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

[2022] SGHC 72

Suit No 867 of 2019

Between

David Cheong Hong Meng

… *Plaintiff*

And

(1) Irene Sim
(2) Global Wheel Leasing Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Directors — Duties]
[Companies — Oppression — Minority shareholders]

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Cheong Hong Meng David
v
Sim Irene and another

[2022] SGHC 72

General Division of the High Court — Suit No 867 of 2019
Audrey Lim J
2, 3 February, 2, 5–9 and 14 July 2021, 7 December 2021, 23 February 2022

1 April 2022 Judgment reserved.

Audrey Lim J:

1 The plaintiff ("David") and the first defendant ("Irene") are equal shareholders and directors of the second defendant ("GWL"). David commenced this suit ("the Suit") against Irene for a claim under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"). GWL is a nominal defendant.

Background

2 David incorporated GWL on 17 November 2016 and it is essentially in the business of leasing private cars for hire. He contributed a total capital of $30,000, comprising $13,000 and his car (SJE 4417K) to GWL.[1] According to David, he had discussed with one Aloysius Tan ("Aloysius") about Aloysius

[1] Statement of Claim (Amendment No. 1) ("SOC") at [1] and [5]; Defence (Amendment No. 1) ("Defence") at [1]; David's AEIC at [4]–[5]; Irene's AEIC at [5]; 2/2/21 NE 9, 30; Agreed List of Issues dated 22 September 2021 ("Agreed List").

acquiring a 50% shareholding in GWL. Around 19 December 2016, Irene joined GWL as a director and David transferred 50% of his shares to her. Irene contributed $30,000 in cash to GWL. Her contribution came from Aloysius, who was her former husband, and she held her 50% shareholding on his behalf.[2]

3 With David's and Irene's cash contribution, GWL acquired three more cars. Subsequently, 34 more cars were acquired by GWL with funds from entities related to Aloysius or one Andrew Sim ("Andrew") used to purchase some of these cars. Whether GWL beneficially owned these 34 cars was a point of contention between the parties. Hence, GWL had 38 cars (collectively "the Cars") under its name, although by October 2017 all the Cars had been transferred out of GWL.[3] For simplicity, I will refer to the Cars by their registration numbers without the corresponding letters.

4 David left the day-to-day management of GWL to Irene, as he was holding full-time employment as a sales manager at Carlsberg.[4]

Plaintiff's claim

5 David pleaded and attested as follows. GWL was founded on the basis of mutual trust and confidence between him and Irene and was a quasi-partnership. The understanding between them was that any profits in GWL's business would be split equally between them and that he would be kept informed in respect of GWL's business dealings and performance.[5]

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2 2/2/21 NE 10–11; 5/7/21 NE 36–37; Agreed List.

3 David's AEIC at [5]; Irene's AEIC at [5]; 3/2/21 NE 1; Agreed Bundle ("AB") 248.

4 David's AEIC at [6]; Irene's AEIC at [9]; 2/2/21 NE 41; 2/7/21 NE 64; 5/7/21 NE 20.

5 SOC at [5], [7] and [20]; David's AEIC at [4] and [6].

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6 Before GWL leased its cars to private-hire drivers, GWL would collect at least a week of rental fees from them in advance. The profits generated from the rental of the cars would be used to acquire more cars at scrap value or close to scrap value where the Certificates of Entitlement for the cars were about to expire. Some of these cars would have their Certificates of Entitlement renewed and be re-sold at a profit with the sale proceeds to be re-invested in acquiring more cars at scrap value.[6]

7 Subsequently, David discovered various matters which he claimed were caused by Irene exercising her powers as a director or shareholder in a manner which was oppressive and in disregard to his interest as a shareholder of GWL. First, Irene had caused GWL to transfer the Cars which belonged to GWL to unknown persons without his knowledge or approval such that GWL had no cars left by October 2017. Despite GWL being profitable, Irene refused to declare a fair share of dividends to David, and she had misappropriated the profits from the sale of the Cars.[7] Second, Irene had caused moneys to be withdrawn from GWL's bank account without his knowledge and consent on at least 78 occasions ("the Transactions"). Third, she had caused GWL to make payments that it did not legitimately incur for her own benefit, on four occasions ("the Payments"). Fourth, she attempted to conceal her wrongdoing and fraud by submitting inaccurate accounts of GWL's records to him and denying him access to inspect the records.[8]

8 By reason of the above matters, disputes arose between David and Irene, resulting in a loss of mutual trust, goodwill and confidence and an

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6 David's AEIC at [7]–[8]; 2/2/21 NE 11.

7 SOC at [9], [11], [15], [16]; David's AEIC at [22]–[24].

8 SOC at [17]–[19]; David's AEIC at [30].

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irretrievable breakdown in their relationship. Irene had also excluded him from participating in GWL's business.[9] For brevity, I will use the term "oppression" to refer to Irene's purported acts which are the subject of the Suit.

First defendant's case

9 Irene denied the oppression claims and stated as follows. Negotiations for her joint venture business with David were done by Andrew on her behalf and culminated in the following agreement. GWL would acquire cars to be leased out, with David and her contributing the initial capital as at [2] above, and they would provide further funds to buy another 50 cars. Additionally, Global Garage Pte Ltd ("**GG**") (incorporated in 2014 with Andrew, Wang Pinying (David's friend) and David as shareholders) would service and repair GWL's cars. Finally, all profits and losses of GWL and GG would be shared or borne equally between the parties. Irene joined GWL around 19 December 2016 on Aloysius's request and she did not know David prior to this.[10]

10 As David did not provide more funds to acquire further cars, he agreed with Irene to allow Global Carz Pte Ltd ("**GC**") and Andrew to place their cars under GWL so that revenue from these cars could be used to defray GWL's operating expenses. Thus, of the 38 Cars, four cars belonged to GWL and 34 cars belonged to GC and Andrew as they purchased and paid for them. As such, there was no dissipation of GWL's assets.[11] As for the Transactions and Payments, they comprised sale proceeds paid to GC and Andrew when the 34 cars were sold or were legitimate payments for GWL's expenses. David knew

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9 SOC at [22]–[23].

10 Defence at [3]; Irene's AEIC at [6]; 5/7/21 NE 36–39.

11 Defence at [4]; Irene's AEIC at [7].

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about the payments as all GWL's cheques were jointly signed by him and Irene. Finally, David was never denied access to GWL's books.[12]

Related entities

11 I first introduce entities related to David, Irene, Andrew or Aloysius that are relevant to the Suit ("Related Entities"), as follows.

(a) Crown Auto ("CA") is owned by Andrew who is also its director. CA imports and sells cars to local dealers. Irene was not an employee of CA, but she assisted Andrew with administrative matters.[13]

(b) Global Garage Pte Ltd or GG is in the business of repair and maintenance of motor vehicles. It was started in 2014 as Soon Kee F&B Group Pte Ltd ("Soon Kee") and changed its name to GG on 3 June 2016. Its registered address is 8 Kaki Bukit Avenue 4 or Premier@Kaki Bukit ("the Premier"). David, Wang Pinying and Andrew hold 30%, 30% and 40% respectively of the shares in GG, and all of them are directors. Irene was involved in the management of GG.[14]

(c) Global Carz Pte Ltd or GC, previously known as Evergreen Motoring Pte Ltd ("Evergreen"), is owned by Aloysius and is in the business of retail sale of motor vehicles. Its registered address was previously at the Premier. Irene was employed by Evergreen, performing administrative duties, and continued to be employed by GC

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12 Defence at [6]; Irene's AEIC at [8]–[14].

13 Bundle of Affidavits of Evidence-in-Chief ("BOA") p 175; 5/7/21 NE 14–15; 7/7/21 NE 83–84, 87.

14 AB 252–255; 2/7/21 NE 65–66.

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doing the same.[15] I will refer to GC and Evergreen inter-changeably as they are essentially the same entity.

(d) Global Autoworks ("GA"), registered on 29 November 2016, is owned by Irene who is also its director. It does spray painting for cars. Its previous business address was also at the Premier.[16]

(e) JAI Motoring ("JAI") was, according to Irene, started by Aloysius, her brother-in-law and her. Irene is the sole shareholder and director. According to Irene, it currently has no business.[17]

12 Additionally, one Global Forecast Pte Ltd ("GF") is owned by Tan Teck Soon, although Mr Seah (Irene's counsel) stated that Irene owned GF.[18]

13 Whilst a shareholder and director of GWL, Irene worked for GG, GA and GC.[19]

The applicable legal principles

14 The plaintiff bringing an action under s 216 of the CA must demonstrate that the wrong is occasioned to him in his capacity as a shareholder, as opposed to a wrong occasioned to the company. Section 216 of the CA encapsulates four limbs, namely oppression, disregard of a shareholder's interests, unfair discrimination and prejudice. The common element supporting these limbs is commercial unfairness, which is found where there has been a visible departure

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15 AB 119–120; AB 256–258; 5/7/21 NE 7–8, 11.

16 AB 116–117; NE 5/7/21 17, 77.

17 AB 122–124; 5/7/21 NE 12–14.

18 AB 259–260; 2/7/21 NE 51.

19 5/7/21 NE 15–17.

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from the standards of fair dealing which a shareholder is entitled to expect. In assessing if there has been commercial unfairness, the court should determine if there has been a departure from the commercial agreement between the shareholders as found in the formal constitutional documents of the company, informal understandings, or, in a quasi-partnership, the legitimate expectations of shareholders (*Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [28]–[29]). In particular, diversion of a company's business without adequate justification, or the favouring by a majority shareholder of another company to the detriment of the company in which a minority has his shareholding, can amount to oppressive conduct under s 216 of the CA (*Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others* [2018] 4 SLR 331 at [67]; *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [85]).

15 Where there is a quasi-partnership, the court will apply a stricter yardstick of scrutiny. In such situations, minority shareholders are particularly vulnerable because of the informal nature of the company set-up where not all rights and obligations are explicitly spelt out in legal terms. The minority shareholders could be vulnerable to the exploitative conduct by the majority as the former may have no obvious legal remedies spelt out in the memorandum and articles of association (*Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 at [83]).

Parties' initial agreement concerning the operation of GWL

16 I first deal with the incorporation of GWL and the terms of agreement which Irene claimed applied to the joint venture with David in GWL.

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17 David had known Aloysius and Andrew prior to Irene becoming a shareholder of GWL. As Andrew attested, he and David became good friends and they set up the GG business. It was also clear that David and Aloysius were interested to work together in relation to GWL's business.[20] Although David had incorporated GWL in November 2016 before Irene/Aloysius became a shareholder in December 2016, the parties had in November 2016 made arrangements on how they would contribute an equal amount of capital for GWL to acquire the first four cars for its business (see [19] below). GWL was managed in an informal manner, with the common understanding that the daily management would be left to Irene as David was occupied with his full-time job at Carlsberg.

18 I thus find that GWL was founded and continued on the basis of mutual trust and confidence when Aloysius became a shareholder, given his friendship with David and their plan to venture into the car-leasing business because of its potential profitability. Hence, David was content to leave the management of GWL to Irene, who operated the business in an informal manner. David and Irene (Aloysius) treated GWL as a quasi-partnership even if Irene (holding her shares on Aloysius' behalf) joined GWL after its incorporation.

