IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 83

Civil Appeal No 103 of 2018

Between

(1) Singapore Shooting Association
(2) Michael Vaz Lorrain
(3) Yap Beng Hui
(4) Chen Sam Seong Patrick

… *Appellants*

And

Singapore Rifle Association

… *Respondent*

In the matter of Suit No 459 of 2016

Between

Singapore Rifle Association

… *Plaintiff*

And

(1) Singapore Shooting Association
(2) Michael Vaz Lorrain
(3) Yap Beng Hui
(4) Chen Sam Seong Patrick

… *Defendants*

And

Singapore Shooting Association

… *Plaintiff in Counterclaim*

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And

Singapore Rifle Association

… *Defendant in Counterclaim*

JUDGMENT

[Contract] — [Contractual terms] — [Rules of construction]
[Courts and Jurisdiction] — [Court judgments] — [Declaratory]
[Tort] — [Conspiracy] — [Elements of unlawful means conspiracy] — [Actionable damage or loss] — [Investigation costs]
[Words and Phrases] — ["Any person interested in the charity"] — [Section 31(1) Charities Act (Cap 37, 2007 Rev Ed)]
[Words and Phrases] — ["Charity proceedings"] — [Section 31(8) Charities Act (Cap 37, 2007 Rev Ed)]

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Singapore Shooting Association and others
v
Singapore Rifle Association

[2019] SGCA 83

Court of Appeal — Civil Appeal No 103 of 2018
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
15 August 2019

20 December 2019 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 This appeal represents the latest instalment in a spate of litigation between the first appellant, the Singapore Shooting Association ("SSA"), and the respondent, the Singapore Rifle Association ("SRA"). SSA is the national sports association for the sport of shooting. SRA is one of SSA's founder members and constituent clubs. The present dispute arises out of a resolution passed by the SSA Council purporting to suspend SRA's privileges at the National Shooting Centre ("the NSC"), which SSA had sub-leased and operated for a spell of time. SRA brought Suit No 459 of 2016 ("the present suit") in the High Court for declarations that (among other things) the resolution was *ultra vires* and the SSA Council had no power to pass such a resolution by circular instead of at a meeting. SRA also pursued a claim in the tort of unlawful means conspiracy against the second to fourth appellants (the "Individual

Defendants"), who were SSA Council members at the material time, for conspiring to cause it damage by procuring the passage of that resolution. On its part, SSA counterclaimed against SRA for the cost of demolishing a shooting range ("the Proprietary Range") which it alleged had been built illegally by SRA at the NSC.

2 The High Court judge ("the Judge") found in favour of SRA and held that the resolution was *ultra vires* SSA's constitution ("the SSA Constitution"). He also found that the Individual Defendants had conspired to cause SRA damage by procuring the passage of that resolution *ultra vires*. He further dismissed SSA's counterclaim: see *Singapore Rifle Association v Singapore Shooting Association and others* [2019] SGHC 13 ("GD").

3 We heard the appeal on 15 August 2019 and reserved judgment. We outline here the main points addressed in this judgment. First, this appeal gives us the opportunity to examine aspects of the tort of unlawful means conspiracy, in particular, the element of loss or damage required to constitute the tort, and whether the fees incurred by solicitors for the purposes of investigating a conspiracy can amount to actionable loss or damage. We state at the outset that such fees generally *cannot* constitute actionable loss or damage. Second, because SSA is a registered charity, this appeal also affords us the opportunity to examine certain provisions in the Charities Act (Cap 37, 2007 Rev Ed) (the "Charities Act") relating to the governance of charities. In particular, we examine whether s 31 of the Charities Act mandates that all actions involving charities be commenced in the High Court. We state at the outset that it does not. Third, we make some observations concerning the management and conduct of this dispute, addressing, specifically, the proportionality of this litigation, having regard to the amounts at stake. We state at the outset that this litigation was disproportionately conducted by SRA, leading to costs

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ramifications for it and potentially for its counsel as well.

Background facts

The parties

4 As we mentioned at [1] above, the first appellant, SSA, is the national sports association for the sport of shooting. It is a registered charity under the Charities Act, a registered society under the Societies Act (Cap 311, 2014 Rev Ed) ("the Societies Act"), and an Institution of Public Character. The respondent, SRA, is a founder member and constituent club of SSA, as is the Singapore Gun Club ("SGC"). SRA, too, is a registered society under the Societies Act.

5 The Individual Defendants occupied key leadership roles in the SSA Council at the time of the material events in this dispute. The second appellant, Mr Michael Vaz Lorrain ("Mr Vaz"), was the president of SSA; the third appellant, Mr Yap Beng Hui ("Mr Yap"), was the secretary-general of SSA; and the fourth appellant, Mr Chen Sam Seong Patrick ("Mr Patrick Chen"), was the treasurer of SSA. Each of the Individual Defendants was a volunteer in respect of his work with SSA. The three Individual Defendants and one Mr Peter Teh Kah Hoon ("Mr Peter Teh"), one of SSA's vice-presidents, comprised the SSA Executive Committee, a smaller grouping within the SSA Council.

The NSC

6 The dispute is largely concerned with events that took place at the NSC. The NSC is a complex of shooting ranges at Old Choa Chu Kang Road used by various shooting clubs and associations in Singapore.

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7 The land on which the NSC stands is owned by the State. The State leased the land to the Singapore Sports Council, which was subsequently rebranded as Sport Singapore ("Sport SG"). Sport SG in turn sub-leased the land to SSA. SSA was entitled to manage and operate the NSC. The tenancy agreement in force at the material time was entered into on 1 August 2015, but prior to that, a tenancy agreement on similar terms had been in force from 29 December 2008.

The Proprietary Range

8 SSA entered into a "Proprietary Range Agreement" ("the Agreement") with SRA on 18 November 2014 for SRA to construct the Proprietary Range within a specified area of the NSC. The Proprietary Range would be for SRA's exclusive use, subject to certain conditions, and would be constructed at SRA's own expense.

9 The area given over to SRA's use had in fact been used in the past as an operational shooting range, but it had fallen into disuse by the time the Agreement was entered into. There were therefore some pre-existing structures at the Proprietary Range. SRA decided to carry out reinstatement works, including the replacement and refurbishment of dilapidated trusses, bullet baffles, and the bullet stop area, as well as construction works consisting primarily of the erection of metal roofing and insulation over the rest area. Phase 1 of the construction works commenced in or around December 2014, and was completed in or around March 2015. SRA spent nearly $300,000 in total on the construction works.

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Complaints made by the appellants to the Building and Construction Authority and the ensuing investigations

10 At the time SRA was carrying out the construction works at the Proprietary Range, the appellants started complaining to the Building and Construction Authority ("BCA") about those works. This was done without SRA's knowledge.

11 The crucial complaint seems to have been made in September 2015. On 15 September 2015, Mr Vaz sent an email to Ms Lu Ji Ju ("Ms Lu") from BCA to report "the construction of illegal structures which were erected without building permits and are being occupied without a [Temporary Occupation Permit]". In that email, Mr Vaz said that the structures had been erected by SRA without approval from either Sport SG or SSA, and confirmed that SRA had never applied for a building permit. He therefore questioned the safety of the structures and "urgently ask[ed] that BCA [call] for the demolition of the structures before anyone [was] seriously hurt".

12 BCA commenced investigations into this complaint and conducted a site visit at the Proprietary Range on 21 September 2015. Two members of BCA's staff, one of whom was Ms Lu, and two SSA representatives – Mr Vaz and SSA's general manager, Mr David Lieu Da-Yan ("Mr David Lieu") – were the only individuals present at the site visit. No SRA representative was invited.

BCA's issuance of the demolition order and the regularisation letter

13 BCA verified through its investigations that no regulatory approvals or permits had been issued for the erection of the Proprietary Range. BCA therefore issued a demolition order to Sport SG, as the lessee of the NSC, on

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6 November 2015, ordering the complete demolition of the Proprietary Range by 7 December 2015 (the "Demolition Order").

14 Accompanying the Demolition Order, however, were two letters also issued by BCA to Sport SG on the same day. The first, which the parties refer to as "the Regularisation Letter", described the steps that Sport SG could take if it wished to retain the Proprietary Range. The letter stated that if BCA did not receive written confirmation from the Urban Redevelopment Authority ("URA") by 20 November 2015 that retention of the Proprietary Range could be supported under the Planning Act (Cap 232, 1998 Rev Ed), Sport SG would be deemed not to wish to retain the Proprietary Range, and would then be required to comply with the Demolition Order by the stipulated deadline of 7 December 2015. The second letter reminded Sport SG not to occupy the Proprietary Range, and is not material to this appeal.

15 Mr Lim Chuan Lye ("Mr Lim"), Senior Manager (Business Operations) of Sport SG, gave evidence that Sport SG forwarded all three documents to SSA on 11 November 2015 by email for its action. Sport SG informed SSA that it could either regularise the Proprietary Range or demolish it, and left it at SSA's option. Sport SG did not issue any direction to SSA to take any particular course of action, although it did expect SSA to take one of those two steps.

SSA's decision to demolish the Proprietary Range

16 On 11 November 2015 at 2.26pm, the same day that SSA received Sport SG's aforesaid email containing the three documents from BCA at 11.29am, Mr David Lieu, SSA's general manager, wrote to the SSA Executive Committee forwarding the email and the three documents. As we have stated above, the SSA Executive Committee comprised the three Individual Defendants and Mr Peter Teh. Mr David Lieu sought the committee's approval

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not to retain the Proprietary Range, not to seek URA's confirmation of planning approval, and to comply with the Demolition Order.

17 The next day, 12 November 2015, Mr David Lieu again wrote to the same recipients informing them that *all* the members of the SSA Executive Committee had given their approval not to retain the Proprietary Range, not to seek URA's confirmation of planning approval, and to comply with the Demolition Order. This decision was conveyed to SRA that same day. The decision was cast in terms of SSA taking steps to demolish the Proprietary Range at BCA's behest: "SSA will take the necessary steps to comply fully with BCA's Demolition Order … by the stipulated deadline". SRA was not informed of the option of regularising the Proprietary Range at all.

The SSA Council meeting on 14 November 2015

18 On 14 November 2015, the SSA Council held a meeting to discuss its regular business and also to formalise its decision on the Demolition Order. Mr Vaz was recorded in the minutes as stating the following:

> President [meaning Mr Vaz] stated that the window of opportunity to regularize the [Proprietary] Range had closed as BCA had issued the Demolition Order. President informed the meeting that SSA would ask for an extension of the deadline to January 2016 to fully comply with the Demolition Order should SRA fail to complete the Order by December 7, 2015. President added that, in that case, SSA would proceed to demolish the [Proprietary] Range and charge the cost of doing so to SRA. …

19 Mr Ong Eng Chong ("Mr Ong"), one of the SRA representatives present at the meeting, was recorded as having asked whether SRA could "respond" to the Demolition Order. Mr Vaz's reply was recorded as follows:

> … President replied that [the] Demolition Order had already been served and SSA would comply with it. …

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20 Mr Ong followed up with another question as to whether complaints had been made about the Proprietary Range which might have prompted BCA's investigations. The minutes recorded the following:

> Mr Ong EC asked if there was a complaint about the [Proprietary] Range that could have led to the issuance of the Demolition Order. President suggested that, after a series of poison letters to various organizations and authorities including MCCY, Sport SG, NEA, PUB, CPIB etc. from anonymous authors, many people had visited [the] NSC for inspection and could have pick up [*sic*] the issues surrounding the [Proprietary] Range.

21 After that meeting and also on 14 November 2015, Mr David Lieu wrote again to SRA informing it that "SRA is to act on the [Demolition] Order and demolish the [Proprietary Range] by Dec 7, 2015, failing which SSA will carry out the [Demolition] Order and charge the work to SRA" [emphasis in original omitted]. Again, no mention was made at all of the option of regularising the Proprietary Range. That same day, Mr David Lieu also wrote to Mr Lim from Sport SG informing him that SSA had communicated to SRA that SRA would have to act on the Demolition Order by 7 December 2015, failing which SSA would demolish the Proprietary Range.

SRA's response to SSA's instructions to demolish the Proprietary Range

22 In the meantime, SRA mounted its own efforts to resist the demolition of the Proprietary Range. On 17 November 2015, Mr Eng Fook Hoong ("Mr Eng"), Chairman of SRA, had a conversation with BCA's Ms Lu, one of the engineers who had conducted the site visit on 21 September 2015 (see [12] above). Mr Eng wrote an email to Ms Lu the next day, 18 November 2015, recording that "SRA shall initiate a meeting of all the parties namely [Sport] SG, SSA and SRA at a time mutually convenient. Timing and venue to be suggested by BCA on or after 30Nov2015 [*sic*]". This email was copied to, among other

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persons, Mr Vaz and Mr Yap from SSA. Mr Vaz then wrote to Ms Lu as well on 19 November 2015, stating that it was "unfortunate that Mr. Eng … [had] dragged [her] into SRA's defiance of SSA authority".

23 On 20 November 2015, SSA issued its own invitation for quotations for the demolition of the Proprietary Range. Pikasa Builders Pte Ltd ("Pikasa") was awarded the contract on 24 November 2015 at a price of $24,800, although, as the Judge noted (GD at [16]), the price it ultimately charged was higher at $26,536.

SRA discovers the option of regularisation

24 On 23 November 2015, Mr Eng and two other SRA representatives attended a meeting with Ms Lu at BCA's office. This was the first time SRA discovered that there was an alternative to demolishing the Proprietary Range, which was to take steps to regularise it.

25 On 27 November 2015, BCA wrote to Mr Lim from Sport SG informing him that BCA had received emails from SSA and SRA concerning the Demolition Order. BCA suggested a meeting to discuss the demolition and the request for an extension of time to either demolish or regularise the Proprietary Range. This email was copied to SSA's Mr Vaz and SRA's Mr Eng. That same day, Mr Vaz sent an email to Mr Lim stating that SSA would not attend the meeting proposed by BCA: "SSA is not prepared to meet over an issue … [in respect of which] the council comprising … the other SSA clubs has decided unanimously to demolish the [Proprietary Range]".

26 On 30 November 2015, the SSA Council met to ratify various resolutions that had been passed earlier in the year. One of these was the resolution that had apparently been passed on 14 November 2015 to demolish

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the Proprietary Range. At the trial, Mr Vaz explained that he called this meeting to ratify those resolutions as they had not been passed by a show of hands, but he had thereafter received legal advice that they ought to have been so passed.

27 While SSA and SRA were grappling over the fate of the Proprietary Range, Sport SG reached out to BCA. On 3 December 2015, BCA granted an extension of time for the demolition of the Proprietary Range until 31 January 2016.

28 On 10 December 2015, SRA's solicitors, Drew & Napier LLC ("D&N"), wrote to SSA's lawyers, BCA, and Sport SG, requesting all parties not to take any action in relation to the Demolition Order as SRA wished to make representations to BCA.

