IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 39

Court of Appeal / Civil Appeal No 23 of 2023

Between

(1) Lim Siau Hing @ Lim Kim Hoe
(2) Lim Vhe Kai

… *Appellants*

And

Compass Consulting Pte Ltd

… *Respondent*

In the matter of Suit No 433 of 2021

Between

Compass Consulting Pte Ltd

… *Claimant*

And

(1) Lim Siau Hing @ Lim Kim Hoe
(2) Lim Vhe Kai

… *Defendants*

Court of Appeal / Civil Appeal No 24 of 2023

Between

Compass Consulting Pte Ltd

… *Appellant*

And

(1) Lim Siau Hing @ Lim Kim Hoe
(2) Lim Vhe Kai

… *Respondents*

In the matter of Suit No 433 of 2021

Between

Compass Consulting Pte Ltd

… *Claimant*

And

(1) Lim Siau Hing @ Lim Kim Hoe
(2) Lim Vhe Kai

… *Defendants*

JUDGMENT

[Contract — Contractual terms — Rules of construction]

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Lim Siau Hing @ Lim Kim Hoe and another
v
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Court of Appeal — Civil Appeal Nos 23 of 2023 and 24 of 2023
Sundaresh Menon CJ, Steven Chong JCA and Belinda Ang Saw Ean JCA
12 October 2023

24 November 2023 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 Disputes over the existence of a contract, its terms, as well as the proper interpretation and effect of those terms regularly come before the courts for adjudication. The court's task in this respect is rendered more challenging when the contract is contained in and/or evidenced by various documents which, on their face, do not appear to bear an obvious nexus with each other. This difficulty is further compounded when the documents are not drafted on advice from lawyers.

2 We are presented with such a challenge in these two related appeals which arose in connection with the reverse takeover of a company (the "RTO"). Mr Lim Siau Hing @ Lim Kim Hoe ("Mr Lim") and Mr Lim Vhe Kai ("Damien") (collectively, "the Lims") had appointed Compass Consulting Pte

Ltd ("Compass") to structure the RTO. At a meeting on 17 July 2017, the parties agreed that upon successful completion of the RTO, Compass would be paid incentives in the form of bonus shares (the "Bonus Shares") and a cash fee (the "Cash Fee") for its services in respect of the RTO (the "Agreement").

3 Typically, the documentation for such a transaction would be drafted by lawyers. However, on this occasion, the three material documents (the "17 July Documents"), which the parties claimed either contained or evidenced the Agreement, were drafted by Compass's representative without any legal input whatsoever. The 17 July Documents were all signed by the Lims during the meeting that same day.

4 Following the completion of the RTO, Compass commenced proceedings for the Bonus Shares and the Cash Fee. The Lims denied that Compass was entitled to the Bonus Shares and the Cash Fee, as certain conditions had allegedly not been fulfilled. The principal issue before the High Court judge below ("the Judge") was therefore to examine how the 17 July Documents should be construed for the purposes of determining the *terms* of the Agreement, and whether some or all of the 17 July Documents formed part of or evidenced the Agreement.

5 Although it appears to have been common ground between the parties that the Agreement was partly written and partly oral, the Judge found that the Agreement was contained wholly in writing, namely in two of the 17 July Documents ("Document 1" and "Document 2"). The consequence of that finding was that one of the 17 July Documents ("Document 3"), as well as the oral testimony in relation to the genesis and purpose of Document 3, was excluded from the Judge's analysis altogether. On that basis, the Judge allowed

Compass's claim for the Bonus Shares but dismissed Compass's claim for the Cash Fee.

6 When the 17 July Documents are properly examined, however, it becomes clear that those documents are not as self-explanatory as the Judge regarded them to be. Consistent with the parties' positions that the Agreement was partly written and partly oral, it is instead necessary to have regard to the oral evidence to make sense of the 17 July Documents, including Documents 1 and 2.

