE (2 February 2018), at 95:22–96:24.
136 NE (2 February 2018), at 99:6–12.
137 NE (2 February 2018), at 99:1–19.
138 Further and better particulars of the defence (Amendment No 2) and counterclaim of
the 2nd, 3rd, 4th and 8th defendants (Plaintiffs’ Bundle of Pleadings, tab 17 at para 8);
NE (2 February 2018), at 97:23–98:3.
139 NE (2 February 2018), at 101:22–102:10.
140 7 AB 5790–5793.
141 1 PBD 670.
142 3 PBD 2000.
143 4 AB 2754 and 3187.
144 1 PBD 734–735.
145 1 PBD 674–676.
146 4 PBD 3308–3310.
147 NE (2 February 2018), at 152:19–24.
148 4 PBD 3310.
149 NE (30 January 2018), at 152:17–20; 4 AB 2869.
150 NE (23 February 2018), at 129:10–20.
151 Lynn’s AEIC, para 109; NE (30 January 2018) at 145:17–20.
152 Defence and Counterclaim of 10th, 12th and 13th defendants (Amendment No 2)
(Plaintiffs’ Bundle of Pleadings, tab 5, at paras 52f and 52h).
153 Defence and Counterclaim of 10th, 12th and 13th defendants (Amendment No 2)
(Plaintiffs’ Bundle of Pleadings, tab 5, at para 52h).
154 NE (24 January 2018), at 27:8–29:1.
155 Plaintiffs’ Closing Submissions, at paras 69, 72 and 73.
156 Plaintiffs’ Closing Submissions, at para 73.
157 NE (31 January 2018), at 34:13–24.
158 4 AB 3662; NE (31 January 2018), at 40:16–41:23.

- 159 NE (2 February 2018), at 171:19–172:4.
160 NE (2 February 2018), at 173:6–8.
161 NE (2 February 2018) at 173:9–18.
162 NE (2 February 2018), at 173:19–25.
163 NE (24 January 2018), at 7:2–19.
164 Shawn Tan’s AEIC, paras 6, 7 and 11.
165 Defence and Counterclaim of 10th, 12th and 13th defendants (Amendment No 2), at
para 52.d (Plaintiffs’ Bundle of Pleadings, tab 5).
166 Shawn Tan’s AEIC, para 7; Defence and Counterclaim of 10th, 12th and 13th
defendants (Amendment No 2), at para 52e (Plaintiffs’ Bundle of Pleadings, tab 5).
167 NE (24 January 2018) at 27:17–22.
168 3 PBD 2088.
169 3 PBD 2089–2097; NE (24 January 2018) at 22:19–23:7.
170 3 PBD 2917, 2107 and 2205.
171 1 PBD 498.
172 NE (31 January 2018), at 20:2–24.
173 Plaintiffs’ Closing Submissions, at para 72.
174 Plaintiffs’ Closing Submissions, at para 72.
175 NE (23 January 2018), at 43:2–16.
176 Huang Wen-Lai’s AEIC, at para 10.
177 NE (30 January 2018), at 52:18 – 53:1.
178 NE (23 January 2018), at 51:20–25.
179 NE (23 January 2018), at 48:16–49:15.
180 1 PBD 94.
181 1 PBD 96–97; NE (23 January 2018), at 82:3–14.
182 1 AB 789.
183 4 PBD 3324–3329.
184 Lynn Sim’s AEIC, at para 15.
185 4 AB 2760.
186 NE (26 January 2018), at 31:19–32:16.
187 NE (26 January 2018), at 32:3–33:1.
188 Plaintiffs’ Closing Submissions, at paras 82–83.
189 Statement of claim (Amendment No 2), Annex A at para 10.
190 Defence of the 11th defendant (Amendment No 3), para 42A(d).
191 Dave Kong’s AEIC, paras 69–75.
192 Plaintiffs’ Reply to Closing Submissions, at para 26.
193 Dave Kong’s AEIC, para 74.
194 11th Defendant’s Closing Submissions, at para 5.
195 Dave Kong’s AEIC, para 71.
196 Dave Kong’s AEIC, para 74.
197 NE (7 February 2018), at 69:1–22.
198 NE (7 February 2018), 72:15–73:13.
199 Plaintiffs’ Closing Submissions, at para 84.
200 Plaintiffs’ Closing Submissions, at para 85.
201 NE (24 January 2018), at 88:9–89:19.
202 Exh P10 vol 1, at p 996.
203 Exh P10 vol 2, at pp 1338, 1599–1602 and 1841–1842; NE (24 January 2018), at 111:3
– 113:21 and 116:8 – 117:19.
204 NE (24 January 2018), at 118:15–120:7.