The circular resolution of 16 December 2015

29 By this point, Mr Vaz was very vexed by SRA's actions in resisting the Demolition Order. On 11 December 2015, he sent an email to Mr Yap expressing his strong dissatisfaction with SRA's having shown that it had "no intention to comply with the resolutions passed by the SSA Council". This is a lengthy email which is quite crucial to appreciating Mr Vaz's intentions. In that email, Mr Vaz said:

> …
>
> SRA has committed so many breaches that SSA needs to take control of the situation. …
>
> The breaches and offensive moves by SRA are: …
>
> …
>
> 5. [SRA] has demonstrated that it has no intention in complying with the Demolition Order issued by the BCA thus forcing SSA to comply with the Demolition Order at great expense to SSA.
>
> …

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> I am truly dismayed that a member of SSA can act in this manner and get away with it. In any civilised club, the member would have been expelled. Unfortunately, we have members in the SSA Council who are sympathetic towards SRA and I am hesitant to call for SRA's expulsion at this time.
>
> I am tabling a resolution to suspend SRA from all privileges in the NSC commencing January 1st. It is not SSA's intention to disadvantage the innocent members of SRA so the suspension I am proposing is a limited suspension.
>
> Terms of the suspension are as follows[:]
>
> 1. SRA will not be allowed to block book a range in the NSC or sponsor any event in the NSC.
>
> 2. ALL SRA staff, coaches and officials will be suspended from all privileges in the NSC.
>
> 3. SRA will not be granted any privileges in the NSC until SRA complies. This includes booking any rooms or space for their functions or events.
>
> …
>
> The members of SRA will be permitted to book SINGLE lanes in the NSC …
>
> I am asking you as Secretary General to send a Circular Resolution to the SSA Council members with the above arguments. Please ask each Council Member for the reasons that they object to the motion to suspend SRA in writing so we can discuss it at the council meeting I intend to call to officially ratify this resolution before Christmas.
>
> …
>
> I will be pleased to assist in writing the circular.

30 Shortly after this, *Mr Vaz* prepared the draft circular resolution and sent it to Mr Yap and some of the SSA Council members on 16 December 2015, requesting Mr Yap to circulate it amongst the council. Mr Yap did so later that same day. The salient parts of this resolution (the "Circular Resolution") read as follows:

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> BY CIRCULAR RESOLUTION
>
> RESOLUTION:
>
> Proposed By: Michael Vaz
>
> Seconded by: Patrick Chen
>
> The [SSA Council] hereby resolves by Circular Resolution, to suspend the privileges of [SRA] in the premises known as the [NSC] from January 1st 2016.
>
> SSA is calling for this resolution in response to SRA's refusal to comply with the SSA Council Resolutions [which] has put the sitting Council Members [at] great risk from liabilities and prosecution arising from the illegal structures erected within the NSC.
>
> SRA BREACHES:
>
> …
>
> 4. Refusal to comply with a BCA Demolition Order issued on November 6th 2015.
>
> TERMS OF THE SUSPENSION
>
> The suspension will be a limited action whereby,
>
> a. SRA will not be allowed to block book any ranges for SRA Activities.
>
> b. All SRA staff and SRA endorsed coaches currently registered will not be recognised as coaches or approved supervisors.
>
> c. SRA staff and SRA endorsed coaches will not be allowed to book individual lanes for instructing members or walk[-]in guests.
>
> d. SRA will not be allowed to book any NSC facilities for SRA functions or meetings.
>
> This action is not targeted at the SRA members who for the most part are oblivious to the actions of the SRA Council.
>
> …

31 The rest of the Circular Resolution reflected the key terms proposed by Mr Vaz in his email, namely, that certain concessions would be granted to SRA members in their personal capacities. Later that same day, D&N sent a letter to

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SSA's solicitors objecting to the Circular Resolution and demanding its retraction by 5.00pm the following day, 17 December 2015.

32 Mr Vaz, Mr Patrick Chen and Mr Yap voted in favour of the Circular Resolution, Mr Loo Woei Harng (from SRA) voted against it, and the other SSA Council members either abstained or did not respond. A majority was achieved and the Circular Resolution was therefore passed.

The Proprietary Range is demolished

33 Even as SSA and SRA remained at loggerheads with each other, SSA proceeded unilaterally with its efforts to have the Proprietary Range demolished. On 18 December 2015, BCA issued SSA a permit to carry out the demolition. Pikasa, SSA's hired contractor, began to demolish the Proprietary Range on 21 December 2015, and BCA was informed on 22 January 2016 that the demolition had been completed.

The Board of Inquiry hearings and the attendant SSA Council meetings

34 After the SSA Council voted to approve the Circular Resolution, Mr Vaz convened a Board of Inquiry ("BOI") to investigate the breaches complained of in that resolution, naming retired Brigadier-General Lim Kim Lye, who had joined the SSA Council as an advisor in 2013, as the chairman of the BOI. Two rounds of BOI hearings were held, the first in February 2016, and the second in March 2016: see GD at [23] and [25]. The mandate given to the BOI was to "determine if SRA had indeed committed the SRA Breaches … as set out in the Circular Resolution". The BOI took the view that SRA had done so, and resolutions were later passed by the SSA Council on 13 February 2016 and 9 April 2016, after, respectively, the first and second rounds of BOI hearings, suspending SRA as a member of SSA and, as a corollary, SRA's privileges at

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the NSC. It is unnecessary for us to go into the BOI hearings or its findings in any great detail because we agree with the Judge that the BOI proceedings were essentially a sham exercise undertaken for the purposes of fashioning, after the event, grounds for the decision that had already been taken in the Circular Resolution.

Sport SG terminates SSA's sub-lease of the NSC

35 While the BOI hearings were ongoing, the police audited the armouries at the NSC on 2 and 4 February 2016, and discovered that the armouries contained firearms with no proper records because they belonged to members of shooting clubs who had died, quit their respective clubs, or left Singapore. As a result, the police seized 75 firearms from SRA's armoury, and two firearms from SGC's armoury. This led Sport SG to terminate its tenancy agreement with SSA with immediate effect on 6 February 2016, with Sport SG resuming control of the NSC, although it appointed SSA as its interim managing agent for the NSC subject to various conditions.

SRA commences the present suit

36 On 6 May 2016, SRA brought the present suit against the appellants.

37 Some seven months after the present suit was commenced, the SSA Council held an Extraordinary General Meeting ("EGM") on 10 December 2016, at which the council expelled SRA from SSA as a member with immediate effect.

The decision below

38 There were three main issues before the Judge: first, whether the Circular Resolution was *ultra vires*; second, whether the Individual Defendants

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were liable to SRA in the tort of unlawful means conspiracy; and third, whether SRA was liable under cl 10 of the Agreement to pay SSA the cost of demolishing the Proprietary Range.

The Circular Resolution was ultra vires

39 On the first main issue, the Judge held that the Circular Resolution was *ultra vires* for three reasons: see GD at [36]. First, the SSA Council had no power to suspend the privileges of a member of SSA. Second, the SSA Constitution did not empower the SSA Council to make decisions by circular resolution. Third, the Circular Resolution was passed without SRA having been given a reasonable opportunity to be heard, and was therefore void for being in breach of natural justice.

40 The Judge also dealt with SSA's argument that SRA's challenge against the validity of the Circular Resolution was moot given that: (a) SRA was no longer a member of SSA, having been expelled at the EGM on 10 December 2016; and (b) the Circular Resolution had in any event been superseded by the SSA Council resolutions passed on 13 February 2016 and 9 April 2016 subsequent to the BOI hearings. As regards (a), the Judge noted that SRA was still a member of SSA when the present suit commenced. SRA had not accepted the legality of its expulsion and had continued to contest it, and the time limit for SRA to bring legal action had not expired: see GD at [60]. As regards (b), the Judge considered that the BOI hearings were an empty formality intended only to create the impression that SRA had been accorded due process when in fact, the suspension of its privileges at the NSC was a *fait accompli*: see GD at [57] and [63]. The resolutions passed by the SSA Council were part of a smokescreen; the Circular Resolution was intended to be "the effective

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instrument for bringing about the suspension of SRA's privileges": see GD at [58]–[59].

The Individual Defendants were liable for unlawful means conspiracy

41 Turning to the second main issue, the Judge found the Individual Defendants liable in the tort of unlawful means conspiracy. He found that the unlawful means in this case was the SSA Council's passing of the *ultra vires* Circular Resolution to suspend SRA's privileges at the NSC: see GD at [67].

42 The other elements of the tort were also made out. The Individual Defendants had collaborated together in issuing the Circular Resolution to the SSA Council members. Mr Vaz had informed Mr Yap of his intention to table the resolution and had indicated that he would draft it. Mr Yap had been asked to find a seconder, and had duly done so in the person of Mr Patrick Chen. And after Mr Vaz had prepared the resolution, Mr Yap had circulated it to the SSA Council members, with Mr Vaz said to be the proposer and Mr Chen, the seconder: see GD at [72]. The Judge found further support for this from the fact that on 18 December 2015, Mr Vaz had sent an email to Mr Peter Teh, one of the SSA Council members as well as a member of the SSA Executive Committee (see [5] above), informing him that the council had sufficient votes to suspend SRA. Only Mr Vaz and Mr Patrick Chen had voted in favour of the Circular Resolution at that time, but it emerged from the evidence that Mr Vaz had already reached an understanding with Mr Yap that he, too, would support the resolution: see GD at [73].

43 The Judge also considered that the Individual Defendants had intended to cause damage to SRA because the Circular Resolution had been aimed at suspending SRA's privileges at the NSC: see GD at [79].

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44 Finally, the Judge found that SRA had suffered damage in the form of loss arising from and relating to the investigation and detection of the conspiracy, and loss arising from and relating to the undertaking of steps to redress the conspiracy: see GD at [85]. He held that the legal fees and disbursements incurred by SRA's solicitors in investigating, detecting and responding to the conspiracy were sufficient to constitute the "damage" element of the tort of unlawful means conspiracy: see GD at [88]–[89]. However, the costs incurred by SRA Council members in scheduling meetings to respond to the conspiracy did not constitute actionable loss because SRA was not obliged to pay its council members for their efforts in relation to the investigation of the conspiracy, given that they were volunteers: see GD at [92].

45 For completeness, the Judge also considered s 32A of the Charities Act, which empowers the court to relieve (among other persons) a person on the governing board of a charity for liability in respect of any "negligence, default, breach of duty or breach of trust" if it appears to the court that the person "has acted honestly and reasonably and, having regard to all the circumstances of the case, … ought fairly to be excused for the negligence, default or breach". The Judge held that the Individual Defendants, having acted not only in breach of the SSA Constitution but also in breach of natural justice, could not be said to have acted reasonably. Thus, they could not rely on s 32A: see GD at [94].

SSA was not entitled to the cost of demolishing the Proprietary Range

46 The third and last main issue that the Judge dealt with was SSA's counterclaim for $26,536, being the sum that it paid Pikasa to demolish the Proprietary Range. The Judge held that SSA was not entitled to this sum as the loss was sustained as a result of SSA's own breach of an implied term in the Agreement that it would use reasonable efforts to assist SRA in obtaining

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planning and building approval from BCA for the construction of the Proprietary Range ("the Implied Term"): see GD at [118] and [147]. This term had to be implied because the Agreement was silent on SSA's role and responsibilities in relation to the regulatory approval process for the construction works: see GD at [119]–[120]. The Implied Term would fill that gap because SRA could only obtain the relevant regulatory approvals with SSA's co-operation: see GD at [125] and [131]. And the Implied Term was breached because SSA had concealed the Regularisation Letter and the option of regularising the Proprietary Range from SRA, and, moreover, had presented a false state of affairs to SRA which impeded its regularisation efforts. Further, SSA had also deliberately obstructed SRA's efforts in engaging BCA on the regularisation process: see GD at [142(c)]–[142(e)] and [143].

The declarations ordered

47 The Judge concluded by making some of the declarations sought by SRA. The declarations granted were that (see GD at [156]):

(a) The Circular Resolution suspending SRA's privileges at the NSC was null and void.

(b) SSA had no power to suspend the rights of its members save as expressly provided for in the SSA Constitution.

(c) Unless and until the SSA Constitution was amended to provide otherwise, the SSA Council did not have the power to make decisions by circular resolution.

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The parties' cases on appeal

The appellants' case

48 The appellants make three main points in this appeal. First, they argue that the Judge erred in making the three declarations. They contend that SRA does not have standing to seek those declarations because the Circular Resolution was not a resolution that was intended to have legal effect in and of itself, but would only have effect if it was communicated, which it never was. That being the case, SRA's privileges at the NSC were never suspended and its legal rights never put in question. The declarations therefore served no purpose in fact. Alternatively, the appellants argue that there was no real controversy for the court to resolve. This was because the Circular Resolution was superseded by the resolutions passed at the SSA Council meetings on 13 February 2016 and 9 April 2016. Further, SSA's sub-lease of the NSC was lost when Sport SG terminated its tenancy agreement with SSA on 6 February 2016, so the Circular Resolution, which purported to suspend SRA's privileges at the NSC, became purely academic as SSA was no longer in a position to implement any suspension of SRA's privileges even if it wanted to. In short, by the time SRA commenced the present suit on 6 May 2016, it no longer faced any consequences arising from the Circular Resolution, and there was therefore no controversy surrounding that resolution.

49 Second, the Individual Defendants contest their liability for unlawful means conspiracy. They argue that the passing of the Circular Resolution does not constitute "unlawful means" for the purposes of the tort of unlawful means conspiracy; the Individual Defendants did not have the requisite intention to cause damage to SRA; and the legal fees and disbursements incurred by SRA in investigating, detecting and responding to the alleged conspiracy cannot amount to "damage" for the purposes of the tort. In any event, the Individual

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Defendants contend, they are saved from liability either by the application of the principle in *Said v Butt* [1920] 3 KB 497 ("*Said v Butt*"), which grants a company director immunity from tortious liability for procuring his company's breach of contract so long as he acts *bona fide* within the scope of his authority, or by virtue of s 32A of the Charities Act.

50 Third, in respect of its counterclaim for an indemnity for the cost of demolishing the Proprietary Range, SSA contests the Implied Term that the Judge found in the Agreement, and also contends that it did not in any event breach that term.

SRA's case

51 SRA's rebuttal to each of the three main issues identified by the appellants is as follows. First, it argues that the declarations made by the Judge were duly granted. It contends that it did have standing to seek those declarations because the Circular Resolution was passed in breach of the SSA Constitution, and SRA, as a member of SSA, was entitled to enforce the latter's constitution by seeking declaratory relief. Further, the declarations were not academic because the Judge found that the two SSA Council resolutions passed on, respectively, 13 February 2016 and 9 April 2016 after the BOI hearings were merely part of a smokescreen to conceal the fact that the Circular Resolution was intended to be, and was, the effective instrument of the suspension of SRA's privileges at the NSC. In any event, the declarations "clarify" SSA's powers in relation to the very real possibility of SSA attempting to suspend another of its members' privileges or to pass another circular resolution in the future, and are therefore of value to SRA.

52 On the second issue of the tort of unlawful means conspiracy, SRA makes the following points. A wide meaning of "unlawful means" should be

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adopted for the purposes of this tort, and that would encompass the passing of the *ultra vires* Circular Resolution in this case. It ought not to be a requirement that the unlawful means be limited only to wrongs that are actionable by a third party. Next, the Judge was right to find that the Individual Defendants intended to injure SRA, and that the investigative costs incurred by SRA in detecting and responding to the conspiracy could amount to actionable loss or damage. Further, the Individual Defendants are not entitled to rely on the principle in *Said v Butt*, which was developed in the commercial context and is wholly inapt for the governance of charities such as SSA; nor can they on s 32A of the Charities Act, given their unreasonable behaviour.