7 In dealing with these appeals, we therefore consider it imperative to consider the *totality* of the evidence surrounding the signing and preparation of the 17 July Documents. In our judgment, once this is done, it is clear that the 17 July Documents were meant to *collectively* evidence an oral agreement that was reached between the parties, and that the Lims are therefore correct to say that the Bonus Shares and the Cash Fee are not due to Compass as certain conditions relating to the RTO had not been fulfilled.

8 For completeness, we add that these appeals were originally fixed before the Appellate Division of the High Court, but were subsequently transferred to this court because the parties relied on evidence of subsequent conduct as an aid to contractual *interpretation*, the admissibility of which has hitherto not been authoritatively decided by us. As we will explain below, however, this issue does not strictly arise for our consideration in these appeals.

Facts

The parties

9 Compass is a private company limited by shares and was incorporated in Singapore in 2004. Its directors are Mr Kelvin Chin Wui Leong ("Kelvin") and his wife, Ms Chong Lee Ching ("Ms Chong"). According to Compass, its principal business is in the provision of business advisory services.

10 Mr Lim and Damien are father and son respectively. They are executive directors of KTMG Ltd ("KTMG"), a public company listed on the Catalist board of the Singapore Exchange Securities Trading Ltd ("SGX"). The Lims are also the controlling shareholders of KTMG, through their collective direct and deemed shareholding interests. Mr Lim is the Executive Chairman while Damien is the Chief Executive Officer ("CEO") of KTMG. Prior to this, the Lims were executive directors and controlling shareholders of Knit Textiles Mfg Sdn Bhd ("KTM"). In February 2019, the Lims successfully listed KTM and its related companies (the "KTM Group") on the Catalist board of the SGX through an RTO of Lereno Bio-Chem Ltd ("Lereno"), which led to Lereno being renamed as KTMG. The RTO of Lereno, and Compass's role in that transaction, form the background to the present dispute.

Background to the dispute

11 In July 2016, Damien was introduced to Kelvin by a friend, after he mentioned that he and his father were considering listing the KTM Group. From July to September 2016, Kelvin and Damien explored the possibility of listing the KTM Group in Hong Kong, but the Lims eventually decided against this.

12 In April 2017, Kelvin approached Damien with the possibility of listing the KTM Group on the Catalist board of the SGX, through an RTO of Lereno. KTM eventually agreed to retain Kelvin's advisory services for the purpose of the RTO. Consequently, Compass entered into a corporate advisory agreement dated 3 May 2017 (the "1st LOE"), which was signed by Kelvin and Damien. Under the 1st LOE, Compass was appointed as "project manager" for the RTO and was to be paid a monthly retainer of $10,000 plus out-of-pocket expenses relating to its engagement.

13 On or around 11 May 2017, the Lims attended a "kick-off meeting" with Kelvin and Ms Chong at KTM's office in Malaysia. Shortly after, on 15 May 2017, Compass entered into an addendum to the 1st LOE (the "2nd LOE"), which was signed by Kelvin and Mr Lim. Significantly, the 2nd LOE expressly provided that Compass's fees for its services were estimated to be $1.1m which could be "adjusted subject to mutual agreement should there be a change in the scope or finalised transaction structure". More will be said about the agreed fee structure below.

14 From May to July 2017, Kelvin and Ms Chong facilitated separate discussions with the Lims and the then-Managing Director and CEO of Lereno, Mr Ong Puay Koon ("Mr Ong"), on how the RTO would be structured. According to the Lims, sometime prior to 17 July 2017, Kelvin visited them at their office in Batu Pahat, Malaysia, to propose that he be paid additional incentives in the form of the Bonus Shares and the Cash Fee, if various conditions were met upon completion of the RTO (the "Batu Pahat Meeting"). On a separate occasion, Kelvin also allegedly met with Mr Ong at his office in Science Park (the "Science Park Meeting") to discuss these additional incentives. We say more about these meetings at [62] and [64] below.

