IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 214

Suit No 758 of 2017

Between

(1) Ng Tang Hock

… Plaintiff

And

(1) Teelek Realty Pte Ltd
(2) Chew Kar Lay
(3) Ng Pei Ling Shirlyn
(4) Ng Jin Ping Eugene

… Defendants

GROUNDS OF DECISION

[Civil Procedure] — [Limitation]
[Companies] — [Accounts]
[Companies] — [Directors] — [Appointment]
[Companies] — [Directors] — [Duties]
[Companies] — [Directors] — [Loans]
[Companies] — [Directors] — [Meetings]
[Companies] — [Oppression]
[Companies] — [Shares] — [Transfer]
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8 October 2020

Chua Lee Ming J:

Introduction

1 All of the claims in this action related to the first defendant, Teelek Realty Pte Ltd ("Teelek Realty"). The plaintiff, Mr Ng Tang Hock, holds 50% of the shares in Teelek Realty. The second defendant, Mdm Chew Kar Lay ("Wendy"), the third defendant, Ms Ng Pei Ling Shirlyn ("Shirlyn") and the fourth defendant, Ng Jin Ping Eugene ("Eugene"), together hold the remaining 50% of the shares in Teelek Realty. Wendy was married to the plaintiff; they divorced in 2012. Shirlyn and Eugene are their children.

2 The plaintiff's main claims were against Teelek Realty for the repayment of loans, and against Wendy, Shirlyn and Eugene for oppression in relation to the affairs of Teelek Realty. In their counterclaims, Wendy, Shirlyn and Eugene claimed that the plaintiff held his shares in Teelek Realty on trust

for Shirlyn and Eugene in equal shares and sought the transfer of those shares to them.

3 Although I dismissed the plaintiff's claim against Teelek Realty for the repayment of loans, I found largely in favour of the plaintiff in respect of his other claims. In particular, I found that he had succeeded in his oppression claim and I ordered that Teelek Realty be wound up. I dismissed the counterclaims by Wendy, Shirlyn and Eugene. All four defendants have appealed against my decision save for those parts of my decision where I made findings against the plaintiff.

Background

4 The plaintiff is a successful self-made businessman. His first wife passed away in 1989, leaving behind two children, Ng Jin Xiang Kevin ("Kevin") who was born in 1986 and Ng Pei Xia Jeanette ("Jeanette") who was born in 1988.

5 The plaintiff came to know Wendy in 1989 and she was employed as an accounts assistant in two of the plaintiff's then companies, Ti-Lek Trading and Ti-Lek Petroleum Pte Ltd, in 1990. The former was in the business of ship-chandling and the latter owned a tanker vessel used for the supply of oil to Thai fishing vessels. The plaintiff was the owner of both companies.

6 The plaintiff and Wendy started a relationship in 1990 and Shirlyn was born in 1993, followed by Eugene in 1995. The plaintiff and Wendy were married on 21 June 1995, after Eugene was born.

7 Teelek Realty was incorporated in Singapore on 22 May 1996 as an investment holding company. It holds commercial and residential properties. At inception, the plaintiff and Wendy each held 50% of the shares in the company

and both were also directors of the company.

8 The plaintiff's businesses were successful and grew over time, eventually comprising two groups of companies. The first was a group of 12 Panamian companies that owned a total of 12 oil tankers ("the Panama Companies"). The second was a group of companies that supported the operations of the oil tankers ("the Teelek Companies").

9 The plaintiff alleged that sometime in March 2006, he discovered that Wendy had a relationship with another man (one "Eric") and woman (one "Carol"), each of whom had his/her own spouse. Wendy denied this; according to her, Eric and Carol were having an affair with each other only. The plaintiff claimed that he forgave Wendy for the sake of the children.

10 In any event, the marriage did not work out and sometime in 2011, the plaintiff and Wendy started to talk about divorce and the division of matrimonial assets.

11 On 11 September 2011, Wendy left the matrimonial home with Shirlyn and Eugene.

12 The plaintiff and Wendy then effected the division of some of the matrimonial assets.

> (a) On 13 September 2011, the plaintiff transferred his shares in a company called Mingsen Link Limited ("Mingsen") to Wendy and ceased to be a director of Mingsen. The plaintiff described Mingsen as the 'cash cow' of the bulk of the entire revenue earned from [his] offshore shipping operations".[1] Mingsen then held:[2]

(i) fixed deposits of US$22,580,000 and RMB44,815,716.26 with Standard Chartered Bank in Hong Kong, both maturing on 17 November 2011; and

(ii) US$13,505,608.73 with HSBC Private Bank Hong Kong.

(b) The plaintiff also gave Wendy sole control of an account with Citibank, N.A. London Branch, which held more than £1.3m.[3] The plaintiff claimed that this amount was meant for Wendy, Shirlyn and Eugene but Wendy claimed that it was given to her alone.

(c) The plaintiff retained ownership of the Panama Companies and the Teelek Companies.

13 The plaintiff had made a number of loans to Teelek Realty over the years. As of 15 August 2011, the total amount of the loans from the plaintiff to Teelek Realty stood at $12,564,000 ("the Loans").[4] On 1 October 2011, Wendy caused the Loans to be reclassified in Teelek Realty's general ledger as loans owing by Teelek Realty to her instead of to the plaintiff.[5] Wendy claimed that the plaintiff agreed to "waive his claim to [the Loans] in favour of [her]";[6] the plaintiff disputed this.

14 On 9 November 2011, the plaintiff incorporated a company called Goodtree Investment Pte Ltd ("Goodtree").[7] The plaintiff held 40% of the shares in Goodtree while Kevin and Jeanette each held 30%. All three of them were appointed as directors of Goodtree.

15 On or about 10 November 2011, the plaintiff discovered that Wendy had been having an affair with one Mr Jason Chai Eng Yeow ("Jason Chai").[8]

16 On 12 November 2011, the plaintiff met with Shirlyn and Eugene at West Coast Plaza ("the West Coast Plaza meeting") because Shirlyn and Eugene were asking for their maintenance. At the meeting, the plaintiff wrote a note stating that he still owed Shirlyn and Eugene $8,000.[9] The plaintiff also spoke about Wendy's affair with Jason Chai. Eugene threw a chair to the right of the plaintiff. According to Eugene, he did so because he became angry when the plaintiff said that he did not want to see Shirlyn and him again.[10] The plaintiff denied saying this.

17 On 14 November 2011, Wendy filed for divorce ("the divorce proceedings").[11]

18 On 25 November 2011, Goodtree entered into a sale and purchase agreement to buy two units at 192 Pandan Loop, Pantech Business Hub, Singapore ("the Pantech Properties") from Teelek Realty for $2.8m.[12] The sale was completed in January 2012[13] and titles to the Pantech Properties were transferred to Goodtree on 27 January 2012.

19 On 3 January 2012, an interim judgment dissolving the marriage was granted in the divorce proceedings.[14]

20 On 29 May 2012, Goodtree entered into a sale and purchase agreement to buy one unit at 11 Collyer Quay, The Arcade, Singapore ("the Arcade Property") from Teelek Realty for $15m.[15] The sale was completed on 24 July 2012[16] and title to the Arcade Property was transferred to Goodtree on 2 August 2012.[17]

21 It was not disputed that Goodtree purchased the Pantech Properties and the Arcade Property at market value.

22 On 1 August 2012, a consent ancillaries order was made in the divorce proceedings ("the Ancillaries Order").[18] In summary, the Ancillaries Order provided as follows:

(a) The plaintiff and Wendy had joint custody of Shirlyn and Eugene but Wendy had care and control with reasonable access to the plaintiff. The plaintiff agreed to pay Shirlyn and Eugene each a monthly maintenance of $2,500.

(b) Jointly owned properties were divided as follows:

(i) A house at South Buona Vista Road and a Housing and Development Board shop unit at Jurong East Street 31 went to the plaintiff.

(ii) An apartment at Park Infinia at 2 Lincoln Road, and two apartments at Dorsett Residences at 331 New Bridge Road, went to Wendy.

(c) Wendy retained ownership of an apartment at The Centris at 71 Jurong West Central 3, which was registered in her name.

(d) The plaintiff was to transfer $1,688,050 from his Central Provident Fund ("CPF") account to Wendy.

(e) Wendy retained a joint account with Standard Chartered Bank.

(f) The Ancillaries Order was in "full and final settlement of [Wendy's] claim for division of matrimonial assets and maintenance".

(g) Wendy and the plaintiff "shall henceforth retain all other assets in their names" (para 13 of the Ancillaries Order).

23 On 7 August 2012, the plaintiff resigned as a director of Teelek Realty and Shirlyn was appointed as a director in his place.

24 On 21 August 2012, the dissolution of the plaintiff's marriage to Wendy was made final.[19]

25 On 1 September 2014, Eugene was appointed as a director of Teelek Realty.

26 In July 2015, Wendy transferred one share in Teelek Realty to each of Shirlyn and Eugene. The share transfer forms were undated; the Board of Directors of Teelek Realty (comprising Wendy, Shirlyn and Eugene) approved the transfers on 28 July 2015.[20] It was not disputed that the transfers were in breach of Teelek Realty's Articles of Association ("Articles") under which the plaintiff had a right of first refusal.