53 On the last issue of SSA's counterclaim for an indemnity for the cost of demolishing the Proprietary Range, SRA essentially endorses the Judge's analysis and the approach that he took in finding the Implied Term in the Agreement and holding that it had been breached by SSA.

The issues to be determined

54 We consider that there are five issues to be addressed in this appeal. The first three are the three substantive points on which the Judge found against SSA, namely, the awarding of declaratory relief to SRA, the holding that the Individual Defendants were liable to SRA in the tort of unlawful means conspiracy, and the rejection of SSA's counterclaim for an indemnity in respect of the cost of demolishing the Proprietary Range. These three issues formed the bulk of the parties' written cases in the appeal, and also constituted a large part of the submissions before us at the oral hearing on 15 August 2019.

55 Apart from these three issues, two additional issues crystallised at the oral hearing. In the course of oral argument, we probed Mr Wendell Wong ("Mr Wong"), counsel for SRA, as to the extent of loss or damage suffered by

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SRA. We pointed out to him that it was striking that the *only* loss or damage claimed by SRA in respect of the conspiracy consisted of the fees that his firm had charged for investigating the conspiracy. Those fees, at their highest, amounted to only around $63,000. This was well below the threshold for a case to be mounted in the High Court. We also expressed our concern that this dispute had not only been commenced in the High Court, but also taken up nine days of the court's time for trial and an additional two days for oral submissions, with five lawyers in total appearing in the High Court proceedings and a sixth added to Mr Wong's team for the appeal. Mr Wong's response essentially was that this was a case involving the governance of a charity, and thus, the proceedings *had* to be initiated in the High Court. He relied in this regard on s 31 of the Charities Act. This raises an important issue of charities governance and, relatedly, the preservation of a charity's assets for use towards its charitable objects instead of being frittered away on wasteful litigation. We will therefore also address in this judgment the proper interpretation of s 31 of the Charities Act in examining whether this dispute should have been litigated in the High Court.

56 In addition, having heard Mr Wong's submissions on s 31 of the Charities Act, we expressed our doubts that the declaratory relief sought by SRA would have been a sufficient basis to sustain this litigation, given what appeared to us to be significant weaknesses in that aspect of SRA's case. We also indicated our additional concerns that if SRA ultimately proved not to be entitled to declaratory relief, then it would be left only with its claim in unlawful means conspiracy, the value of which was plainly insufficient for this litigation to have been commenced in the High Court. This would, in turn, raise questions as to the proportionality of this litigation. As we alluded to earlier (see [3] above), we consider that this litigation was not prosecuted in an economical or proportionate way on the part of SRA. The final issue we will address in this

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judgment, therefore, is how this disproportionate litigation ought to be addressed in the award of costs.

57 In summary, the issues that we will address are as follows:

(a) First, are the Individual Defendants liable in the tort of unlawful means conspiracy?

(b) Second, is SRA entitled to declaratory relief in respect of the Circular Resolution?

(c) Third, is SSA entitled to an indemnity for the cost of demolishing the Proprietary Range?

(d) Fourth, does s 31 of the Charities Act require that this dispute be litigated in the High Court?

(e) Fifth, how should the disproportionate litigation in this case be addressed in terms of costs?

Issue 1: Are the Individual Defendants liable in the tort of unlawful means conspiracy?

58 It was clear, both from the length of the parties' written submissions on this issue and the amount of time that the parties devoted to it at the oral hearing before us, that SRA's claim against the Individual Defendants in the tort of unlawful means conspiracy lay at the heart of the dispute between the parties. We therefore address it first.

59 The parties' submissions raise two sub-issues: first, whether the passing of the Circular Resolution constituted the requisite "unlawful means"; and second, whether solicitors' fees allegedly incurred for the purposes of

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investigating a conspiracy can constitute actionable loss or damage in the tort of unlawful means conspiracy. Although the discussion of whether the requisite "unlawful means" were made out in this case ought, conceptually, to precede the discussion of whether there was any actionable loss or damage, we will consider the latter sub-issue first because, as will shortly be shown, our holding on that sub-issue is determinative of SRA's claim in unlawful means conspiracy.

60 In short, we hold that solicitors' fees, even if they are expenses incurred in investigating a conspiracy and labelled as "investigative fees", *cannot* generally, and *do not* in this case, constitute actionable loss or damage for the purposes of the tort of unlawful means conspiracy. It follows that the tort of unlawful means conspiracy is not made out in this case, and the Individual Defendants succeed in this aspect of the present appeal.

Can solicitors' fees allegedly incurred for the purposes of investigating a conspiracy constitute actionable loss or damage in the tort of unlawful means conspiracy?

The parties' arguments

61 SRA contended before the Judge that it had suffered damage as a result of the Individual Defendants' conspiracy. The pleaded damage was the loss it had suffered arising from and related to the investigation and detection of the conspiracy, and the loss arising from and related to the undertaking of steps to redress the conspiracy. The precise pecuniary loss suffered consisted of the fees it had paid its solicitors, D&N, to investigate, respond to and unravel the conspiracy: see GD at [85]. The Judge accepted this submission. He ruled that, as a matter of principle, the costs incurred in investigating, detecting and responding to a conspiracy *could* constitute actionable damage for the purposes of the tort of conspiracy as long as there was a causal link between such costs

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and the tort itself: see GD at [88]. He found, on the facts, that the conspiracy among the Individual Defendants which led to the passing of the Circular Resolution was the cause of SRA's investigation into the circumstances in which that resolution was passed; thus, the costs of the investigation, including legal fees and disbursements, did constitute actionable damage: see GD at [89]. In so finding, the Judge relied on three authorities, namely, *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 ("*Ong Han Ling*"), *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 ("*Clearlab*"), and *Li Siu Lun v Looi Kok Poh and another* [2015] 4 SLR 667 ("*Li Siu Lun*"): see GD at [88]. SRA supports the Judge's analysis of actionable damage on appeal.

62 The Individual Defendants, on their part, contend that the Judge was wrong to find that the legal fees which SRA claimed it had incurred in investigating, detecting and responding to the conspiracy could amount to actionable loss or damage in the tort of unlawful means conspiracy. They submit that such legal fees would be recoverable as costs in any litigation, and therefore cannot also be recovered as damages. Because the element of loss or damage is not made out, the Individual Defendants argue, SRA must fail in its conspiracy claim. Alternatively, the Individual Defendants submit that even if such legal fees could in principle constitute actionable loss or damage in the tort of unlawful means conspiracy, SRA has not proved that it incurred the alleged legal fees, and, further, has failed to prove that those fees were directly attributable to the conspiracy. The Individual Defendants point out that the particulars offered by SRA are bare and bereft of detail, and are simply insufficient to establish the causal link that the Judge accepted was necessary.

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The Singapore authorities relied upon below

63 We begin our analysis with a survey of the relevant authorities, starting with the three local authorities relied upon by the Judge.

(1) *Ong Han Ling*

64 The first authority the Judge referred to was the High Court's decision in *Ong Han Ling*, which involved a claim brought by an elderly Indonesian couple against American International Assurance Co Ltd and its successor corporation (collectively, "AIA") for selling them a fictitious policy ostensibly offered by the company. The couple brought claims for breach of contract, fraud, and negligence. AIA counterclaimed, alleging that the plaintiffs had engaged in a conspiracy with one of its agents to defraud it.

65 We focus on the counterclaim in unlawful means conspiracy. Belinda Ang Saw Ean J examined the losses that AIA claimed it had suffered as a result of the conspiracy. She first dismissed AIA's argument that the costs of defending the plaintiffs' action could constitute loss for the purposes of this tort. In her view, such costs were to be dealt with by way of a costs order made following the conclusion of the action, and not by way of damages: at [14]. She then considered AIA's claim that reputational damage had been occasioned, but found that reputational damage could not constitute actual pecuniary loss unless it could be tied to a loss of business profits, which AIA had failed to show: at [14].

66 Finally, and most relevantly for present purposes, Belinda Ang J accepted that "in principle, the costs of investigat[ing] (and perhaps unwinding) the conspiracy can constitute a head of loss in a conspiracy claim so long as there is a causal link between the costs of [the] investigation and the tort": at

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[14]. Relying on the decision of Gloster J in the English High Court case of *R + V Versicherung AG v Risk Insurance and Reinsurance Solutions SA and others* [2006] EWHC 42 (Comm) ("*Risk Insurance*"), Belinda Ang J developed the requirement of a causal link by observing that if wasted *staff time* were claimed, it would be necessary to "demonstrate with certainty and in detail that the time spent on investigating and/or mitigating the … tort, and hence the expenditure incurred, was directly attributable to the conspiracy" (at [14]). In the event, AIA was unable to sufficiently particularise or present acceptable evidence of the pecuniary losses allegedly *caused* by its investigation of the conspiracy, and Belinda Ang J accordingly rejected its counterclaim for lack of proof of loss: at [14].

67 We pause to observe that although *Ong Han Ling* stands for the proposition that investigative costs can, in principle, constitute actionable loss or damage for the purposes of the tort of unlawful means conspiracy, it does *not* answer the precise question before us. Nothing in the judgment in *Ong Han Ling* suggests that AIA's *solicitors* were involved in investigating the conspiracy, and so nothing was said on the question of whether *legal fees* incurred in investigating a conspiracy could constitute actionable loss or damage for the purposes of the tort. Instead, Belinda Ang J was plainly concerned with the cost of AIA's own staff being engaged by the investigative exercise, as amply evidenced by her references to "wasted staff time" and "[e]vidence of some disruption to the business, *eg*, that the staff member had been significantly diverted from his usual activities" (at [14]). Indeed, in so far as legal costs were put forward as the first possible head of claim, Belinda Ang J had no hesitation in rejecting that submission as she held that the legal fees incurred by AIA in defending the plaintiffs' action had to be dealt with by way of a costs order at the conclusion of the action, and not by way of damages: see [65] above.

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(2) *Clearlab*

68 The next decision the Judge relied upon was the decision of the High Court in *Clearlab*. There, the plaintiff company, Clearlab SG Pte Ltd ("Clearlab"), sued the defendants, who were its ex-employees, for breach of confidence and unlawful means conspiracy, amongst other heads of claim. The defendants had left Clearlab for a rival, but before doing so, they had allegedly taken confidential documents from Clearlab that benefited its rival.

69 In its claim in unlawful means conspiracy, Clearlab alleged that it had suffered loss in the form of the significant legal and professional fees that it had incurred in prosecuting the action, as well as the management time that had been diverted away from its business: at [243]. Lee Seiu Kin J considered that it was "not clear that all of the [claimed] losses [were] the kinds of loss relevant to the tort of conspiracy by unlawful means", but accepted that on the authorities before him, the element of loss had "a broad scope": at [243]. He referenced the decision of the English High Court in *British Motor Trade Association v Salvadori and others* [1949] Ch 556 ("*Salvadori*") as authority for the proposition that the expenses incurred in unravelling and detecting the unlawful machinations of the defendants could constitute the relevant loss. He also referred to the decision of the English Court of Appeal in *Lonrho Plc and others v Fayed and others (No 5)* [1993] 1 WLR 1489 ("*Lonrho*") at 1497 as authority for the proposition that the cost of *managerial and staff time* spent in investigating or mitigating the consequences of a conspiracy could constitute actionable loss.

70 Lee J then turned to the facts before him. He found that Clearlab had expended money to have IT forensic experts uncover the confidential documents that had been taken by the defendants, and accepted that significant

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time and effort had been spent subsequently to analyse what information in those documents had been illegitimately exploited by Clearlab's rival. Lee J considered that the forensic examination and analysis "flowed from the conspiracy", and sufficed to constitute actionable loss: at [243].

71 It is significant that Lee J only mentioned the expenses of the IT forensic experts as constituting the relevant loss. He did not specifically accept Clearlab's submission that the *legal fees* it had incurred in prosecuting the action would also have constituted the relevant loss. Thus, *Clearlab*, too, does not answer the precise question that is before us.

(3) *Li Siu Lun*

72 The third authority the Judge relied upon was *Li Siu Lun*, also a decision of Belinda Ang J. The plaintiff in that case, a Mr Li, sued his doctor and the hospital where the doctor practised in the torts of negligence, trespass, and unlawful means conspiracy in respect of a hand surgery that had gone wrong. The claim for damages against the hospital included the legal costs that Mr Li had incurred in applying for interrogatories against a non-party to the proceedings: at [21(a)]. The hospital *conceded* the fact of damage and accepted that those legal costs could constitute the relevant pecuniary loss: at [124(a)], [127] and [129]. Indeed, Belinda Ang J later observed in *Ong Han Ling* (at [13]) that *Li Siu Lun* was a case where "the element of damage was admitted". Thus, *Li Siu Lun* does not stand as authority for the proposition that legal fees incurred in investigating a conspiracy can constitute actionable loss or damage for the purposes of the tort of unlawful means conspiracy.

73 It is evident from the foregoing decisions of our High Court that the costs incurred in investigating, detecting and unravelling a conspiracy can constitute actionable loss or damage in the tort of unlawful means conspiracy if the

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requisite causal link between such costs and the conspiracy itself is established. None of these decisions, however, directly addresses the precise and more particular question before us now, which is whether *legal fees* which are allegedly incurred in this regard can constitute actionable loss or damage as well.

The English authorities

74 We turn to the key English authorities which have touched on this question.

(1) *Salvadori*

75 *Salvadori* is often cited as the genesis of the proposition that investigation costs may constitute actionable loss or damage in the tort of conspiracy. The plaintiff there was a trade union of which all British car manufacturers and authorised car dealers were members. Every member of the public who purchased a new car was required to enter into a covenant with the plaintiff and the car dealer from whom he purchased the car that he would not resell the car within a 12-month period. This was to prevent price inflation. The defendants, through their agents, breached that covenant. Roxburgh J held in the English High Court that the plaintiff's cost of maintaining a large investigation department to detect and unravel the defendants' conduct constituted actionable loss for the purposes of the plaintiff's conspiracy claim. The defendants had "adopt[ed] every available means of covering up their tracks", and had "resort[ed] to false names, false addresses and false documents". Consequently, Roxburgh J held (at 569):

> To resist such a counter-attack and also counter-attacks from various other directions, the plaintiffs maintain, and must maintain, a large investigation department, and the money actually expended in unravelling and detecting the unlawful

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> machinations of the defendants which have been proved in this case before any proceedings could be taken must have been considerable. I can see no reason for not treating the expenses so incurred *which could not be recovered as part of the costs of the action* as directly attributable to their tort or torts. That these expenses cannot be precisely quantified is true, but it is also immaterial. Accordingly, the plaintiffs have proved the damage which is essential to the tort of conspiracy, and they are entitled to an inquiry accordingly. [emphasis added]

76 We note two points at this stage. First, nothing in the recitation of the facts in the judgment suggests that the plaintiff's investigation department involved external parties, including external counsel, unlike the present case. Second, Roxburgh J was careful to emphasise that investigation costs would only be treated as actionable loss or damage if they "could not be recovered as part of the costs of the action". This implicitly draws a line between legal costs, which are recoverable as the "costs of the action", and other investigation expenses, which are not.