Capital contribution and first four cars

19 I accept that Aloysius (through Irene) acquired a 50% shareholding in GWL based on his $30,000 capital contribution. It was not disputed that David's $30,000 contribution comprised about $13,000 in cash and his car 4417. On 23 November 2016, David transferred $16,000 into GWL's account. He also handed $14,000 to Aloysius to settle the outstanding loan on his car and, on

[20] 2/2/21 NE 6–7; 7/7/21 NE 77–78, 84.

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23 November 2016, JAI transferred $14,000 to GWL. The following day, $17,439.83 was used to pay off the loan on car 4417. The transactions are reflected in GWL's bank statements and recorded in Irene's journal entries (at the Plaintiff's Core Bundle pages 1 to 20, collectively called "Irene's Journal"). Car 4417 was transferred to and registered in GWL on 28 November 2016. As for Aloysius's capital contribution, GWL received the moneys from JAI on 25 November and 19 December 2016.[21]

20 Irene did not dispute that the first four cars acquired by GWL belonged to it. Whilst she and David claimed they were cars 4417, 8931, *6302* and *3487*, I find that they were cars 4417, 8931, *714* and *2951*. Both parties stated that their respective capital contribution led to GWL acquiring the first four cars, and Irene further attested that it was after the parties' "initial" four cars were rented out that David did not provide additional funds to purchase more cars. If so, these four cars would have been the first four cars registered in GWL, namely cars 4417, 8931, 714 and 2951 registered on 28 November, and on 8, 19 and 20 December 2016 respectively. David accepted that JAI's transfer of moneys into GWL on 19 December 2016 (see [19] above) was used to pay for cars 714 and 2951. Irene also accepted that cars 6302 and 3487 were purchased only in February and April/May 2017 respectively.[22]

Other purported terms of the initial agreement

21 Next, Irene claimed that negotiations for her joint venture business with David were discussed or negotiated by Andrew on her behalf with David at three

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21 AB 2; Plaintiff's Core Bundle ("PCB") 1; 3/2/21 NE 8, 12–15, 21, 24; 5/7/21 NE 24–25; 7/7/21 NE 47, 50, 57; BOA p 45; PCB 1; AB 2 and 5.

22 David's AEIC at [5]; Irene's AEIC at [5]; 3/2/21 NE 26; 5/7/21 NE 25; AB 5; BOA pp 43–46.

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locations, namely at Westway Building ("Westway"), the ARK@KB at Kaki Bukit ("the Ark"), and UOB bank at Novena Square ("UOB Novena"). These meetings ("the Meetings") culminated in an agreement between Irene and David whereby, apart from agreeing that GWL's business was to acquire second-hand cars to rent out and that she and David would each contribute $30,000 in capital, they also agreed as follows (the "Purported Terms"):[23]

(a) parties (*ie*, David and Irene) would provide further funds to acquire up to 50 cars to be leased out;

(b) GG would service and repair GWL's cars (in addition to other cars);

(c) all profits and losses of GWL and GG would be shared equally between the two entities.

22 Andrew, who testified in support of Irene, stated that David had agreed with Irene, whom he represented at the Meetings, on the Purported Terms. Andrew stated that it was David's idea to start GWL and that GG was intended to facilitate GWL's business. Thus, they had always treated GG and GWL as a "bundle". Hence all the discussions among Andrew, David and Aloysius even before GG was incorporated, was always about GG and GWL together and never about starting a garage (*ie*, GG) first and then starting GWL.[24]

23 David denied any agreement on the Purported Terms. He claimed there were no discussions of the terms of business between him and Andrew prior to Irene joining GWL. He started GWL before Aloysius asked to join in,

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[23] Irene's AEIC at [6].

[24] Andrew's AEIC at [7]; 7/7/21 NE 90–92.

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whereupon they then agreed to joint ownership. His understanding with Irene was that any profits made by GWL would be split equally between them as they were equal shareholders. Also, once GWL's first few cars were rented out, the profits generated would be reinvested to acquire more cars.[25]

24 Whilst I am cognisant that David had shares in GG and GWL, and that GG would benefit from servicing and repairing GWL's cars as it would generate business for GG, Irene has nevertheless failed to show on balance that she had agreed to the Purported Terms with David. Apart from the absence of documentary evidence to support such an agreement, Irene's and Andrew's testimony cast doubts even on when the Meetings took place, what purportedly transpired, whether there was a meeting of minds on the Purported Terms and when the agreement was concluded.

25 First, Irene was not present when the Purported Terms were supposedly discussed and agreed on. She claimed that Andrew represented her at the Meetings and she knew about what transpired at each meeting only *after* it was concluded and either Andrew or Aloysius (whom she claimed was also present at the Meetings) would then *update* her. It was unclear what mandate she had given Andrew in relation to the negotiations that led to the Purported Terms. Indeed, Irene did not even know David until she joined GWL.[26]

26 In the above regard, Irene stated (in her further and better particulars or "F&BP") that the meetings at Westway and the Ark were in April/May 2016, the meeting at UOB Novena occurred when she went to open a bank account for GWL, and at *all* the Meetings David and she had agreed to contribute further

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[25] David's AEIC at [6], [8]; 2/2/21 NE 9–11; 2/7/21 NE 20.

[26] 5/7/21 NE 36, 38–43, 47–49; 7/7/21 NE 57–58.

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funds to acquire up to 50 cars and also agreed that the profits and losses from both GG and GWL would be borne equally between the two entities.[27] This is in contrast to Andrew's testimony that *after Irene* had agreed to the Purported Terms, they then met at UOB Novena to open a bank account for GWL.[28] His explanation that "maybe [Irene and David] could have discussed further at the bank" was unconvincing, given that he claimed to have been present together with David and Irene at that time,[29] and he and Irene claimed that he was the one representing Irene in negotiating the Purported Terms and that Irene would only be updated on the terms thereafter. Irene also claimed that she did not participate in the negotiations even at UOB Novena.

27 Second, Andrew's explanation that all the discussions pertained to GG and GWL *at the same time* because the entities were treated as a "bundle", that GG's incorporation was to facilitate GWL's business and that it was never about starting a garage (GG) first and then the rental business (GWL) later, did not stand up to scrutiny.

(a) That GG and GWL were treated as a "bundle" and the discussions were never about starting a garage and then the rental business did not explain why GG was started first (by a change of name from Soon Kee on 3 June 2016) and GWL was incorporated some five months later on 17 November 2016 with David as GWL's only director and shareholder on its incorporation.

(b) Pertinently, that the two entities were treated as a "bundle" from day one (and even before GG was started) or discussed together was not

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27 F&BP dated 10 January 2020 at Answers to (1) and (2).

28 Andrew's AEIC at [7].

29 7/7/21 NE 105–107.

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borne out in Andrew's affidavit of evidence-in-chief ("AEIC"). Andrew stated in his AEIC that around *May* 2016, David and he started GG to do repairs and maintenance of vehicles, and it was between *May and November* 2016 that he was *requested by Irene to explore and discuss* the setting up of a company to acquire second-hand cars to rent out for private hire.[30] Indeed, Irene stated in court that she did not have full knowledge about GG or when it was incorporated, and Andrew subsequently stated that any negotiations pertaining to the two businesses (GG and GWL) would have occurred *at different times* as the two entities were set up at different times.[31]

28 Next, Irene's evidence was inconsistent. Whilst she maintained in court that she did not have full knowledge about GG or its incorporation, she had earlier pleaded and stated that David and she had agreed, as part of their business venture, to set up GG to service GWL's cars, and that she had authorised Andrew to discuss and agree to the terms of the setting-up of GWL *and GG*.[32] But she was not a shareholder of GG and Andrew claimed that any negotiations relating to the two entities had occurred at different times. There was also no evidence that GG was a party to the Purported Terms which dealt with its rights and obligations (in particular, that all profits and losses between GG and GWL would be shared equally). Andrew stated that the "parties" who agreed to the Purported Terms were Irene (who was represented by Andrew) and David.[33]

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30 Andrew's AEIC at [5]–[6].

31 5/7/21 NE 36; 7/7/21 NE 114.

32 Defence at [2(2)]; Irene's F&BP dated 7 July 2020 (Answers to Question 1).

33 7/7/21 NE 96.

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29 In fact, it is unclear that there were a meeting of minds and certainty of the Purported Terms, as even if the Purported Terms were discussed, it was uncertain that parties (who are alleged to be David and Irene) *had to* contribute funds to acquire up to 50 cars. As Andrew explained, that was more of a "target" or a "dream" when parties were discussing their plans for the future of GWL.[34]

30 In the round, I find that Irene has failed to prove on balance that there was any agreement reached with David that contained the Purported Terms. Irene's testimony showed that she was a passive participant in how she came to join GWL. She was not present when the Purported Terms were discussed (although she claimed that Aloysius was) and was only updated after the fact. Aloysius, whose evidence would have been material to the existence of an agreement on the Purported Terms, was not called by Irene to support her case.

David's refusal to provide funds to acquire more cars and agreement for GC and CA to put their cars in GWL

31 Irene claimed that after the initial four cars belonging to GWL were rented out, David refused or was unable to provide additional funds to acquire further cars, which was important as the rental from the first four cars was hardly sufficient to cover GWL's operating expenses. Thus, David and she agreed to GC and CA "putting their cars" under GWL so that the revenue from their cars could contribute to GWL's operating expenses. Andrew stated that he was "given to understand" that David was unable to provide funds to acquire further cars, and thus GC and CA were "roped in" and they bought another 34 cars and placed them under GWL with the revenue generated from these cars used to defray GWL's expenses.[35]

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34 7/7/21 NE 104.

35 Irene's AEIC at [7]; Andrew's AEIC at [8]–[9].

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32 David claimed that he was never asked to contribute funds to expand the fleet of cars and that GWL's business model was to fund the acquisition of more cars through the revenue obtained from leasing out the initial cars.[36]

33 I agree that GWL was not at that time making sufficient profits from the rental of the first four cars to purchase more vehicles or to expand its fleet without financial help. This must also be seen in the light that GWL had operating expenses.[37] Its bank statements show that it did not have sufficient money to purchase even the fifth car (8233) in January 2017 without an injection of funds from JAI. David did not dispute that moneys were transferred from GC or CA to GWL on various occasions for GWL to purchase more cars.[38]

34 That said, I find that it was not the case where David was approached to provide more funds for GWL to expand its fleet of cars and he then refused. Rather, he was unaware at the material time, having left the daily management of GWL to Irene, as to precisely how the additional 34 cars came to be acquired and he assumed they were acquired by the revenue generated from leasing out the existing fleet.[39]

35 Irene's testimony does not bear out her claim that David was approached for money to acquire more cars and David had refused to do so (the "Purported Meeting"), whereupon *she* and David then agreed to allow GC and CA to put their cars under GWL so that the revenue from leasing them out could contribute to GWL's operating costs (the "Purported Agreement"). In court, Irene stated

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36 Reply at [6]; David's AEIC at [7]–[9].

37 2/7/21 NE 7–8.

38 3/2/21 NE 32–33, 54; David's Closing Submissions ("PCS") at [43].

39 2/7/21 NE 42; David's AEIC at [8]–[9].