27 A notice of Teelek Realty's 20th Annual General Meeting ("AGM") was issued on 26 May 2017. The meeting was held on 12 June 2017; the plaintiff attended the meeting through his proxy. The meeting was adjourned without any resolution being voted on. A subsequent notice dated 3 August 2017 was issued for the adjourned meeting to be held on 22 August 2017. This notice included a new proposed resolution to authorise Teelek Realty's directors to allot and issue shares ("Resolution 6").

28 The plaintiff objected to Resolution 6 because it was not proposed or considered at the meeting held on 12 June 2017. The defendants refused to remove Resolution 6 from the agenda for the adjourned meeting.

29 On 17 August 2017, the plaintiff commenced the present action. The

plaintiff also applied for an injunction (*vide* HC/SUM 3757/2017) to restrain the defendants (pending the determination of this action) from, among other things,

(a) holding any meeting at which the plaintiff was not present; and/or

(b) holding any meeting for the purposes of considering and passing resolutions to alter the share capital of Teelek Realty.

30 On 21 August 2017, a consent order was recorded under which the adjourned 20th AGM was adjourned to a date after the plaintiff's application for an injunction had been heard.

31 On 6 October 2017, I heard the plaintiff's application for an injunction. I ordered that, pending the determination of this action, the defendants be restrained from:

(a) holding the adjourned 20th AGM with an agenda that was different from that set out in the notice of the 20th AGM dated 26 May 2017; and

(b) recognising Shirlyn and Eugene as shareholders of Teelek Realty.

32 The 20th AGM was eventually held on 7 November 2017 based on the same agenda as that set out in the notice dated 26 May 2017.

The claims and counterclaims

33 The plaintiff's claims were for the following:

(a) repayment of the Loans (amounting to $12,564,000) by Wendy to Teelek Realty, and by Teelek Realty to him thereafter;

(b) cancellation of the transfers of shares in Teelek Realty by Wendy to Shirlyn and Eugene;

(c) striking off of Wendy, Shirlyn and Eugene as directors of Teelek Realty; and

(d) oppression in relation to the conduct of Teelek Realty's affairs.

34 In their counterclaims, Wendy, Shirlyn and Eugene alleged that the plaintiff held his shares in Teelek Realty on trust for Shirlyn and Eugene, and sought the transfer of those shares to Shirlyn and Eugene. The plaintiff denied any such trust.

Plaintiff's claim for repayment of the Loans

35 The Loans comprised several loans that the plaintiff had made to Teelek Realty up to 15 August 2011, in his capacity as a director of Teelek Realty. Although the Statement of Claim (Amendment No 2) ("SOC") stated the amount of the Loans as "not less than S$11,546,000.00",[21] it was not disputed that the total amount of the Loans was $12,564,000, as reflected in Teelek Realty's general ledger.[22]

36 Teelek Realty and Wendy claimed that:

(a) the Loans were time-barred; and/or

(b) the plaintiff had waived the Loans in favour of Wendy.

Whether the Loans were time-barred

37 The Loans were interest-free and unsecured. There were no repayment terms. In the circumstances, time under the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") began to run from the date of each of the loans: *Hong Guet Eng v Wu Wai Hong (liquidator of Xiang Man Lou Food Court Pte Ltd)* [2006] 2 SLR(R) 458 at [4]. The last loan was made on 15 August 2011. Since the writ in the present action was filed on 17 August 2017, the Loans were time-barred under s 6(1) of the Limitation Act, unless there was a fresh accrual of action within six years of the filing of the writ in the present action.

38 The plaintiff relied on s 26(2) of the Limitation Act under which the right of action to recover a debt shall be deemed to have accrued on the date of an acknowledgment of the claim. He contended that the following constituted acknowledgments of his right to recover the Loans:[23]

(a) Teelek Realty's general ledger, stating "Loan Fm Director – Mr Ng", which was disclosed in Teelek Realty's and Wendy's Supplementary List of Documents dated 16 April 2018. The Supplementary List and the affidavit verifying the same were sent to the plaintiff through his solicitors.

(b) Teelek Realty's general ledger, stating "Loan Fm Director – Mr Ng", which was disclosed in Teelek Realty's and Wendy's second Supplementary List of Documents dated 23 November 2018. The second Supplementary List and the affidavit verifying the same were sent to the plaintiff through his solicitors.

(c) Paragraphs 30, 31, 34 and 35 of Wendy's Affidavit of Evidence-in-Chief ("AEIC") dated 31 October 2018 and paragraphs 28, 29 and 30 of her Supplementary AEIC ("SAEIC") dated 13 December 2019.

(d) The execution, filing and/or service of Wendy's AEIC and SAEIC on or after 31 October 2018 and 13 December 2019 respectively.

Teelek Realty's general ledger

39 Section 27 of the Limitation Act sets out the formal provisions as to an acknowledgment of debt. It requires an acknowledgment of debt to be:

(a) in writing and signed by the person making the acknowledgment or his agent; and

(b) made to the person whose claim is being acknowledged or his agent.

40 Teelek Realty's general ledger, in and of itself, did not constitute an acknowledgement of debt since it was neither signed by Teelek Realty or its agent, nor made to the plaintiff or his agent.

41 However, the plaintiff submitted that s 27 of the Limitation Act was satisfied because the general ledger was disclosed to the plaintiff through Teelek Realty's Supplementary Lists of Documents dated 16 April 2018 and 23 November 2018, and the Lists were verified by affidavits signed by Wendy on behalf of Teelek Realty. The plaintiff relied on *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 ("*Chuan & Co*") in which the Court of Appeal held (at [17]) that "if an affidavit, though by its terms not addressed to the creditor, is nevertheless sent by the debtor to the creditor, that could amount to an effective acknowledgment of the debt".

42 I disagreed with the plaintiff. In my view, the disclosures of the general ledger did not constitute acknowledgments of the plaintiff's Loans for the purposes of ss 26 and 27 of the Limitation Act.

43 First, *Chuan & Co* also held (at [16]) that delivery by compulsion of an order of court does not suffice to constitute an acknowledgment; there must be some intention to convey the contents of the document to the creditor or his agent. An acknowledgment of debt must stem from a voluntary desire to admit such a debt: *Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2007] 4 SLR(R) 565 ("*Murakami*") at [36]. Disclosure of the general ledger, accompanied by an affidavit verifying the List of Documents, was part of the discovery process mandated by the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). It was as much a disclosure by compulsion as one made pursuant to an order of court. Such a disclosure did not embody the intention to convey the contents of the general ledger to the plaintiff. Neither did it stem from a voluntary desire to admit the debt.

44 Second, a document which refers to the alleged debt for the sake of denying its validity cannot be a good acknowledgment: Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 8th Ed, 2018) at paras 18.027–18.028; *Murakami* at [36]–[38], citing *In re Flynn, decd (No 2)* [1969] 2 Ch 403. It could not be disputed that in the present action, Teelek Realty had denied liability for the Loans. Disclosure of the general ledger in the face of Teelek Realty's denial of liability could not constitute a good acknowledgment of the plaintiff's claim for the Loans.

Wendy's AEIC and SAEIC

45 As for Wendy's AEIC, the relevant paragraphs stated as follows:

> 30 On 15th August 2011, a further sum of S$900,000 was lent to the 1st defendant. Like the earlier loans, there was no discussion as to the terms upon which this loan was made.
>
> 31 Although the S$11m Loan and the S$900,000 loan aforesaid were listed in the 1st defendant's accounts as from the plaintiff, they in fact came from the Teelek Group of Companies, of which I have a half share.
>
> …
>
> 34 While I now understand that to properly effect the [waiver of the Loans in my favour], there should have been a deed of waiver or novation signed by all parties, this was not done back in 2011 or 2012.
>
> 35 Further, I also understand that although the waiver of the loans by the plaintiff in my favour were recorded in the accounts of the 1st defendant, the proper double entries were not done. …

46 The relevant paragraphs in Wendy's SAEIC stated as follows:

> 28 In paragraph 18(j) of his [statement of claim], the plaintiff said that the 1st defendant had reclassified this S$11m Loan to my account with the 1st defendant. This is correct.
>
> 29 I gave instructions to do so as the plaintiff … had agreed to give up his claims for all monies owed to him by the 1st defendant and to transfer such loans to me. …
>
> 30 This is confirmed by the plaintiff when he signed an audit confirmation on 12th July 2012. In the said audit confirmation, the plaintiff acknowledged that no money was due from the 1st defendant to him. I also signed another audit confirmation the same day confirming that the sum was due to me.

47 In my view, Wendy's AEIC and SAEIC also did not constitute acknowledgments of the plaintiff's claim for the Loans for purposes of ss 26 and 27 of the Limitation Act. As stated earlier, Teelek Realty had denied

liability for the Loans. The references to the Loans in Wendy's AEIC and SAEIC were simply part of her evidence in denying Teelek Realty's liability.

Whether the plaintiff had waived the Loans in favour of Wendy

48 On 1 October 2011, the Loans were reclassified in Teelek Realty's ledgers as loans owing by Teelek Realty to Wendy, instead of to the plaintiff.[24] Teelek Realty and Wendy claimed that the plaintiff had agreed, in September 2011, to waive the Loans in favour of Wendy.[25] The plaintiff disputed this.

49 Teelek Realty and Wendy bore the burden of proving that the plaintiff had waived the Loans in favour of Wendy. I found that they failed to discharge this burden. Wendy was not a credible witness and I disbelieved her claim that the plaintiff agreed to waive the loans in her favour in September 2011. I found that Wendy had wrongfully reclassified the Loans as loans owing to her.

