IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 159

Suit No 88 of 2020

Between

Atlantic Navigation Holdings (Singapore) Ltd

… *Plaintiff*

And

(1) Chang Yee Meng Malcolm
(2) ASEAN Offshore Ltd

… *Defendants*

JUDGMENT

[Credit And Security] — [Guarantees and indemnities] — [Co-guarantors] — [Right to contribution]

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v
Chang Yee Meng Malcolm and another

[2021] SGHC 159

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24–26 March 2021, 10 June 2021

29 June 2021 Judgment reserved.

Kwek Mean Luck JC:

Introduction

1 The plaintiff, Atlantic Navigation Holdings (Singapore) Ltd, claims against its co-guarantors, Chang Yee Meng Malcolm (the "first defendant"), and ASEAN Offshore Ltd (the "second defendant"), for contribution of the sums that the plaintiff had paid Malayan Banking Bhd (the "Bank") pursuant to a loan facility agreement issued by the Bank to Atlantic Venture Inc ("AVI"). The defendants resist the contribution, mainly on the ground that the plaintiff and its subsidiaries should be treated as one entity and the plaintiff had oppressed the defendants through its subsidiaries, rendering it inequitable for the plaintiff to seek contribution. I find the defendants liable to the plaintiff and set out my reasons below.

Facts

2 The plaintiff is a publicly listed company incorporated in Singapore.[1] The plaintiff has a wholly owned subsidiary, Atlantic Navigations Holdings Inc ("ANHINC"), which is incorporated in the British Virgin Islands.[2]

3 The second defendant is a company incorporated in the Marshall Islands.[3] The first defendant is the director of the second defendant.[4]

4 Pursuant to a shareholders' agreement dated 14 November 2014 (the "Shareholders' Agreement"), ANHINC and the second defendant entered into a joint venture to form AVI, a company incorporated in the British Virgin Islands, for the purpose of buying, owning, chartering and selling vessels.[5] The parties of the joint venture agreed that ANHINC would hold 51% of the shareholding of AVI, while the second defendant would hold 49% of the shareholding of AVI.[6] ANHINC and the second defendant also agreed to secure a term loan of up to US$8.4m from the Bank to partly finance AVI's acquisition of a vessel named "AOS Triumph" (the "Vessel").[7] They also agreed for AVI

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1 Bundle of Affidavits of Evidence-in-Chief ("BAEIC") at Tab 1, p 294.

2 Statement of Claim dated 28 January 2020 ("SOC") at para 1; Defence dated 19 February 2020 ("Defence") at para 2.

3 SOC at para 3; Defence at para 4.

4 Malcolm Chang's Affidavit of Evidence-in-Chief ("2nd Df's AEIC') at para 1.

5 Wong Siew Cheong's Affidavit of Evidence-in-Chief dated 5 January 2021 ("Wong's AEIC") at para 4.

6 Wong's AEIC at para 4 and p 10.

7 Wong's AEIC at para 5.

to enter into a ship management agreement (the "SMA") with Atlantic Maritime Group (FZE) ("AMG"),[8] a wholly owned subsidiary of ANHINC.[9]

5 AVI subsequently entered into a US$8.4m Commodity Murabahah Financing Facility Agreement dated 22 May 2015 (the "Facility Agreement"),[10] with the Bank. The terms of the Facility Agreement provided, *inter alia*, for AVI as "Customer" to enter into a sale contract where the Bank purchased the Vessel for US$8.4m and resold the Vessel to AVI for US$10.815m (the "Sales Price"). It was agreed that the Sales Price be paid in the following manner:[11]

> SECTION 5.08 DEFERRED PAYMENT OF BANK'S SALES PRICE
>
> The Customer shall pay the Bank's Sales Price by twenty (20) quarterly payments consisting of nineteen (19) equal quarterly principal payments of US$420,000.00 each and a final twentieth (20th) quarterly principal payment consisting of the balance principal amount of the Facility, together with the Periodic Profit Amount due for the final Profit Period, less the aggregate of all amounts to which the Bank has granted a Rebate. The first of such instalments shall be due and payable on the date falling six (6) months from the Disbursement Date and the subsequent instalments shall be due and payable on the corresponding date of each succeeding quarter thereafter or such other dates as the Bank may specify. If any payment due date under this Agreement would otherwise be due on a day which is not a Business Day, it shall instead fall on the immediately preceding Business Day.

6 The plaintiff, the first defendant, and the second defendant each executed guarantees dated 22 May 2015 (collectively the "Guarantees") in favour of the Bank, in consideration of the Bank making or continuing to make

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8 Core Bundle ("CB") at p 1831.

9 BAEIC at Tab 1, p 4.

10 CB at pp 1859–1919.

11 CB at p 1878.

available to AVI banking facilities.[12] The amounts recoverable by the Bank from the guarantors under the Guarantees are subject to the following limits:

(a) Against the plaintiff: US$10,080,000.00;[13]

(b) Against the first defendant: US$4,939,200.00;[14] and

(c) Against the second defendant: US$4,939,200.00.[15]

7 Clause 4 is the same across each of the Guarantees. It states that:[16]

> 4.1 The Guarantor undertakes to the Bank that so long as the Customer has any actual or contingent liability to the Bank, *the Guarantor shall not exercise any rights* which the Guarantor may at any time have whether by reason of performance by it of its obligations under this Guarantee or otherwise:
>
> ….
>
> (d) *to claim any contribution from any other guarantor of the Customer's obligations*;
>
> …
>
> [emphasis added]

8 On or about May, August and November 2019, the quarterly instalments due from AVI to the Bank under the Facility Agreement became payable.[17] AVI was unable to make payment on these instalments.[18]

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12 CB at pp 1920–1958.