(2) *Tate & Lyle Food and Distribution Ltd and another v Greater London Council and another*

77 A similar distinction was drawn in another decision of the English High Court, *Tate & Lyle Food and Distribution Ltd and another v Greater London Council and another* [1982] 1 WLR 149 ("*Tate & Lyle*"). This case did not concern a claim in conspiracy, but rather, a claim for damages in respect of managerial time that had been spent on initiating and supervising remedial work occasioned by the defendants' negligent acts, which time might otherwise have been spent on the plaintiffs' trading activities. It was cited by Gloster J in *Risk Insurance* in discussing whether wasted managerial time could amount to actionable loss or damage in the tort of conspiracy. We will not go into the facts of the case, but it is helpful to reproduce the question that Forbes J considered he had to address (at 152):

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> The problem, it seems to me, resolves itself into two constituents: (a) Is there any warrant for suggesting that managerial time, which otherwise might have been engaged on the trading activities of the company, had to be deployed on the initiation and supervision of remedial work (*excluding anything which might properly regarded as preparation for litigation*)? … [emphasis added]

78 Forbes J answered that question in the affirmative. For present purposes, it is the separation of expenses that might be recoverable as costs in the action from other expenses that are not so recoverable which is important.

(3) *Lonrho*

79 We turn next to *Lonrho*, a decision of the English Court of Appeal. There, the plaintiffs claimed against the defendants in the tort of *lawful* means conspiracy, alleging that the defendants had conspired to sponsor and encourage a third party to publish defamatory statements about them, and had financed and caused another party to bring an action against them. The defendants succeeded in having the claim struck out in the English High Court for failure to plead particulars of the damage allegedly suffered. On appeal, the English Court of Appeal allowed the appeal in part and gave the plaintiffs leave to amend their statement of claim.

80 One of the heads of loss claimed by the plaintiffs was "the cost of managerial and staff time spent in investigating, or mitigating the consequences of, the conspiracy": at 1497C. Dillon LJ's judgment deals most comprehensively with this aspect of the claim. He allowed this head of loss to be pleaded. In his view, *Salvadori* established the proposition that the time spent in detecting and countering a conspiracy could be included in a claim for damages. Although the defendants had argued that "it would be self-serving to allow the mere cost of staff time, or payment to third parties, to investigate and uncover the conspiracy to count as damage and warrant the bringing of the

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action if the acts done by the conspirators [had] caused no other damage to the victim", Dillon LJ considered that that was a matter that could be considered in greater detail at the trial, where "fuller facts [would be] available to show what actually was done by Lonrho staff that is claimed under this heading": at 1497D–1497E. Stuart-Smith LJ (at 1505E-1505F) and Evans LJ (at 1507H) concurred with this part of Dillon LJ's judgment.

81 Again, it is relevant to note that nothing was said of lawyers' fees being claimable as expenses incurred in investigating a conspiracy. The head of loss described in *Lonrho* was confined to "managerial and staff time", and the English Court of Appeal, in allowing the statement of claim to be amended, expected to hear more about what work "Lonrho staff" had done to investigate the conspiracy.

(4) *Risk Insurance*

82 We turn now to Gloster J's decision in *Risk Insurance*, which, as we noted earlier, was relied upon by Belinda Ang J in *Ong Han Ling*. The claimant in *Risk Insurance* was a major German reinsurance company. The defendants comprised companies under the "Risk" umbrella of companies and individuals employed by them. The claimant authorised the first defendant to write on its behalf contracts of reinsurance obtained through the London market: at [4]. The claimant succeeded in its claim against the defendants in respect of a conspiracy by unlawful means that, in gist, enabled the defendants to obtain a large amount of commission contrary to the interests of the claimant. The parties came before Gloster J for a hearing to determine certain issues of principle in relation to the quantum of damages to be paid to the claimant: at [1].

83 Gloster J characterised the "real issue" before her as the question whether the claimant could "recover, as damages, *internal management and*

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staff time and internal overheads" [emphasis added], except for the amount it would be claiming under the separate head of loss of profits: at [55].

84 Gloster J embarked on a survey of the authorities, including *Salvadori*, *Tate & Lyle* and *Lonrho*, which we have just discussed. Her conclusion can be found at [77] of *Risk Insurance*. She ruled that, as a matter of principle, "the cost of *wasted staff time* spent on the investigation and/or mitigation of the tort … is recoverable, notwithstanding that no additional expenditure 'loss', or loss of revenue or profit can be shown" [emphasis added]. This was subject to the proviso that it had to be "demonstrated with sufficient certainty that the wasted time was indeed spent on investigating and/or mitigating the … tort; i.e. that the expenditure was directly attributable to the tort".

85 As in *Salvadori* and *Lonrho*, Gloster J did not have to consider the question whether *legal costs* incurred in investigating a conspiracy could constitute actionable loss or damage.

(5) *Rustem Magdeev v Dimitry Tsvetkov and others*

86 Finally, there is the decision of the English High Court in *Rustem Magdeev v Dimitry Tsvetkov and others* [2019] EWHC 1557 (Comm) ("*Magdeev*"), a case that *does* squarely deal with the question whether *solicitors' fees* incurred in investigating a conspiracy can constitute actionable loss or damage for the purposes of the tort of unlawful means conspiracy. This decision was released after the parties had filed their written cases for this appeal, but prior to the hearing before us. Unfortunately, neither party drew our attention to it.

87 In *Magdeev*, Mr Tsvetkov counterclaimed against Mr Magdeev and one Mr Gaynulin in unlawful means conspiracy, alleging that they had conspired to

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injure him by depriving his company of its assets. Mr Gaynulin applied for the counterclaim to be struck out for Mr Tsvetkov's failure to establish claimable heads of loss.

88 One of the heads of loss that Mr Tsvetkov claimed concerned what Picken J termed "the Investigation Loss". This consisted of the costs and expenses Mr Tsvetkov had incurred in investigating the alleged conspiracy against him, for which purpose he had paid several sums to two law firms in England. Picken J surveyed the authorities and considered that they appeared to "draw a distinction between the cost of wasted staff/managerial time spent in investigating and/or mitigating a tort (which are recoverable as damages) and litigation costs i.e., costs of '*anything which might properly be regarded as preparation for litigation*' (which are not recoverable as damages)" [emphasis in original]: at [111]. The only exception to the general rule that legal costs were not recoverable as damages was where "the claim to recover legal costs as damages [was] based on a 'separate cause of action', i.e. a cause of action distinct from that on which the main proceedings were … based": at [113].

89 On the facts, Mr Tsvetkov's claim for the Investigation Loss was based on the tort of unlawful means conspiracy, which was the same cause of action as that from which the main proceedings arose. Picken J therefore considered that the key question was "whether the Investigation Loss [could] properly be regarded as being part of Mr Tsvetkov's legal costs of pursuing the Conspiracy Claim": at [113]. If it was, it could not be recovered as damages.

90 Picken J examined Mr Tsvetkov's witness statement, which described the investigative costs he had incurred. In his view, the tasks on account of which those costs had been incurred were tasks that solicitors would routinely undertake in preparing statements of case: at [116]. The tasks included

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reviewing Mr Tsvetkov's documents and correspondence, investigating actions between Mr Magdeev and Mr Gaynulin that might potentially have formed part of the alleged conspiracy, and providing advice in the light of the other side's statement of case: at [116]. In those circumstances, Picken J considered that the Investigation Loss claimed by Mr Tsvetkov consisted of costs incurred by his solicitors in preparation for litigation, which could not be recovered as damages in his conspiracy counterclaim: at [117].

91 We make three brief comments on the English authorities we have just considered. First, *Salvadori* and *Magdeev* both make clear that investigation costs can constitute actionable loss or damage in the tort of conspiracy *if* such costs *cannot* be recovered as part of the costs of the action. Second, none of the cases, except *Magdeev*, actually dealt *on the facts* with a situation where *solicitors'* fees were claimed as expenses incurred in investigating a conspiracy. Instead, the facts of all the cases bar *Magdeev* concerned *staff* time and costs. Third, the court in *Magdeev* held, consistently with the underlying principle that may be extracted from all the other cases, that legal expenses could not constitute actionable loss or damage for the purposes of the tort of unlawful means conspiracy if they were properly to be regarded as expenses of the sort that would be incurred in preparation for litigation. Implicit in this is the principle that in such circumstances, the legal expenses in question should be dealt with by way of a costs order at the conclusion of any proceedings that may be brought. The statements in the cases to the effect that investigation costs may constitute actionable loss or damage must be read in the light of the relevant facts.

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Legal fees that can be recovered as costs cannot constitute actionable loss or damage in the tort of unlawful means conspiracy

92 Having canvassed the relevant authorities, we now set out our views as to the proper approach to be taken. In our judgment, the legal fees incurred in investigating, detecting, unravelling and/or mitigating a conspiracy *cannot* constitute actionable loss or damage in the tort of unlawful means conspiracy if they are in substance the sort of expenses that would be incurred in preparation for litigation, and so would be recoverable as costs in any action that may be brought.

93 There are three reasons for such a rule. The first is that if legal fees that can be recovered as costs were held to be sufficient to constitute actionable loss or damage in the tort of conspiracy, then, as we pointed out to Mr Wong at the hearing, the result would be that this element of the tort would be satisfied in virtually every case where the litigant pleading conspiracy engages a lawyer. A litigant who mounts a claim in conspiracy and who engages lawyers to assist him in doing so, as will almost invariably be the case, could simply assert that his legal fees were incurred in investigating and/or mitigating the conspiracy so as to establish the loss/damage element of the tort. Costs would simply be characterised as damages. We consider that this too readily dilutes the requirement that a claimant who brings an action in the tort of conspiracy must prove that he has suffered loss or damage as a result of the conspiracy.

94 Our second reason is that allowing solicitors' fees that are recoverable as costs to be recovered as damages instead would subvert the costs regime put in place to regulate the recoverability of such fees. We observed in *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 that a legal system's rules on costs (which include how legal costs should be recovered in litigation) are necessarily a matter of social policy: at

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[29] and [33]. This includes the important policy of "enhancing access to justice for all" [emphasis in original omitted]: at [34]. The costs regime achieves this objective by requiring, amongst other things, the costs awarded to be reasonable and proportional: see *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052; see also *Lock Han Chng Jonathan (Jonathan Luo Hancheng) v Goh Jessiline* [2008] 2 SLR(R) 455. The application of such principles involves a different assessment, and will likely lead to a different result, from that involved in an inquiry into damages, which is instead subject to rules on causation, remoteness and mitigation: see Louise Merrett, "Costs as Damages" (2009) 125 LQR 468 at p 470. It will often, although not invariably, be the case that the former will result in a figure lower than the latter. Thus, the courts have been careful to distinguish between those expenses which properly fall to be recovered as the costs of the action and those which can constitute actionable loss or damage in the tort of conspiracy. Indeed, in *Salvadori*, the decision from which the principle that investigation costs may constitute actionable loss or damage originates, Roxburgh J was careful to emphasise (at 569) that such costs could only be claimed as damages if they "could not be recovered as part of the costs of the action": see [75]–[76] above. Forbes J's question in *Tate & Lyle* reflected the same concern (see [77] above), and so too did the reasoning of Picken J in *Magdeev* (see [88]–[90] above).

95 We consider that the concern not to subvert the established costs regime also answers the objection that it seems artificial to draw a distinction between, on the one hand, wasted staff time and other internal expenses and, on the other hand, the costs incurred in hiring external legal counsel, when both are directed at the common aim of investigating a conspiracy. It was suggested to us at the hearing that lawyers might be equally, if not more, effective at investigating a conspiracy than a company's own staff. This was particularly true in this case, it was said, where SRA depended heavily on volunteers and had minimal staff,

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and so was not in a position effectively to investigate the conspiracy against it. It was therefore contended that there ought to be no reason to distinguish between external counsel's fees and internal staff expenditure, particularly if costs might be saved in having lawyers investigate the conspiracy instead. Although it is possible that the defendants to an alleged conspiracy might in some circumstances feel more compelled to offer up information and evidence under threat of legal action than in response to questions by laypersons, the short answer is that fees and expenses incurred by lawyers are subject to the costs regime so as to serve larger policy considerations, including the important one of enhancing access to justice, as we have just explained. These policy considerations simply do not apply if it is only staff time and effort that is forgone. Thus, if solicitors' fees can be recovered as costs, they ought to be dealt with in that way and not by way of damages.

96 The third reason for the general rule is that there is simply no authority in support of SRA's contention that the legal fees incurred for the purposes of investigating a conspiracy can constitute actionable loss or damage in the tort of conspiracy. We have already explained above (at [67], [71] and [72]) that *Ong Han Ling*, *Clearlab* and *Li Siu Lun*, the three decisions relied upon by the Judge, do not in fact support SRA's proposition. None of these cases was concerned, on the facts, with solicitors' fees being claimed as a head of loss in the tort of conspiracy. In addition, none of the other authorities we have canvassed support that proposition. In fact, the only decision in which the point was engaged on the facts, *Magdeev*, adopts the contrary position that legal fees, even if they are allegedly incurred in investigating a conspiracy, ought *not* to constitute actionable loss or damage if they are of a sort that are recoverable by way of a costs order. The weight of the authorities is therefore against SRA.

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97 The three reasons we have just propounded explain the rationale for the rule that generally, the legal fees incurred in investigating a conspiracy will not be recoverable as damages in a claim in conspiracy. That said, the rule as we have framed it at [92] above does envisage that such fees *may* constitute actionable loss or damage *if*, for some reason, they cannot be recovered as costs instead. In our judgment, this proviso flows naturally from the second reason set out at [94] above because if such fees cannot be recovered as costs, then the costs regime would not be subverted by their being claimed as damages instead. Thus, it is open to a party to make the case that *on the facts* of a particular dispute, the legal fees which it incurred in investigating the conspiracy against it are of a sort that cannot be recovered by way of a costs order. We do not foreclose the possibility that this argument might successfully be made, but we caution that for a party to succeed, it will have to offer cogent proof that its lawyers truly performed a discrete investigative function, instead of merely gathering such evidence, facts and information as would typically precede the giving of legal advice or the commencement of litigation.

98 In this regard, we endorse the requirement imposed by Belinda Ang J in *Ong Han Ling*, echoing Gloster J's approach in *Risk Insurance*, that where investigation costs are relied on as constituting the requisite actionable loss or damage in a conspiracy claim, it remains necessary to demonstrate with sufficient particularity that the time spent on investigating and/or mitigating the conspiracy, and, hence, the expenditure incurred, was directly attributable to the conspiracy. The test to apply is whether the claim is for wasted staff expenditure arising from the investigation, as is likely to be more common, or for discrete investigative fees incurred by solicitors of the sort we have alluded to, which, as we have just observed, is likely to be less common.

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99 We should point out here that since the present case was argued on the footing that the conspiracy alleged by SRA was one of conspiracy by *unlawful* means, the general rule that we have laid down at [92] above applies, strictly speaking, only to this form of conspiracy. That said, we note that *Salvadori* did not distinguish between unlawful means conspiracy and lawful means conspiracy, and that *Lonrho* was a case involving *lawful* means conspiracy. We see no reason in principle why the three reasons which we have given for the general rule set out at [92] above should not apply with equal force to cases of *lawful* means conspiracy. It is therefore likely that this general rule will apply to the tort of *lawful* means conspiracy as well, although we leave this for determination on a future occasion if and when the question does arise before us.