50 First, there was no contemporaneous document supporting the reclassification of the Loans. On 1 October 2011, the Loans simply appeared in the general ledger as a loan from Wendy to Teelek Realty.[26] Wendy explained that the proper double entries (*ie*, reducing the loans owing to the plaintiff to zero, and crediting the amount of the loans to Wendy's director's loan account) were not made because Teelek Realty changed its accounting software and stopped using the previous software (Oracle) at the end of September 2011.[27] Clearly, Wendy's explanation was weak. The proper double entries could have been made using the new accounting software.

51 Second, right up until the time that Wendy took the stand, Teelek Realty's and Wendy's joint Defence and Counterclaim (Amendment No 4) pleaded as follows:[28]

(a) The plaintiff agreed to the following terms ("the Trust Agreement"):

(i) to hold his shares in Teelek Realty on trust for Shirlyn and Eugene equally;

(ii) to transfer his shares to Shirlyn and Eugene "when they are of majority age or alternatively when they are mature enough";

(iii) to give up his control of Teelek Realty; and

(iv) to "waive his claim to all monies owed to him by [Teelek Realty]".

(b) The Trust Agreement was entered into in the course of various conversations between September 2011 and April 2012 and the "key terms of the Trust Agreement" set out in (a) above were reached "during a conversation that took place sometime in April 2012".

52 Although the Defence and Counterclaim (Amendment No 4) did not plead that the Loans were waived *in Wendy's favour*, it was clear from Wendy's AEIC that this was what she meant.[29] The Defence and Counterclaim (Amendment No 4) was subsequently amended to expressly plead that the Loans were waived in Wendy's favour.[30]

53 Under cross-examination, Wendy confirmed more than once that the agreement to waive the Loans in her favour was reached in April 2012.[31] However, it was not disputed that she had reclassified the Loans in the general ledger as loans given by her, much earlier on 1 October 2011. When questioned about the inconsistency, Wendy could not explain why she had reclassified the

Loans on 1 October 2011 and gave answers that were not responsive.[32] She then changed her evidence to first claim that the agreement to waive the Loans in her favour took place between September 2011 and April 2012,[33] before finally claiming that the agreement took place in September 2011.[34]

54 As a result of Wendy's oral testimony, Teelek Realty and Wendy applied to amend their defence and counterclaim to plead that the agreement to waive the Loans in Wendy's favour took place in September 2011, and that the agreement relating to the plaintiff's shares in and control of Teelek Realty ([51(a)(i)]–[51(a)(iii)] above) was reached in November 2011.[35] The application was made after all the factual witnesses had given evidence but I granted the application as I saw no prejudice to the plaintiff in doing so.

55 I rejected Teelek Realty's and Wendy's claim that the plaintiff had waived the Loans in Wendy's favour. In my view, this claim was nothing more than a concoction by Wendy. Teelek Realty's and Wendy's pleaded case, up to the time that Wendy took the stand, was that the agreement to waive the Loans in her favour was reached in April 2012. On the stand, Wendy was initially firm in her evidence that this was the case. It was only when she was confronted with the fact that the reclassification of the Loans had taken place on 1 October 2011 that she changed her evidence and alleged with surprising clarity that the agreement to waive the Loans in her favour was reached in September 2011. It was clear that Wendy changed her evidence only because she was otherwise unable to explain why she had reclassified the Loans on 1 October 2011. I found Wendy's evidence on the alleged agreement lacking in credibility.

56 Teelek Realty and Wendy also relied on audit confirmations signed by the plaintiff and Wendy on 12 July 2012. The audit confirmation signed by the plaintiff confirmed that as of 31 December 2011, nothing was due to him from

Teelek Realty and *vice versa*.[36] The audit confirmation signed by Wendy confirmed that $12,564,950 (inclusive of $950 in petty cash) was due to her from Teelek Realty.[37]

57 The plaintiff did not dispute signing his audit confirmation. However, the audit confirmation signed by the plaintiff only evidenced his intention to waive the Loans as between him and Teelek Realty; it was not evidence of an intention to waive the Loans in Wendy's favour. Wendy claimed that the plaintiff was aware of the audit confirmation signed by her. In her oral testimony, she alleged that Teelek Realty's auditor had sent *both* audit confirmations to the plaintiff and that she had signed her audit confirmation in the plaintiff's presence when she met with him at the car park.[38] I rejected Wendy's evidence. There was no reason for the auditor to send *Wendy's* audit confirmation to the plaintiff. There was also no independent evidence to show that her audit confirmation was sent to the plaintiff; the auditor was not called to give evidence. Further, Wendy's allegation was not in her AEIC although it was obviously an important piece of evidence.

58 For completeness, I should add that the plaintiff claimed that he had signed his audit confirmation because he thought that the audit confirmation simply reflected the fact that he had not made a demand for repayment yet.[39] I did not accept his explanation. His explanation was not convincing especially since he had signed audit confirmations for 2010 and 2011, each of which reflected the amount owing by Teelek Realty to him even though he had not made any demand for repayment.[40]

59 Teelek Realty and Wendy next relied on the fact that the plaintiff had not objected to Teelek Realty's accounts for FY2012 and FY2013, which showed amounts owing to "a director".[41] Teelek Realty and Wendy argued that

since the plaintiff had resigned as a director of Teelek Realty on 7 August 2012, he would have known that the amounts owing to directors had to be amounts owing to Wendy. In my view, these accounts were not sufficient to prove that the plaintiff had waived the Loans in favour of Wendy. The fact that the accounts did not reflect any loans owed to the plaintiff as a shareholder was consistent with the plaintiff's audit confirmation dated 12 July 2012.

Claim against Wendy for repayment of the sum of $12,564,000

60 Wendy subsequently withdrew the sum of $12,564,000 from Teelek Realty purportedly as repayment of the (wrongfully) reclassified loans. I have found that Teelek Realty and Wendy failed to prove that the plaintiff had agreed to waive the Loans in favour of Wendy. Teelek Realty therefore had a claim against Wendy for the return of the sum of $12,564,000.

61 The plaintiff sought an order for Wendy to pay Teelek Realty the sum of $12,564,000 on the basis of a common law derivative action against Wendy.

62 A common law derivative action takes the form of a representative action: *Sinwa SS (HK) Co Ltd v Morten Innhaug* [2010] 4 SLR 1 at [15]–[16]. In *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 ("*Venkatraman*"), the court held (at [69]) that to bring a claim under the common law derivative action, the following procedural requirements must be met:

(a) A minority shareholder must bring an action on behalf of himself and all the other shareholders of the company, excluding the majority wrongdoers.

(b) The wrongdoers must be named as defendants. The company must also be joined as a defendant so that it is bound by the result of the action.

(c) The statement of claim must disclose that it is a derivative action, and recite the facts that made it so.

63 I agreed with Wendy that the plaintiff had not satisfied the third requirement set out above. The SOC did not disclose that it was a common law derivative action against Wendy or that a claim was being brought against Wendy on behalf of Teelek Realty to recover the sum of $12,564,000. I therefore dismissed the plaintiff's common law derivative action against Wendy.

Plaintiff's claim for cancellation of transfer of shares to Shirlyn and Eugene

64 As stated earlier, on 28 July 2015, Wendy transferred one share to Shirlyn and Eugene each. As Shirlyn and Eugene were not shareholders of Teelek Realty before the transfers by Wendy, article 29 of Teelek Realty's Articles required Wendy to give a "transfer notice" to Teelek Realty stating her desire to transfer the shares to Shirlyn and Eugene.[42] Under article 30, Teelek Realty then had to notify the plaintiff (as the only other shareholder) of the transfer notice and the plaintiff had a prior right to purchase those shares.[43]

65 It was not disputed that Wendy did not give any transfer notice as required under the Articles. Wendy admitted that her non-compliance was wilful.[44] Wendy, Shirlyn and Eugene argued that the plaintiff had suffered no loss or prejudice since he was only a trustee holding his shares in Teelek Realty for the benefit of Shirlyn and Eugene. This argument did not excuse Wendy's

non-compliance with the Articles. In any event, the argument was a non-starter because, as will be seen later in these grounds of decision, I found that the plaintiff did not hold his shares in Teelek Realty on trust for Shirlyn and Eugene.

66 The transfers to Shirlyn and Eugene were in clear contravention of the Articles. In the circumstances, the transfers were invalid and I ordered that they be cancelled.

Plaintiff's claim for Wendy, Shirlyn and Eugene to be struck off as directors

67 The plaintiff sought an order striking off Wendy, Shirlyn and Eugene as directors of Teelek Realty. The plaintiff did not dispute that Wendy and Shirlyn had been legitimately appointed as directors; as for Eugene, I found that his appointment as a director was similarly unimpeachable (see [71] below). The plaintiff submitted that Wendy could and ought to be struck off as a director if she was found to be in breach of director's duties.[45] However, no authority was cited for this proposition. In my view, there was no basis for me to order that Wendy, Shirlyn and Eugene be struck off as directors of Teelek Realty. In any event, this issue was moot because I ordered Teelek Realty to be wound up pursuant to the plaintiff's oppression claim (see [106] below).