13 CB at p 1920.

14 CB at p 1934.

15 CB at p 1946.

16 CB at pp 1921

17 Wong's AEIC at pp 121, 125 and 126.

18 Wong's AEIC at paras 11–12.

9 The Plaintiff made payment of the three (3) quarterly instalments as one of the guarantors, for the months of May, August and November 2019, for a total of US$1,042,748.07.[19]

Date	Description	Amount
31.05.2019	Part payment for AVI loan due 30 May 2019	US$144,133.46
30.08.2019	Principal & interest payment for AVI loan due 30 August 2019	US$453,669.14
29.11.2019	Principal & interest payment for AVI loan due 29 November 2019	US$444,945.47
	TOTAL:	US$1,042,748.07

10 The defendants did not make payment to the Bank for these instalments.[20] The plaintiff, by a letter dated 10 October 2019, sought the Bank's consent to proceed to seek contribution from the co-guarantors for payments which the plaintiff had made or which it would make to the Bank under its Guarantee.[21] By a letter dated 2 December 2019, the Bank agreed to the plaintiff's request and gave its consent to waive cl 4.1(d) of the Guarantee issued by the plaintiff in favour of the Bank,[22] to enable the plaintiff to proceed to recover the rateable proportion paid by it by way of contribution from the defendants as well as monies which the plaintiff will pay to the Bank under its

19 SOC at para 12; Wong's AEIC at para 12.

20 Wong's AEIC at paras 13–14.

21 SOC at para 14; CB at p 1971.

22 CB at p 1696.

Guarantee.[23] The plaintiff by its solicitors' letter of 10 December 2019 demanded that the defendants make payment of the sum of US$510,946.55 (being their rateable proportion of the total sum paid by the plaintiff to the Bank on behalf of the Guarantors) by way of contribution to the plaintiff for the amounts the plaintiff had paid to the Bank.[24]

11 As of end-November 2019, the outstanding debt owed by AVI to the Bank was a sum of US$1,260,000.00.[25] The plaintiff now seeks:[26]

(a) a declaration that the defendants and each of them are jointly and severally liable to contribute to the amounts paid or to be paid by the plaintiff under the Guarantees;

(b) the sum of US$510,946.55 or severally the sum of US$255,473.28 being rateably the defendants' proportion of the sums due under their respective Guarantees; and

(c) interest at 5.33% per annum in respect of each of the three payments from the due dates set out in [12] of the Statement of Claim (*ie*, 31 May 2019, 30 August 2019 and 29 November 2019) until the date of judgment pursuant to s 12(1) Civil Law Act (Cap 43, 1999 Rev Ed).

12 The defendants' main defences are:

(a) First, that there was oppression of the second defendant due to repeated breaches of the SMA between AVI and AMG by the plaintiff,

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23 SOC at para 15.

24 SOC at para 13; CB at p 1665.

25 SOC at para 16.

26 SOC at prayers (a) to (c).

ANHINC and/or AMG. In particular, the plaintiff, through AMG and ANHINC, procured AMG's breach of the SMA. This has resulted in AVI incurring losses on a yearly basis.[27]

(b) Second, the current action is unjust towards them, as the most appropriate action at this juncture would be to sell the Vessel and settle the loan with the Bank, due to the Vessel's operation expenses exceeding the income from the Vessel.[28]

Main issues

13 The overarching question is whether the plaintiff is entitled to call on the defendants as co-guarantors to seek contribution for the payments made by the plaintiff to the Bank set out at [9] above. There are three main issues:

(a) Whether a contractual relationship between the plaintiff and defendants is required before the plaintiff can seek contribution under the Guarantees ("Issue 1");

(b) Whether there is a need for the Bank to call on the guarantors to make payment first before a guarantor's entitlement for contribution arises ("Issue 2"); and

(c) Whether the alleged oppression of ANHINC and the contractual breaches by AMG are relevant to the defendants resisting the claim for contribution ("Issue 3"). This involves the following two sub-issues:

(i) whether the plaintiff, ANHINC and AMG are one and the same; and

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27 Defendants' Written Submissions dated 20 May 2021 ("DWS") at paras 118–152.

28 DWS at paras 153–160.

(ii) whether there were oppressive acts by AMG and ANHINC on the defendants such that it was inequitable for the plaintiff to claim contribution.

Issue 1: Whether a contractual relationship between the plaintiff and the defendants is needed before the plaintiff seeks contribution under the Guarantees

Parties' cases

14 The plaintiff acknowledged that there was no contractual relationship between the parties, but submitted that it is trite law that there is no such requirement, as the plaintiff's right to contribution stems from equity and not contract.[29] The plaintiff relied on *Law Relating to Specific Contracts in Singapore* (Michael Hwang editor-in-chief & Yeo Tiong Min gen ed) (Sweet & Maxwell Asia, 2008), which states at para 13.7.7:

> **13.7.7 Surety's right to contribution from co-sureties.** Where one of two or more sureties, who have guaranteed the same debt (or performance of the same obligation) to the same creditor, has paid more than his equal share of the debt, he may look to his co-sureties for contribution. The co-surety's entitlement to contribution arises at the time he makes payment and not, it would seem, upon demand if so required by the contract of guarantee. …

15 The plaintiff also cited *Tng Kay Lim v Wong Fook Yew and another* [2009] SGHC 195 ("*Tng Kay Lim*"). There, the court held at [16]–[17]:

> 16 A guarantor has the right to call upon a co-guarantor to contribute towards his liability if he has made a payment in excess of his own share of liability: *Davies v Evan Humphreys* (1840) 6 M&W 153. This right to contribution is founded not in contract but in equity: *Sir Edward Deering v The Earl of Winchelsea* (1787) 2 Bos & Pul 270, at 272-273:

[29] Plaintiff's Written Submissions dated 21 May 2021 ("PWS") at para 8.

> If a view is taken of the cases, it will appear that the bottom of contribution is a fixed principle of justice, and is not founded on contract … In the particular case of sureties, it is admitted that one surety may compel another to contribute to the debt for which they are jointly bound. On what principle? Can it be because they are jointly bound? What if they are jointly and severally bound? What if severally bound by the same or different instruments? In every one of those cases sureties have a common interest and a common burthen. They are bound as effectively quoad contribution, as if bound in one instrument, with this difference only that the sums in each instrument ascertain the proportions, whereas if they were all joined in the same engagement they must all contribute equally.

17. In *Teo Song Kwang v Vijayasundram Jeyabalan* [2005] SGHC 60, Tan Lee Meng J held at [40]:

> It is trite law that a creditor is entitled to sue any of the guarantors of the sum loaned. It is also a well-established rule founded upon natural justice and equitable principles that if one guarantor is asked to pay a sum, his co-guarantors are liable to contribute their share of the amount paid if they benefit from such a payment to the creditor. In *Craythorne v Swinburne* (1807) 14 Ves 160; 33 ER 482, Lord Eldon LC explained that the equitable principle of contribution enabled a guarantor to assume the burden of suretyship on the faith of an implied promise of contribution from his co-sureties.

16 The defendants accepted that the right to contribution arises not as a matter of contract but rather equity.[30] Notwithstanding this, the defendants maintained that a contractual relationship between the plaintiff and the defendants was necessary for the plaintiff's claim for contribution to succeed.[31] In addition, the defendants submitted that the right to contribution has been

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30 DWS at para 52.