15 Subsequently, on 17 July 2017, the Lims, Kelvin, Ms Chong, and Mr Ong attended a meeting at Lereno's office where the structure of the RTO was finalised (the "17 July 2017 Meeting"). It is not in dispute that an agreement on the Bonus Shares and the Cash Fee was reached at this meeting (*ie*, the Agreement). The following three documents were signed by the Lims at the same meeting (*ie*, the 17 July Documents):

(a) A document titled "Project Libra: Sale of Knit Textile Manufacturing Sdn Bhd and its related companies (KTM) to Lereno Bio-Chem Ltd (Transaction)" addressed to Mr Ong and Kelvin (*ie*, Document 1). Document 1 stated that the Lims, "being the directors and shareholders of KTM, hereby agree to the sale of KTM to [Lereno] provided [that their] net share of equity in the listed issuer … is no less than 65% at completion of the Transaction". The structure of the RTO was recorded in a scheme spreadsheet annexed to Document 1 (the "Scheme Spreadsheet").

(b) A document titled "Project Libra – Corporate Service Agreements" addressed to Mr Ong and Kelvin (*ie*, Document 2). Document 2 stated that the Lims, "being the directors and shareholders of KTM, hereby agree to provide both [Mr Ong] and [Kelvin] and/or their nominated representatives a corporate advisory service agreement (Agreements) for a period of 2 to 3 years from completion of Transaction (the Period). The total fees for the Agreements for both [Mr Ong] and [Kelvin] is no less than S$480,000 per person for the Period".

(c) A document titled "Project Libra: Sale of Knit Textile Manufacturing Sdn Bhd and its related companies (KTM) to Lereno

> Bio-Chem Ltd (Transaction)" addressed to Lereno's board of directors (*ie*, Document 3). Document 3 stated that the Lims, "being the directors and shareholders of KTM, hereby agree to the sale of entire equity in KTM to [Lereno] for a consideration of S$30 Million".

16 According to Kelvin, the finalised structure of the RTO was as follows. The KTM Group would be restructured such that the issued share capital of all the companies in the KTM Group would be held by a single holding entity, Knit Textile and Apparel Pte Ltd ("KTA"). The share capital of KTA would in turn be 100% held by Mr Lim. Lereno would then acquire all of Mr Lim's shares in KTA for a consideration of $26.4m, and this consideration would be satisfied by Lereno issuing: (a) $25.3m worth of shares in Lereno to Mr Lim; and (b) $1.1m worth of shares in Lereno to Compass, since the Lims were supposed to pay Compass $1.1m in fees under the 2nd LOE. Lereno had been struggling financially at that time and was keen to acquire a new business to sustain its listing status on the SGX. Lereno did not have funds to finance the acquisition, which was why it paid for the acquisition via the issuance of new shares.

17 Accordingly, following the 17 July 2017 Meeting, Mr Lim entered into a Put and Call Option Agreement with Lereno on 27 September 2017 to sell his shares in KTA for $26.4m (the "Option Agreement"). The RTO was eventually completed on 18 February 2019, with Lereno duly issuing $26.4m worth of new shares as consideration for the acquisition, as follows:

Issued to	**Price per share**	**Number of shares**	**Total value of shares**	**Lims' stake in Lereno post-completion (excluding transaction costs)**

Mr Lim	\$0.20	126,500,000	\$25.3m	77.79%
Compass (at Mr Lim's direction)	\$0.20	5,500,000	\$1.1m	

18 In other words, the RTO was completed with the Lims holding a 77.79% stake in Lereno and their shares being worth a total of \$26.4m. Compass was also paid \$1.1m by the Lims for its services, via the issuance of Lereno shares to it. However, Compass was not paid the Bonus Shares and the Cash Fee, which formed the subject of the dispute below.