Plaintiff's oppression claim

68 The plaintiff complained that the following constituted oppression and/or unfair discrimination and/or prejudice under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"):

(a) Wendy's reclassification and withdrawal of the Loans;

(b) Wendy's share transfers to Shirlyn and Eugene;

(c) the appointment of Eugene as a director of Teelek Realty;

(d) the remuneration paid by Teelek Realty to Wendy, Shirlyn and Eugene;

(e) the holding of fictitious AGMs;

(f) the failure to provide the plaintiff with Teelek Realty's audited accounts for FY2016 within a reasonable time before the 20th AGM;

(g) the inclusion of Resolution 6 in the notice dated 3 August 2017 for the adjourned 20th AGM;

(h) the co-mingling of Wendy's own funds with Teelek Realty's funds;

(i) misappropriation of Teelek Realty's funds; and

(j) Teelek Realty's provision of loans to Wendy, Shirlyn and Eugene.

Wendy's reclassification and withdrawal of the Loans

69 I had found that Wendy had wrongfully reclassified the Loans as loans given by her. Teelek Realty did not owe her the amount of $12,564,000. Wendy therefore misappropriated Teelek Realty's moneys for her own use when she withdrew $12,564,000 from Teelek Realty purportedly as repayment of the (wrongfully) reclassified loans.

Share transfers to Shirlyn and Eugene

70 As stated in [65], it was not disputed that Wendy transferred one share to each of Shirlyn and Eugene in 2015, without giving the transfer notice

required under Teelek Realty's Articles. Further, in her capacity as a director of Teelek Realty, Wendy had failed to ensure that Teelek Realty's Articles were complied with.

Appointment of Eugene as director

71 Eugene was appointed as a director of Teelek Realty on 1 September 2014. The plaintiff complained that he had not approved Eugene's appointment as a director of Teelek Realty.[46] However, Eugene was appointed as a director pursuant to a Directors' Resolution,[47] as permitted under article 78 of Teelek Realty's Articles.[48] The plaintiff's approval was not required as he was no longer a director of Teelek Realty by then, having resigned as a director on 7 August 2012. The plaintiff therefore had no basis to complain about Eugene's appointment.

Remuneration paid to Wendy, Shirlyn and Eugene

72 The plaintiff complained that the remuneration paid to Wendy, Shirlyn and Eugene from FY2013 to FY2016 was not justified and that he did not approve or authorise any of the remuneration paid.[49]

73 The remuneration paid to Wendy, Shirlyn and Eugene were all set out in the audited accounts of Teelek Realty. The plaintiff admitted that he had received the audited accounts.[50] However, the plaintiff did not raise any objections until the present dispute. In my view, the plaintiff had agreed to or accepted the payment of the remuneration to Wendy, Shirlyn and Eugene.

74 I also noted that the plaintiff had initially objected to the remuneration paid to Wendy for FY2012 despite having signed, on behalf of Teelek Realty, a Declaration of Directors' Remuneration for FY2012 confirming the

remuneration of $249,600 that was paid to Wendy.[51] The plaintiff eventually agreed that he had approved the payment to Wendy after he was confronted with this document.[52] The plaintiff's evidence in this regard also raised doubts as to whether his complaints about the remuneration paid to Wendy, Shirlyn and Eugene were made in good faith.

Fictitious AGMs

75 The plaintiff's pleaded case was that copies of Teelek Realty's audited accounts were sent to him but no physical AGMs were held.[53] It was not disputed that no physical meetings were held before the 20th AGM (FY2016). However, the plaintiff admitted that he signed the minutes of and had no objections to any of the resolutions passed at the 15th AGM (FY2011),[54] the 16th AGM (FY2012)[55] and the 17th AGM (FY2013).[56] In my view, there was no reason for the plaintiff to complain about the fact that there were no physical meetings for these AGMs as the plaintiff had agreed to dispense with them.

76 No physical meetings were held for the 18th AGM (FY2014) and the 19th AGM (FY2015) and the plaintiff did not sign the minutes of these two AGMs.[57] The plaintiff may have agreed to dispense with physical meetings in the past but he was entitled to insist on physical meetings if he so chose. The plaintiff had not agreed to dispense with physical meetings for the 18th and 19th AGMs. In my view, Wendy was not entitled to dispense with physical meetings for these two AGMs without the plaintiff's agreement.

Failure to provide audited accounts for the 20th AGM (FY2016)

77 The plaintiff complained that Wendy, Shirlyn and Eugene failed to provide him with the audited accounts of Teelek Realty for FY2016 within a reasonable time prior to the 20th AGM which was held on 12 June 2017.[58] It

was not disputed that the audited accounts were not sent to the plaintiff together with the notice (dated 26 May 2017)[59] of the 20th AGM. On 2 June 2017, the plaintiff (through his lawyers) requested a copy of the audited accounts.[60] The plaintiff received a copy of the audited accounts only on 9 June 2017.[61]

78 As a shareholder, the plaintiff was entitled to a reasonable time to review the accounts so that he could raise any questions that he might have had at the AGM. The plaintiff was clearly not given a reasonable time in this case, particularly as the 20th AGM was held on a Monday (*ie*, 12 June 2017) but he only received the audited accounts on the Friday immediately prior (*ie*, 9 June 2017). As a director, Wendy was required to take reasonable steps to ensure that the accounts were audited not less than 14 days before the AGM unless the plaintiff agreed otherwise: s 201(9)(*a*) of the Companies Act. In my view, Wendy had acted unreasonably in providing the plaintiff with a copy of the audited accounts only on 9 June 2017. If the audited accounts could not be ready at least 14 days before 12 June 2017, then the 20th AGM should not have been held on that date.

79 In response to the plaintiff's request for a copy of the audited accounts, Teelek Realty's lawyers said on 7 June 2017 that "[t]he director of the Company is presently outstation" and that they were "taking instructions",[62] and on 8 June 2017 that they were "in the midst of securing a copy of the requested audited accounts".[63] No reasonable explanation was given as to why Wendy did not provide the plaintiff with a copy of the audited accounts together with the notice of the 20th AGM.

The inclusion of Resolution 6 in the notice of the adjourned 20th AGM

80 As stated earlier, the 20th AGM was adjourned on 12 June 2017, without any resolution being voted on. A subsequent notice dated 3 August 2017[64] was issued for the adjourned meeting to be held on 22 August 2017. This notice included Resolution 6 which reads as follows:

> That pursuant to the provision of section 161 of the Companies Act (Cap. 50), the Directors of the Company be and are hereby authorised to allot and issue shares of the Company to such persons at any time and upon such terms and conditions whether for cash or otherwise and with such rights and restrictions as the Directors may, in their absolute discretion deem fit, and that such authority shall continue in force until the conclusion of the next Annual General Meeting or the expiration of the period within which the next Annual General Meeting of the Company is required by law to be held, whichever is earlier.

81 Article 60 of Teelek Realty's Articles provided that "no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place".[65] Resolution 6 was not in the agenda for the 20th AGM held on 12 June 2017 and therefore should not have been included in the notice of the adjourned 20th AGM.

82 Despite the plaintiff's objections, Wendy insisted on proceeding with Resolution 6. The plaintiff applied for an injunction and on 6 October 2017, I restrained the defendants from holding the adjourned 20th AGM with an agenda that was different from that set out in the notice of the 20th AGM dated 26 May 2017, pending the determination of this action.

83 The 20th AGM was eventually held on 7 November 2017 based on the same agenda as that set out in the notice dated 26 May 2017.

84 The plaintiff submitted that the inclusion of Resolution 6 in the agenda for the adjourned 20th AGM was for the purpose of diluting his interest in Teelek Realty and that there was no commercial reason to issue more shares.[66] I disagreed with the plaintiff. Resolution 6 merely concerned a general authority to allot and issue shares at prices and upon terms to be decided. In my view, the plaintiff's complaints were premature. In any event, the plaintiff would have been entitled to subscribe for any new shares to be issued, in proportion to his existing shareholding. There was no suggestion or evidence that the plaintiff would not have been financially able to do so. There was therefore no basis for the plaintiff's submission that Resolution 6 was for the purpose of diluting his interest in Teelek Realty. In my view, Wendy's attempt to have Resolution 6 passed did not amount to oppressive conduct within s 216 of the Companies Act.

85 However, although Resolution 6 was eventually not proceeded with, Wendy's conduct in connection with Resolution 6 remained a relevant consideration. When the plaintiff objected to Resolution 6, she insisted on proceeding with it even though doing so contravened article 60 of Teelek Realty's Articles. This was in clear disregard of the plaintiff's interest as a shareholder and in breach of Wendy's duties as a director. Wendy removed Resolution 6 from the agenda only because she was compelled to do so by the order that I made on 6 October 2017.

86 In her oral testimony, Wendy explained that Resolution 6 had been included in the agenda by Teelek Realty's corporate secretarial firm without her knowledge because she had told them that she wanted to transfer her shares to Shirlyn and Eugene.[67] I did not accept her explanation. Her explanation did not make sense and the defendants did not call the relevant person from the corporate secretarial firm as a witness. Wendy's explanation also could not be

true because she had already transferred her shares to Shirlyn and Eugene by then. In my view, Wendy's explanation was a fabrication; this further eroded her credibility as a witness.

Co-mingling of funds

87 Wendy became the sole shareholder of Mingsen after the plaintiff transferred his shares in the company to her in 2011 (see [12(a)] above). Wendy is also the sole shareholder of the following companies:

(a) JCWC Investment (S) Pte Ltd ("JCWC Investment"): This company was incorporated on 3 April 2012 to acquire and hold properties.[68] Wendy, Shirlyn and Eugene are its directors.