31 DWS at paras 85–86.

excluded by cl 4.1(d) of the Guarantees.[32] This clause states that the guarantors shall not claim any contribution from any other guarantor, so long as AVI has any actual or contingent liability to the Bank. But at the same time, the defendants also do not dispute that the plaintiff had obtained from the Bank, a waiver of cl 4.1(d) to commence legal proceedings against the defendants for contribution.[33]

My decision

17 It is trite law that the right to contribution from a co-guarantor arises as a right in equity. This right arises independently of contract and recognises that co-sureties have a common interest and a common burden. A surety who has paid more than his rateable proportion of the debt is thus entitled to claim against his co-surety: see *Teo Song Kwang (alias Teo Richard) and Another v Vijayasundram Jeyabalan* [2005] SGHC 60 at [40], *Tng Kay Lim* at [16] and *Wong Chin Juan (trading as SE Automobile Investment) v Absolute Euromotors Pte Ltd and others* [2010] SGHC 1 at [10].

18 The defendants submitted that cl 4.1(d) of the Guarantees has excluded the plaintiff's right in equity to claim for contribution.[34] But cl 4.1(d) only vests the right in the Bank to prevent claims for co-contribution. It does not vest such right in the co-guarantors. Each of the Guarantees is a contract between the individual guarantor and the Bank, and not between the Guarantors. It is indeed the defendants' case that there is no contractual relationship between them and the plaintiff, much less an agreement by the plaintiff with the guarantors not to exercise its rights against other guarantors. In any event, the defendants also do

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32 DWS at para 54.

33 DWS at para 56; Wong's AEIC at p 131.

34 DWS at para 54.

not dispute that the Bank has waived cl 4.1(d).[35] Hence, the defendants' submission, that they are not liable to contribute because such right to contribution is excluded by cl 4.1(d) of the Guarantees, is without any merit.

Issue 2: Whether the Bank must call on the guarantors to make payment first before a guarantor's entitlement for contribution arises

Parties' cases

19 The plaintiff submitted that it is also trite law that a surety has a right to contribution from a co-surety even if the creditor has not made a formal demand for payment under the guarantee: see *Stimpson v Smith* [1999] Ch 340 at 354 ("*Stimpson v Smith*"). There was thus no need for the Bank to issue a demand before the plaintiff is entitled to seek contribution for payments made. It would also not be in the interest of AVI to wait for the Bank to issue a formal letter of demand.[36] Any delay in making payment to the Bank would entitle the Bank to accelerate the instalment payments and commence legal proceedings against AVI to recover the entire outstanding debt on the loan.[37]

20 With respect to the defendants' allegation that there was no default, the plaintiff referred to the reminder e-mails sent by the Bank to AVI copying the Guarantors for loans due in May, August and November 2019 respectively.[38] The Bank also sent a letter of demand to AVI dated 31 May 2019 (the "Letter of Demand"), which was addressed to Mr Bill Wong ("Bill Wong"), the CEO and director of the plaintiff,[39] and the first defendant, for the instalment that was

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35 DWS at para 56.

36 PWS at paras 14–15.

37 PWS at para 20.

38 CB at pp 1291–1293 and 1506.

39 Wong's AEIC at para 1.

due on 30 May 2019.[40] In the Letter of Demand, the Bank explicitly stated that the instalment was overdue and that it would not hesitate to enforce its rights under the Facility Agreement and/or under the Guarantees to recover the outstanding amount.[41] For the instalments due on 30 August 2019 and 29 November 2019, the Bank also informed AVI that if it defaulted on the instalment payments, the Bank would be entitled to commence proceedings against AVI to recover the outstanding sums.[42]

21 The defendants made two responses on this issue.

22 First, the defendants submitted that the plaintiff had received no demand from the Bank for the three quarterly instalment payments. For this, they relied on Bill Wong's testimony that the Letter of Demand from the Bank was addressed to AVI, and not the plaintiff.[43] The defendants then submitted that there was no reason for the plaintiff to waive the need for the Bank to make the demand.[44] There is no inherent obligation for guarantors to step in to make payments on behalf of the principal, without any demand made to the guarantors.[45] Having made such unilateral payment, the plaintiff should not be allowed to seek contribution from other guarantors.[46] In support, the defendants referred to *Can-Win Leasing (Toronto) Limited v Moncayo*, 2014 ONCA 689 ("*Can-Win Leasing (Toronto) Limited v Moncayo*"), where the Ontario Court

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40 CB at pp 1966–1967.

41 CB at pp 1966–1967.

42 Wong's AEIC at pp 125–126.

43 Notes of Evidence ("NE") 24/3/2021 at p 92, lines 6–7 and 16.

44 DWS at para 65.

45 DWS at para 68.

46 DWS at para 61 and 65.

of Appeal refused to allow a surety to recover against his co-surety because the court was of the view that the payment of debt was premature.[47]

23 Second, the defendants submitted that the plaintiff's conduct in making payment to the Bank was an irresponsible one that did not benefit the co-guarantors.[48] The re-payment was not for the benefit of the defendants, because the defendants were exposed to greater liabilities by virtue of the plaintiff's refusal to sell the Vessel to make repayments, when the Vessel which comprised the business of AVI was clearly unprofitable.[49]

My decision

24 The documentary evidence shows that there were three instances where the Bank called upon AVI to make payments for instalments due. Through its Letter of Demand, the Bank had made clear that the instalment in May 2019 was overdue and that it would not hesitate to enforce its rights under the Facility Agreement and the Guarantees if the overdue instalments were not paid.[50] With respect to the August and November 2019 instalments, the Bank had also sent e-mails to AVI mere days before each instalment was due to demand payment.[51] The present case is thus very different from *Can-Win Leasing (Toronto) Limited v Moncayo*. In that case, there was no evidence that the borrower, or primary obligor, was in default under the loan agreement, nor was there any evidence of demand made by the bank on the company or any of the guarantors. The court also found at [39] that it was not established that the primary obligor's default

47 DWS at para 107.

48 DWS at paras 89, 91, 105, 117.

49 DWS at paras 101–104, 109–113.

50 CB at pp 1966–1967.

51 Wong's AEIC at pp 125–126.

there was so imminent that the surety was entitled to take unilateral action even in the absence of a demand from the bank. Hence, the surety that made payment was a volunteer and had no right of contribution.