- 205 NE (24 January 2018), at 135:15–136:9.
206 NE (24 January 2018), at 149:23–150:24.
207 Statement of claim (Amendment No 2), at para 56.
208 Plaintiffs’ Closing Submissions, at para 17.
209 NE (11 January 2018), at 26:13–16.
210 Plaintiffs’ Reply to Closing Submissions, at para 4.
211 Statement of claim (Amendment No 2), Annex A, at para 42.
212 Statement of claim (Amendment No 2), Annex A, at para 46.
213 Plaintiffs’ Closing Submissions, at paras 15 and 87.
214 Plaintiffs’ Reply to Closing Submissions, at para 4.
215 NE (23 February 2018), at 139:10–15.
216 NE (23 February 2018) at 140:22–141:1.
217 The Expert’s AEIC, exh JTC-1.
218 The Expert Report, at para 45.
219 Plaintiffs’ Closing Submissions, at para 93; Plaintiffs’ Reply to Closing Submissions,
para 4.
220 NE (23 February 2018), at 147: 10–12.
221 Huang Wen-Lai’s AEIC, at para 33.
222 Huang Wen-Lai’s AEIC, at para 34.
223 Huang Wen Lai’s AEIC at para 35.
224 5 AB 4293.
225 5 AB 4306.
226 5 AB 4307.
227 5 AB 4325-4332, at para 1.30.
228 5 AB 4325-4332, at para 1.32.
229 Lynn Sim’s AEIC, at para 129.
230 2 AB 1816; Lynn Sim’s AEIC, at para 130.
231 2 AB 1822–1826.
232 5 AB 4325-4332, at paras 1.31 and 1.33.
233 5 AB 4325-4332, at paras 1.33 and 1.34.
234 Huang Wen-Lai’s AEIC, at para 35.
235 5 AB 4325-4332, at para 1.30.
236 5 AB 4325-4332, at para 1.30.
237 5 AB 4325-4332, at para 1.30(i).
238 5 AB 4325-4332, at para 1.30(ii).
239 5 AB 4325-4332, at para 1.30(iv).
240 1 AB 924.
241 Lynn Sim’s AEIC, at para 127.
242 2 AB 1105–1137, at 1131.
243 The Expert Report, at paras 139–142.
244 The Expert Report, at paras 149–150.
245 The Expert Report, paras 158–166.
246 The Expert Report, at para 173.
247 The Expert Report, at paras 177–182.
248 The Expert Report, at paras 191–195.
249 The Expert Report, at paras 213–218.
250 The Expert Report, at para 198.
251 (221,457 + 894,312 + 1,780,145 + 2,120,473 + 1,189,430) – see the Expert Report,
para 249 and Appendix J.

252 (753,355 + 2,336,381) – see the Expert Report, para 272 and Appendix J.
253 The Expert Report, Appendix J at notes 1 and 2.
254 The Expert Report, para 247.
255 6,205,817 x 15%.
256 \$3,089,736 x 15%.
257 Plaintiffs’ Reply to Closing Submissions, at paras 5–6.
258 The Expert Report, at para 45.
259 The Expert Report, at paras 47 and 49.
260 The Expert Report, at paras 50 and 53.
261 The Expert Report, at paras 345 and 347.
262 The Expert Report, at para 143; NE (18 January 2018), at 75:3-24.
263 The Expert Report, at Appendix J (at p 102).
264 The Expert Report, at Appendix J, note 10 (at p 102).
265 NE (17 January 2018), at 160:1-161:21.
266 The Expert Report, at paras 45(iii) and 202.
267 NE (18 January 2018), at 63:11–64:2.
268 The Expert Report, at para 198 and Appendix I (at p 107).
269 The Expert Report, at para 360.
270 The Expert Report, at para 365.
271 Statement of claim (Amendment No 2), Annex A, at paras 44–46.
272 Defence and counterclaim of the 10th, 12th and 13th defendants (Amendment No 1), at
paras 65 and 68 (Plaintiffs’ Bundle of Pleadings, tab 5).
273 Defence and counterclaim of the 10th, 12th and 13th defendants (Amendment No 1), at
paras 71-72 (Plaintiffs’ Bundle of Pleadings, tab 5).
274 Defence to 12th defendant’s counterclaim (Amendment No 1), dated 4 September
2015, at paras 92 and 96.