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that *she was not present* at the Purported Meeting, but that Aloysius had informed her, after that meeting, that David had told Aloysius that he did not wish to purchase more cars.[40]

36 Further, Irene claimed that the Purported Meeting was among David, Aloysius and Andrew.[41] But Andrew testified in court that *he was told by Irene* that David was unable to provide further funds to acquire cars; that he was not involved in that meeting which was between David and Aloysius; and that it was *Irene* who decided that GC and CA would buy more cars to park under GWL. Andrew then claimed that there were *two* meetings where the Purported Agreement was made, one between him (representing CA) and Irene, and the other between Aloysius (representing GC) and Irene. He also admitted that he did not know what terms were agreed between GC and Irene pertaining to the Purported Agreement as he was not present at the meeting where such agreement was purportedly made between GC and GWL.[42]

37 Andrew and Irene's testimony were diametrically at odds, as to who was present at the Purported Meeting and had concluded the Purported Agreement on GWL's behalf, especially when Irene claimed not to have been present at all. Further, if Irene was not present at any meeting concerning the Purported Agreement and Andrew was not present where the Purported Agreement pertained to GC, then it is unclear as to who agreed to the terms of the Purported Agreement which pertained to GWL and GC, let alone what terms were agreed on. Pertinently, Aloysius has not testified in support of Irene's claim. As such I

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40 Irene's AEIC at [7(2)]; 5/7/21 NE 52–54.

41 5/7/21 NE 56.

42 7/7/21 NE 108–109, 128–129.

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find that Irene has not shown on balance that the Purported Meeting (or any meeting) took place in which the Purported Agreement was concluded.

38 I add also that whilst Irene claimed that 34 cars (excluding the initial four cars) belonged to GC and/or CA by reason of this Purported Agreement, she conceded that cars 3487 and 6302 (purchased in around February and April 2017 respectively) and which she labelled as two of "David 4 Cars" belonged to GWL.[43]

Ownership of the additional 34 cars

39 I deal first with the ownership of the additional 34 cars ("34 Cars") registered in GWL after the initial four cars 4417, 8931, 714 and 2951 were registered. David claimed that the Cars, all registered in GWL's name, belonged to GWL as GWL paid for them, and any profits made from leasing them belonged to GWL.[44] Hence, the subsequent disposal of the Cars by Irene was conduct amounting to oppression. Irene claimed that the 34 Cars belonged to GC and CA because they were purchased with their moneys and the revenue generated from the cars (after deducting GWL's operating expenses) also belonged to GC or CA.[45]

40 I have found that the Purported Agreement (which is the crux of Irene's defence pertaining to the 34 Cars) did not exist and David would have been unaware of any arrangement for GC or CA to put any of their cars under GWL. Hence, any of the 34 Cars that were purchased by GWL (even if assisted by funds from another entity) belonged to GWL. This is even if David did not at

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43 3/2/21 NE 66–67; 8/7/21 NE 7–8; BOA pp 26–30.

44 SOC at [8], [10]–[11]; Reply at [4]–[6]; David's AEIC at [6].

45 Defence at [4]; Irene's AEIC at [7]–[8].

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the material time know how many cars were registered in GWL.[46] I turn to my findings on the 34 Cars.

Car 6302

41 Irene accepted that this car belonged to GWL. She had recorded this as one of "David 4 Cars" in GWL's accounts but which she had clarified meant they were GWL's cars.[47]

Cars 8233, 2986, 6154, 2982, 3685, 5893, 3564, 3396, 4778, 3058, 4414, 4179, 2843, 1163, 1433 and 8082 – purchased with GWL's money via financial assistance from Related Entities

42 The following cars were purchased by GWL with moneys from its account, albeit with financial assistance or loans from Related Entities. As such, these cars belonged to GWL, albeit that any loans would have to be repaid.

43 First, GWL purchased and paid for car 8233, albeit with a "loan" from JAI (as recorded in Irene's Journal). David accepts that this car was purchased with the help of JAI's money.[48]

44 Second, car 2986 was sold to GWL for $9,989.[49] Whilst GWL's bank statement did not show that GWL had paid for the car, Irene's Journal recorded a sum of $9,989 as a "loan from Evergreen" by way of "cash (Aloysius) contra" which Mr Seah claimed was GC's payment for the purchase price. Mr Lim (David's counsel) submitted that GWL had purchased the car with funds

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46 6/7/21 NE 113.

47 3/2/21 NE 66–67; 8/7/21 NE 7–8; PCB 6; BOA pp 37, 40.

48 AB 8; PCB 28; 3/2/21 NE 33; 6/7/21 NE 49, 81–82; PCS at [43(f)].

49 Irene's 2nd Bundle of Documents ("2nd DBOD") at p 222; PCB 154.

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borrowed from GC.[50] As the sum of $9,989 was treated as a "loan" to GWL from GC via cash and the sales and purchase agreement showed GWL as the buyer of the car, I accept that the car belonged to GWL, with GWL having to repay the loan to GC.

45 Third, cars 6154 and 2982 were purchased by GWL for $15,800 and $12,600 respectively.[51] GWL's bank statements showed $15,811 and $12,600 credited into GWL and contemporaneous payments made by GWL for the cars. Mr Lim submitted that GC had lent GWL money to purchase these cars, and Irene's Journal recorded these sums as a "loan" from GC to GWL which she claimed was to pay for the two cars.[52] Hence, I find the cars belonged to GWL.

46 Fourth, cars 3685, 5893 and 3564 were purchased by GWL for $11,000, $17,388 and $15,588 respectively, totalling $43,976.[53] GWL's bank statement showed $43,976 transferred to GWL and a similar sum transferred out on the same day to pay for the purchase of the three cars. As Irene's Journal recorded $43,976 as a "loan from Evergreen" to GWL,[54] I find the cars belonged to GWL.

47 Fifth, car 3396 was purchased by GWL for $20,700. It was not disputed that GC transferred money to GWL for GWL to pay for this car and Irene's Journal had recorded this $20,700 as a "loan from [GC]".[55] As such, I find that the car belonged to GWL.

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50 PCB 1A; PCS at [43(f)].

51 PCB 149, 152.

52 PCS at [43(f)]; AB 9–10; PCB 1A, 149, 152; Set Down Bundle p 63 (s/n 2 and 3 of the Table).

53 PCB 158, 161 and 238.

54 AB 14; Defence at [10] (s/n 17–19 of the Table); PCB 2; PCS at [43(f)].

55 PCB 2 and 164; AB 15; PCS at [43(f)].

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48 Sixth, the sale and purchase agreements showed that cars 4778, 3058 and 4414 were purchased by GWL for $8,713, $14,000 and $9,320 respectively,[56] which totalled $32,033. On 11 April 2017, $32,000 was credited into GWL's account (and recorded in Irene's Journal as a loan from GC) and $32,038 was transferred from GWL's account (and recorded in Irene's Journal as for the purchase of the three cars).[57] I find these cars beneficially belonged to GWL as it had purchased and paid for them albeit with a loan from GC.

49 Seventh, cars 4179 and 2843 were purchased by GWL for $13,800 and $14,100 respectively.[58] On 6 April 2017, $25,000 was credited into GWL's account, recorded in Irene's Journal as a "Evergreen – return of loan", and which Irene claimed was to pay for the two cars. GWL's bank statement showed that without the $25,000 from GC, GWL would not have had sufficient funds to purchase the cars on 10 April 2017.[59] That said, the cars belonged to GWL given that GWL had paid for them from the moneys in its bank account.

50 Eighth, cars 1163, 1433 and 8082 were purchased by GWL for $15,999, $15,299 and $12,748 respectively and GWL paid for these cars.[60] Mr Lim accepted that CA had lent $44,000 to GWL (on 25 May 2017) to purchase these cars, and GWL's bank statements showed that the cars were purchased with the assistance of the funds from CA. Whilst Andrew claimed that the three cars belonged to CA, I had earlier found there was no Purported Agreement and

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56 PCB 185, 188 and 191.

57 AB 30; PCB 5.

58 PCB 179, 182.

59 6/7/21 NE 49–50; 7/7/21 NE 35–36; AB 29–30.

60 PCB 217, 220, 223; AB 40–41.

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Irene's Journal had also recorded the $44,000 from CA as a "loan" to GWL.[61] As such, I find that these cars belonged to GWL.

Car 3487

51 I turn to car 3487, which was purchased for $12,600, although there was no evidence of a sales and purchase agreement. Irene's Journal recorded that on 17 February 2017, GWL paid $8,511.96 and $4,008.04 for the car (which corresponds with two sums withdrawn from GWL's bank account). Mr Seah confirmed that GWL paid for the car and claimed that its source of funds came from its sale of car 714 in which GWL obtained $12,500 on 25 January 2017.[62]

52 I find that car 3487, which GWL paid for, beneficially belonged to it (and which Irene also agreed (see [38] above)). Even if GWL had purchased the car with funds from having sold car 714, I have found car 714 to belong to GWL.

Cars 6915, 7514, 9796 and 2574 – purchased with GWL's moneys without financial assistance from third parties

53 Cars 6915, 7514, 9796 and 2574 were purchased and paid for by GWL.[63] Irene accepted that the purchase of these cars was not preceded by an injection of funds into GWL from a third party but claimed that GWL had used the rental income (earned from the leasing of its existing cars) to purchase these cars.[64]

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61 PCS at [43(g)]; 7/7/21 NE 112; PCB 7.

62 PCB 2; AB 10, 16–17; 3/2/21 NE 59–60; Exhibit B.

63 PCB 213, 226, 229, 232; AB 40.

64 AB 51, 56; PCB 10; 6/7/21 NE 51, 55–56.

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54 I find these cars beneficially belonged to GWL. I do not accept that the rental proceeds from the existing cars belonged to GC or CA, even if their funds were used to purchase some of the 34 Cars. I will return to the issue of the rental proceeds.

Cars 6359, 6396, 8385, 2629, 3174, 3382, 3625 and 4228 – purchase price paid by GC

55 The following cars were purchased by GWL but the purchase price was paid by GC directly to the seller. David subsequently conceded that these cars did not beneficially belong to GWL and that the transfer proceeds of their subsequent sale should belong to GC.

56 First, David conceded that as GC paid the purchase price for cars 6359, 6396 and 8385 (although they were registered in GWL's name), the proceeds of the subsequent sale of the cars should belong to GC.[65] I take this to mean that David did not object to the sale proceeds from the sale of car 6396 (to CarTimes Automobile Pte Ltd ("CarTimes")) to belong to GC. Similarly, where cars 6359 and 8385 were transferred to GC subsequently without consideration, I understood that David was no longer asserting that GWL should be entitled to any transfer proceeds. Likewise, car 3174, although purchased by GWL, was paid for by GC. Again, David confirmed that he was no longer claiming that car 3174 was beneficially owned by GWL.[66]

57 Next, GWL purchased car 2629 for $22,500. GC paid $22,500 to the seller although Irene's Journal recorded that GC had lent $22,500 to GWL for

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65 PCB 137, 143 and 146; PCS at [43(c)].