100 In addition, we would also observe that the three reasons we have offered in respect of the general rule stated at [92] above would generally apply also to the legal costs of defending an action. Unlike the costs of investigating a conspiracy, which may or may not be necessary depending on the dispute, the costs of defending an action seem to be an inevitable expense once a claim is brought against a defendant in legal proceedings and the defendant engages a lawyer. On this basis, the case would seem to be even *stronger* that such costs ought not to be recoverable as damages because to permit such recovery would essentially be to render the requirement of actionable loss or damage otiose.

101 We recognise that there has been some divergence in the authorities on this question. Our decision in *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 ("*Raffles Town Club*") and the High Court's decision in *Lim Kok Lian (executor and trustee of the estate of Lee Biau Luan, deceased) v Lee Patricia (executor and trustee of the estate of Lee Biau Luan, deceased) and another* [2015] 1 SLR 1184 ("*Lim Kok Lian*") can be

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read as decisions supporting the recoverability of the legal costs of defending an action as damages. Another stream of authorities, however, in the form of the High Court's decision in *Strategic Worldwide Assets Ltd v Sandz Solutions (Singapore) Pte Ltd and others (Tan Choon Wee and another, third parties)* [2013] 4 SLR 662 ("*Sandz Solutions (HC)*") and our decision on appeal in *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 ("*Sandz Solutions (CA)*") is to the contrary. For the reasons already given above, we consider that in general, the legal costs incurred in defending an action cannot constitute actionable loss or damage in the tort of conspiracy, and would adopt the approach taken by the High Court in *Sandz Solutions (HC)* and this court in *Sandz Solutions (CA)* over the approach adopted in *Raffles Town Club* and *Lim Kok Lian*. However, we leave open for consideration, on a future occasion, the exceptional case where the conspiracy is said to consist of the bringing and the conduct of litigation for purposes that are, and in a manner that is, oppressive in order to injure the defendant. We leave this open because we held in *Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 that the tort of abuse of process is not part of our law, and it is possible in these circumstances that some qualification may be needed to the principle set out in this paragraph and the preceding paragraph.

Application to the facts

102 We now apply the rule we have propounded to the facts of this case. Mr Wong, for SRA, relied on two pieces of evidence to substantiate the claim that his firm's fees were incurred as part of investigative work. The first was an extract from the affidavit of evidence-in-chief of Mr Eng, SRA's chairman, where he set out a table quantifying SRA's losses. The item constituting the relevant head of loss was the sum of $63,200, being "[l]egal fees and

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disbursements" paid to a team of three solicitors. The description of this item was as follows:

> Legal fees and disbursements paid to solicitors (Instructing solicitors on the facts, seeking advice from solicitors on investigating the conspiracy, seeking advice on raising relevant objections to the conspiracy)

Mr Wong also emphasised that the legal fees were described as having been incurred for the period from 16 December 2015 up to 6 May 2016, which was the date on which the present suit commenced. According to Mr Wong, this supported SRA's contention that the legal fees were incurred in investigating the conspiracy, and were not legal costs incurred in prosecuting the present suit.

103 We have significant difficulties accepting this submission. As we pointed out to Mr Wong at the hearing, so described, the work done by D&N was nothing more than what solicitors would typically do in preparing for litigation. In particular, the description of SRA "seeking advice" from its lawyers shows that what D&N did was no more than what lawyers would ordinarily do in advance of litigation; in other words, render legal advice and think of possible legal arguments – "objections" – to rebut the conspiracy alleged by SRA. Nothing about this description tells us what discrete investigative functions D&N performed in order to detect or unravel the conspiracy.

104 Mr Wong told us that what his team did was to look through the documents, find out who the parties to the conspiracy were and what motives they might have had, and discover how the conspiracy was executed. But reviewing documents, identifying the parties to the conspiracy so as to establish the persons against whom a claim in unlawful means conspiracy could be mounted, and discerning their possible motives so as to establish whether the

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conspiracy was targeted at SRA, which is an element of the tort, are no more than what any counsel would have to do in order to determine whether a claim in unlawful means conspiracy has reasonable prospects of success and ought to be pursued. In *Magdeev*, Mr Tsvetkov, in seeking to recover as damages the investigation costs which he had incurred, relied on his lawyers having undertaken a detailed review of documents to investigate the conspiracy and identify who was party to it and what actions had been done to execute it (see *Magdeev* at [114]), but Picken J considered that the costs incurred in that regard did not consist of anything other than costs incurred by Mr Tsvetkov's lawyers in preparing for litigation (see *Magdeev* at [117]; see also [90] above). So too in this case.

105 As for the purported significance of the legal fees outlined at [102] above having been claimed only up to the date of commencement of the present suit, we fail to see how this assists SRA. This might establish the point that the legal fees were not incurred in carrying out the litigation once it had commenced, but, equally, it does not mean that those fees were not costs that would ordinarily, and indeed necessarily, be incurred by lawyers in preparing for litigation. Indeed, Mr Wong himself eventually conceded that not all the work done by his firm before the present suit commenced comprised investigative work.

106 Mr Wong attempted to buttress his submission by drawing our attention to a second piece of evidence, namely, the evidence given by Mr Eng under cross-examination by counsel for SSA, Mr Anthony Lee ("Mr Lee"). Mr Lee invited Mr Eng to explain the description of the work done by D&N under the label "seeking advice from solicitors on investigating the conspiracy". Mr Eng's reply was essentially that SRA had to ask what the suspension from SSA meant and what SRA should do in response. When asked to elaborate further, Mr Eng

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stated that the fees paid to D&N were fees incurred because SRA "needed to consult someone", and it so happened that the advisors whom SRA consulted were their legal advisors, D&N.

107 This exchange between Mr Lee and Mr Eng does not take SRA's case any further. It sheds no light at all on what work D&N actually performed. It tells us that SRA consulted D&N, but it says nothing about what D&N did and whether that work was purely investigative or also advisory, which is the relevant inquiry for this purpose.

108 Mr Wong then submitted that the question whether D&N's fees were incurred in respect of advisory work or investigative work should be held over to the assessment of damages, when the taxing registrar could receive further evidence on this issue. We reject this for two reasons. First, as a matter of principle, if it has not been established in the liability phase of an action in the tort of conspiracy that actionable loss or damage was occasioned – which is precisely the question before us now – then the tort will not have been established and there will be no reason at all for the matter to proceed to the assessment of damages. Second, to accept Mr Wong's suggestion would be to give SRA a second chance at fixing gaps in the case it has brought, and that is not only wrong in principle, but also wholly unfair to the Individual Defendants, who are the alleged conspirators in this case.

109 In our judgment, nothing in the evidence we were shown indicates that D&N's fees were of a sort that would *not* have been recoverable as the costs of the action. SRA is therefore unable to bring itself within the proviso to the rule spelt out above at [92], and so we consider that D&N's fees do *not* constitute actionable loss or damage for the purposes of SRA's claim in unlawful means conspiracy.

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110 Faced with these significant hurdles, Mr Wong fell back on his secondary submission that actionable loss or damage could be found in the efforts undertaken by various SRA Council members who had to expend their time and resources to investigate the conspiracy, incurring expenses to the tune of $16,180.

111 This submission is also not borne out by the evidence. The description of the work allegedly done by the SRA Council members was this:

> SRA Council meetings (urgent and scheduled), reading documents, preparation of documents to instruct solicitors, instructing solicitors, seeking advice from solicitors on investigating the conspiracy, seeking advice on raising relevant objections to conspiracy and related disbursements

112 This description only tells us that the SRA Council members gave instructions to SRA's solicitors, who then had to investigate the conspiracy. The SSA Council members do not appear to us to have pursued any investigations on their own, and, indeed, Mr Eng's responses in cross-examination that we narrated above at [106] support this. Thus, the expenses incurred by the SRA Council members in relation to the investigation of the conspiracy also cannot constitute the requisite actionable loss or damage. In addition, we also agree with the Judge that the expenses of the SRA Council members cannot be claimed by SRA as *SRA's* own loss or damage. As the Judge found, SRA was not obliged to pay its council members for their efforts in relation to the investigation of the conspiracy, given that they were volunteers: see GD at [92]; see also [44] above.

113 In summary, SRA's claim in unlawful means conspiracy fails because the element of actionable loss or damage is not made out. It is therefore unnecessary for us to consider the other sub-issue raised by the parties' arguments, namely, the scope of "unlawful means" for the purposes of this tort,

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and whether such means were made out on the facts. For completeness, we note that we last had the occasion to consider this point in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT*"), and there expressed the view that "unlawful means" ought not to be confined only to actionable civil wrongs: at [91]. We recognised that giving "unlawful means" a wide meaning could raise questions as to what criminal conduct would amount to the requisite unlawful means and what would not, and suggested that the test of "instrumentality" proposed by Lord Nicholls of Birkenhead in *OBG Ltd and another v Allan and others* [2008] 1 AC 1 might be useful for that purpose: see *EFT* at [93]. Nothing in the parties' submissions has persuaded us that that view was incorrectly taken. Thus, although we cautioned in *EFT* itself that the scope of "unlawful means" remains a live question, we take the view that *EFT* continues to represent the state of the law in Singapore.

Issue 2: Is SRA entitled to declaratory relief in respect of the Circular Resolution?

114 We turn to the second substantive issue in this case. This concerns SRA's application for declaratory relief in respect of the Circular Resolution suspending its privileges at the NSC, which it alleged was *ultra vires* the SSA Constitution. SRA sought declarations essentially to the effect that the Circular Resolution was null and void, and that SSA had no power to make decisions by circular resolution. We reproduce below the text of the key declaratory reliefs set out in SRA's Statement of Claim (Amendment No 2) (SRA's "statement of claim"):

> **AND THE PLAINTIFF CLAIMS:**
>
> 1) An order that the Circular Resolution be declared null and void;

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> 2) A declaration that [SSA] has no rights and/or powers under its Constitution to impose any partial or total suspension of the rights and/or privileges of [SSA's] members at the [NSC] or otherwise;
>
> …
>
> 4) A declaration that [SSA] has no rights and/or no powers under its Constitution to table and/or pass circular resolutions of its Council;
>
> …
>
> 6) A declaration that [SSA] has no rights and/or powers under its Constitution to seek armoury licenses;
>
> …
>
> 8) A declaration that [SSA] has no rights and/or powers under its Constitution to regulate the usage and/or mode of storage of firearms and ammunition in armouries by its members;
>
> …

115 The Judge decided in favour of SRA on this issue, and made the following three declarations (see GD at [156]; see also [47] above):

(a) The Circular Resolution suspending SRA's privileges at the NSC was null and void.

(b) SSA had no power to suspend the rights of its members save as expressly provided for in the SSA Constitution.

(c) Unless and until the SSA Constitution was amended to provide otherwise, the SSA Council did not have the power to make decisions by circular resolution.

116 The Judge made no order on SRA's application for declarations in respect of SSA's right and/or power to apply for armoury licences and regulate the usage and/or mode of storage of firearms and ammunition because he

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considered that it was unnecessary for him to do so, having determined that the Circular Resolution was invalid: see GD at [157].

The parties' arguments

117 The appellants contend in this appeal that the Judge was wrong to have made the declarations set out at [115] above. They make two main arguments in this regard. The first is that there was no real controversy underlying the declaratory relief sought by SRA because the Circular Resolution had been superseded by the two SSA Council resolutions passed on, respectively, 13 February 2016 and 9 April 2016 suspending SRA as a member of SSA and, as a corollary, SRA's privileges at the NSC (see [34] above). Alternatively, there was no real controversy in any event because SSA's power to suspend SRA's privileges at the NSC had been wholly removed when Sport SG terminated SSA's sub-lease of the NSC on 6 February 2016.

118 Second, the appellants also attack SRA's standing to seek the declarations set out in its statement of claim. They argue that the Circular Resolution was not a document that had any legal effect in and of itself, citing *Koh Sin Chong Freddie v Singapore Swimming Club* [2015] 1 SLR 1240 and *Goh Kim Hai Edward v Pacific Can Investment Holdings Ltd* [1996] 1 SLR(R) 540. Instead, it was in the nature of a resolution that had to be communicated to SRA before it could take legal effect, and it was never so communicated. SRA's legal rights therefore could not have been affected by the Circular Resolution, and thus, SRA could not be enforcing any rights personal to it as would properly be the subject of declaratory relief.

119 On its part, SRA defends the Judge's decision on appeal. It contends that a real controversy existed at the time it sought declaratory relief, even though SSA's sub-lease of the NSC had been terminated by then. The NSC could be

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reopened at any time, and SRA would be at SSA's mercy if the right to manage and operate the NSC were subsequently restored to SSA.

120 In addition, in its written case, SRA relies on our observations in *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") and *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 ("*Vellama*") to support the grant of declaratory relief "even if the facts on which the action is based can be described as theoretical" (see *Vellama* at [25]), such as where the controversy in question might have been overtaken by subsequent events. SRA says that the focus in this case should be on whether the declarations sought in its statement of claim are "of value" to it, which they are, inasmuch as they would restrain SSA from carrying out further breaches of the SSA Constitution by passing yet more circular resolutions, or yet more resolutions purporting to suspend SSA members such as SRA itself.

The law

121 The law concerning a party's standing to seek declaratory relief in the courts is relatively straightforward. The requirements are set out in our decision in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112, and distilled by our subsequent decision in *Tan Eng Hong* as follows (at [72]):

(a) the applicant must have a "real interest" in bringing the action;

(b) there must be a "real controversy" between the parties to the action for the court to resolve; and

(c) the declaration sought must relate to a right which is personal to the applicant and which is enforceable against an adverse party to the litigation.

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Our decision

122 We focus on the requirement that there must be a "real controversy" between the parties as we consider this to be the strongest part of the appellants' case. In our judgment, the appellants are correct in contending that there was no real controversy underlying the declaratory relief sought by SRA at the time it brought its application for such relief. Instead, the controversy which such relief was intended to resolve had become academic by the time SRA commenced the present suit on 6 May 2016.

123 The entire purpose of the Circular Resolution was to suspend SRA's privileges *at the NSC*, as the relevant part of the Circular Resolution under the heading "TERMS OF THE SUSPENSION" (reproduced at [30] above) makes clear. But SSA lost the power to manage and operate the NSC when its sub-lease with Sport SG was terminated on 6 February 2016 (see [35] above), well before the present suit commenced on 6 May 2016 (see [36] above). As Mr Patrick Chen, the fourth appellant, pertinently observed in his affidavit of evidence-in-chief, on 6 February 2016, "[Sport SG] took back control of the Demised Premises". SRA was fully cognizant of this state of affairs because in its statement of claim, it pleaded that "[o]n 6 February 2016, the lease to the [NSC] between [Sport SG] and [SSA] was terminated by [Sport SG]. *The NSC was therefore shut down by [Sport SG]*" [emphasis added].