(b) JCWC Automobile Pte Ltd ("JCWC Automobile"): This company was incorporated on 10 September 2012.[69] Its business includes the sale of motor vehicles and the renting and leasing of private cars. Wendy and Jason Chai are its directors.

(c) JCWC Credit (S) Pte Ltd ("JCWC Credit"): This company was incorporated on 1 October 2012 and was formerly known as JCWC Food (S) Pte Ltd.[70] Its business includes hire-purchase. Wendy and Jason Chai are its directors.

88 It was common ground between the parties that between 2012 and 2018, Teelek Realty received a total amount of $49,878,044.87 comprising the following:[71]

(a) $200,000 from Wendy;

(b) $35,961,817.65 from Mingsen;

(c) $11,252,971.94 from JCWC Automobile; and

(d) $2,463,255.28 from JCWC Credit.

These receipts were recorded in Teelek Realty's books as loans from Wendy. I should add that the above excluded the Loans (amounting to $12,564,000) which Wendy had reclassified as loans given by her to Teelek Realty. Adding the reclassified loans to the above receipts, the total amount of loans from Wendy to Teelek Realty would have been $62,442,044.87.

89 It was also common ground that between 2012 and 2018, Wendy withdrew a total of $62,381,129.46 from Teelek Realty's account.[72] These withdrawals were recorded as repayments of Wendy's loans. The moneys were used to pay various entities including JCWC Automobile, JCWC Credit and JCWC Investment (collectively, "the JCWC entities").

90 The plaintiff complained that Wendy had co-mingled her own funds with Teelek Realty's funds and had used Teelek Realty's moneys as her own. While Wendy had co-mingled her funds with Teelek Realty's funds, I did not think that she had used Teelek Realty's moneys as her own. The receipts by Teelek Realty were recorded as loans from Wendy and the withdrawals by Wendy were made against her loan account, *ie*, the withdrawals were repayments of her loans.

91 In addition, it was also common ground that there were another nine deposits into and ten withdrawals from Teelek Realty's account, that were not recorded and reflected in Teelek Realty's general ledger.[73] These deposits and withdrawals took place between 9 September 2015 and 13 July 2017. A total amount of $1.4m was deposited into Teelek Realty's account; a matching total

amount was withdrawn. The withdrawals were usually made on the same day as the deposits but on three occasions, the deposits were made within two days after the withdrawals. There was no suggestion or evidence that the deposits were meant for Teelek Realty. These deposits and withdrawals seemed to be loans to Teelek Realty and withdrawals in repayment of the loans. Although these deposits and withdrawals were not recorded in Teelek Realty's general ledger, Wendy could not be said to have used Teelek Realty's funds by making the withdrawals amounting to $1.4m.

92 Nonetheless, I agreed with the plaintiff that Wendy had co-mingled her funds with Teelek Realty's funds and had treated Teelek Realty as her alter ego. It was not disputed that Wendy used Teelek Realty's bank accounts as conduits for her other businesses. The moneys that were paid into Teelek Realty's accounts were neither intended for Teelek Realty nor used for its purposes. Instead, they were withdrawn and used for Wendy's own purposes or for purposes of the JCWC entities. I agreed with the plaintiff that such use of Teelek Realty's accounts could not be said to be in the interests of Teelek Realty. Clearly, Wendy was treating Teelek Realty's bank accounts as her own.

93 Wendy argued that Teelek Realty had suffered no loss. This was not entirely correct although the losses suffered were not significant. For example, the plaintiff's expert's report showed the following:

> (a) A remittance from Mingsen to Teelek Realty incurred bank charges amounting to US$13.89 (equivalent to $19.87). This amount was charged to Teelek Realty and recorded in its general ledger as an expense when it should have been a reduction in Wendy's loan account.[74]

(b) As at 29 December 2017, Wendy had overdrawn on her loan account with Teelek Realty by an amount of $1,752,971.94 which was then repaid to Teelek Realty the next day.[75]

Misappropriation of Teelek Realty's funds

94 The plaintiff claimed that Wendy had misappropriated Teelek Realty's funds as a result of the withdrawals made by Wendy referred to in [89] above. As stated in [69] above, Wendy had wrongfully reclassified the Loans as loans owing to her and therefore she had misappropriated the sum of $12,564,000 which she withdrew from Teelek Realty purportedly as repayment of the reclassified loans. As for the rest of the withdrawals, Wendy had used Teelek Realty as a conduit for her own funds and funds from Mingsen and the JCWC entities; there was no misappropriation of Teelek Realty's funds.

Loans to Wendy, Shirlyn and Eugene

95 Wendy, Shirlyn and Eugene, in their capacities as directors of Teelek Realty, had taken loans from the company to pay for professional fees incurred by them in the present suit. The plaintiff argued that these were unauthorised. These loans contravened s 162(2) of the Companies Act. However, the taking of these loans had not been pleaded and therefore could not form part of the plaintiff's case.

Breaches of directors' duties

96 In my view, Wendy breached her duties as a director by reason of the following:

(a) the wrongful reclassification of the Loans and her withdrawal of the amount of $12,564,000 in purported repayment of the reclassified Loans (see [69] above);

(b) the transfer of one share to each of Shirlyn and Eugene in breach of Teelek Realty's Articles (see [70] above);

(c) refusing to hold physical meetings in respect of the 18th AGM (FY2014) and the 19th AGM (FY2015) (see [76] above);

(d) failing to provide the plaintiff with a copy of Teelek Realty's audited accounts for FY2016 within a reasonable time prior to the 20th AGM (see [78] above); and

(e) treating Teelek Realty's accounts as her own and using the accounts for purposes that had nothing to do with Teelek Realty's business (see [92] above).

97 As for Shirlyn and Eugene, the evidence showed that they were not active directors. They had simply left the management of Teelek Realty to Wendy and followed her instructions on matters relating to the company.[76] However, in so doing, they had ignored, and therefore breached, their duties as directors – in particular, their duties to act in Teelek Realty's interests and to act with due care and diligence in executing their responsibilities as directors.

Conclusion on the plaintiff's oppression claim

98 Section 216(1) of the Companies Act provides as follows:

> **216.**—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —

> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

99 It is well established that s 216 of the Companies Act should not be used to vindicate wrongs which are in substance wrongs committed against the company, and which are thus corporate rather than personal in nature: *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [93]. A claim brought under s 216 in respect of corporate wrongs would be an abuse of process.

100 In the present case, Wendy had breached her duties as a director by reason of the matters set out at [96] above. As for Shirlyn and Eugene, they had breached their duties as directors because they had acted without due care and diligence and in disregard of the plaintiff's interests as a shareholder. Breach of a director's duty is a corporate wrong done to the company. However, it could not be denied that the transfer of shares to Shirlyn and Eugene, the failure to hold physical AGMs, and the failure to provide the plaintiff with the audited accounts within a reasonable time before the 20th AGM, (see [96(b)]–[96(d)] above) were also personal wrongs against the plaintiff as a shareholder of Teelek Realty.

101 In *Ho Yew Kong*, the Court of Appeal set out an analytical framework to be applied where an oppression action features both personal wrongs and corporate wrongs (at [115]–[116]). The key question is whether a plaintiff who

brings an oppression action under s 216, instead of seeking leave to commence a statutory derivative action under s 216A, is abusing the process. In answering this question, the court is to consider the remedy sought, and the injury complained of and for which the remedy is sought. The appropriate analytical framework is as follows:

(a) Injury

(i) What is the real injury that the plaintiff seeks to vindicate?

(ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?

(b) Remedy

(i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?

(ii) Is it a remedy that can only be obtained under s 216?

See *Ho Yew Kong* at [115]–[116].

102 Applying the *Ho Yew Kong* framework, I was of the view that the plaintiff's s 216 claim was not an abuse of process.

(a) The real injury that the plaintiff sought to vindicate was injury to his interests as a shareholder of Teelek Realty and breach of his legitimate expectations as to how the company's affairs were to be managed. Wendy, Shirlyn and Eugene had ignored and disregarded the plaintiff's interests as a shareholder. The injury to the plaintiff's interests

as a shareholder amounted to a distinct personal wrong and met the threshold of commercial unfairness.

(b) The essential remedy sought by the plaintiff was an exit through a buyout order, which was a remedy only available under s 216. The plaintiff had also sought a restitutionary order in respect of the sum of $12,564,000 that Wendy had withdrawn in purported repayment of the reclassified loans. However, in the context of the s 216 claim, the restitutionary relief was incidental to the essential remedy sought – the restitutionary order was necessary in so far as it ensured a fair exit value for the plaintiff.

103 Turning next to the test applicable under s 216, the four alternative limbs (*ie*, oppression, disregard of a member's interests, unfair discrimination, or otherwise prejudicial conduct) under s 216(1) of the Companies Act are not to be read disjunctively. The common element is that of unfairness: *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70]. The common test is that of "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": *Over & Over* at [77]. Ultimately, whether the test is satisfied depends on the facts of each case.

104 In my view, Wendy's, Shirlyn's and Eugene's conduct clearly met the test of "unfairness" or "a visible departure from the standards of fair dealing".

105 I therefore found for the plaintiff on his oppression claim. The plaintiff sought a buyout order in his favour but subject to terms, including a term that Wendy, Shirlyn and Eugene give certain undertakings as to the financial status of Teelek Realty, and a special audit into the accounts and affairs of Teelek

Realty. Clearly, the plaintiff had no confidence in the accuracy of Teelek Realty's financial records. This was consistent with the evidence which showed that it was doubtful whether Wendy had kept Teelek Realty's accounts properly. She had wrongfully reclassified the Loans and failed to record deposits into and withdrawals from Teelek Realty's account (see [49] and [91] above).