66 PCB 176; 2nd DBOD 160–161; Withers KhattarWong's letter dated 23 February 2022.

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it to purchase the car.[67] This car was subsequently transferred from GWL to GC for no consideration. Be that as it may, David was no longer claiming that GWL owned any transfer proceeds for the car.[68]

58 Finally, cars 3382, 3625 and 4228 were purchased by GWL for $15,200, $17,000 and $15,000 respectively. Although Irene's Journal recorded a "loan" from GC to GWL for the purchase of these cars, Irene stated that GC paid the seller and it was undisputed that GWL did not pay for the cars.[69] Cars 3382 and 3625 were subsequently sold to CarTimes, whilst car 4228 was transferred to GC for no consideration. Be that as it may, David was no longer claiming that GWL owned any transfer proceeds for these cars.[70]

Cars 7665, 3736, 3572 and 554 – trade-in cars

59 Next, David accepted that cars 7665, 3736, 3572 and 554 were trade-in cars from GC which were transferred to GWL, that the transfer proceeds for the transfer out of these cars (from GWL subsequently) belonged to GC and that he was no longer claiming they were beneficially owned by GWL.[71]

Loans to GWL

60 Despite Irene and Andrew's claim that GC and CA had contributed their cars to GWL, I find that the moneys injected into GWL by GC or CA were treated as loans to GWL.

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67 6/7/21 NE 88; 7/7/21 NE 10; PCS at [43(e)]; PCB 4, 173.

68 PCS at [43(e)].

69 PCB 6, 194, 197 and 200; 7/7/21 NE 43.

70 Defence Bundle ("DB") 6 and 10; PCS at [43(e)].

71 3/2/21 NE 62; PCS at [43(d)]; 2nd DBOD 174–177, 199–200, 207–209; Withers KhattarWong's letter dated 23 February 2022.

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61 First, Irene classified in Irene's Journal the moneys that were transferred from GC or CA to GWL as "loans". She agreed that the cars in many instances were purchased with loans to GWL and claimed that a sum of $107,000 that was subsequently transferred from GWL to GC was to repay the loans that GC had previously made to GWL to purchase some of the cars.[72] Second, Irene recorded numerous occasions of loans repaid by GWL to GC or CA, namely: (a) on 4 April 2017 of $25,000 to GC; (b) on 29 May 2017 of $26,500 to GC; (c) on 20 July 2017 of $20,000 to CA; (d) on 23 August 2017 of $25,000 to GC; (e) on 2 October 2017 of $6,000 to GC; and (f) on 6 October 2017 of $107,000 to GC.[73] Irene had also pleaded that the Transactions involving some of these sums were to return loans.[74]

Revenue generated from leasing the Cars

62 In relation to 26 cars which I found beneficially belonged to GWL, any revenue generated from these cars would also belong to GWL. Although Andrew claimed that GC or CA would receive *all* the rental from GWL after deducting GWL's operating expenses,[75] there was no evidence that GWL had transferred any revenue or rental proceeds from any of the Cars to GC or CA. Given that at least five cars (*ie*, the initial four cars and car 6302) belonged to GWL and were generating revenue, there was also no attempt to segregate the rental of these five cars from the rest, if indeed the 34 Cars (or 33 of the 34 Cars) were GC's or CA's cars. Instead, the rental proceeds for all 34 Cars were commingled in GWL's account.

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72 6/7/21 NE 73–74, 82, 96.

73 PCB 5, 8, 12, 14, 18, 19; AB 29, 42, 59, 68, 78; Defence at [10]; 6/7/21 NE 72–73; 7/7/21 NE 34–36.

74 Defence at [10] (s/n 45, 61, 66, 73 of the Table).

75 7/7/21 NE 120, 122, 123, 125.

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63 However, David conceded that 12 cars (cars 6359, 6396, 8385, 2629, 3174, 3382, 3625, 4228, 7665, 3736, 3572 and 554) beneficially belonged to GC, as he stated that any proceeds from the disposal of these cars belonged to GC.[76] Nevertheless, as they were transferred to GWL and registered in its name for its business purposes, and as I have found there to be no Purported Agreement, any revenue generated from these cars whilst registered under GWL belonged to GWL.

Subsequent disposal of the Cars

64 It was not disputed that of the 38 Cars, nine cars were sold to CarTimes around 5 October 2017 for $107,000, namely cars 3487, 6396, 3625, 2574, 3396, 6915, 3382, 4417 and 3572 (the "Nine Cars"). Irene stated that the other cars were transferred to GC for no consideration at various points in time before the Nine Cars were sold, except car 1433 which was transferred out on 17 October 2017. Cars 3685 and 8385 were deregistered on 12 March and 23 May 2017 respectively.[77]

65 David claimed that the Cars were transferred from GWL without his knowledge and approval and, for the cars that beneficially belonged to GWL, they were transferred out for no apparent consideration in return. Irene's action in so doing was thus in breach of her fiduciary duties and in disregard of his interest as a shareholder of GWL. Irene claimed that by around October 2017, she, Andrew and Aloysius decided to sell the Nine Cars (out of 10 remaining

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76 PCS at [43(c)], [43(d)] and [43(e)]; Withers KhattarWong's letter dated 23 February 2022.

77 DB 3–13; BOA pp 45–46; 6/7/21 NE 11–14.

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cars in GWL) as GWL was not profitable, and that it was Andrew and Aloysius who had instructed that the cars be sold or transferred to GC.[78]

66 I find that David did not know of the transfer or disposal of the Cars at the time of transfer or disposal. Whilst Irene claimed that Andrew had informed David of this, she admitted that she did not know this for a fact.[79] Andrew stated that the discussion to dispose of the Cars was among Aloysius, Irene and him (without David), and he only told David after the Cars had been disposed of.[80] Although Irene claimed that David would have known of the disposal of the Cars based on the WhatsApp chats between them, she agreed that the chats showed that the first time David had enquired about the sale of the Cars was around 19 October 2017,[81] after all the Cars had been disposed of.

67 Irene's claim that the Cars were disposed of because GWL's overheads were very high and GWL had a lot of bad debts was not supported by evidence. On the contrary, prior to disposing of the last 10 cars in GWL, Irene's Journal showed that GWL was still generating revenue from leasing out the cars, and Irene agreed that each car could generate at least $1,000 in revenue per month.[82]

68 Even if I accept Irene's explanation for the disposal of the Cars, Irene and Andrew's testimony showed that the decision to dispose of the Cars was made by them and Aloysius, without consulting David. The transfer of the Cars from GWL either for no consideration to GC or for consideration to CarTimes

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78 SOC at [9] and [16]; 6/7/21 NE 16–17, 64; 8/7/21 NE 35.

79 6/7/21 NE 17, 60.

80 7/7/21 NE 117–119.

81 7/7/21 NE 29–31; Bundle of AEICs at p 157.

82 6/7/21 NE 65–67.

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(in relation to the Nine Cars) which was subsequently diverted purportedly to repay loans owing to GC or CA, resulted in GWL having no cars for its business and its funds depleted.

69 I find that Irene, who caused the disposal of the Cars in the above manner, had failed to act in good faith and for the benefit of GWL, and was acting in the interests GC (in which she was also working for) and CA. In so doing, she breached her duty to act *bona fide* in GWL's interest. Although David was not involved in the daily management of GWL, as a 50% shareholder, he was entitled to be consulted on major decisions such as the sale or disposal of GWL's assets. Further, as a shareholder, he had a legitimate expectation that Irene would act in GWL's best interest, and not use GWL to further the interest of other entities, particularly entities in which David had no interest.

The Transactions and Payments which are disputed

70 I turn then to the Transactions and Payments.

71 David pleaded that Irene had caused the Transactions to be entered into without justification, or without his knowledge or consent, in breach of her fiduciary duties and in disregard of his interest as a shareholder of GWL. He also pleaded that the Payments were not legitimately incurred by GWL and were made for Irene's personal benefit. Irene, however, claimed that the Transactions were legitimate as set out in the table in her Defence and as supported by documents filed in an affidavit verifying her fourth supplementary list of documents ("D1's 4th SLOD").[83]

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83 SOC at [17]–[18]; Defence at [10]; D1's 4th SLOD.

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72 That David did not know of or consent to the Transactions or Payments, without more, did not necessarily amount to a case of oppression. There was nothing to suggest that his consent was required for them, if they were largely to do with GWL's operating expenses, as he was content to leave the daily management of GWL to Irene who was also a director. This is even if he expected to be kept informed of GWL's business dealings and performance as there was no evidence that he had requested for periodic updates on GWL's business much less that Irene had refused to update him when he asked. The issue is whether the Transactions or Payments were legitimate in nature. In this regard, Irene was managing GWL solely and had access to the documents and records, while David was not an active director. Therefore, to the extent that David can show a *prima facie* case that raises suspicion as to the validity of the Transactions or Payments, the evidential burden shifts to Irene to produce the relevant documents to show they were legitimate.

73 In court, David conceded that apart from items 11, 12, 16, 19, 21, 22, 26, 27, 29 to 32, 34, 40, 41, 45, 48 to 52, 54, 55, 57 to 59, 61 to 63, and 65 to 78, he was no longer challenging the rest of the Transactions.[84] I turn to deal with the disputed Transactions and Payments.

Payment of rental (items 27, 59 and 70 of the Transactions; and items 2 and 3 of the Payments)

74 Irene's Journal recorded that GWL had paid the following: (a) $2,000 on 28 February 2017 to GC being rent for January and February 2017; (b) $4,000 on 18 July 2017 to GA being rent for March and April 2017; (c) $4,000 to GA on 31 July 2017 being rent for May and June 2017; (d) $4,000 to GA on 22 August 2017 being rent for July and August 2017; and (e) $4,200

[84] Agreed List; PCS at [54].

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around 24 or 25 September 2017 to GA being rent for September and October 2017.[85]

75 David explained that GG rented two floors at 62 Kaki Bukit Avenue 6 ("KB Ave 6") and paid monthly rent of $2,000 for the first floor, and he was given to understand that the rent for the premises (including the second floor) was $6,000. Irene decided to operate GWL's business from the second floor when it was incorporated. David claimed that GWL did not require a separate office or pay rent for it, as it could conduct business from GG's premises on the first floor. There was also no rental agreement between GWL and a landlord.[86]

76 Irene explained that as GG was occupying the first floor of KB Ave 6, GWL was stationed on the second floor together with GC. Hence GWL and GC each paid $1,000 rent per month. GG, GC and GWL were renting the premises from GF, the main tenant. Irene stated that David was at the material time informed that GWL was paying rent. However, the rent increased to $2,000 per month from March 2017 as GWL had moved to the Premier in order to increase its fleet of cars. At the Premier, GA rented two units from the landlord at over $4,000 per unit, and then leased one of the units to GWL and GC, with GA occupying the other unit. GG also moved to the Premier but to a different unit.[87]

77 I find that the rental payment for January and February 2017 of $2,000 in total was a legitimate transaction because GWL had occupied premises separately from GG. This is even if there was no formal rental agreement in relation to GWL. Irene had attested that there were also no rental agreements in

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85 PCB 3, 12–14, 17.

86 2/7/21 NE 9–13, 50, 77; PCS at [59] and [71].

87 5/7/21 NE 50, 58–61, 70–71; 6/7/21 NE 17, 26, 29, 33–35; AB 249.

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relation to GG and GC, and essentially this matter was conducted on an informal basis as they were related entities.[88] By David's account GG was already paying $2,000 per month for the first floor of KB Ave 6. He also knew that GWL was operating from the second floor[89] and did not object to this at the material time.