124 We note that when Sport SG terminated SSA's sub-lease of the NSC, it gave SSA certain residual powers to manage the NSC as its interim managing agent. But those powers were severely restricted by Sport SG's own conditions. The email from Sport SG terminating SSA's sub-lease stated that "SSA is appointed, in the interim, as managing agent of the [NSC] for [Sport SG] until further notice" subject to certain conditions. One of those conditions was that

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"[the NSC] … shall be shut down with immediate effect and access shall be strictly limited" only to: (a) authorised staff of SSA; (b) national carded athletes; (c) officers, agents and representatives of the relevant government authorities; and (d) any other persons expressly authorised in writing by Sport SG. It seems to us quite clear that the imposition of those conditions meant that SSA was unable to confer on or grant SRA any privileges at the NSC, which correspondingly entailed that it also could not suspend any such privileges.

125 In our judgment, the effect of the NSC having been shut down and the strictness of the conditions under which SSA could manage the NSC as Sport SG's interim managing agent entails that there was no factual basis to grant the first declaration made by the Judge – that the Circular Resolution was null and void – because that resolution was entirely moot by the time the present suit commenced. By that time, SSA simply had no power to suspend SRA's privileges at the NSC as it was itself no longer in a position to grant or confer such privileges.

126 In addition, we consider that the shutdown of the NSC also removed the factual bases for the second and third declarations made by the Judge. The short point as regards the third declaration is that the question whether the SSA Constitution permitted the SSA Council to make decisions by circular resolution was a live question only because a circular resolution had been passed which appeared to have had some legal effect to it. But that legal effect was wholly overtaken by subsequent events when SSA's sub-lease of the NSC was terminated, so the factual basis for the controversy which that declaration was intended to resolve was removed.

127 Similarly, although the second declaration granted by the Judge is framed more widely and addresses the question whether SSA has the power to

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suspend its members' rights if such suspension is not expressly provided for in its constitution, it seems to us that the factual substratum for such a declaration must be an act of suspension. The only relevant suspension on the facts was the suspension of SRA's privileges at the NSC, but that factual substratum was extinguished by Sport SG's terminating SSA's sub-lease of the NSC and restricting the latter's powers to manage the NSC as Sport SG's interim managing agent.

128 We pause briefly to address some of the arguments made on behalf of SRA. Mr Wong submitted that the declarations made by the Judge ought to stand because the NSC could have been reopened at any time, and SSA would then have been in a position to suspend SRA's privileges at the NSC. In our judgment, this argument does not assist SRA. The premise of this submission is clearly a hypothetical scenario, contingent not only on the NSC being reopened, but also on Sport SG restoring to SSA the power to manage and operate the NSC. It is precisely such hypothetical situations that the requirement of a real controversy is intended to exclude. If the hypothetical scenario canvassed by Mr Wong does occur, declaratory relief could be sought *at that time* as a real controversy might then exist.

129 Similarly, SRA's reliance on the observations made by this court in *Tan Eng Hong* and *Vellama* does not assist it. It is true that our courts may grant a declaration even if the facts on which the claim for the declaration is based or the issue to which it relates can be described as theoretical, if such a declaration will be helpful to the parties or the public: see *Tan Eng Hong* at [143]. But the court will generally only make such a declaration where there is a good reason in the public interest to do so: see *Tan Eng Hong* at [145]–[146]. It is not the case that simply because the declaration might have "value" to the plaintiff, standing for declaratory relief will be established. Such public benefit is notably

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absent from this case, which, although presented as a case involving charities governance at large, is in substance really a dispute about the governance of *one* particular charity, SSA, and how *its* constitution has allegedly been breached.

130 It is apparent from this analysis that we consider SRA's application for declaratory relief in respect of the Circular Resolution to be ill-founded. Indeed, as we observed at the hearing, the absence of a real controversy struck us as a significant defect in SRA's case for declaratory relief. This hurdle could only have been overcome if the Judge's findings in respect of SRA's application for declaratory relief were seen instead through the rather different lens of substantiating SRA's conspiracy claim. Had the application for declaratory relief been taken alone, the grant of declaratory relief ultimately could not have been supported in the absence of a real controversy. But, viewed instead through the lens of SRA's claim in the tort of unlawful means conspiracy, a determination that the Circular Resolution was *ultra vires* would probably have been necessary to establish the necessary element of "unlawful means" for the purposes of this tort. Thus, the conspiracy claim *might* have constituted the relevant real controversy for the purposes of the application for declaratory relief, but that, of course, crucially depended on the conspiracy claim succeeding. That claim, however, has failed for lack of actionable loss or damage. Thus, even the potential lifeline that the conspiracy claim presents to the application for declaratory relief is unavailable.

131 We therefore hold that by the time the present suit commenced on 6 May 2016, the real controversy underlying the declaratory relief sought by SRA had been extinguished. Given this conclusion, it is unnecessary to consider the parties' other arguments concerning the declarations sought by SRA. Declaratory relief ought not to have been granted, and we therefore set aside the three declarations made by the Judge.

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Issue 3: Is SSA entitled to an indemnity for the cost of demolishing the Proprietary Range?

132 We turn now to deal with SSA's counterclaim for an indemnity of $26,536, being the cost that it incurred in hiring Pikasa to demolish the Proprietary Range. SSA relied on cl 10 of the Agreement, which we set out in full below at [136], as the basis for its counterclaim. The Judge dismissed SSA's counterclaim, holding that SSA could not rely on cl 10 of the Agreement because it had itself breached the Implied Term in the Agreement that it would use reasonable efforts to assist SRA in obtaining planning and building approval from BCA for the construction of the Proprietary Range: see GD at [118] and [147]; see also [46] above.

The parties' arguments

133 On appeal, SSA contends that the Judge was wrong in his conclusion on the Implied Term. There is, SSA asserts, in fact no gap in the Agreement that the Implied Term is necessary to fill. SSA relies on the "Approval Procedure" set out in SRA's closing submissions in the proceedings below as evidence that the parties' respective responsibilities in the regulatory approval process *were* contemplated by the parties. SSA submits that this is a case where the parties did contemplate the scenario in question, but failed to make provision for it, which, on the authority of our decision in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*"), is an insufficient basis upon which to imply a term in a contract. SRA, on the other hand, defends the Judge's analysis and decision in respect of the Implied Term, and his finding that it was breached by SSA.

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Our decision

134 In our judgment, it was unnecessary for the Judge to find the Implied Term in order to conclude that SSA was not entitled to an indemnity for the cost of demolishing the Proprietary Range. Instead, cl 10 of the Agreement is sufficient, on its own terms, to exclude SSA from claiming such an indemnity.

135 The relevant principles to be applied in the construction of contracts are well established by several decisions of this court, notably, *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029, *Sembcorp Marine*, which SSA relies upon, and *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 ("*YES F&B*"). We do not propose to set out the entire body of principles here. What the cases make clear is that the text of the provision concerned is the first port of call in interpreting a contract: see *YES F&B* at [32] and *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]. In addition, avoiding an absurd result is one factor that must be considered by the court in interpreting a contract because the court should ordinarily assume that the parties did not intend the contractual term(s) in question to produce an absurd result: see *YES F&B* at [32].

136 The critical question before us is the scope of the indemnity in cl 10 of the Agreement. The relevant part of cl 10 provides that SRA shall indemnify and keep indemnified SSA from (among other liabilities) all claims, proceedings, costs, losses and expenses which SSA may suffer or incur "for any death, injury, loss and/or damage caused directly or indirectly by ***its*** activities, including the activities of ***its*** members, employees, independent contractors, agents, invitees or other permitted occupier at the [NSC]" [emphasis added]. In

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our judgment, the parties could only have intended the word "its" in cl 10 to be a reference to SRA. The natural reading of cl 10 supports this interpretation. If the word "its" is substituted by the word "SRA's", the clause will read thus:

> **10. INDEMNITY**
>
> [SRA] shall indemnify and keep indemnified the SSA from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, penalties, costs (including repair costs to reinstate the [Proprietary] Range), losses and expenses of any nature whatsoever which *the SSA may suffer or incur for any death, injury, loss and/or damage caused directly or indirectly by [SRA's] activities, including the activities of [SRA's] members, employees, independent contractors, agents, invitees or other permitted occupier at the [NSC]*, including all losses and expenses which the SSA may incur arising from the Insurance Policy [taken out by SRA] not being in force for any reason, or if in force, [being] inadequate to cover all losses and expenses.
>
> [emphasis added]

In short, the effect of cl 10 is that SRA will indemnify SSA in respect of all liability and/or loss that SSA may suffer or incur as a result of SRA's activities, which only seems commercially sensible.

137 In contrast, an absurd result would ensue if the word "its" in cl 10 is interpreted as referring to SSA instead. In that event, cl 10 would require SRA to indemnify SSA for liabilities that SSA has suffered or incurred as a result of *SSA's own* activities. We struggle to see why SRA would have agreed to such an absurd result and to be, in effect, the insurer of SSA's misdeeds or misfortunes. Although the avoidance of an absurd result is only a starting point in the process of contractual interpretation, inasmuch as the court will uphold an interpretation of a contractual term that produces an absurd result if this is what the parties did intend (see *YES F&B* at [32]), no objective evidence was proffered, and no arguments were made, to suggest that such a result was intended by cl 10.

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138 The question that follows is whether SSA's demolition of the Proprietary Range falls within the indemnity in cl 10 of the Agreement. We have no hesitation in finding that that unilateral act of SSA falls outside cl 10. In the first place, the cost of the demolition does not represent loss incurred by SSA that was caused by *SRA's* activities. SSA hired Pikasa of its own accord to demolish the Proprietary Range *even though* SRA had asked SSA to desist from doing so while it attempted to make representations to BCA about the Demolition Order: see [28] above.

139 Secondly, to give SSA the benefit of the indemnity in cl 10 would be to allow it essentially to benefit from its own wrong. SSA knew of the option of regularising the Proprietary Range at the same time it was notified of BCA's Demolition Order: see [15] above. It wilfully concealed that option from SRA, and, in its correspondence with SRA, made it appear as though there was *only* the option of demolition when this was not in fact the case: see [17]–[21] above. SRA fortuitously came to know of the option of regularisation by its own efforts when it reached out to BCA: see [24] above. And even then, when BCA offered to organise a meeting with both SRA and SSA to discuss the options of demolition and regularisation, SSA refused to participate: see [25] above. In short, SSA stonewalled SRA. This was plainly unreasonable behaviour, especially given the sheer wastefulness of demolishing a shooting range that had cost almost $300,000 to build (see [9] above) when there was a lawful and much cheaper alternative, namely, regularisation. In these circumstances, we are amply satisfied that SSA cannot invoke cl 10 to claim an indemnity for the cost of demolishing the Proprietary Range. SSA's counterclaim therefore fails.

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Issue 4: Does s 31 of the Charities Act require that this dispute be litigated in the High Court?

140 We come to the fourth issue, which, as we foreshadowed above at [55], was developed in the course of oral argument before us. To recapitulate, we perceived the conspiracy claim as forming the heart of the dispute between the parties. However, the loss that SRA had allegedly suffered as a result of the conspiracy was, on its primary submission, a sum of only $63,200 (see [102] above), and, on its secondary submission, an even lower sum of $16,180 (see [110] above). These sums were well below the monetary threshold for claims to be commenced in the High Court. In view of this, we put our concerns to Mr Wong.

141 Mr Wong's response was that this was a case concerning declaratory relief being sought against a charity for breaches of the charity's constitution, and therefore, pursuant to s 31 of the Charities Act, the dispute *had* to be litigated in the High Court. Further, SRA had obtained the requisite approval of the Commissioner of Charities ("the Commissioner") to commence the litigation in the High Court, so there was nothing procedurally improper about mounting the present suit in the High Court. Mr Wong also argued that it made more sense, both as a matter of litigation strategy and cost savings, for the conspiracy claim to be heard in the High Court together with the application for declaratory relief, given the similar ground that would have to be traversed. This would, he said, avoid additional costs being incurred in respect of satellite litigation of the conspiracy claim in the State Courts.

The relevant statutory provisions

142 We first examine the relevant provisions of the Charities Act. The provision that is of foremost relevance is s 31, which we set out here in full:

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> **Taking of legal proceedings**
>
> **31.**—(1) Charity proceedings may be taken with reference to a charity either by the charity, or by any of the governing board members, or by any person interested in the charity, but not by any other person.
>
> (2) Subject to this section, no charity proceedings relating to a charity (other than an exempt charity) shall be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commissioner.
>
> (3) The Commissioner shall not, without special reasons, authorise the taking of charity proceedings where in his opinion the case can be dealt with by him under the powers of this Act.
>
> (4) This section shall not require any order for the taking of proceedings in a pending cause or matter or for the bringing of any appeal.
>
> (5) Where subsection (2) requires the taking of charity proceedings to be authorised by an order of the Commissioner, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from the High Court.
>
> (6) Nothing in subsections (1) to (5) shall apply to the taking of proceedings by the Attorney-General, with or without a relator.
>
> (7) Where it appears to the Commissioner, on an application for an order under this section or otherwise, that it is desirable for legal proceedings to be taken with reference to any charity (other than an exempt charity) or its property or affairs, and for the proceedings to be taken by the Attorney-General, the Commissioner shall so inform the Attorney-General, and send him such statements and particulars as the Commissioner thinks necessary to explain the matter.
>
> (8) In this section, "charity proceedings" means proceedings in the High Court brought under the jurisdiction of the Court with respect to charities, or brought under the jurisdiction of the Court with respect to trusts in relation to the administration of a trust for charitable purposes.

143 Another provision that is also relevant is s 24 of the Charities Act, in particular, ss 24(1), 24(4) and 24(5), which we set out here as well:

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> **Concurrent jurisdiction with High Court for certain purposes**
>
> **24.**—(1) Subject to the provisions of this Act, the Commissioner may, with the consent of the Attorney-General, by order exercise the same jurisdiction and powers as are exercisable by the High Court in charity proceedings for the following purposes:
>
> (*a*) establishing a scheme for the administration of a charity;
>
> (*b*) appointing, discharging or removing a governing board member of a charity or trustee for a charity, or removing an officer or employee; and
>
> (*c*) vesting or transferring property, or requiring or entitling any person to call for or make any transfer of property or payment.
>
> …
>
> (4) The Commissioner shall not exercise his jurisdiction under this section in any case (not referred to him by order of the High Court) which, by reason of its contentious character, or of any special question of law or of fact which it may involve, or for other reasons, the Commissioner may consider more fit to be adjudicated on by the High Court.
>
> (5) An appeal against any order of the Commissioner under this section may at any time, within the 3 months beginning with the day following that on which the order is published, be brought in the High Court by the charity or any of the governing board members, or any person interested in the charity, or by any person removed from any office or employment by the order.

144 We consider that a few key propositions can be discerned from reading ss 24 and 31 together. First, certain categories of charity proceedings may be dealt with either by the Commissioner or by the High Court, as ss 24(1) and 31(8) make plain. We recognise that s 31(8) provides that the definition of "charity proceedings" set out therein applies only "[i]n this section"; in other words, "charity proceedings" as so defined applies only to s 31. However, it is also a well-recognised rule of statutory interpretation that where an identical expression is used in a statute, it should presumptively have the same meaning:

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see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [58(c)(i)]. Thus, notwithstanding the express limitation in s 31(8), "charity proceedings" as used in s 24(1) should presumptively have the same meaning as in s 31(8), in the absence of any indications to the contrary. We can find no such indications, and, indeed, would observe that the phrase "as are exercisable by the High Court in charity proceedings" in s 24(1) in fact militates in favour of "charity proceedings" having the same meaning in both ss 24(1) and 31(8). A similar view was reached by Russell LJ in *Construction Industry Training Board v Attorney-General* [1972] 3 WLR 187 (at 191A) in discussing the English counterparts to ss 24(1) and 31(8) in the Charities Act 1960 (c 58) (UK) ("the 1960 English Act").