25 In contrast, default here was at the very least imminent. With respect to the August and November instalments, the plaintiff made payment to the Bank on exactly the dates that AVI's re-payments fell due.[52] As for the May instalment, default was not merely imminent; it had already occurred. The Bank had also called on AVI, copying the Guarantors, to demand payment on three separate occasions. There was no premature payment by the plaintiff.

26 The fact that the Bank did not formally call on the guarantors to make payment does not mean that the loan was not in fact due. As evidenced by the Letter of Demand and the reminder e-mails sent by the Bank to the plaintiff and defendants, it was clear that the instalments were due, and payments were not made. Rather than risking default and allowing the Bank to accelerate the instalment payments and call on the entire outstanding loan, the plaintiff made repayments for the May, August and November instalments in their entirety, including for the defendants' share.

27 The defendants' submission that a formal demand from the creditor is required before a surety is entitled to seek contribution from the co-surety lacks legal support. As held by Tuckley LJ in *Stimpson v Smith* at 354, where the guarantee requires a formal demand to be made on the surety, this is not a condition precedent to his liability. It simply marks the time from which that liability can be enforced. It is a provision in the contract for the surety's benefit which he may waive and if he does so and pays the debtor, there is no reason

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[52] Wong's AEIC at pp 125–128.

why his waiver should affect his separate right to contribution from his co-surety. The co-surety's liability to the surety is not dependent upon any formal demand being made on him. In this case, by virtue of the plaintiff having paid more than his proportion of the guaranteed sum, the right to seek contribution from the defendants has arisen.

28 Neither is there merit to the defendants' submission that the plaintiff's repayment was not to the benefit of the defendants. Here, the plaintiff paid for the defendants' share of the instalment payments that they were liable for under the Guarantees. This resulted in a corresponding reduction in the amount of liability that the defendants would have under the Guarantees. It thus cannot be said by the defendants that they did not derive benefit. If the plaintiff had not paid for the overdue loan instalments, the Bank could have exercised its rights under the Facility agreement to accelerate the loan and call on an even larger sum which the defendants had guaranteed. Nor is there merit to the defendants' submission that it is inequitable for the plaintiff to claim contribution because the plaintiff as co-surety enjoys the whole benefit of the Guarantees. Here, the benefit of the Guarantees was derived by AVI, which is jointly owned by ANHINC and also the second defendant, and not wholly by the plaintiff.

29 Finally, the defendants' argument that they were prejudiced by the plaintiff's refusal for AVI to sell the Vessel surfaced also in their submissions on the third issue, and will be dealt with there.

Issue 3: Whether the alleged oppression by ANHINC and the contractual breaches by AMG are relevant to the defendants resisting contribution

Parties' cases

30 The defendants sought to rely on the alleged oppressive acts by ANHINC or the alleged breaches of the SMA by AMG to argue that it is inequitable for the plaintiff to seek contribution.

Whether the plaintiff, ANHINC and AMG are one and the same

31 The defendants submitted that the plaintiff, ANHINC and AMG are in fact the same entity. The court should lift the corporate veil such that the oppressive conduct undertaken by ANHINC and the breaches by AMG should be attributed to the plaintiff. The defendants cited in support of this submission *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 ("*Kumagai*") at [57].[53]

32 The defendants enumerated a list of factors for why they considered ANHINC, AMG and the plaintiff to be one and the same. These include, *inter alia*, the following:

(a) The plaintiff does not have its own premises and uses the same business office as that of AMG.[54]

(b) AMG does not have its own website and shares the same website as the plaintiff.[55]

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53 DWS at paras 125–127.

54 BAEIC at Tab 1, p 11.

55 BAEIC at Tab 1, p 11.

(c) The plaintiff considers the Vessel as a part of its own fleet even though the Vessel belongs to AVI, whose majority shareholder is ANHINC and not the plaintiff.[56]

(d) The plaintiff's CEO Bill Wong communicated with the defendants using e-mail accounts bearing the name of AMG.[57]

(e) AMG and the plaintiff share common directors and have the same executive officers. Bill Wong is the CEO of both the plaintiff and AMG, and was also a director of AVI. The key employees of the plaintiff and/or ANHINC and/or AMG were based in the UAE, such as Bill Wong himself.[58]

(f) The plaintiff actively controls and manages AMG.[59]

(g) The plaintiff's 2019 annual report also states that the plaintiff's operations are managed mainly through AMG and another entity.[60]

(h) ANHINC is merely a holding company with no business of its own.[61] The plaintiff controls the board of ANHINC. ANHINC does not have its own bank account, but uses the plaintiff's bank account to transfer funds on behalf of ANHINC.

(i) The plaintiff's operations were managed by AMG.[62]

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56 BAEIC at Tab 1, p 12.

57 BAEIC at Tab 1, p 12.

58 DWS at para 125.

59 DWS at para 13(i).

60 BAEIC at Tab 1, p 242.

61 DWS at para 13.

62 DWS at para 127.

33 The defendants hence submitted that the oppressive acts of ANHINC as a shareholder of AVI and the contractual breaches of AMG in relation to the SMA are relevant to whether the plaintiff has the right to seek contribution.

34 The plaintiff's position is that it is not a party to the Shareholders' Agreement. The parties to the Shareholders' Agreement are the second defendant and ANHINC. The plaintiff is also not a party to the SMA. The parties to the SMA are AVI and AMG. Hence, by virtue of the principle of privity, the alleged acts and breaches by ANHINC and AMG do not concern the plaintiff, and are thus irrelevant to determining whether the plaintiff is entitled to payment as a co-guarantor.

35 With respect to the defendants' claim that the plaintiff, ANHINC and AMG are the same entity, the plaintiff submits that each incorporated entity is a separate legal entity.[63] This remains the case even if the companies are within the same group, and even if the plaintiff owns all the shares in the ANHINC and ANHINC is the sole asset of the plaintiff.[64] The court should not lift the corporate veil unless it is shown that the subsidiary is the alter ego of the parent company.[65]

36 As for the Vessel, the plaintiff submitted that it had not treated the Vessel as a part of its own fleet. The plaintiff pointed to the Vessel Fleet List in the plaintiff's Annual Report 2019, identifying the Vessel as "Under

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63 PWS at paras 27–28.