78 Likewise, I find the subsequent rental payments for the premises at the Premier to be legitimate. David knew at the material time that GWL had moved from KB Ave 6 to another location.[90] Whilst Mr Lim argues that if GWL had only four cars which would have generated about $6,000 per month in rental revenue and would not have justified GWL taking up a lease of premises at $2,000 per month,[91] David cannot blow hot and cold. He claimed that GWL owned all the Cars, and by end February 2017 GWL had a fleet of about 15 cars. I add here that for the rental for September and October 2017, I accept that Irene had charged to GWL an additional $200 for shared utilities with the other related-entity tenants, and such expenses for utilities were never charged to GWL previously as GWL was then trying to maintain costs.[92]

79 Hence, I find the rental payments by GWL for the premises it occupied (including the additional $200 for utilities) to be legitimate transactions.

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88 6/7/21 NE 60–61.

89 2/7/21 NE 12–13, 80.

90 2/7/21 NE 105.

91 PCS at [71].

92 6/7/21 NE 42–44.

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Staff salaries and allowances (items 11, 16, 26, 48, 49, 57, 68, 72, 74, 75 and 78 of the Transactions; and item 4 of the Payments)

80 Next, David disputed payments to various persons, which he claims were either not employees of GWL or if they were employees their pay was excessive. There were also no employment agreements with these persons. David thus claimed that all these payments were unauthorised and constituted a breach of Irene's duties of fidelity and good faith to GWL.

Payments to Tesla, Yani, Benson, Adam and Adeline

81 First, David asserted that one Tesla Lim should not have been paid $619.20 in January 2017 (item 11 of the Transactions) as he did not know if she was GWL's employee.[93] Irene stated that Tesla was GWL's employee,[94] which I accept. There was no reason why Irene would lie and the evidence also showed an email that was carbon-copied to Tesla regarding GWL's purchase of car 2951. On the other hand, David's assertion was a bare one.

82 Second, one Yani was paid $950 in January 2017 and $720 in February 2017 (items 16 and 26 of the Transactions). Irene explained that the payments were for Yani's salary or allowances as Yani was an administrative assistant at GWL whose duties included filing, generating documents such as invoices to hirers of GWL's cars, and ensuring that payments were made by the hirers. Irene explained that Yani's salary was $1,900 in total but GG paid half her salary as she was also working for GG, and whilst she also did some work for GC she was reimbursed by GC.[95] I accept Irene's testimony that Yani was GWL's

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93 PCB 28; PCS at [55].

94 6/7/21 NE 133.

95 5/7/21 NE 26–27; 6/7/21 NE 118–121, 126.

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employee, and the payments of salary were recorded contemporaneously in Irene's Journal. David's assertion that he was not aware that Yani was working for GWL ran contrary to his admission that he had liaised with Yani on matters relating to GWL.[96] Additionally, David in his Closing Submissions ("David's Closing Submissions") challenged a payment of $354 to the Central Provident Fund for Yani's salary in February 2017.[97] However, this was not pleaded nor raised in court for Irene to explain, and as I have found Yani was GWL's employee I am not satisfied that this payment was without basis.

83 Third, one Benson Seah ("Benson") was paid $1,800 on around 7 June 2017 (as salary for May) and 5 July 2017 (as salary for June) (items 49 and 57 of the Transactions). In addition, David's Closing Submissions asserted that Benson was also paid $1,800 on 5 May 2017 (which was recorded as salary for April 2017) and $1,800 on 4 August 2017 (and recorded as salary for July 2017) which were not pleaded.[98]

84 David claimed that Benson was working part time in GWL and was hence paid $900 initially. However, his subsequent salary of $1,800 was excessive as he was a full-time employee at GF. Irene explained that Benson's salary increased to $1,800 from April 2017 as he was then working for GWL full time; and that his role was to assist in administrative matters including sourcing for hirers for GWL's cars and chasing for payments from the hirers.[99] Whilst the evidence showed that Benson had used GC's email address on 16 December 2016, I accept Irene's explanation that this was because GWL did

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96 PCB 2 and 3; 2/7/21 NE 42, 49.

97 PCS at [58].

98 PCS at [65], [66] and [70].

99 2/7/21 NE 63–65; 5/7/21 NE 64 – 66; 6/7/21 NE 127, 130–131.

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not have its own email address and which David confirmed to be the case. In any event, the email of 16 December 2016 showed that Benson was liaising with Republic Auto Pte Ltd pertaining to the sale of car 2951 *to GWL* (and which I have found was one of the initial four cars).[100] I preferred Irene's testimony that Benson was a full-time employee with GWL at the material time. David could not even say with certainty Benson's involvement in GWL as he was merely content to leave the daily management of GWL to Irene.[101]

85 Fourth, various payments to one Adam Chua ("Adam") were made and recorded in Irene's Journal as salary to Adam. They were $1,600 each in June, July, September and November 2017, and $1,471 in October 2017 (items 48, 57, 68, 74 and 78) for Adam's salary in the respective preceding months, save that the amount paid in August 2017 (for July salary) was not pleaded.[102]

86 Irene explained that Adam was employed by GWL and that his duties included collecting debts owed to GWL by hirers of GWL's cars, recommending potential customers or hirers to GWL and arranging for repairs of GWL's cars. I accept Irene's testimony that Adam was GWL's employee. I did not see any reason for her to lie. On the contrary, David's testimony was unhelpful, as he merely claimed that he did not know who Adam was or whether Adam was GWL's employee.[103]

87 Fifth, Irene's Journal had recorded a payment around 10 October 2017 of $1,369.55 to Adeline Ye, being her salary for September 2017 (item 75 of

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100 6/7/21 NE 128, 134–135; PCB 134.

101 2/7/21 NE 63–64.

102 PCB 8, 11, 13, 16, 18, 19; PCS at [67], [70], [76], [80].

103 2/7/21 NE 75, 87, 94; 6/7/21 NE 148.

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the Transactions). I accept Irene's explanation that Adeline was a salesperson in GWL and her role was to recruit hirers for GWL's cars. Mr Lim contends that Irene's claim that Adeline was attempting to recruit hirers went against the evidence that Irene was at the material time selling off GWL's cars.[104] However, the fact remains that in September 2017, GWL still had about 15 cars, and I accept Irene's testimony that GWL required a staff to source for more business as she hoped that GWL could continue with its rental business.[105] David's assertion that the payment to Adeline was not legitimate was a bare one. He merely claimed that he did not know Adeline was working for GWL.[106]

88 In the round, I find that the payments to Tesla, Yani, Benson, Adam and Adeline were legitimate even if there were no employment contracts between GWL and any of them. As GWL's employees, they were entitled to be remunerated for their employment. There were also contemporaneous records in Irene's Journal to support these payments with corresponding descriptions of them. Having found the transactions to be legitimate and with basis, the fact that David was not consulted before the payments were made or did not authorise them was irrelevant (see [72] above). I reiterate, David was content to leave the daily management of the business to Irene, which would have included the decision to hire staff to assist in GWL's operations.

Payments to Irene and Andrew as salary

89 I turn to a sum of $1,600, recorded in Irene's Journal as paid to Irene for "admin work done" and withdrawn from GWL's bank account on 9 October 2017 (item 4 of the Transactions). Irene stated that she paid herself for her work

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104 PCB 19; PCS at [81].

105 6/7/21 NE 154.

106 2/7/21 NE 93.

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in GWL as she had not drawn a salary in 2017 or been reimbursed for transport or given any allowance. However, she did not inform David that she had done so.[107] Mr Lim asserts that this was a random payment made by Irene to herself to deplete GWL's cash balance, which was self-serving and a breach of her duties of good faith and fidelity to GWL.[108] I agree and find this payment to be made without proper basis. There was no evidence that Irene and David had agreed to Irene's remuneration as a director or the quantum thereof or that s 169 of the CA had been complied with.

90 Further, Andrew was paid $1,440 on 5 October 2017 (item 72 of the Transactions), which Irene's Journal recorded as "net salary for Sept". Irene did not explain why Andrew was paid a salary when he was not GWL's employee.[109]

91 I find the above payments were made without proper basis and in breach of Irene's duty to act *bona fide* in GWL's interest. Indeed, the withdrawal by Irene of these two sums from GWL was around the time of the withdrawal of $107,000 from GWL after the last of GWL's cars (save for one) had been disposed of, and was made effectively to reduce GWL's assets and cash balance and ultimately to affect the value of David's shareholding in GWL (see further below at [143]–[144]).

Payment of commissions (items 22, 32 and 52 of the Transactions; and item 1 of the Payments)

92 Next, Irene had caused "commission" payments (as recorded in Irene's Journal) to be made by GWL.

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107 6/7/21 NE 155–157.

108 PCB 19; AB 79; SOC at [18(1)]; PCS at [82].

109 PCB 18; AB 78; PCS at [78].

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$1,000 paid to Vince on 20 February 2017 (item 22 of the Transactions)

93 First, on 20 February 2017, GWL paid one Vince $1,000 as commission, which Irene explained was for Vince recommending the purchase of car 3487 to GWL. Mr Lim submitted that GWL should not have paid any commission to Vince as Irene claimed that the car belonged to GC. As I have found that car 3487 beneficially belonged to GWL, I accept that this was a legitimate payment to Vince as described in Irene's Journal and supported by GWL's payment vouchers and documents which were contemporaneous records.[110]

$600 paid to Andrew on 24 March 2017 (item 32 of the Transactions)

94 Second, Andrew was paid $600 on 24 March 2017, recorded in Irene's Journal as commission for cars 3487 and 3396. I accept that this payment to Andrew was not justified. Irene could not properly explain the purpose of the payment to Andrew and stated that he was paid a commission for introducing a hirer for car 3396.[111] However GWL's payment voucher dated 24 March 2017 showed that Andrew was paid $300 each as commission for "purchasing" the two cars.[112] In this regard, Vince had earlier been paid a commission for recommending to GWL the purchase of car 3487 (see [93] above).

$1,334 paid to Benson on 8/9 May 2017 (item 1 of the Payments)

95 Third, Irene's Journal recorded that Benson was paid $1,334 as "commission and claims" for cars 3174, 4778, 4414, 2843, 3058 and 4179 around 8 or 9 May 2017. David pleaded that he had never authorised any payment of commission to employees and Mr Lim submitted that Irene should

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110 PCB 2; 2/7/21 NE 47; 6/7/21 NE 135–136; D1's 4th SLOD at s/n 21.

111 PCB 4; 6/7/21 NE 138.

112 D1's 4th SLOD at s/n 32.

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not have caused GWL to pay commissions for cars which she claimed belonged to GC and which sales revenues were not accounted to GWL.[113] Irene did not plead nor explain what these payments were for, nor did she produce any supporting documents to explain the payments. Whilst the legal burden rests on David to prove his assertion, the evidential burden shifts to Irene to show the purpose and legitimacy of the payments given that she was managing GWL, determined and recorded these payments and had access to the supporting documents. Pertinently, Benson was a paid employee of GWL at the material time whose job *(as Irene claimed) included sourcing for hirers* for GWL's cars, and it is unclear why he was remunerated further with commission pertaining to GWL's cars. Hence, I find on balance that Irene had caused GWL to make these payments to Benson without basis.