145 Second, the jurisdiction of the Commissioner is more limited than that of the High Court. Section 24(1) provides that the Commissioner shall have the same jurisdiction as the High Court in respect of charity proceedings concerning the three defined categories of matters set out in ss 24(1)(*a*) to 24(1)(*c*), but there is no such limitation on the High Court's jurisdiction.

146 Third, the Commissioner is mandated by the statute to defer to the High Court. Section 24(4) of the Charities Act provides that even where the Commissioner has jurisdiction, he shall not exercise his jurisdiction if the matter is more appropriately adjudicated in the High Court. Relevant considerations to be taken into account by the Commissioner in making this assessment include the contentious character of the dispute, or the raising of special questions of law or fact: see s 24(4).

147 Fourth, the Commissioner is to operate essentially as an adjudicator at first instance in respect of matters that he considers he can deal with. In such instances, his orders may be appealed to the High Court: see s 24(5).

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148 Fifth, charity proceedings (as defined in s 31(8)) in the High Court are *not* to be commenced *unless* the taking of proceedings is authorised by order of the Commissioner: see s 31(2). The Commissioner, in turn, shall not authorise the taking of charity proceedings if he can deal with the case himself, excepting any special reasons: see s 31(3).

149 Sixth, the Charities Act is careful to use the term "charity proceedings" to describe the sort of proceedings which are the subject of ss 24 and 31. The Charities Act does not, by its own terms, mandate that *all* legal proceedings involving charities, whatever their nature, be litigated either before the Commissioner or before the High Court. Instead, ss 24 and 31 speak only of "charity proceedings", which, as we will discuss shortly, is a term of art.

The legislative history of ss 24 and 31 of the Charities Act

150 The present edition of the Charities Act, the 2007 Revised Edition, can be traced back to the Charities Act 1994 (Act 22 of 1994), and, even before that, to the Charities Act (Cap 32, 1982 Ed) ("the 1982 Act"). Before 1982, Singapore had no legislation specifically dedicated to charities: see Ter Kah Leng, "Changes to Charity Law" (1995) 7 SAcLJ 291. The 1982 Act, in turn, was modelled on the 1960 English Act. Subject to a minor amendment to the categories of persons entitled to take out charity proceedings in s 31(1) of the present Charities Act, s 31 as currently worded is materially the same as s 18 of the 1982 Act. Similarly, except for the introduction of s 24(4) of the present Charities Act, s 24 is materially the same as s 14 of the 1982 Act.

151 Sections 24 and 31 of the Charities Act also find substantial parallels in English charities legislation. Section 24 of the Charities Act is materially similar to portions of s 18 of the 1960 English Act, and similarly, s 31 of the Charities Act substantially reproduces s 28 of the 1960 English Act. English charities

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legislation has seen many significant changes since 1960, but the English counterparts to ss 24 and 31 of our Charities Act in the Charities Act 1993 (c 10) (UK) ("the 1993 English Act") at least remain substantially unchanged. Section 24 of our Charities Act reproduces key portions of s 16 of the 1993 English Act, and s 31 of our Charities Act essentially mirrors s 33 of the 1993 English Act. Jurisprudence discussing English charities legislation up to the 1993 English Act is therefore likely to be persuasive in interpreting ss 24 and 31 of our Charities Act.

152 The enactment of the Charities Act 2006 (c 50) (UK), however, brought about sweeping changes to the regulation of charities in the UK, in particular, the introduction of a new body and a new procedure to replace the procedure of appeal from decisions of the Charity Commission to the English High Court: see Hubert Picarda, *The Law and Practice Relating to Charities* (Bloomsbury Professional, 4th Ed, 2010) ("*Picarda*") at p 909. Jurisprudence touching on this and English charities legislation subsequent to the 1993 English Act must therefore be approached with more caution, although this is not to say that they will be wholly unpersuasive. In this regard, we note that s 115 of the Charities Act 2011 (c 25) (UK) materially reproduces s 33 of the 1993 English Act, which, as we have noted above, is the counterpart to s 31 of our Charities Act.

Analysis

153 The question before us is whether this dispute, involving as it does three essential aspects – (a) SRA's conspiracy claim; (b) SRA's application for declaratory relief; and (c) SSA's counterclaim for an indemnity for the cost of demolishing the Proprietary Range – ought to have been litigated in the High Court. In our judgment, answering this question requires us to consider the following points:

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(a) First, did SRA have standing to take charity proceedings against SSA ("the standing issue")?

(b) Second, was the authorisation of the Commissioner obtained for the taking of charity proceedings ("the authorisation issue")?

(c) Third, did the matters in this dispute fall within the definition of "charity proceedings" in s 31(8) of the Charities Act so as to be properly the subject of proceedings in the High Court ("the charity proceedings issue")?

The standing issue

154 The standing issue engages s 31(1) of the Charities Act, which sets out the categories of persons who may take "[c]harity proceedings … with reference to a charity". The charity which is the subject matter of the present suit is SSA. It is clear that the action (save in respect of the counterclaim) was not brought by the charity, SSA, itself. It is also clear that the action was not brought by the governing board members of SSA. Section 2(1) of the Charities Act defines "governing board members" to mean "members of the governing body of a charity or trustees for a charity having the general control and management of the administration of the charity". In the present context, this refers to the SSA Council, which, under Art 8 of the SSA Constitution, is vested with the "administration and management" of SSA.

155 This leaves the residual category of "any person interested in the charity". It has been judicially noted that this is an expression incapable of any precise meaning. The phrase was examined by the English Court of Appeal in *In re Hampton Fuel Allotment Charity* [1989] 3 WLR 513 ("*Re Hampton*") in applying s 28 of the 1960 English Act, the English counterpart to our s 31.

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Nicholls LJ, giving the decision of the court, expressed the following view (at 520C–520G):

> … [T]he interest which ordinary members of the public, whether or not subscribing to a charity, and whether or not potential beneficiaries of a charity, have in seeing that a charity is properly administered is a matter in respect of which the Attorney-General remains charged with responsibilities. He can institute proceedings ex officio or ex relatione. This suggests, therefore, that to qualify as a plaintiff in his own right a person generally needs to have an interest materially greater than or different from that possessed by ordinary members of the public such as we have described.
>
> In our view that may be as near as one can get to identifying what is the nature of the interest which a person needs to possess to qualify under this heading as a competent plaintiff. It is not a definition. But charitable trusts vary so widely that to seek a definition here is, we believe, to search for a will-o'-the-wisp. If a person has an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public as described above, that interest may, depending on the circumstances, qualify him as a "person interested". It may do so because that may give him, to echo the words of Sir Robert Megarry V.-C. in *Haslemere Estates Ltd. v. Baker* [1981] 1 W.L.R. 1109, 1122D: "some good reason for seeking to enforce the trusts of a charity or secure its due administration …" We appreciate that this is imprecise, even vague, but we can see no occasion or justification for the court attempting to delimit with precision a boundary which Parliament has left undefined.

156 We agree with the observations made by Nicholls LJ. The lodestar, it appears to us, is whether the person claiming to be a "person interested" in the charity concerned has an interest in securing the due administration of the charity that is materially greater than or different from that of an ordinary member of the public. This test is amply satisfied on the facts of this case. SRA is a founder member and constituent club of SSA (see [1] and [4] above), and was seeking declaratory relief in respect of a resolution which it perceived not only to have been passed *ultra vires* the governing instrument of SSA, but moreover, to have had the effect of depriving it of certain privileges to which it

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considered itself entitled. SRA would thus have a materially greater interest than ordinary members of the public in securing the due administration of SSA. This may seem a surprising result, given that the absence of a real controversy deprived SRA of standing to obtain declaratory relief in respect of the Circular Resolution, but we consider that the test in s 31(1) is of a different nature: the focus here is on the relationship between SRA and SSA, and whether this means that SRA has an interest in securing the due administration of SSA that is materially greater than or different from that of ordinary members of the public. In our assessment, this latter threshold has been crossed.

The authorisation issue

157 We next consider whether SRA was authorised by the Commissioner to take charity proceedings in the High Court, as required by s 31(2) of the Charities Act. The English authorities make clear that the purpose of this statutory filter is to prevent the wasteful expenditure of precious charity funds and assets on litigation. In *Muman and others v Nagasena* [2000] 1 WLR 299 ("*Nagasena*"), the English Court of Appeal stayed court proceedings because they constituted charity proceedings that had been commenced without the requisite authorisation. In explaining the requirement of authorisation set out in s 33 of the 1993 English Act (the counterpart to s 31 of our Charities Act), Mummery LJ observed the following (at 305C–305D):

> … To allow the proceedings to continue without authorisation would be to offend the whole purpose of requiring authorisation for charity proceedings. That is to prevent charities from frittering away money subject to charitable trust in pursuing litigation relating to internal disputes. …

Similarly, in *Re Hampton*, Nicholls LJ considered that the filter was instituted to "avoid charities being vexed with frivolous and ill founded claims" (at 520A).

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158 To ensure that the statutory filter has teeth, the English courts have strictly interpreted the requirement that authorisation be obtained. This is illustrated by two cases. The first is the English Court of Appeal's decision in *Amrik Singh v Virender Pal Singh Sikka and others* (2 December 1998, unreported) ("*Amrik Singh*"). There, the Charity Commissioners had approved the taking of charity proceedings in the courts. However, an order was granted staying the proceedings in respect of a particular relief that was claimed because, although charity proceedings had been authorised in respect of other reliefs, the authorisation did not extend to the particular relief that was sought. Peter Gibson LJ, with whom Butler-Sloss LJ agreed, expressed the view that the failure to obtain the Charity Commissioners' approval to pursue that particular head of claim was fatal. Furthermore, that head of claim could not simply be pursued under the residuary category of "further or other relief", in respect of which the Charity Commissioners had granted approval.

159 A similar approach was taken by the English High Court in *Adrian Gordon Dean (on behalf of himself and all other members of the Russian Orthodox Diocese of Sourozh) v Patience Burne and others* [2009] EWHC 1250 (Ch) ("*Dean v Burne*"), which too involved charity proceedings authorised by the Charity Commission. In that case, the suggestion was made that the English High Court should order a scheme in the exercise of its inherent jurisdiction, even though that had not been pursued in the claim nor in a counterclaim, and authorisation of the Charity Commission to seek the scheme had not been obtained: at [118]. Blackburne J referenced the decision in *Amrit Singh* and noted that in that case, the failure to obtain authorisation to pursue the particular relief in respect of which the proceedings were stayed was fatal where that relief was concerned (at [123]). He also referenced his earlier decision in *Associated Nursing plc v Kells and others* (16 October 1996, unreported), which concerned a counterclaim being mounted without authorisation in the context of charity

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proceedings for which authorisation had been obtained. Arguments had been made in that case that s 33(4) of the 1993 English Act (the English counterpart to s 31(4) of our Charities Act), which dispensed with the need to obtain authorisation for "the taking of proceedings in a pending cause or matter", applied so as to allow the counterclaim to be pursued without the Charity Commissioners' authorisation. Blackburne J disagreed, and instead took the view that "section 33(4) did not obviate the need for authorisation where the counterclaim was in the nature of a wholly distinct claim and in no sense arose out of the subject matter of the action": see *Dean v Burne* at [122].

160 Blackburne J therefore concluded in *Dean v Burne* that it was necessary for the Charity Commission's authorisation to be obtained before the scheme could be pursued in court, expressing the following view (at [123]):

> … In these circumstances the better view I think appears to be that, even if there are existing charity proceedings on foot relating to a charity other than an exempt charity, a person who wishes to claim relief in those proceedings, whether as an addition to claims he is already making or by way of counterclaim, requires authorisation under section 33(2) or section 33(5) unless the relief sought is clearly within the scope of any authorisation already given.

161 We endorse the approach taken in *Amrik Singh* and *Dean v Burne*, and rule that the failure to obtain the Commissioner's authorisation to pursue a particular head of claim or relief bars a claimant from presenting that head of claim or relief as part of charity proceedings in the High Court, unless it clearly falls within the scope of authorisation that has already been given.

162 There are clear benefits to be obtained from such a rule. In the first place, such a rule will help to preserve a charity's funds and assets for its charitable purposes, instead of being frittered away on wasteful litigation. Secondly, such a rule discourages those plaintiffs who would seek to mount frivolous or ill-

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founded claims on the back of legitimate ones. An authorised claim ought not to be used simply as a doorstop to open the gate to all manner of unauthorised claims against a charity. The courts must be astute to safeguard a charity's assets for use towards its charitable endeavours. Allowing claims to be brought in the High Court for unauthorised reliefs undermines this important policy objective. Thirdly, instituting a strict requirement that the Commissioner's authorisation be obtained for the pursuit of reliefs helps to strengthen the Commissioner's role in regulating charities generally. Parties should not be encouraged to sidestep the Commissioner by bringing charity proceedings straight to the High Court without the Commissioner's authorisation. Fourthly, the rule helps to ensure that the duties and responsibilities of the Commissioner and the High Court in superintending the administration of charities are appropriately distributed in the way Parliament intended in the Charities Act. Matters which the Commissioner has power to determine should not be escalated to the High Court unless the statutory criteria for doing so are satisfied.

163 In the present case, SRA did obtain an order from the Commissioner to commence proceedings in the High Court. This took the form of a written order dated 24 March 2016 ("the Order") from the chief executive officer of Sport SG, exercising the delegated authority of the Commissioner pursuant to s 2(1) of the Charities (Sector Administrators) Regulations (Cap 37, Rg 6, 2008 Rev Ed). The Order reads as follows:

> … I, Lim Teck Yin, Chief Executive Officer of [Sport SG], hereby authorise [SRA] to take such charity proceedings in the High Court as [SRA] may be advised for the following matters:
>
> 1. [SRA's] claim against [SSA] for its breaches of its Constitution and ultra vires acts; and
>
> 2. Such further or other directions and orders as the High Court may deem fit and just.

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164 It is apparent from the face of the Order that the scope of the authorisation granted was in fact *restricted* only to those claims by SRA that formed the subject of its application for declaratory relief. No mention was made at all of authorisation having been sought by or granted to SRA for the conspiracy claim.

165 In our judgment, the failure to obtain the Commissioner's authorisation to bring the conspiracy claim is fatal to Mr Wong's submission that that claim had to be litigated in the High Court because it formed part of the proceedings against SSA, which was a charity. All that SRA was authorised to do was simply to apply for the declarations that it sought; a conspiracy claim was never authorised as part of the charity proceedings in the High Court at all. Further, the conspiracy claim that was ultimately brought was not even mounted against SSA at all, but was instead directed only at the three Individual Defendants. This does not mean that the conspiracy claim could not have been mounted at all, but SRA would then have had to cross the usual monetary threshold for proceedings to be brought in the High Court in order to properly pursue a claim for damages for unlawful means conspiracy as free-standing relief.