106 In the circumstances, I concluded that the more appropriate remedy was to wind up Teelek Realty rather than to make a buyout order, and I so ordered. The liquidators would be in a position to investigate the accounts and affairs of Teelek Realty. I also took into consideration the fact that Teelek Realty was just an investment holding company; it had no business operations in respect of which a winding-up order may not have been the most appropriate remedy.

Restitutionary order against Wendy

107 In connection with his s 216 claim, the plaintiff also sought an order requiring Wendy to return the sum of $12,564,000 to Teelek Realty. Where the s 216 claim has been established, the court has a wide discretion to fashion such relief as it considers just, including making orders for the errant shareholders or directors of the company concerned to make restitution to the company of moneys that they have wrongfully diverted from the company: *Ho Yew Kong* ([99] *supra*) at [118].

108 I therefore ordered Wendy to return the sum of $12,564,000 to Teelek Realty and directed that Teelek Realty's accounts be rectified accordingly.

Plaintiff's claim for conspiracy

109 The plaintiff claimed that Wendy, Shirlyn and Eugene conspired to injure himself and/or Teelek Realty by lawful and/or unlawful means. The

elements that have to be satisfied in a claim of conspiracy are set out in *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [23] as follows:

> (a) a combination of two or more persons and an agreement between and amongst them to do certain acts;
>
> (b) if the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff but if the conspiracy involves unlawful means, then such predominant intention is not required;
>
> (c) the acts must actually be performed in furtherance of the agreement; and
>
> (d) damage must be suffered by the plaintiff.

110 The plaintiff pleaded that the agreement among Wendy, Shirlyn and Eugene was "supported" by the following:[77]

> (a) Shirlyn and Eugene are Wendy's biological children.
>
> (b) Ever since the divorce, Shirlyn and Eugene had taken Wendy's side and had not been on speaking terms with the plaintiff.
>
> (c) Wendy unlawfully transferred one share in Teelek Realty to each of Shirlyn and Eugene, in breach of the Articles.
>
> (d) Wendy directly and/or indirectly caused and/or procured directorships in Teelek Realty for Shirlyn and did so unlawfully for Eugene.

(e) Shirlyn and Eugene were Wendy's nominee shareholders and directors in Teelek Realty.

111 The agreement to do certain acts was an essential element in the plaintiff's conspiracy claim. In my view, the plaintiff had not properly pleaded the agreement. The SOC did not even allege that Wendy, Shirlyn and Eugene had reached an agreement; neither did it plead what Wendy, Shirlyn and Eugene had agreed to do.

112 In any event, the evidence did not support the existence of any agreement among Wendy, Shirlyn and Eugene. The plaintiff claimed that the following acts were performed in furtherance of the conspiracy:[78]

(a) the reclassification of the Loans and the repayment of the reclassified Loans to Wendy and/or JCWC entities and/or entities related to the JCWC entities;

(b) the holding of fictitious AGMs of Teelek Realty;

(c) the transfers of one share in Teelek Realty to each of Shirlyn and Eugene;

(d) remuneration paid by Teelek Realty to Wendy, Shirlyn and Eugene;

(e) the failure to provide Teelek Realty's accounts for FY2016 to the plaintiff within a reasonable time prior to the 20th AGM on 12 June 2017, and the introduction of Resolution 6 in the agenda for the adjourned 20th AGM;

(f) Wendy's co-mingling of her own funds with Teelek Realty's funds; and

(g) misappropriation of moneys belonging to Teelek Realty.

113 The evidence established that Shirlyn and Eugene had left the management of Teelek Realty to Wendy. They simply did whatever Wendy required them to.

114 As the plaintiff has not proved an agreement among Wendy, Shirlyn and Eugene to injure the plaintiff and/or Teelek Realty, I dismissed the conspiracy claim. The claim that there was a conspiracy to injure Teelek Realty also failed because the plaintiff had not properly pleaded a common law derivative action.

The counterclaims

The Trust Agreement

115 Wendy's, Shirlyn's and Eugene's pleaded claim was that pursuant to the Trust Agreement, the plaintiff agreed to:[79]

(a) hold his shares in Teelek Realty on trust for Shirlyn and Eugene equally;

(b) transfer the shares to them "when they are of majority age and when they are mature enough";

(c) give up his control of Teelek Realty; and

(d) waive his claims to the Loans in favour of Wendy.

The issue relating to the alleged waiver of the Loans in favour of Wendy has already been dealt with. Wendy, Shirlyn and Eugene claimed that the agreement relating to the plaintiff's shares in and control of Teelek Realty was reached in November 2011.[80]

116 I rejected the claim and found that there was no such agreement as alleged. The evidence overwhelmingly contradicted the claim. I found that the alleged Trust Agreement was a complete fabrication.

117 First, Wendy kept changing her evidence on when the alleged Trust Agreement took place. As stated at [51] above, Teelek Realty's/Wendy's joint Defence and Counterclaim (Amendment No 4) pleaded that the Trust Agreement was reached "during *a* conversation that took place sometime in April 2012" [emphasis added].

(a) In her oral testimony, Wendy claimed that when she left the matrimonial home in *September 2011*, she told Shirlyn and Eugene about the Trust Agreement and that the plaintiff's shares in Teelek Realty would be transferred to them on or after they turned 21 years of age.[81]

(b) Subsequently, she maintained that the discussions relating to the trust ended in 2012.[82]

(c) A little later, she changed her evidence and said that the discussions relating to the trust were completed in November 2011.[83]

(d) During re-examination, Wendy first said that the Trust Agreement took place "around 2012" and then said that it took place in September 2011.[84]

(e) Eventually, after all the witnesses had given evidence, Teelek Realty and Wendy amended their joint Defence and Counterclaim (Amendment No 4) to state that the Trust Agreement relating to the plaintiff's shares was reached in November 2011.

118 Wendy's evidence kept changing so often that the only conclusion that could be reached was that there was no such Trust Agreement.

119 Second, Wendy also prevaricated about the alleged agreement as to when the plaintiff's shares were to be transferred to Shirlyn and Eugene. As pleaded in Teelek Realty's/Wendy's joint Defence and Counterclaim (Amendment No 4), the shares were to be transferred when Shirlyn and Eugene "are of majority age or *alternatively* when they are mature enough" [emphasis added].[85]

(a) In her AEIC, Wendy said that the shares were to be transferred to Shirlyn and Eugene after they "reached the age of majority, *ie,* 21 years of age, *and* when they are mature enough" [emphasis added].[86] During her oral testimony, Wendy first said that her pleaded case was wrong but subsequently said that it was her AEIC that was wrong.[87]

(b) During her oral testimony, Wendy at first said that she had told Shirlyn and Eugene in September 2011 that the plaintiff's shares would be transferred to them "when they are at the age of 21 or after 21".[88] She then changed her evidence to say that she told them the shares would be transferred after they reach 21 years of age.[89]

(c) In her AEIC, Wendy said that she did not discuss with the plaintiff about the age at which Shirlyn and Eugene would be considered to be "mature enough".[90] On the stand, Wendy first said that both the

plaintiff and she would decide whether Shirlyn and Eugene were "mature enough".[91] Subsequently, she said that the plaintiff would transfer the shares when he was free to do so, before finally saying that the plaintiff would decide when to transfer the shares.[92]

(d) Wendy also claimed that after she discovered that Kevin and Jeannette were aged 25 and 23 respectively when they became shareholders in Goodtree upon its incorporation, she told the plaintiff in early 2012 to transfer his shares to Shirlyn and Eugene when they reach "23 or 25" years of age and the plaintiff agreed.[93] However, this was not the pleaded case. Wendy could not explain why her pleaded case stated that the shares were to be transferred to Shirlyn and Eugene when they were "mature enough".[94] In any event, Wendy's evidence vacillated yet again as she later claimed that the plaintiff was to transfer his shares to Shirlyn and Eugene when they were "23 *to* 25" years of age [emphasis added].[95]

(e) At one point, Wendy claimed that Shirlyn and Eugene would be considered "mature enough" when they could "handle all sorts of things like money, characters".[96] She had also testified that Eugene and Shirlyn would be "mature enough" when they were 23 and 25 years of age respectively.[97] When queried as to how she would have been able to draw such a conclusion years in advance, Wendy simply asserted that she could "foresee their character".[98] I did not accept Wendy's assertion; it was simply not credible. Further, Wendy could not explain why the Trust Agreement did not specify that the plaintiff would transfer his shares upon Shirlyn and Eugene reaching 25 and 23 years of age respectively, if indeed she had been so certain that Shirlyn and Eugene

would be "mature enough" by then. Wendy's evidence on this was evasive and utterly incoherent.[99]

(f) Subsequently, Teelek Realty's and Wendy's pleaded case was amended to state that the shares would be transferred when Shirlyn and Eugene "are of majority age and when they are mature enough".[100]

120 The agreement as to when the plaintiff was to transfer his shares in Teelek Realty to Shirlyn and Eugene was (as pleaded) a "key term".[101] The fact that there were so many versions of a key term again led to the conclusion that the Trust Agreement was a fabrication.