Payment to Benson on 15/16 June 2017 (item 52 of the Transactions)

96 Fourth, on 15 or 16 June 2017, $1,079.80 was paid to Benson comprising commission for cars 6302, 3382, 4228 and 3625; "claims for inspection" for cars 4228 and 3396; and a payment for "replacement IU" for car 3058. Irene produced a GWL payment voucher that showed that Benson was paid: (a) $200 each as "commission" for cars 6302, 3382, 4228 and 3625; (b) $62 each as reimbursement for inspections by the Land Transport Authority ("LTA") of cars 4228 and 3396; and (c) $155.80 as reimbursement for replacing the in-vehicle unit of car 3058.[114]

97 I accept that the reimbursement claims of $155.80 for car 3058 and $62 each for cars 4228 and 3396 were legitimate payments by GWL to Benson, as

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113 SOC at [18(2)]; PCS at [68]; PCB 6.

114 PCB 9; D1's 4th SLOD at s/n 52.

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there were supporting documents to show the basis for these payments. Whilst David had conceded that car 4228 did not belong to GWL, I had nevertheless found that it was used to generate revenue for GWL (which was also David's position) and thus the operating expenses for maintaining the car was rightly attributed to GWL. As for the commission paid to Benson for cars 6302, 3382, 4228 and 3625, I was not satisfied that there was any reason why they should have been made. I repeat my reasons at [95] above.

Payments to Singtel for phone and fax lines and broadband (items 29 and 30 of the Transactions)

98 Irene had also caused GWL to pay $610.95 for telephone and fax lines ("Phone Bill") and $529.52 for broadband ("Broadband Bill") to Singtel in March 2017. David claimed that GWL did not need these services and the bills were wrongfully attributed to it. Also, the bills were addressed to GF.[115]

99 The Phone Bill comprised about $310.13 (being outstanding amounts due up to 21 November 2016) and the remainder $291.82 which were charges up to 20 January 2017 pertaining to phone and fax numbers 63845766 and 63845760. Irene claimed that GWL shared these phone/fax numbers. I find that Irene should not have attributed the bulk of the Phone Bill to GWL. There was no basis to attribute some $310.13 to GWL when it was only incorporated on 17 November 2016. As for the phone/fax expenses incurred after GWL's incorporation, whilst David claimed that GWL did not use these lines which were GF's lines, GWL's documents (*eg*, its purchase agreement even in April 2017) reflected these numbers as GWL's phone and fax numbers.[116] Hence, it was justifiable to attribute at best half of the $291.82 as GWL's expenses.

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115 PCB 3; AB 22; D1's 4th SLOD at s/n 29 and 30; 2/7/21 NE 51–52.

116 2/7/21 NE 58; D1's 4th SLOD at s/n 39.

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100 Turning to the Broadband Bill, again this was billed to GF and which remained unpaid from mid-October 2016 to February 2017. I find this Bill should not have been attributed to GWL. In relation to an accumulated amount of $219.94 owing from mid-October to November 2016, GWL was not in existence then. As for the amounts from mid-January 2017, Irene accepted that GWL had moved to the Premier and the broadband charges were for the premises at KB Ave 6.[117] I am of the view that even for the amount of $99 (being charges for 18 December 2016 to 17 January 2017), the evidence did not show whether GWL had indeed utilised any broadband at the material time at KB Ave 6, given that there were at least two Related Entities at those premises, namely GG and GC (see [76] above). As Irene admitted, GWL paid for broadband utilised by GG as GG had insufficient funds.[118]

101 In the round, what is crucial is that Irene was aware that GWL should not have paid for the Bills, particularly when it had not incurred the expenses or was not situated at the premises at the material time when the expenses were incurred. Irene had thus caused GWL to pay the Bills when the amounts were owed by GF (which Mr Seah had stated belonged to Irene) or GG, in breach of her duty of loyalty to GWL and contrary to GWL's best interest.

Maintenance, servicing, repairs or painting of cars (items 12, 50, 51, 62, 63, 65, 67 and 77 of the Transactions)

102 Next, various payments were recorded as made to GG for maintenance, servicing or repairs, comprising: (a) $980 around 16 January 2017; (b) $6,164 around 14 June 2017; (c) $1,759.80 around 24 July 2017; (d) $3,684.10 around 24 July 2017; (e) $973.70 around 16 August 2017; (f) $814.10 around

117 5/7/21 NE 81–82.

118 6/7/21 NE 22.

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4 September 2017; and (g) $797.40 around 17 October 2017. Additionally, on 14 June 2017, GWL paid GA $960 for spray painting of three cars.[119]

103 I have no reason to doubt they were legitimate transactions, as Irene had shown supporting documents from GG or GA (as the case may be) for the works done, and in some instances GG's invoices showed they were billed by David's brother (who was a mechanic at GG). David is also a director and shareholder of GG. Whilst David claimed that he was unaware of what servicing or maintenance works were done, he agreed that the cars had to be serviced.[120] Even if some of the repair works were to put the cars in a condition to be sold, I nevertheless find that these expenses were justified.

Payments of insurance (items 31 and 40 of the Transactions)

104 GWL had also made payments to Cowell Insurance Agency Pte Ltd ("Cowell") which David disputes, namely a payment around 15 March 2017 of $942.83 and a payment around 19 May 2017 of $5,170.68.[121]

105 I accept that these were legitimate payments for insurance coverage for GWL's cars. Irene had adduced supporting documents from Cowell in addition to GWL's payment vouchers. Whilst David merely asserted that he did not know which cars the insurance payments were for, he accepted that such insurance had to be obtained for the cars and that he had left the business operations to Irene.[122] In fact, there were other payments made to Cowell such

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119 PCB 1A, 9, 12, 14, 16, 19; D1's 4th SLOD at s/n 12, 50, 51, 62, 63, 65, 67, 77.

120 2/7/21 NE 7, 40–41, 84–87, 93–94.

121 PCB 4, 6; AB 23, 39; D1's 4th SLOD at s/n 31, 40.

122 2/7/21 NE 52–53.

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as in March 2017 of $4,009.61 and in June 2017 of $2,915.49 (items 28 and 53 of the Transactions) which David was no longer disputing.

Return of rental deposit (items 21 and 76 of the Transactions)

106 Around 20 February 2017, a sum of $1,000 in total was, according to Irene's Journal, the deposit that GWL refunded for cars 6359 and 8233 (item 21 of the Transactions). It was not disputed that GWL would collect a rental deposit from a hirer of a car and the deposit would have to be returned to the hirer when the leased expired and the car was returned to GWL.[123] I accept that this transaction was valid, and it was not the case that Irene (or any of the Related Entities) had benefitted from it.

107 Next, on 13 October 2017, $2,500 was withdrawn from GWL's account by cheque (item 76 of the Transactions). This was recorded in Irene's Journal and GWL's payment voucher as a refund of rental deposit to five persons whom Irene stated were the hirers of GWL's cars.[124] Irene explained that the $2,500 was paid to CarTimes because the five cars which were hired out had been sold to CarTimes and CarTimes would eventually refund the deposit to the hirers who were at that time still leasing the cars. It is not disputed that the Nine Cars were sold to CarTimes around 5 October 2017, and that the five named persons in the payment voucher and Irene's Journal (pertaining to the sum of $2,500) were GWL's customers or hirers.[125] As such, I find this to be a valid payment.

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123 PCB 2; 2/7/21 NE 48.

124 AB 79; PCB 19; D1's 4th SLOD at s/n 76.

125 5/7/21 NE 34–35; 2/7/21 NE 93.

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Petty cash (item 41 of the Transactions)

108 Next, David claimed that $1,000 that was withdrawn from GWL's bank account around 22 May 2017, which Irene's Journal recorded as "petty cash", was a suspicious transaction.[126] In court, Mr Lim also raised a transaction of $300 in cash paid by GWL to Aloysius on 5 April 2017 as recorded in Irene's Journal. Whilst the 5 April 2017 transaction was not pleaded by David, he had pleaded that the Transactions consisted of at least 78 unauthorised transactions and was non-exhaustive, and Irene was cross-examined on this in court.[127]

109 In relation to the $1,000 "petty cash", Irene had explained that GWL required cash for minor expenses[128] which I accept, as it is not uncommon or unusual for an operating entity to keep some petty cash. However, the payment of $300 to Aloysius is not justifiable as Irene claimed that Aloysius had collected this money on GWL's behalf from a hirer of a car and which was a deposit that should have been paid to GWL.[129] In allowing Aloysius to keep the $300 when it should have been handed over to GWL, Irene had breached her duty to act in GWL's best interests.

Payments of $20,700, $10,500 and $7,700 to purchase cars (items 19, 54 and 55 of the Transactions) and a commission payment for car 9796 (item 58 of the Transactions)

110 David challenged these payments by GWL to purchase various cars, namely: (a) $20,700 around 17 February 2017 for car 3396; (b) $10,500 around 23 June 2017 for car 2574; and (c) $7,700 around 23 June 2017 for car 7514.

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126 PCB 7; AB 40.

127 PCB 5; 6/7/21 NE 145–148; PCS at [56]; SOC at [17].

128 2/7/21 NE 59.

129 6/7/21 NE 147–148.

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He did not know if GWL had paid a fair price for the cars and claimed that there were no sale and purchase agreements supporting the transactions.[130]

111 I am not satisfied that these payments were unjustified. David claimed that all three cars belonged to GWL, which I had accepted based on the supporting documents. If he claimed that the cars should have been purchased at a lower price, the onus was on him to show what that price should have been. In any event, these claims were abandoned in David's Closing Submissions.[131]

112 Additionally, David disputed a sum of $100 paid to one Eddie as commission for GWL's purchase of car 9796.[132] I am not satisfied that this payment was without basis. The claim was not specifically raised in Irene's cross-examination for her to explain and was also abandoned in David's Closing Submissions.

Payment of $610.76 to Lyreco (item 69 of the Transactions)

113 David claimed that he was unaware of the purpose of a payment of $610.76 around 19 September 2017. Irene explained that this was a payment to Lyreco, an employment agency that GWL engaged to source for a new staff after an employee of GWL had resigned.[133] I accept this to be a legitimate transaction. Whilst there was no document between Lyreco and GWL pertaining to this transaction, there was a contemporaneous GWL payment voucher to

130 2/7/21 NE 42, 73–74.

131 PCB 2; AB 15; Exhibit C; 2/7/21 NE 42.

132 2/7/21 NE 75–76.

133 2/7/21 NE 89–90; AB 74; Exhibit C.

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record this transaction (and which was also recorded in Irene's Journal) and I find no reason to doubt its veracity.[134]

Transfers of moneys as returning "loans" to Related Entities (items 34, 45, 61, 66, 71 and 73 of the Transactions)

114 Next, the following sums which were transferred from GWL were disputed:[135]

(a) $25,000 transferred out on 4 April 2017 and recorded in Irene's Journal as "Evergreen – return of loan" (item 34 of the Transactions);

(b) $26,500 transferred out on 29 May 2017 and recorded in Irene's Journal as a "loan" and "Evergreen" (item 45 of the Transactions);

(c) $20,000 transferred out on 20 July 2017 and recorded in Irene's Journal as "return of loan" to CA (item 61 of the Transactions);

(d) $25,000 transferred out on 23 August 2017 and recorded in Irene's Journal as "return of loan" to GC (item 66 of the Transactions);

(e) $6,000 transferred out on 2 October 2017 and recorded in Irene's Journal as "return of loan" to GC (item 71 of the Transactions);

(f) $107,000 transferred out on 6 October 2017 and recorded in Irene's Journal as "return of loan" to GC (item 73 of the Transactions).