64 PWS at para 30.

65 PWS at para 29.

management with 51% ownership under Investment in Joint Operation", which accurately reflects the extent of ownership of ANHINC in AVI.[66]

37 The plaintiff further denied that it exercised control in the management of ANHINC and/or AMG. Bill Wong, the CEO and director of the plaintiff, testified that he did not personally control any of the three companies, namely the plaintiff, ANHINC and AMG.[67] Each of these companies has its own operating profile.[68] Even though there is common directorship amongst the three companies, Bill Wong wore different hats and acted accordingly.[69] The plaintiff is a listed company run by a board of directors. It is an investment company but that does not mean it necessarily controls the activities of the subsidiaries it owns.[70] In any event, the defendants would have done their due diligence before entering into the joint venture with ANHINC, such that they would have been aware of the group structure, including the relationship between the plaintiff and AMG. Such information is readily available on the plaintiff's website. There is no basis for the defendants to now assert that the plaintiff, AMG and/or ANHINC are the same entity.[71]

Whether there were oppressive acts by ANHINC and AMG

38 The defendants submitted that the plaintiff's conduct, through AMG's breaches of the SMA and ANHINC's oppressive conduct towards the second

66 PWS at para 31.

67 NE 24/3/2021 at p 13, lines 6–17.

68 NE 24/3/2021 at p 13, lines 12–13.

69 NE 24/3/2021 at p 13, lines 29–32.

70 NE 24/3/2021 at p 14, lines 5–9.

71 PWS at para 35.

defendant as a shareholder of AVI, renders it inequitable for the plaintiff to claim for contribution.[72]

39 The defendants submitted that there was oppression arising from AVI's exclusion of the second defendant from the management of AVI and the failure to sell the Vessel, and the second defendant's inability to terminate the SMA between AVI and AMG (as the second defendant is a minority shareholder of AVI),[73] particularly in light of multiple breaches of the SMA by AMG and/or ANHINC and/or the plaintiff.[74] These breaches include:

(a) failure to obtain AVI's approval for all charter contracts that were entered into after 2015, as required by cl 3.3 of the SMA, which essentially provides that AMG has the authority to fix charter contracts that are for a period of three months or shorter so long as they are not below a certain rate, and that AMG shall seek the approval of AVI for other charter contracts;

(b) accepting charter hire rates which were significantly lower than the rate of about US$8,500.00 per day, which AVI had anticipated, without obtaining AVI's approval beforehand, breaching cl 3.3 of the SMA;

(c) failure to provide AVI with regular quarterly reports on the Vessel, breaching cl 4 of the SMA;

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72 DWS at para 123.

73 DWS at para 19.

74 DWS at para 128; BAEIC at Tab 1, pp 13–20.

(d) failure to provide AVI with revised management fees on a yearly basis since 2017, breaching cl 8.2 of the SMA;

(e) failure to provide AVI with an operation budget on a yearly basis since 2016, breaching cl 9.1 of the SMA;

(f) failure to ensure that a back-to-back charter party agreement was signed for each charter party agreement signed between AMG and the charter hirers in respect of the Vessel, breaching cl 21 of the SMA; and

(g) failure to transfer the charter hire to AVI's account within two working days upon receipt of the same from the charters, breaching cl 22 of the SMA.[75]

40 The defendants submitted that there were also oppressive acts in relation to the Vessel, including, *inter alia*, the failure by AMG to disclose the terms of the charter party agreements to AVI, AMG causing an increase in AVI's operating expenses, AMG's use of the Vessel without AVI's prior authorisation, AVI's failure to sell the Vessel to mitigate the losses of AVI, and ANHINC's two-year delay in obtaining the Bank's banking token to facilitate the transfer of funds to AVI.[76]

41 The nub of the defendants' complaint is that the joint venture has not been profitable owing to the plaintiff's mismanagement, and that the Vessel should have been sold.[77] The second defendant had engaged a broker for the sale of the Vessel since 2019, but ANHINC and/or the plaintiff rejected the offers

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75 BAEIC at Tab 1, pp 13–16.

76 DWS at para 22; BAEIC at Tab 1, pp 15–20.

77 DWS at para 153.

made by prospective buyers.[78] Hence, as a result of ANHINC's unreasonable delay, AVI incurred further debt, which could have been mitigated if the Vessel were sold to repay the overdue instalments under the Facility Agreement. Hence, the failure by ANHINC and/or the plaintiff to sell the Vessel also created unfairness such that the plaintiff's claim should not be allowed.[79]

42 The defendants submitted that because of the oppressive conduct by the plaintiff, the plaintiff has not come to the court with clean hands, and is thus not entitled to seek contribution from the defendants.[80]

43 The plaintiff disputed that there were oppressive acts. It submitted that even if there were oppressive acts, the second defendant has not suffered any prejudice. The SMA was negotiated at arm's length between AVI and AMG. The SMA allows AVI to terminate on both non-fault and fault bases.[81] While the second defendant claimed that it could not terminate the SMA unilaterally, there was no evidence that the issue of termination had ever been raised with ANHINC or that ANHINC had rejected a request by the second defendant for termination.[82]

44 As for the alleged breaches of the SMA, the plaintiff's submissions were as follows:

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78 DWS at paras 34–37.

79 DWS at para 153.

80 DWS at paras 132.

81 PWS at para 46.

82 PWS at para 54; NE 25/3/2021 at p 145, lines 24–32.

(a) AMG did provide AVI with an operation budget for 2017 and 2018.[83] While AMG had not provided AVI with an detailed operation budget for every year since 2016, there were separate discussions between shareholders of AVI, where an agreement was reached on the broad strokes of the budget.[84] The first defendant was involved in those discussions, as evidenced by his subsequent e-mails acknowledging such discussions.[85]

(b) There were back-to-back charters between AVI and AMG.[86] Where there were no back-to-back charters, it was inconsequential because the charter terms were made known to AVI, as such information would be presented in the accounts.[87]

(c) The charter hire was not remitted to AVI's account because AMG had pre-funded the operations. The charter hire was then used to pay for the arrears in the operating expenses, and the balance was sent back to AVI's account, which was used to pay the instalments due under the Facility Agreement.[88] Such operating expenses related to the crew expenses.[89] Hence, it was not possible for the entire charter hire to be paid to AVI, as operating expenses of the Vessel had to be paid.[90]

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83 CB at p 961.