Proceedings below

Compass's arguments in the court below

19 On 12 May 2021, Compass commenced HC/S 433/2021 ("S 433"), claiming for the Bonus Shares and the Cash Fee. Compass's case was that in the course of negotiations leading up to its engagement as project manager for the RTO, it had communicated to the Lims that it expected to receive a fee of \$2.08m in relation to the RTO, and the Lims did not object to this. Accordingly, the parties had understood that the amount of \$1.1m stated in the 2nd LOE was only *part* of Compass's fees. Under the terms of the Agreement entered into at the 17 July 2017 Meeting, Compass would be paid the \$1.1m as stated in the 2nd LOE, and its balance fees in the form of: (a) \$500,000 worth of shares in the listed entity (*ie*, the Bonus Shares); and (b) \$480,000 in cash over a period of two to three years (*ie*, the Cash Fee) upon completion of the RTO. While all of the 17 July Documents had been prepared during the 17 July 2017 Meeting, the Agreement was "contained in and/or recorded and/or evidenced by" Documents 1 and 2 *only*. Document 3, on the other hand, was for the purpose

of facilitating Mr Ong's discussions with Lereno's board of directors and was not to be read together with Documents 1 and 2.

20 In its Statement of Claim dated 12 May 2021 ("SOC"), Compass initially pleaded that the Agreement "was not conditional upon and/or subject to any alleged condition that [the Lims'] shares in the listed entity would amount to more than 65% of the ordinary shares of the listed entity and would be worth at least S$30 million". By the commencement of the trial, however, Compass altered its case. It took the position that at the 17 July 2017 Meeting, it was agreed between Compass and the Lims that the Bonus Shares and the Cash Fee were payable to Compass in the event that the RTO was completed with reference to the Scheme Spreadsheet annexed to Document 1 (*ie*, Lereno paying consideration in the sum of $26.4m), with the Lims owning no less than 65% of the issued share capital of Lereno on completion. Compass maintained this position in its closing submissions. Thus, given that Lereno had duly paid the requisite consideration and that the Lims held 77.79% of the share capital in Lereno upon completion, Compass claimed that it had performed its side of the bargain and was therefore entitled to the Bonus Shares and the Cash Fee.

21 Further, it should also be noted that while Compass did not expressly state so in its SOC, it took the position in its closing submissions that the Agreement was partly written and partly oral. Specifically, its position was that the agreement concerning the Bonus Shares and the Cash Fee was made *orally* between the parties at the 17 July 2017 Meeting, and Documents 1 and 2 were then prepared to record the fact that the Agreement was reached.

The Lims' arguments in the court below

22 The Lims accepted that there was a partly written and partly oral agreement reached at the 17 July 2017 Meeting regarding the Bonus Shares and the Cash Fee but denied that Compass was entitled to the same for four reasons:

(a) First, the Lims alleged that the Agreement had been concluded between themselves, Kelvin and Mr Ong. Compass was not a party to the Agreement and was therefore not the proper plaintiff.

(b) Second, in relation to the Cash Fee, the terms of the Agreement were that the Lims would provide a corporate advisory service agreement to Kelvin and Mr Ong, and Kelvin and Mr Ong would be paid $480,000 each in exchange for their services. Given that no corporate advisory service agreement was entered into, the sum of $480,000 (*ie*, the Cash Fee) was not due. Alternatively, the parties had effectively entered into an agreement to agree, and this was unenforceable for want of certainty.

(c) Third, under the terms of the Agreement, the Bonus Shares and the Cash Fee were only payable if: (a) the Lims held more than 65% of the shares in the listed entity upon completion of the RTO (the "65% Condition"); and (b) the Lims' shares were worth at least $30m upon completion of the RTO (the "$30m Condition") (collectively, the "Conditions"). The Agreement was reflected in Documents 1, 2 *and* 3. Given that the Lims' shares were only worth $26.4m upon completion of the RTO, the $30m Condition had not been satisfied and the Bonus Shares and the Cash Fee were therefore not payable.

(d) Fourth, and in any case, the services that Kelvin and Compass had offered to provide were regulated activities and they did not have the requisite capital markets services licence under the Securities and Futures Act (Cap 289, 2006 Rev Ed). The Agreement was therefore tainted by illegality and unenforceable.