115 David claimed that he was not aware whether any Related Entity had lent money to GWL, that he had never authorized GWL to lend money to

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134 PCB 17; D1's SLOD at s/n 69.

135 PCB 5, 8, 12, 14, 18, 19; AB 29, 42, 59, 68, 78.

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anyone, and in particular the $107,000 was transferred to GC without his consent and for no good reason.[136]

116 As a preliminary point, David has not shown that Irene required his approval (as the other director or shareholder) for GWL to borrow or lend money or to repay loans. He has not pleaded nor attested to any agreement (between the shareholders), or to any constitution of GWL, in this regard. On the contrary, he consistently maintained that he left Irene to manage GWL's daily operations. He also claimed that the cars purchased by GWL with moneys borrowed from GC and CA nevertheless belonged to GWL, and that GWL would have to repay the loans.[137] Hence, if GWL had borrowed money for its business (including to increase its fleet of cars for its core leasing business), Irene's act of causing GWL to repay the loans would not have amounted to acts of oppression vis-à-vis David.

117 I turn then to consider whether each of the above transactions was a genuine or legitimate transaction.

$25,000 transferred to GC on 4 April 2017

118 Based on GWL's bank statement and records, $25,000 was transferred by GWL to GC on 4 April 2017. Irene pleaded that this $25,000 was a "refund" to GC, although it was recorded in Irene's Journal as a "loan". Irene explained in court that the description in Irene's Journal was wrong and should have been recorded as a "return of loan" as the money belonged to GC.[138]

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136 David's AEIC at [30]; 2/7/21 NE 60, 73, 80, 85–86.

137 SOC at [6] and [16(1)]; David's AEIC at [6]; PCS at [43(f)] and [43(g)].

138 AB 29; D1's 4th SLOD at s/n 34; Defence at [10]; PCB 5; 7/7/21 NE 34–36.

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119 I accept that GWL was on 4 April 2017 making a loan repayment to GC of $25,000 and that this was a legitimate transaction. Prior to 4 April 2017, GWL had borrowed money from GC on at least four occasions, namely: (a) on 17 January 2017 of $15,811; (b) on 23 January 2017 of $12,600; (c) on 1 February 2017 of $43,976; and (d) on 17 February 2017 of $20,700. All these were recorded in Irene's Journal, supported by GWL's bank statements showing these sums credited into GWL's account.[139] Mr Lim also accepted that such sums were lent by GC to GWL for GWL to purchase cars 6154, 2982, 3685, 5893, 3564 and 3396 (see [45]–[47] above). There is no evidence to show that GWL had repaid any of these sums to GC, prior to 4 April 2017.

120 It should be noted that in David's Closing Submissions, Mr Lim had mentioned two transactions of $25,000 from GWL to GC of the same date,[140] when the two were essentially the same transaction – this was recorded in Irene's Journal on 5 April 2017, and GWL's bank records showed only one withdrawal of $25,000 in April 2017 (*ie*, on 4 April).

$26,500 transferred to GC on 29 May 2017

121 Based on GWL's bank statement and bank transfer details, $26,500 was transferred by GWL to GC on 29 May 2017. Irene pleaded that this was a refund to GC of a loan, although it was recorded in Irene's Journal as a "loan".[141]

122 I accept Irene's explanation that GWL was repaying GC $26,500 as GC had transferred some $32,000 to GWL on 11 April 2017. Mr Lim had accepted the $32,000 was a loan from GC and which I have found to have assisted GWL

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139 PCB 1A, 2; AB 9, 10, 14, 15.

140 PCS at [63] and [69].

141 AB 42; D1's 4th SLOD at s/n 45; Defence at [10]; PCB 8.

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in its purchase of cars 4778, 3058 and 4414 (see [48] above).[142] There was no evidence that GC was repaid that sum until GWL returned some $26,500 to GC on 29 May 2017. As such, this was a legitimate transaction.

$20,000 transferred to CA on 20 July 2017

123 On 20 July 2017, $20,000 was transferred to CA, which Irene pleaded as a return of a loan to CA and recorded in Irene's Journal as such.[143] Mr Lim accepted that CA had transferred $44,000 to GWL on 25 May 2017 for GWL to purchase cars 1163, 1433 and 8082 (see [50] above).[144] As I have found that GWL had borrowed $44,000 from CA and which Mr Lim accepted, I am satisfied that the $20,000 transferred to CA on 20 July 2017 was a partial repayment of the $44,000 loan and thus a legitimate transaction. There is no evidence that prior to 20 July 2017, GWL had repaid CA any part of the loan.

$25,000 transferred out on 23 August 2017

124 On 23 August 2017, $25,000 was transferred out of GWL. Whilst it was pleaded and recorded in Irene's Journal as a return of a loan to GC,[145] there is no evidence to show who the sum was transferred to or the purpose of the transfer. As such, I find there was no proper basis for this transaction.

$6,000 transferred to GC on 2 October 2017

125 On 2 October 2017, GWL transferred $6,000 to GC. Although Irene initially pleaded that this was a payment to GG for servicing and maintenance,

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142 7/7/21 NE 41–42; PCB 11.

143 AB 59; D1's 4th SLOD at s/n 61; Defence at [10]; PCB 12.

144 PCS at [73]; PCB 11.

145 AB 68; Defence at [10]; PCB 14.

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I accept that this should have been a record of a "return of loan" to GC, as stated in Irene's Journal, GWL's payment voucher and the bank transfer details.[146] However, it is unclear from the documents which loan GWL was repaying GC, and Irene could not satisfactorily explain this.[147] As such, I find that this sum was transferred to GC without proper basis.

$107,000 transferred to GC on 6 October 2017

126 It was not disputed that the Nine Cars were sold to CarTimes around 5 October 2017 and which GWL received $107,000 (see [64] above). Then on 6 October 2017, Irene caused GWL to transfer $107,000 to GC, which was recorded in Irene's Journal and GWL's payment voucher as a "return of loan" to GC. Irene explained that the sale proceeds of the Nine Cars were transferred to GC as the cars belonged to GC and CA.[148]

127 It is unclear which loans GWL was repaying GC, given that GWL had on earlier occasions been discharging its loan obligations (as I have found). Moreover, if Irene claimed to be repaying CA's loan as well, it is strange that she caused GWL to transfer the entire $107,000 to GC. Irene did not explain how much was still owed by GWL to GC (or CA) as of 5 or 6 October 2017. Furthermore, Irene's basis for transferring $107,000 to GC was that the Nine Cars belonged to GC and/or CA. However, I had earlier found that cars 3487, 2574, 3396, 6915 beneficially belonged to GWL, and Irene did not dispute that car 4417 was one of the initial four cars. Nevertheless, David conceded that four of the Nine Cars (*ie*, cars 6396, 3625, 3382 and 3572) beneficially belonged to

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146 AB 78; PCB 18; D1's 4th SLOD at s/n 71; Defence at [10].

147 6/7/21 NE 71–74.

148 Defence at [10]; Irene's AEIC at [8]; PCB 19; D1's 4th SLOD at s/n 73; DB 3–13; 6/7/21 NE 63, 72.

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GC and that any proceeds from the disposal of these cars (which totalled $52,000) would also belong to GC (see [63] above).

128 That being the case, I am satisfied that Irene should not have caused the remainder of $55,000 to be transferred from GWL to GC.

Denial of access to GWL's records and concealment of wrongdoing

129 Finally, David pleaded that Irene had attempted to conceal her wrongdoing and fraud by submitting inaccurate accounts of GWL's books and records ("GWL's records") to David and denied him the right to inspect GWL's records. David stated that by January 2018, he started to chase Irene for GWL's accounts as he expected a fair return on his business investment in GWL; this was after disagreements and tensions had arisen around mid-2017 with Aloysius regarding the management of GG. Irene however refused to provide him with GWL's records and told him that the accounts would be prepared by GWL's accountant, Prima Management Services Pte Ltd ("Prima"). David then made enquiries to Prima regarding GWL's accounts which Prima subsequently prepared, and Prima provided David a summary of the profit and expenses for cars 6302, 3487, 8931 and 4417 ("4 Cars") with a brief statement that GG had suffered losses which were to be set off against any profits made by GWL. At that point, David was shocked as there was no prior agreement that the accounts for GWL and GG would be linked or that the profits and losses of both entities would be accounted for together. Subsequently, despite David seeking discovery of GWL's records, Irene did not provide them.[149] Irene however

[149] SOC at [19]; David's AEIC at [10]–[27]; 2/7/21 NE 27.

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claimed that David was given due access and copies of all the documents that he requested for.[150]

130 On balance, I do not accept that David was chasing Irene in January 2018 for GWL's records which Irene was unwilling to provide at that time. David did not elaborate on how he had chased Irene and Mr Lim asserted that David had merely asked Irene "verbally".[151] As for the WhatsApp chats between David and Irene from around 17 January to 7 February 2018, they did not show David chasing Irene for the accounts. David knew that during this period GWL's and GG's accounts and books were with Prima, which led to Prima preparing the profit and loss statements essentially for 2017 for GWL and GG.[152]

131 That said, Irene clearly had possession and custody of GWL's records at the material time. She also sought to conceal the true state of GWL's assets and financial position when she forwarded only some documents to David and also refused to provide further information.

132 Irene admitted that David had on various occasions asked her for GWL's records including documents supporting GWL's various expenses but claimed that she did not forward them to him because they were with Prima to prepare the accounts. Subsequently, Prima had in around March 2018, on David's request, provided him with a summary and breakdown of profit and expenses for only the 4 Cars, which were based on four spreadsheets (the "Spreadsheets")

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150 Irene's AEIC at [13].

151 6/7/21 NE 105–106.

152 2/7/21 NE 31–32; David's AEIC at pp 31–34 and pp 157–166.

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prepared by Irene pertaining to the 4 Cars (which she named as "David 4 Cars") and which she had also sent to David in October 2018.[153]

133 Irene's conduct and explanation on how the Spreadsheets came to be prepared were telling. She had prepared spreadsheets to show the profit or loss pertaining only to four cars when there were 38 cars registered with GWL and then claimed that she was not the one who had decided on these four cars to reflect GWL's financial position or to set off against GG's losses.[154] Irene claimed that although similar spreadsheets for another 34 cars had to be prepared, she did not do so as David, Andrew and Aloysius could not agree to the figures on the Spreadsheets. This explanation was unconvincing. There was no reason why Andrew had to agree to the profit or loss statements pertaining even to the 4 Cars when he was not a director or shareholder of GWL,[155] and particularly when Irene herself claimed the 4 Cars were beneficially owned by GWL (see [20] and [38] above). Her explanation also contradicted her position that the other 34 cars belonged to GC or CA. If that were the case, she did not have to prepare further similar spreadsheets for the 34 cars for GWL's purposes.

134 Next, it was clear that the expenses attributed to the 4 Cars as reflected in the Spreadsheets were doubtful. For instance, Irene could not explain how she had attributed $1,250 as rental expenses (for premises) for each of the 4 Cars, which was excessive. She then revealed that it was Aloysius who had instructed her on the figures in the Spreadsheets.[156] Additionally, in a "Summary" that she prepared of the 4 Cars, Irene set off *all* of GG's losses

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153 David's AEIC at [17]–[20]; 5/7/21 NE 26; 6/7/21 NE 83–84.