84 NE 25/3/2021 at p 42, lines 29–32.

85 CB at p 951.

86 NE 24/3/2021 at p 66, lines 10–12; CB at p 338.

87 NE 24/3/2021 at p 64, lines 26–32.

88 NE 24/3/2021 at p 46, lines 13–18; BAEIC at p 637, Row "D", "Atlantic Maritime Group FZE – Payment to the Bank".

89 NE 24/3/2021 at p 45, lines 13–23,

90 PWS at para 52.

(d) While there were breaches of the SMA by AMG, there were also breaches by AVI, who failed to pre-fund the operations of the Vessel as required under the SMA.[91]

(e) There were times where the Vessel was used without AVI's authorisation, but AVI was informed as to when and who the charterers were. AVI would be notified of the charterparties.[92]

(f) The charter rates were significantly lower than anticipated because of a downturn in the marine industry.

(g) There was no breach of cl 4 of the SMA as AMG was not obliged to provide quarterly reports. AMG's obligation was to provide the income and expense statements only.[93] AMG also did not breach cl 8.2 of the SMA as it did provide a reduced management fee at the defendants' request.[94]

45 The plaintiff's case is that while there were lapses by AMG, there was no detriment to AVI, as these lapses were not serious, and AMG continued to manage the Vessel well despite the market conditions. There was no detriment to AVI, as AMG achieved utilisation rates ranging between 50% to 73% from 2015 to 2019.[95] Some of the lapses did not prejudice AVI. For instance, while there was some delay in obtaining the bank token to facilitate the transfer of

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91 NE 24/3/2021 at p 42, lines 18–27; BAEIC at p 637.

92 PWS at p 55.

93 NE 24/3/2021 at p 72, lines 13–15.

94 CB at p 1213.

95 PWS at para 55.

funds to AVI, which was issued in 2017,[96] AMG did remit the surplus of the charter hire by the Vessel to AVI after the token was received.[97] Actions were taken when complaints against AMG were lodged. According to Bill Wong, the second defendant did not raise the issue of termination of the SMA in board meetings, despite having had the opportunity to do so in board meetings[98] (on the first defendant's own evidence, there were at least two meetings in the past)[99]. The reason why the second defendant did not raise the issue of termination is that there was no truth in the alleged breaches, and/or that the alleged breaches were inconsequential.[100] Bill Wong also attested that the other alleged oppressive acts, such as ANHINC's failure to provide documents, were never brought up to the AVI board, or through the shareholders' forum.[101] Instead, the second defendant went along with AMG, as it did not have to put in funds to AMG for the operational expenses of AVI, even though that was required under the SMA.[102]

46 As for the defendants' claim that the Vessel ought to be sold, the plaintiff's position is that the defendants are not entitled to insist that the Vessel be sold.[103] As held by the court in *KPMG Services Pte Ltd v Pawley, Mark Edward* [2021] SGHC 54 at [103] ("*KPMG v Pawley*"), citing *Chan Siew Lee Jannie v Australia and New Zealand Banking Group Ltd* [2016] 3 SLR 239 at

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96 NE 24/3/2021 at p 81, lines 21–23.

97 NE 24/3/2021 at p 81, line 28.

98 PWS at para 55; NE 24/3/2021 at p 39, lines 22–23.

99 NE 25/3/2021 at p 84.

100 PWS at para 57.

101 NE 24/3/2021 at p 41, lines 16–17.

102 PWS at para 80(a).

103 PWS at paras 76–78.

[36], a surety has no right to require the creditor to proceed against the principal or any security provided for the debt before proceeding against himself. Further, even if the Vessel was sold, there is no confirmation that the sale proceeds would be sufficient to pay AVI's creditors.[104]

47 The plaintiff submitted that there was no delay in the sale of the Vessel. Bill Wong's evidence was that in or around 2017, the market conditions were bad. If the Vessel had been sold at that point, AVI would have received a low price while the remaining bank loan was high.[105] In 2019, while the remaining loan was lower, the offer was US$1.9m. Taking into account what the shareholders have put in, this was not an attractive proposition.[106] As the majority shareholder, ANHINC also had an interest to make sure that the proceeds of sale from the Vessel should be adequate to clear the debts of AVI.[107] Moreover, the offer of US$1.9m was not a firm one. No inspection took place, and the potential buyer might simply have lost interest, as accepted by the first defendant during cross-examination.[108] The defendants' claim that it was difficult to carry out inspection for prospective buyers was not pleaded nor stated in any communications the first defendant relied on. Instead, what was clear was that ANHINC had facilitated inspections of the Vessel when the Vessel was not out on charter. If the Vessel was chartered, it would not be in the interest of AVI to jeopardise a charter by bringing it back for an inspection that may not materialise.[109]

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104 PWS at para 79.

105 NE 24/3/2021 at p 102, lines 2–7.

106 NE 25/3/2021 at p 11, lines 10–26.

107 NE 25/3/2021at p 5, line 18.

108 NE 26/3/2021 at p 51, lines 6–31.

109 NE 25/3/2021 at p 50, lines 16–18; NE 25/3/2021 at p 51, lines 1–12.

My decision

Whether the plaintiff, ANHINC and AMG are one and the same

48 I find the defendants' allegations relating to the conduct of AMG and ANHINC irrelevant to this Suit. The plaintiff is not a party to the SMA between AVI and AMG or the Shareholders' Agreement between the second defendant and ANHINC. The defendants have not established that the plaintiff, ANHINC and AMG are one and the same, such that their separate legal personalities should be disregarded.

49 The law on this is common ground among the parties. One ground for lifting the corporate veil and disregarding the separate legal personalities of ANHINC and AMG is to show that the subsidiary company is carrying on the business of its controller: see *NEC Asia Pte Ltd (now known as NEC Asia Pacific Pte Ltd) v Picket & Rail Asia Pacific Pte Ltd and others* [2011] 2 SLR 565 at [31]. There is no presumption that a subsidiary is the parent company's alter ego: see *Win Line (UK) Ltd v Masterpart (Singapore) Pte Ltd and another* [1999] 2 SLR(R) 24 at [43].

50 In *Miller Freeman Exhibitions Pte Ltd v Singapore Industrial Automation Association and another* [2000] 3 SLR(R) 177 ("*Miller Freeman*"), the Court of Appeal noted that the indicia adumbrated in *Smith, Stone and Knight, Ltd v Lord Mayor, Aldermen and Citizens of the City of Birmingham* [1939] 4 All ER 116, such as whether the subsidiary company's profits were treated as entirely those of the parent company's, whether the subsidiary had no staff of its own and whether the parent governed the business of the subsidiary, were helpful guidelines but by no means a conclusive and definitive test in determining whether a business is carried out by the subsidiary as the principal or agent for its holding company. The Court of Appeal observed that in some

cases, such as in *Miller Freeman*, there were other circumstances to be taken into account. In that case, the second respondent was a wholly owned subsidiary of the first respondent. The appellant sued the first respondent, arguing that the first and second respondents were the same party. The Court of Appeal found at [19]–[23] that even though the second respondent shared the same office address, and the first respondent managed and controlled the second respondent, it did not necessarily follow that the second respondent was acting as the agent of the respondent, or that they were one and the same party. The respondents were entitled to utilise the corporate structure by setting up a company to limit its liability and risk. This must have been known to the appellants who decided to do business with the second respondent. Whether the corporate veil should be lifted is thus very much an inquiry taking into account the circumstances of the particular case.