121 Third, a Ms Valerie Wong ("Wong") from M/s Wong Thomas & Leong advised Wendy regarding the plaintiff's shares in Teelek Realty. On 21 January 2013, Wong sent an e-mail to her colleague, Mr Leong Hee Tean ("Leong"),[102] stating that Wendy had informed her that she (Wendy) had reached an agreement with the plaintiff "regarding the bank account in UK and the only issue which remain[ed] to be resolved [was] the trust in respect of [the plaintiff's] shares in Teelek Realty". The e-mail also discussed the question of when the shares should be transferred to Shirlyn and Eugene; Wong noted that Wendy and the beneficiaries were inclined towards having 50% of the plaintiff's shares transferred to the beneficiaries at age 30 and the balance at age 35. In addition, the e-mail discussed the administration of Teelek Realty during the trust period when the plaintiff remained the legal owner of his shares, and sought confirmation that Wendy would be in charge of the management of Teelek Realty.

122 Apparently, Leong was to speak to the plaintiff. The plaintiff was familiar with Leong because he advised the plaintiff on dispute matters

involving the Teelek Companies.[103] A copy of the e-mail was sent to Wendy on 7 June 2013 for Wendy's "review of the issues".[104] There was no evidence that Wendy disagreed with any part of Wong's e-mail of 21 January 2013.

123 On 13 August 2013, Wong sent Wendy an e-mail attaching a draft Trust Deed for her review.[105] The draft Trust Deed provided for the plaintiff's shares in Teelek Realty to be transferred to Shirlyn and Eugene in equal tranches when they reached the ages of 35 and 40. Wong also pointed out in her e-mail that until the shares were transferred to Shirlyn and Eugene, the plaintiff would still have the rights of a shareholder.

124 On 14 August 2013, Wong sent an e-mail to the plaintiff stating as follows:[106]

> Dear Mr Ng,
>
> Wendy has asked me to prepare the attached Declaration of Trust and to forward the same to you for your review. If the same is acceptable to you, we can arrange for your execution of the Trust Deed in duplicate.
>
> …

The attached draft Declaration of Trust provided for the plaintiff's shares in Teelek Realty to be transferred to Shirlyn and Eugene in equal tranches when they reached the ages of 30 and 35.

125 The plaintiff did not respond to Wong's e-mail. On 24 March 2014, Wendy sent the plaintiff an e-mail asking him to go through the draft Trust Deed.[107] The plaintiff did not agree to sign the Trust Deed.[108]

126 The abovementioned e-mails and draft Trust Deed/Declaration of Trust clearly contradicted the pleaded counterclaim that in November 2011, the

plaintiff had agreed to transfer his shares to Shirlyn and Eugene when they "are of majority age and when they are mature enough".

127 Further, there was no mention whatsoever of the alleged Trust Agreement in any of the e-mails referred to above. On the contrary, the e-mails and the draft Trust Deed/Declaration of Trust incontrovertibly showed that even as of March 2014, no agreement that the plaintiff would hold his shares on trust for Shirlyn and Eugene had even been reached, much less any agreement as to when the shares were to be transferred to Shirlyn and Eugene. If, as Wendy, Shirlyn and Eugene claimed, the alleged Trust Agreement had been reached in November 2011 or even in April 2012, one would expect the e-mails to refer to the Trust Agreement and the draft Trust Deeds to reflect the key terms of the Trust Agreement. It was abundantly clear that the e-mails and draft Trust Deeds constituted objective evidence that clearly contradicted the alleged Trust Agreement pleaded by the defendants.

128 Fourth, Wendy, Shirlyn and Eugene made no mention whatsoever of the alleged Trust Agreement until after these proceedings were commenced. Apart from the fact that the alleged Trust Agreement was not mentioned in any of the e-mails referred to at [121]–[125] above, the alleged Trust Agreement was also not mentioned in the following:

(a) The Ancillaries Order.[109] Paragraphs 12 and 13 of the Ancillaries Order provided that the order was in full and final settlement of Wendy's claim for division of matrimonial assets and maintenance, and that Wendy and the plaintiff would retain all other assets that were not dealt with by the Ancillary Order, "in their names". Wendy explained that these two paragraphs were "meant only for residential properties and CPF and joint account in Standard Chartered".[110] However, there was

nothing in the Ancillaries Order that supported Wendy's explanation. Wendy's further explanations on this were incoherent.[111] Although Wendy was not the beneficiary of the plaintiff's shares in Teelek Realty under the alleged Trust Agreement, there was every reason to include the alleged Trust Agreement in the Ancillaries Order, had the agreement been made. After all, the plaintiff had allegedly agreed with Wendy on the disposal of his shares in Teelek Realty, which was a matrimonial asset. In addition, the plaintiff had allegedly agreed to give up control of Teelek Realty. This must have been important to Wendy since the plaintiff remained a 50% shareholder and would retain shareholder's rights pending the transfer of his shares to Shirlyn and Eugene. In her closing submissions, Wendy also pointed out that the Ancillaries Order did not deal with the Pantech Properties or the Arcade Property.[112] However, the simple answer was that Teelek Realty had sold these properties to Goodtree (at market value) and completed the sales before the Ancillaries Order was made (see [18] and [20] above). There was no reason whatsoever for these transfers to be included in the Ancillaries Order.

(b) Wendy did not inform her lawyer in the divorce proceedings about the alleged Trust Agreement.[113] Hence, the exchange of correspondence between Wendy's and the plaintiff's lawyers regarding the division of matrimonial assets did not mention any such trust.[114]

129 Fifth, I found that Wendy was not a credible witness; she kept tailoring her evidence, according to what suited her best in response to the specific questions that were asked. In addition to her changing evidence with respect to when the alleged Trust Agreement was reached, and when the plaintiff's shares

were to be transferred to Shirlyn and Eugene, I found that the following evidence further eroded her credibility.

(a) When asked whether "JCWC" stood for "Jason Chai and Wendy Chew", Wendy asserted that it could stand for "Jason Chai or Wendy Chew" or "Japan car or western car".[115] Wendy's suggestion that "JCWC" could stand for "Japan car or western car" was incredulous. "JCWC" was first used when JCWC Investment was incorporated on 3 April 2012 to *invest in properties*.[116] The company that traded in cars, JCWC Automobile, was incorporated only five months later on 10 September 2012.[117] I had no doubt that "JCWC" stood for "Jason Chai and Wendy Chew".

(b) Wendy also claimed that she started her relationship with Jason Chai in 2015.[118] However, this was clearly untrue. The JCWC entities were incorporated in 2012. I found it unbelievable that Wendy would have incorporated companies under "JCWC" in 2012 if she was not already in a relationship with Jason Chai then. Further, Shirlyn and Eugene testified that Jason Chai had moved into their house in Jurong shortly after 12 November 2011.[119] Obviously, Wendy's relationship with Jason Chai started before JCWC Investment was incorporated in April 2012.

130 In so far as the Trust Agreement was concerned, Shirlyn and Eugene relied on Wendy's evidence. They were not involved in the alleged discussions between Wendy and the plaintiff.

Alternative claim based on estoppel

131 Shirlyn and Eugene had an alternative claim to the plaintiff's shares in Teelek Realty based on estoppel. Their pleaded case was that the plaintiff was estopped from claiming that he was the legal and beneficial owner of his shares in Teelek Realty. They alleged as follows:[120]

(a) During the West Coast Plaza meeting, the plaintiff told them that "they may take what they want from [Teelek Realty]".

(b) They took the plaintiff's words to mean that he would be giving his shares to them in equal portions after they "turn 21 and are mature enough", and that pending the transfer of the shares to them, the plaintiff would hold the shares on trust for them.

132 I rejected Shirlyn's and Eugene's claim.

133 First, I could not see how the statement that Shirlyn and Eugene could take what they wanted from Teelek Realty (assuming this statement was indeed made) would necessarily mean that the plaintiff would transfer his shares to them, much less that he would do so when they "turn 21 and are mature enough". In fact, Eugene admitted he had not understood the plaintiff's alleged representation to mean that the plaintiff was going to transfer his shares to him.[121]

134 Second, Shirlyn's and Eugene's evidence as to what the plaintiff had said to them was internally inconsistent. In their oral testimonies, both Shirlyn and Eugene testified that the plaintiff had told them that they could take whatever they needed or wanted from Teelek Realty.[122] This was markedly different from what they had said in their joint AEIC, which was that the

plaintiff had told them words to the effect that he would take care of "both [their] future from his rights and shares in [Teelek Realty]".[123]

135 Third, to buttress their claim that the plaintiff had told them to take what they needed from Teelek Realty, Shirlyn and Eugene asserted that the plaintiff did not pay them maintenance after the West Coast Plaza meeting. However, this assertion was demonstrably false; the plaintiff paid maintenance from November 2011 until December 2014.[124]

136 Fourth, Shirlyn and Eugene had not acted to their detriment in reliance on the alleged representation (see *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800 at [33] and [40]). Shirlyn and Eugene pleaded that, relying on the plaintiff's representation, they were appointed as directors and had become shareholders in Teelek Realty.[125] However, the evidence showed that their appointment as directors and their becoming shareholders were clearly neither in reliance on the plaintiff's alleged representation nor to their detriment.