154 5/7/21 NE 27.

155 8/7/21 NE 17, 23–24.

156 8/7/21 NE 15–16.

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against the profits made on *only* the 4 Cars, to give the impression that David's 50% returns in GWL at the end of October 2017 was some $6,415.10 because GWL only had four cars.[157]

135 I accept that David was unable to see the true picture of GWL's financial position and wrote to LTA in October 2018 for a list of cars that had been registered in GWL. LTA then responded in November 2018.[158] Then on 20 March 2019, David's lawyers wrote to Irene to demand for GWL's records, including the revenue generated by GWL and the supporting documents relating to the sale of GWL's cars ("2019 Demand Letter"). In that letter David stated that he had previously requested to inspect GWL's records, but Irene had failed to provide full disclosure of them. I accept that David then commenced the Suit as Irene had refused to accede to his request. There was no evidence that Irene complied with David's request nor refuted what was said in that letter.

136 I find, on balance, that Irene was reluctant to provide GWL's records and documents to David when she had them. Although Irene claimed that she did not give GWL's records to David because they were with Prima, she admitted that Prima had returned all of GWL's documents to her in 2018 and that some documents were never handed to Prima in the first place, such as the sales agreements for GWL's cars which she had possession of.[159] If so, there was no reason why she could not have acceded to David's request for disclosure, particularly when she received the 2019 Demand Letter. Although David could obtain some of GWL's documents independently such as requesting for a copy of GWL's bank statements from the bank, he would have been unable to obtain

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157 David's AEIC at p 37.

158 David's AEIC at [21]–[22] and p 43.

159 6/7/21 NE 107–108, 110, 112; 7/7/21 NE 20.

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GWL's other records and documents which were in Irene's possession and given that (as Irene claimed) there was only one set of everything. Pertinently, David did not know at the material time of Irene's Journal, a document created by Irene and a copy of which was forwarded to him only much later.[160]

137 That Irene was reluctant to disclose material documents can be seen from the fact that even up to the period leading to the trial, David repeatedly requested for documents to no avail. This included a letter from David's lawyers dated 25 February 2020 to Irene's lawyers (which letter Irene claimed she did not have sight of and which claim I disbelieve) and a subsequent discovery application filed by David in the Suit. Even so, Irene continued to withhold documents, which were produced only at the trial and in dribs and drabs.[161]

138 Irene's conduct thus showed that she had sought to conceal material information from David pertaining to how GWL's business had been run and its financial position. Her actions must be seen in the light that David was unaware of the number of cars registered under GWL at the material times and of GWL's disposal of all the Cars until after the fact.

Whether a claim under s 216 of the CA is made out

139 There is no requirement for the plaintiff to be a minority shareholder to bring a claim under s 216 of the CA. The key question is whether the member lacks the power to stop the allegedly oppressive acts (*Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*") at [48]). In *Neil John Ryan v Exploration Png (S) Pte Ltd and Another* [2000] SGHC 242 at [15] and [19], the court held that a claim under s 216 of the CA may be brought even where

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160 6/7/21 NE 24, 84; 7/7/21 NE 64.

161 PCB 1–8; 6/7/21 NE 99–103, 108–109; 7/7/21 NE 19–20.

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both parties hold equal shares in the company. Whilst David was a 50% shareholder in GWL, he was not in control of the affairs of the company such that he cannot allege that he could have been oppressed (*Ng Kek Wee* at [49]). Any disagreement between him and Irene on GWL's management would have resulted in a deadlock. Hence, David is entitled to seek relief under s 216.

140 Next, it would not be easy for a shareholder who bases his oppression action on allegations of mismanagement to meet the requisite threshold for establishing oppression, unless there was also a self-serving aspect to the mismanagement in question (*Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 at [151]). However, in the present case, Irene's acts were not mere mismanagement. They were intended to benefit her or Related Entities, to deplete GWL's assets and finances and ultimately the value of David's shareholding, and to reduce the returns that David would obtain from his investment in GWL. I find that this amounted to a personal wrong against David. Irene had conducted GWL's affairs in a manner oppressive to David, and in disregard of and prejudiced his interests as a shareholder. Her conduct, seen in totality, had been commercially unfair to David and contrary to his legitimate expectation as a shareholder that Irene would act in GWL's best interest and not use GWL to further her interest or the interest of other parties. I am thus satisfied that David's claim under s 216 of the CA has been made out. I elaborate below.

141 In managing GWL's business, Irene charged various expenses to GWL without justification. In March 2017, she charged phone and broadband expenses to GWL when she clearly knew there was no justification for so doing. The Phone Bill and Broadband Bill, which were addressed to GF, had remained unpaid for many months before they were suddenly attributed as GWL's expenses. As Mr Seah revealed in court, Irene had an interest in GF. She also

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allowed Aloysius to keep a sum of $300 which belonged to GWL and caused GWL to pay commission to Andrew without justification.

142 Then, in August and October 2017 (after disputes arose between David and Aloysius), Irene caused some $25,000, $6,000 and $107,000 to be transferred from GWL to GC purportedly as repayment of loans but which I have found were largely unsubstantiated (see [124]–[128] above).

143 Additionally, Irene unilaterally determined and paid herself $1,600 (around 9 October 2017) and caused GWL to pay a "salary" to Andrew of $1,440 (on 5 October 2017) although Andrew was not GWL's employee. I agree with Mr Lim that the timing of Irene's withdrawals of these sums, which were on or shortly after the last nine (out of 10) cars from GWL had been disposed of and a sum of $107,000 had been transferred from GWL to GC (being the sale proceeds for the Nine Cars), was effectively to reduce GWL's cash balance and ultimately the value of David's shares in GWL. This is also in light of the fact that the withdrawal of $1,600 by Irene, which was to enrich herself, was made without informing David.

144 As for the Cars registered in GWL's name, Irene had treated them as GC's and/or CA's cars and sought to dispose of all of them in agreement with Aloysius and Andrew and without David's knowledge. In particular, a substantial number of cars that belonged to GWL beneficially were transferred out (to GC) for no consideration. Pertinently, when nine of the last 10 cars were disposed of in October 2017, Irene had caused all the sale proceeds of the Nine Cars received by GWL to be paid to GC the very next day. Irene's claim that the $107,000 sale proceeds belonged to GC and/or CA as the Nine Cars were beneficially owned by them was inconsistent with her admission and treatment

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of at least two cars (*ie*, cars 4417 and 3487) which she stated belonged to GWL. I reiterate my findings at [68] above.

145 Even if some of the Cars belonged to GC (which David subsequently conceded there were 12), Irene had allowed them to be placed under GWL's business to generate revenue which she then claimed belonged to GC and/or CA. If so, she had allowed GC, CA, Aloysius or Andrew to utilise GWL's resources (such as staff and premises) for GC and/or CA's business, given it was unclear how much of the revenue generated from the cars (which Irene and Andrew claimed belonged to GC or CA) were actually used to defray GWL's operating expenses.

146 Subsequently, Irene sought to attribute only four cars (the 4 Cars) as belonging to GWL and then sought to set off whatever profits generated from the 4 Cars against all the losses of GG, in reliance on the Purported Terms which I have found were never agreed upon. In effect, her action in this regard and the manner of accounting was an attempt to reduce the value of David's shareholding and returns in GWL.

147 The bulk of moneys and/or assets of GWL that were transferred from GWL took place when David and Aloysius' relationship started to deteriorate. Hence, when David asked Irene for GWL's records to verify its transactions, Irene had deliberately withheld them even when she had the documents.

148 Irene's conduct, seen in totality, showed that she had failed to act *bona fide* in the interest of GWL and to safeguard GWL's interests. Indeed, she caused many of the above to occur on the instructions of Aloysius, whom I find played an active role behind the scenes. Irene admitted that Aloysius either made decisions for GWL or that she made decisions for GWL pursuant to

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Aloysius' instructions. This included expanding the fleet of cars in GWL and the subsequent disposal of all the Cars.[162] Even the decision to attribute only four cars to GWL for the purposes of calculating David's returns in GWL was influenced by Aloysius (see [133]–[134] above). Essentially Aloysius (through Irene) was using GWL as his corporate vehicle to do as he pleased and at David's expense.

149 Finally, in relation to David's claim that Irene had refused to declare a fair share of dividends to him, I do not find sufficient evidence to support a claim in oppression in this regard. The failure to declare dividends does not in itself amount to unfair conduct under s 216 of the CA, as a company generally has no obligation to declare dividends and shareholders correspondingly have no right to receive them (*Burland v Earle* [1902] AC 83 at 95; *Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 at [145]).

Remedies

150 David has prayed that Irene be ordered to purchase his shares in GWL without a discount and at a fair value to be determined by the court, or alternatively that GWL be wound up pursuant to s 254 of the CA. Mr Lim submitted that as Irene had effectively dissipated GWL's assets causing it to be nothing more than an empty shell with no viable ongoing business or assets, the more appropriate order would be for her to buy out David's shares taking into account the acts of oppression committed.[163] Irene, on the other hand, made no submissions whatsoever on the appropriate remedy in the event that the court

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162 5/7/21 NE 56; 6/7/21 NE 16–17, 64; 7/7/21 NE 22; 8/7/21 NE 33, 35.

163 PCS at [115].

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finds there to be oppression – Mr Seah's closing submissions (which dealt with the issue of liability) amounted to no more than four pages.

151 In determining the appropriate remedy under s 216 of the CA, the court has the unfettered discretion to make such order is it thinks appropriate with the view "to bringing to an end or remedying the matters complained of". A winding up should only be ordered if, having taken into account all the circumstances of the case, it is the best solution for all the parties involved (*Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 at [91]).

152 In this case, I agree with Mr Lim that it would be more appropriate to order Irene to buy out David's shares in GWL at a fair value. A winding up of GWL would not bring to an end or remedy the matters complained of, particularly when various sums of moneys have been wrongfully transferred out to GC and the Cars have been disposed of (such as by transfer to GC or sale to CarTimes). Whilst GWL is hardly operational, this is not a case in which it would be difficult to value its shares, given that the leasing business was conducted for only about a year before all the Cars were disposed of and that GWL was not a large entity with extensive assets. Further, the disputed payments which Irene caused GWL to make were identified and the court has made a determination on them.

153 I thus order that an independent valuer be appointed to determine the value of David's 50% shares in GWL, and the valuation should take into account the following:

(a) the value of the cars that I have found to be beneficially owned by GWL (totalling 26 cars), and where the cars were sold the value of

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the sale proceeds should be considered as GWL's assets for the purposes of valuation;

(b) all the moneys that had been paid out without proper basis (based on my findings above) should be considered as GWL's assets;

(c) any moneys owed by GWL should be considered as GWL's liability which has to be repaid.

154 I will hear parties on the exact form of the orders to be made arising out of my decision, including the method of appointing a valuer and the date the shares should be valued at. I will also hear the parties on costs.

Audrey Lim J
Judge of the High Court

Lim Jun Hao Alvin (Withers KhattarWong LLP) for the plaintiff;
Seah Choon Huat Johnny (Seah & Co) for the first defendant;
second defendant unrepresented.

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