51 In this case, I find that the defendants have not shown that ANHINC and AMG are the alter egos of the parent company. While the plaintiff wholly owns ANHINC and AMG, this does not render the latter two the alter egos of the parent company. The factors relied on by the defendants – for example, the plaintiff and AMG's sharing of websites and office space, Bill Wong being CEO for both AMG and the plaintiff, and ANHINC utilising the bank account of AMG and the plaintiff to conduct business – do not in themselves mean that ANHINC and AMG are carrying on the business of the plaintiff as the plaintiff's agent or alter egos. There is similarly no evidence that ANHINC was operating as a vehicle of the plaintiff in managing AVI or issues relating to AVI's sale of the Vessel (as set out above in [39] and [41]). I also accept Bill Wong's evidence that each of the companies has its own operating profile, that AMG has its own team running its business, and AMG has existed before the plaintiff was

incorporated.[110] In addition, the group structure of the plaintiff was known to the defendants when the second defendant entered into the joint venture with ANHINC and entered into the SMA with AMG. The plaintiff is entitled to utilise such group structure to structure its business.

52 The defendants' reference to *Kumagai* does not assist them. First, *Kumagai* concerned oppression under s 216 of the Companies Act. Here, the defendants conceded that they were not relying on s 216 of the Companies Act, as the second defendant is a foreign company. Second, the defendants cited [57] of *Kumagai* in support of their case. But the holding at [57]–[58] is that Low did not sufficiently take into account the interests of his principal KZ, for whom he was serving as nominee director on the board of KPM (a subsidiary of KZ). The Court of Appeal found that when Low carried on the business of KPM, serving only his interest and in disregard of the interest of his principal KZ, he acted in breach of his duty to his principal KZ. There is no suggestion here by the defendants that any of the directors of AVI were not acting in the interest of their principal. Third, when the Court of Appeal observed at [44] that counsel had adopted too legalistic an approach in relying on the separate legal personalities of KZ and KPM, it was in the context of the court's finding that KPM did not operate independently of KZ. Thus, the Court of Appeal observed at [59] that "subsidiaries come in all shapes and sizes; some are truly independent, while others are not", and that on the facts, KPM had been used by Low as a mere vehicle of KZ. In contrast, for the reasons stated above in this judgment at [51], I do not find on the evidence presented by the defendants that AMG or ANHINC were used as mere vehicles of the plaintiff, or that ANHINC, AMG and the plaintiff have been managed as one, such that their separate legal personalities should be disregarded.

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110 NE 24/3/2021 at p 13, lines 8–17.

Whether there were oppressive acts by AMG and ANHINC

53 As I have found that there is no ground to pierce the corporate veil to consider these group companies as one entity, the issue of whether there are oppressive acts by AMG or by ANHINC is not relevant to the defendants' resistance to contribution. However, for completeness I have also examined, assuming that the corporate veil is pierced, whether the acts are indeed oppressive, such that they should prevent the plaintiff from seeking contribution from the defendants.

54 As a preliminary point, I observe that both the Shareholders' Agreement and the SMA require any disputes arising out of those agreements to be resolved by arbitration. The second defendant is a party to the Shareholders' Agreement and is not constrained in any way from referring disputes thereunder to arbitration. But it has not done so at any point to the proper forum. It has instead bypassed the arbitration provisions to raise its grievances here and now. Similarly, as a shareholder of AVI, the second defendant could have sought arbitration between AVI and AMG for the alleged breaches of the SMA, arbitration being the agreed and proper forum for their disputes. But the second defendant has never raised this with the board of AVI, and has instead bypassed the proper forum of arbitration to raise those grievances in this suit.

(1) Alleged breaches of the SMA

55 On the facts, even though there were some breaches of the SMA by AMG in relation to the chartering of the Vessel, they did not prejudice the defendants, nor did they render it unfair for the plaintiff to seek contribution from the defendants:

(a) The failure by AMG to enter into back-to-back charters was not prejudicial, as AVI was informed of the charterparties entered into by AMG. Where the Vessel was used without AVI's authorisation, AVI was notified of the charterparties.

(b) The failure to provide AVI with an operation budget was not prejudicial. I accept Bill Wong's evidence that there were subsequent discussions with AVI shareholders, who were informed of the operation budget and approved it. This is supported by the first defendant's own correspondence to Bill Wong.

(c) The delay in obtaining the banking token was remedied as the token was issued in 2017. In any event, the breach was not so material as to render it inequitable for the plaintiff to seek contribution, as AMG remitted the surplus of the charter hire to AVI thereafter.

56 If the second defendant found the alleged breaches of AMG prejudicial or unfair, it could have raised this during AVI's board meetings, but it did not do so. The first defendant attested that there were at least two board meetings in the past.[111] The first defendant also agreed that there was a board meeting on 1 July 2019, where Bill Wong proposed that AVI's board could discuss the issue of AMG's performance as a ship manager, and then decide whether AVI would continue with the current SMA.[112] During the meeting, the first defendant discussed the issue of AMG's performance. His evidence is that the discussion "went beyond the termination of the ship management agreement", as he had

111 NE 25/3/2021 at p 84.

112 NE 25/3/2021 at p 86, lines 12–17; CB at p 1212.

suggested that AVI should sell the Vessel, given the high operating expenses incurred.[113]

57 There is thus no evidence that the first defendant sought to terminate the SMA at the board meeting even though Bill Wong had suggested such an option. Instead, the first defendant claimed that it would not have been possible for the defendants to raise the issue of termination because the plaintiff and/or ANHINC would not have considered it.[114] The defendants' case, therefore, is not that they tried to but were prevented by ANHINC from terminating the SMA, but rather that *they thought they would not have been able to* have AVI terminate the SMA, as the second defendant was merely the minority shareholder in AVI with 49% of the shares.[115] However, this is speculation on the part of the defendants. What the evidence does bear out is that the first defendant did not raise the issue of termination; rather, the first defendant simply, in his words, "went beyond" this issue to discuss instead the sale of the Vessel. There is also evidence that the first defendant was aware of these alleged breaches, and that he was unhappy with AMG's alleged mismanagement from around 2015,[116] and yet no action was taken to terminate the SMA. If the alleged breaches are as consequential as the defendants now make them out to be, why did they not take action on them all these years?