(a) Shirlyn was made a director in August 2012 when the plaintiff resigned as a director of Teelek Realty. Eugene became a director in September 2014 after he had attained the age of 18 years. Wendy testified that it was "always the intention of the plaintiff and [herself]" that both Shirlyn and Eugene would be appointed as directors of Teelek Realty once they attained the age of 18 years.[126]

(b) Shirlyn and Eugene became shareholders pursuant to Wendy's wishes. Wendy admitted that they became shareholders so that Teelek Realty could meet the quorum requirements for AGMs, and approve and file accounts.[127]

137 In closing submissions, Shirlyn and Eugene belatedly raised several purported acts of detrimental reliance, but these were never pleaded.

Conclusion

138 I dismissed the following:

(a) the plaintiff's claim for repayment of the Loans;

(b) the plaintiff's common law derivative action to recover the sum of $12,564,000 on behalf of Teelek Realty;

(c) the plaintiff's claim that Shirlyn and Eugene be struck off as directors of Teelek Realty; and

(d) the counterclaims by Wendy, Shirlyn and Eugene.

139 I found that the transfers of one share in Teelek Realty by Wendy to each of Shirlyn and Eugene were invalid and I ordered the transfers to be cancelled.

140 I found that the plaintiff had made out his case under s 216 of the Companies Act and I ordered that Teelek Realty be wound up. As I found that Wendy's reclassification of the Loans was wrongful, I also ordered Wendy to return the sum of $12,564,000 to Teelek Realty and directed that Teelek Realty's accounts be rectified accordingly. I gave directions regarding the appointment of liquidators.

141 I ordered Shirlyn, Wendy and Eugene to pay the plaintiff costs of the action (including the counterclaims but excluding the plaintiff's claim for the repayment of the Loans) fixed at $250,000 plus disbursements to be fixed by me if not agreed among the parties.

Chua Lee Ming
Judge

Suresh s/o Damodara, Ong Ziying Clement and Khoo Shufen Joni (Damodara Ong LLC) for the plaintiff;
Lim Seng Siew and Isabel Chew-Lau (OTP Law Corporation) for the first and second defendants;
Ong Ying Ping and Chua Kok Siong Kenneth (Ong Ying Ping Esq) for the third and fourth defendants.

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1 Plaintiff's affidavit of evidence-in-chief ("AEIC"), at para 25.
2 Plaintiff's AEIC, at para 26.
3 Plaintiff's AEIC, at para 27.
4 Agreed Bundle vol 4 ("4 AB") at p 26.
5 4 AB 27.
6 Defence and Counterclaim (Amendment No 5) of the 1st and 2nd Defendants ("D1/D2's D&CC"), at para 15B(d).
7 1 AB 171–173.
8 29 AB 10–13.
9 Plaintiff's AEIC, at p 819.
10 Notes of Evidence, ("NE"), 4 March 2020, at 36:22–37:9.
11 1 AB 97–114.
12 3 AB 204; Wendy's AEIC, at para 25.
13 3 AB 208, at para (e).
14 1 AB 118–119.

15 3 AB 239–242.
16 3 AB 254, 260 and 262.
17 3 AB 274.
18 1 AB 126–131.
19 1 AB 132–133.
20 1 AB 217, 221–222.
21 Statement of Claim (Amendment No 2) ("SOC"), at para 16.
22 4 AB 26.
23 Reply and Defence to Counterclaim (Amendment No 8) of the 1st and 2nd Defendants' Defence and Counterclaim (Amendment No 5), at para 29(e).
24 4 AB 27.
25 D1/D2's D&CC, at paras 15B(d) and 15C(a).
26 4 AB 27.
27 Wendy's AEIC, at para 35.
28 Teelek Realty's and Wendy's D&CC (Amendment No 4), at paras 15B and 15C.
29 Wendy's AEIC, at para 23(b).
30 D1/D2's D&CC, at para 15B(d).
31 NE, 28 February 2020, at 99:17–21, 100:6–10 and 18–22.
32 NE, 28 February 2020, at 109:22–110:23.
33 NE, 28 February 2020, at 111:3–19.
34 NE, 28 February 2020, at 112:22–113:8.
35 D1/D2's D&CC, at para 15C.
36 30 AB 162.
37 30 AB 161.
38 NE, 3 March 2020, at 74:22–75:7; 76:10–20.
39 NE, 25 February 2020, at 49:9–50:13.
40 30 AB 127 and 131.
41 2 AB 171 and 212
42 3 AB 18–19.
43 3 AB 19.
44 NE, 3 March 2020, at 93:20–95:3.
45 NE, 20 March 2020, at 83:14–16.
46 SOC, at para 7.
47 1 AB 215.
48 3 AB 25.
49 SOC, at para 33.
50 SOC, at para 24(b); NE, 26 February 2020, at 43:16–44:8.
51 33 AB 102.
52 NE, 25 February 2020, at 42:12–44:4.
53 SOC, at para 24.
54 1 AB 229; NE, 26 February 2020, at 42:10–43:7 and 44:9–45:1.
55 1 AB 230; NE, 26 February 2020, at 45:9–18.
56 1 AB 231; NE, 26 February 2020, at 45:19–46:2.
57 1 AB 232–233; NE, 26 February 2020, at 46:3–6.
58 SOC, at para 37.
59 3 AB 186.
60 29 AB 181.
61 29 AB 189–211.

62 29 AB 187.
63 29 AB 188.
64 3 AB 187.
65 3 AB 22.
66 SOC, at para 39.
67 NE, 3 March 2020, at 98:18–99:12.
68 1 AB 148–150.
69 Bundle of Plaintiff's AEICs, vol 2, at pp 1577–1580.
70 Bundle of Plaintiff's AEICs, vol 2, at pp 1581–1584.
71 Exh P1: Experts' List of Agreed and Non-agreed Issues, at s/n 12.
72 Exh P1, at s/n 14.
73 Bundle of Plaintiff's AEICs, vol 3, at p 1979; Exh P1, s/n 22.
74 Bundle of Plaintiff's AEICs, vol 3, at p 1968 (fn 77) and p 1973.
75 Bundle of Plaintiff's AEICs, vol 3, at p 1974, para 4.3.11.
76 Shirlyn's and Eugene's joint SAEIC, at paras 20 and 21; NE, 4 March 2020, at 24:14–24:25 and 25:22–26:7.
77 SOC, at paras 46(a) and 48(b).
78 SOC, at para 46(b)(i).
79 D1/D2's D&CC, at para 15B; Defence and Counterclaim (Amendment No 6) of the 3rd and 4th Defendants ("D3/D4's D&CC"), at para 15B.
80 D1/D2's D&CC, at para 15C(b); D3/D4's D&CC, at para 15C(b).
81 NE, 28 February 2020, at 43:12–44:12.
82 NE, 28 February 2020, at 67:3–13 and 68:9–14.
83 NE, 28 February 2020, at 68:15–69:5.
84 NE, 3 March 2020, at 109:16–110:20.
85 Teelek Realty's and Wendy's D&CC (Amendment No 4), at para 15B(b).
86 Wendy's AEIC, at para 46.
87 NE, 28 February 2020, at 74:10–77:1.
88 NE, 28 February 2020, at 42:17–44:3.
89 NE, 28 February 2020, at 44:10–12.
90 Wendy's AEIC, at para 46.
91 NE, 28 February 2020, at 48:19–49:3.
92 NE, 28 February 2020, at 52:12–53:7.
93 NE, 28 February 2020, at 45:19–25 and 53:8–21.
94 NE, 28 February 2020, at 53:22–54:3.
95 NE, 28 February 2020, at 83:20 – 84:10.
96 NE, 28 February 2020, at 50:18–23.
97 NE, 28 February 2020, at 50:14–17.
98 NE, 28 February 2020, at 50:24–51:10.
99 NE, 28 February 2020, at 51:11–54:3.
100 D1/D2's D&CC, at para 15B(b).
101 D1/D2's D&CC, at para 15C.
102 29 AB 41–42.
103 Wendy's AEIC, at para 50.
104 29 AB 41.
105 29 AB 38–40. The date shown on the e-mail is "13 August 2556". Wendy confirmed that the year "2556" referred to "2013"; "2556" was based on the Buddhist calendar. See, NE, 3 March 2020, at 1:13–2:13.

106 29 AB 49–51.
107 29 AB 52.
108 Wendy's AEIC, at para 55.
109 1 AB 127–131.
110 NE, 3 March 2020, at 49:2–8.
111 NE, 3 March 2020, at 49:9–50:21.
112 Closing Submissions of 1st and 2nd Defendants dated 17 March 2020, at para 90.
113 NE, 28 February 2020, at 44:14–17.
114 1 AB 89–93.
115 NE, 3 March 2020, at 104:5–23.
116 1 AB 148–153; Wendy's AEIC, at para 92.
117 Bundle of Plaintiff's AEICs, at p 1577; Wendy's SAEIC, at para 72.
118 NE, 3 March 2020, at 106:13–14.
119 Shirlyn's and Eugene's joint AEIC, at para 11.
120 D3/D4's D&CC, at para 15D(a)–(c).
121 NE, 4 March 2020, at 49:8–50:9.
122 NE, 3 March 2020, at 115:25–116:9; NE, 4 March 2020, at 35:13.
123 Shirlyn's and Eugene's joint AEIC, at para 19.
124 Exhs P3 and P4; NE, 4 March 2020, at 2:2–13 and 50:22–51:1.
125 D3/D4's D&CC, at para 15D(d).
126 Wendy's AEIC, at para 69.
127 Wendy's AEIC, at para 73; NE, 3 March 2020, at 93:20–94:7.