166 To this, Mr Wong submitted that it made more sense, both as a matter of litigation strategy and cost savings, to have the conspiracy claim heard together with the application for declaratory relief (see [141] above). We have significant difficulty accepting this submission. As we have alluded to above, the danger of accepting such a submission is that an authorised head of claim or relief may simply become an anchor for unauthorised heads of claim or reliefs, when the time and effort that have to be expended in litigating the latter might well disproportionately outweigh the time and effort required to pursue the former. Indeed, the facts of this case are a clear illustration of this undesirable outcome: the arguments on the conspiracy claim formed the bulk of the parties'

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submissions in this dispute, and the application for declaratory relief – which itself was undermined by the absence of a real controversy – was little more than the anchor for the conspiracy claim.

167 We also find it difficult to see what benefit SSA as a charity would have gained from having the conspiracy claim litigated in the High Court. We can see how the declaratory relief pursued might have gone towards ensuring its better administration or governance because, had the declarations sought by SRA been granted, they would have established SSA's disobedience of its constitution, which the courts, in seeking to uphold the public interest, would naturally be keen to protect. But the same cannot be said of the conspiracy claim, which was mounted against the Individual Defendants only and thus appears to have no real connection to the administration or governance of SSA as a charity. After all, SRA itself does not seek the removal of the Individual Defendants from their positions of authority in SSA, which is what one would have expected a party concerned about the misbehaviour of the governing board members of a charity to do.

168 It is also befuddling how litigating the conspiracy claim in the High Court can be said to have saved costs. The claim required each of the alleged conspirators, Mr Vaz, Mr Yap and Mr Patrick Chen (the three Individual Defendants), to be cross-examined in court, and extensive submissions had to be made, given the difficulties over the scope of various elements of the tort of unlawful means conspiracy, in particular, the scope of "unlawful means" and "actionable damage", as we have discussed above. In the proceedings below, SRA's legal team had three lawyers on it, while SSA's had two. The costs, it seems to us, must have been significant, and litigating in the High Court could only have added to them. We therefore consider that the conspiracy claim ought

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not to have been mounted in the High Court, and we will spell out the consequences of this in our discussion on costs below.

169 For now, however, we must add that it is not only SRA that has run afoul of the rule propounded above at [161]. SSA, too, failed to obtain the Commissioner's authorisation to bring its counterclaim for an indemnity for the cost of demolishing the Proprietary Range, and the counterclaim can in no way be seen as falling within the scope of the relief that SRA was authorised to pursue. The value of the counterclaim is also a small amount, and far below the monetary threshold for proceedings to be brought in the High Court. This counterclaim, too, could not have supported this litigation in the High Court by itself. This likewise has ramifications in costs, which we address below.

The charity proceedings issue

170 Having determined that SRA's conspiracy claim and SSA's counterclaim for an indemnity were both not authorised to have been brought as charity proceedings in the High Court, it is strictly unnecessary to address whether they fall within the ambit of "charity proceedings" as defined in s 31(8) of the Charities Act in the first place. We will, however, make some observations on this point so as to give guidance to future litigants.

171 "Charity proceedings" is defined in s 31(8) of the Charities Act to mean "proceedings in the High Court brought under the jurisdiction of the Court with respect to charities, or brought under the jurisdiction of the Court with respect to trusts in relation to the administration of a trust for charitable purposes". The leading textbooks concur that the essence of the definition is that charity proceedings are those which involve the proper administration of a charity. Jean Warburton, *Tudor on Charities* (Sweet & Maxwell, 9th Ed, 2003) describes (at para 10-028) charity proceedings as those "in which administration of the

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charity property is sought or which necessarily involves either whole or partial administration or execution of the trusts of the charity". Similarly, *Picarda* describes (at p 914) the court's jurisdiction in charity proceedings as "in effect a jurisdiction over the administration of charities and charitable trusts", and notes that "[a]ccordingly, charity proceedings must be confined to proceedings of an administrative nature".

172 Although no precise test has yet been offered by any of the authorities for identifying charity proceedings, helpful indicia as to what might amount to charity proceedings can be discerned from the cases. In *Nagasena*, Mummery LJ considered that the dispute involved "charity proceedings" because the proceedings related to the administration of a trust for charitable purposes, and raised issues including who were the trustees of the charity, who was its patron, and a third possible dispute as to the identity of its members: see 305B. He commented that those were "matters of internal or domestic dispute and are not a dispute with an outsider to the charity", and the proceedings thus constituted "charity proceedings" within the meaning of s 33(8) of the 1993 English Act. In contrast, actions brought by charities to enforce their common law rights or individual equitable rights not relating to the administration of a charitable trust are not considered to be charity proceedings: see *Holme v Guy* (1887) 5 Ch D 901 and *Rendall v Blair* (1890) 45 Ch D 139 at 153.

173 In our judgment, both SRA's conspiracy claim and SSA's counterclaim for an indemnity for the cost of demolishing the Proprietary Range do not fall within the definition of "charity proceedings". SSA's counterclaim for an indemnity is plainly a claim brought to enforce a term of the Agreement (namely, cl 10), and is therefore an action brought by SSA to enforce its common law rights. SRA's claim in conspiracy is similarly not one that can be described as related to the administration of SSA for the reasons we have given

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above at [167]. Thus, even if we had not found that SRA's conspiracy claim and SSA's counterclaim for an indemnity ought not to have been pursued in the High Court because they were not authorised by the Commissioner to be brought in that forum, we consider that they would not in any event have fallen within the ambit of "charity proceedings". In other words, s 31(8) of the Charities Act would not have *required* SRA's conspiracy claim and SSA's counterclaim for an indemnity to be pursued in the High Court. They could have been pursued independently of the charity proceedings, but they would then have to be assessed in the light of the applicable monetary threshold for a claim to be brought in the High Court, which they plainly did not meet.

Issue 5: How should the disproportionate litigation in this case be addressed in terms of costs?

174 We come finally to the issue of costs. As things stand, the appellants have succeeded in two significant respects of their appeal because we have ruled that SRA's conspiracy claim fails for lack of actionable loss or damage, and SRA's application for declaratory relief fails in the absence of a real controversy. On the other hand, SSA has failed in this appeal in so far as its counterclaim for an indemnity for the cost of demolishing the Proprietary Range is concerned. At the same time, the outcome reached on the substantive issues is not the only consideration we take into account in awarding costs. In our view, this litigation was run in a disproportionate manner by SRA, and this too must be taken into account in our decision on costs.

175 Lawyers have a professional obligation to ensure that a proper risk-benefit evaluation is undertaken at each stage of legal proceedings: see *Lam Hwa Engineering & Trading Pte Ltd v Yang Qiang* [2014] 2 SLR 191 ("*Lam Hwa*") at [36]. This obligation is also codified in r 17(2)(*e*)(i) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("the LPPCR"),

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which states that a legal practitioner "must, in an appropriate case, together with his or her client … evaluate whether any consequence of a matter involving the client justifies the expense of, or the risk involved in, pursuing the matter".

176 In our judgment, the present litigation was disproportionately conducted by SRA in several ways. In the first place, the conspiracy claim ought not to have been part of the proceedings in the High Court. The Commissioner did not authorise the bringing of the conspiracy claim in the High Court; the claim was not even directed at SSA, but was instead directed only at the Individual Defendants; and the claim was ultimately ill-founded for lack of actionable loss or damage. Most strikingly, even if SRA had succeeded in the conspiracy claim, the most it stood to recover, on its best case, was a sum of $63,200, far below the threshold for a claim to be mounted in the High Court. Indeed, the conspiracy claim plainly could not sustain this litigation, which took 11 days of hearing, and involved five lawyers in the High Court and six in the Court of Appeal.

177 Mr Wong characterised this case as one directed towards securing the proper governance of a charity, namely, SSA; but if that belief were truly held, it ought to have warranted further consideration of whether the expense of litigation in the High Court was the appropriate means of achieving this, bearing in mind that SSA's assets would have to be diverted to defending the litigation. It was also said that this was a case that had to be brought on the principle of not allowing SSA to bully SRA; but even then, it had to be asked whether this was a principle that had to be defended at any price, especially given the quantum of the loss that was ultimately claimed.

178 Moreover, it should not be forgotten that even if his client were prepared to take the matter to court and bear the expense of litigation, Mr Wong, as an

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officer of the court, nevertheless owed a higher duty to the court to assess whether it would be in the interests of the administration of justice to pursue the conspiracy claim: see *Lam Hwa* at [37]–[38]. It was not simply his client's money that was at stake; precious judicial time and resources also had to be expended on the claim, even though it was manifestly of insufficient value to be litigated in the High Court.

179 Secondly, the litigation was also disproportionately conducted by SRA because of its failure to pursue more cost-efficient alternatives. We pointed out to Mr Wong at the hearing that one option SRA could have taken, if it were truly concerned that SSA would suspend its privileges at the NSC, was to seek an injunction to restrain SSA from acting on the Circular Resolution and interfering with those privileges. This, it seems to us, would have been a far more cost-efficient approach than bringing what was ultimately a defective application to the High Court for declaratory relief, which decision was then appealed to the Court of Appeal. No reasons were given as to why this path was not taken. Mr Wong reiterated that it was necessary to obtain the declarations sought by SRA so as to secure the proper governance of SSA as a charity. However, the court does not grant declarations in the absence of a real controversy, so more consideration ought to have been given to whether that essential foundation for the application for declaratory relief existed.

180 Thirdly, although SRA ultimately succeeded in defending SSA's counterclaim for an indemnity in respect of the cost of demolishing the Proprietary Range, the reasons we have given for dismissing the counterclaim are quite different from those which SRA offered both here and in the court below. SRA made lengthy submissions in the High Court and before us as to the necessity of implying a term in the Agreement, and finding that that implied term had been breached by SSA so as to preclude SSA from relying on cl 10 of

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the Agreement to claim an indemnity. But a far simpler alternative was available to SRA on the terms of cl 10 itself, as our analysis at [134]–[139] above shows. Although it is not for the courts to say how parties should run their cases, we think it only right to point out that where parties have the option of choosing between a shorter, simpler argument and a more convoluted and circuitous one, they ought to pursue the former instead of the latter. After all, one of the principles expressed in r 9 of the LPPCR is that a legal practitioner must conduct his case in a manner which maintains the efficiency of court proceedings. Thus, in *Lam Hwa*, we criticised counsel for having filed extensive submissions and multiple bundles for an extremely straightforward matter, and observed that doing so when the merits of the case did not require it would not only lead to unnecessary costs for the client, but also amount to a breach of a solicitor's duty to the court: at [38].

181 The appellants, on the other hand, should not imagine that because we have allowed part of their appeal, we endorse their actions in this case. In our judgment, the appellants, in particular, Mr Vaz, have behaved deplorably. The genesis of this dispute can be traced to the actions of the appellants in giving SRA the right to build the Proprietary Range and then completely reversing their position by seeking to undermine SRA instead. To that end, Mr Vaz went behind SRA's back to complain to BCA about the construction of the Proprietary Range, sparking BCA's investigations (see [11]–[12] above); and when BCA found that the requisite regulatory approvals for the construction of the Proprietary Range had not been obtained – just as Mr Vaz had hoped – and issued the Demolition Order, the appellants deceptively concealed the option of regularising the Proprietary Range from SRA. When probed about BCA's Demolition Order at the SSA Council meeting on 14 November 2015, Mr Vaz even had the gall to suggest that the Demolition Order might have been issued as a result of an inspection of the NSC following anonymous poison letters sent

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to various governmental organisations and authorities, despite knowing full well that he was the author of the complaints to BCA: see [20] above. Further, even after SRA fortuitously found out about the option of regularisation of its own accord, the appellants refused to co-operate in the regularisation process in any way whatsoever (see [25] above), and instead proceeded unilaterally to demolish the Proprietary Range (see [33] above). We find it difficult to see the appellants' concealment of the option of regularisation and their persistent failure to co-operate with SRA in any light other than as having been borne out of malice and ill-will.

182 It is true that because of our holdings on the conspiracy claim and the declarations sought by SRA, the appellants are not liable in law to SRA. But these outcomes have nothing to do with the appellants' actions. Far from it. Instead, the fact that no real controversy exists to substantiate SRA's application for declaratory relief is very largely a matter of pure happenstance, arising out of Sport SG's terminating SSA's sub-lease of the NSC and restricting entry rights at the NSC. It is certainly *not* the result of the appellants' having behaved reasonably towards SRA. We therefore record our strong disapproval of and dismay at the appellants' conduct in this case.

183 In our judgment, the actions of the appellants in engendering this dispute and the way the litigation was conducted by SRA reflected appallingly on both parties. We therefore rule that the appropriate order on costs is that there will be no order as to the costs of the proceedings both here and in the court below. As between the parties on either side of this dispute, each party will bear its own costs.

184 That, however, is not the end of the matter. In so far as Mr Vaz is concerned, we are minded to require him *personally* to indemnify and hold SSA

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harmless in respect of any and all legal costs it has incurred or may become liable for as a result of these proceedings. We consider that we are entitled to do so pursuant to O 59 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"), which provides:

> Subject to the express provisions of any written law and of these Rules, the costs of and incidental to proceedings in the Supreme Court or the State Courts, including the administration of estates and trusts, shall be in the discretion of the Court, and the Court shall have full power to determine *by whom* and to what extent the costs are to be paid. [emphasis added]

185 Before we make such an order, we afford Mr Vaz the opportunity, if he contends that we should not do so, to make any submissions in writing, limited in length to ten pages, within 14 days of the date of this judgment.

186 In so far as SRA's solicitors, D&N, are concerned, we are minded to disallow or limit the recovery of their costs as between themselves and their client pursuant to O 59 r 8(1)(*a*) of the ROC, which provides in material part that the court may make an order "disallowing the costs as between the solicitor and his client". We are so inclined because of the grossly disproportionate and ill-advised manner in which we consider this litigation to have been conducted both here and in the court below. Before we make such an order, we afford D&N the opportunity to show cause why such an order should not be made and/or to make any other relevant submissions. Such submissions are to be made in writing, limited in length to 20 pages, and filed within three weeks of the date of this judgment.

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Conclusion

187 For the foregoing reasons, we allow this appeal in part, and rule that SRA's claim in unlawful means conspiracy fails for lack of actionable loss or damage, and its application for declaratory relief in respect of the Circular Resolution fails in the absence of a real controversy. We therefore set aside the three declarations granted by the Judge. We hold, however, that this appeal fails in so far as SSA's challenge to the Judge's dismissal of its counterclaim for an indemnity for the cost of demolishing the Proprietary Range is concerned.

188 Given the disproportionate manner in which the litigation was conducted by SRA as well as the appellants' deplorable conduct, we direct that there be no order as to the costs of the proceedings both here and in the court below, and that each party is to bear its own costs. We will determine what, if any, further costs orders we will make after we have heard Mr Vaz and D&N respectively.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Lee Hwee Khiam Anthony and Huineng Clement Chen (Bih Li & Lee LLP) for the appellants;
Wong Hin Pkin Wendell, Teo Ying Ying Denise (Zhang Yingying), Tan Si Ying Evelyn and Andrew Chua Ruiming (Drew & Napier LLC) for the respondent.

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