(2) The failure to sell the Vessel

58 I also find that the fact that the Vessel has not been sold is not due to oppressive acts by AMG and/or ANHINC. First, there is no evidence that the

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113 NE 25/3/2021 at p 102, lines 13–14, 21–23; NE 25/3/2021 at p 112, lines 21–23.

114 NE 25/3/2021 at p 102, lines 4–5.

115 DWS at para 115.

116 NE 25/3/2021 at p 104, lines 9–12; NE 25/3/2021 at p 112.

plaintiff, AMG and/or ANHINC prevented or delayed such a sale. When the Vessel was not chartered and inspections were possible, AMG facilitated such inspections.[117] There were prospective buyers with tentative offers in 2019. The fact that no sale materialised could not be attributed to any oppression by ANHINC or the plaintiff. As the first defendant has acknowledged, one prospective buyer made an offer for US$1.9m made in December 2019, but lost interest thereafter. The prospective buyer did not request an inspection,[118] so it could not be said that ANHINC and/or AMG had prevented any inspection from taking place. Bill Wong testified that his approach was that if the Vessel were chartered, in the absence of a firm offer, he would not jeopardise a charter which had contractual obligations attached, to satisfy a prospective buyer whose purchase may not materialise. This cannot be said to be a decision that was against the interest of AVI, or in any way oppressive to the second defendant.

59 Second, the evidence is that for the offers that were closer to materialising, there was commercial reason for AVI not to sell at that price, even if the offers became firm. For the offer in 2019, where the tentative offer was US$1.9m, the price was not sufficient to clear all the debts of AVI. I accepted Bill Wong's evidence that it would be in neither ANHINC's nor the second defendant's interests to force a sale that would still leave outstanding debt to AVI's creditors. Again, his assessment cannot be said to be against the interest of AVI or in any way oppressive to the second defendant.

60 Neither could it be said that it was oppressive of ANHINC to continue with the Vessel's operation when the operating expenses were above US$3,000 per day. The shareholders of AVI agreed to make contributions to AVI of

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117 NE 25/3/2021 at p 50.

118 NE 25/3/2021 at pp 51–52; BAEIC at p 218.

US$135,000 each on a quarterly basis, on the budget estimation of US$3,000 per day of operating expenses, to fund the running of the Vessel. Since the operating expenses were higher than expected, the defendants submitted that Vessel should have been sold to discontinue the loss-making venture of AVI.[119] However, this issue is not material as I have found that AHNINC and AMG did not obstruct any attempts to sell the Vessel. The fact that the Vessel was not sold could not be attributed to any oppression by AHNINC and AMG.

61 In any event, the defendant accepted that the actual operating expenses amounted to US$3,591.52 per day,[120] which is not far off from the budgeted figure of US$3,000 per day. Further, as Bill Wong has attested, which I accept, the operating expenses figure discussed here was ultimately an estimate, and much depended on the actual operation of the Vessel.[121] The figure of US$3,000 of operating expenses per day was made on the premise of 100% utilisation.[122] The actual expenses would likely exceed this amount where there was no 100% utilisation, and the operating expenses of similar vessels in the market were in the region of US$4,500 and above.[123] I therefore find that the actual operating expenses of the Vessel were within a reasonable range, such that the continued operation of the Vessel was not oppressive to the defendants.

62 Third, that the Bank could have enforced the security by selling the Vessel to re-pay the loan does not assist the defendants' case. It is well established in case law (see *KPMG v Pawley* at [103]) that a surety has no right

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119 Defendant's Reply Submissions at paras 50–52.

120 Defendant's Reply Submissions at para 51.

121 NE 25/03/2021 at pp 40–41.

122 NE 24/03/2021 at pp 73, 107; CB at p 73.

123 CB at p 1206.

to require the creditor to proceed against the principal or any security provided for the debt guaranteed before proceeding against himself.

Conclusion

63 The defendants essentially seek to resist the plaintiff's claim for contribution on the grounds that it is inequitable for the plaintiff to do so. However, having assessed the overall evidence, I do not find that it is inequitable for the plaintiff to seek contribution from the defendants. The defendants allege that the mismanagement by AMG has caused the Vessel to bring in poor returns. However, they do not deny that the Vessel has brought in returns of about US$2.15m, which has contributed to the repayment of the US$8.4m loan.[124] This has reduced the contributions needed by the second defendant, as shareholders of AVI, to keep the loan afloat, and reduced the potential liability of the first defendant as a co-guarantor. Moreover, it is undisputed that such returns were generated through AMG's management of the Vessel, and that AVI owed management fees to AMG to the tune of $915,512 as of 30 September 2020.[125] For all the litany of complaints that the defendants have regarding AVI, AMG, ANHINC and the plaintiff, which according to the first defendant started since 2015, the defendants have never brought any action against AVI for minority shareholder oppression, nor did they actively seek to have the board of AVI deal with the alleged breaches of AMG or terminate the SMA with AMG.

64 In conclusion, I find that the plaintiff is entitled to its claim for:

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124 NE 24/3/2021 at p 46, lines 13–18; BAEIC at p 637 at Row D.

125 BAEIC at p 637 at Row I=E+F+G+H.

(a) a declaration that the defendants are jointly and severally liable to contribute to the amounts paid or to be paid by the plaintiff under the Guarantees;

(b) the sum of US$510.946,55 or severally the sum of US$255,473.28 being rateably the defendants' proportion of the sums due under their respective Guarantees; and

(c) interest at 5.33% per annum from each of the three payments due dates set out in [12] of the Statement of Claim (*ie* 31 May 2019, 30 August 2019 and 29 November 2019) until the date of judgment pursuant to s 12(1) of the Civil Law Act.

65 I will hear the parties on costs.

Kwek Mean Luck
Judicial Commissioner

Yoga Sharmini, Subashini N, Peh Kai Sen Eli (Haridass Ho & Partners) for the plaintiff;
Mathiew Christophe Rajoo, Tharanii Thiyagarajan (Dennismathiew) for the defendants.