23 For completeness, Mr Ong did not make any claim against the Lims. He testified that he knew that he did not have a "meaningful claim" against the Lims because the $30m Condition had not been met. Further, he had signed an agreement on 10 July 2018 waiving all his claims against the Lims. He was thus advised by his lawyer that he did not have a viable case against the Lims.

Decision below

24 On 20 January 2023, the Judge delivered his decision in *Compass Consulting Pte Ltd v Lim Siau Hing (alias Lim Kim Hoe) and another* [2023] SGHC 17 (the "Judgment"). The Judge considered that there were six issues for his consideration (Judgment at [21]):

(a) first, whether the Agreement had been concluded between the correct parties for the purposes of Compass's claim;

(b) second, what the Agreement comprised;

(c) third, whether Compass had met the conditions under the Agreement to be entitled to the Bonus Shares and the Cash Fee;

(d) fourth, even if Compass had met the conditions for payment, whether it was specifically entitled to the Cash Fee;

(e) fifth, whether the Agreement was performed so as to entitle Compass to the benefits it was promised; and

(f) sixth, regardless of the above, whether the Agreement was nonetheless unenforceable because of illegality.

25 The Judge's reasoning on the issues identified above may be summarised as follows:

(a) First, the Judge found that the Agreement was concluded between Compass and the Lims. Compass was therefore the proper plaintiff (Judgment at [23] and [33]–[43]).

(b) Second, the Judge held that the Agreement comprised Documents 1 and 2, excluding Document 3 (Judgment at [25] and [46]–[52]).

(c) Third, the Judge found that Compass had satisfied the 65% Condition and was therefore entitled to be paid the Bonus Shares. The $30m Condition did not form part of the Agreement. Documents 1 and 2 did not contain the $30m Condition, and the parties could not have intended to supplement the documents by unrecorded oral terms (Judgment at [26] and [60]–[69]). Further, the parties' subsequent conduct to the Agreement supported the absence of the $30m Condition (Judgment at [70]–[80]).

(d) Fourth, the Judge held that Compass was not entitled to the Cash Fee, as Document 2, which referred to its payment, clearly contemplated in writing that Compass was to enter into a separate corporate advisory service agreement to earn this sum (Judgment at [26] and [89]–[93]).

(e) Fifth, the Agreement was not tainted by illegality which would have rendered it unenforceable (Judgment at [28] and [99]–[123]).

26 Consequently, the Judge awarded Compass $500,000 in damages in lieu of the transfer of the Bonus Shares (Judgment at [125]). The Judge also made the "usual order for interest to be awarded" pursuant to s 12 of the Civil Law Act 1909 (2020 Rev Ed) (the "CLA"), and directed that parties were to agree on costs or otherwise write in with submissions within 14 days (Judgment at [126]–[127]). As the parties were unable to agree on costs, Compass and the Lims both filed submissions on 10 February 2023. On 16 February 2023, the parties were informed by way of a letter from the court that the Judge had directed for parties to each bear their own costs and expenses in S 433.

27 Separately, following a request for clarification from counsel for Compass as to what the "usual order for interest" entailed, the Judge ordered on 10 March 2023 that Compass was entitled to interest at the rate of 5.33% from the date on which its cause of action arose (*ie*, 18 February 2019) to the date of payment.

The parties' cases on appeal

28 Compass and the Lims subsequently each filed an appeal against the Judge's decision. CA/CA 23/2023 ("CA 23") is the Lims' appeal against the Judge's decision on the Bonus Shares and computation of pre-judgment interest, while CA/CA 24/2023 ("CA 24") is Compass's appeal against the Judge's decision on the Cash Fee and costs of the action.

CA 23

29 In CA 23, the Lims argue that the Judge erred in three key aspects.

30 First, the Judge erred in finding that the Agreement was contained only in Documents 1 and 2. The Judge should have found that based on the parties'

discussions before and during the 17 July 2017 Meeting, the parties had orally agreed to the $30m Condition at that meeting. The Agreement was therefore made both orally (by way of parties' discussions at the 17 July 2017 Meeting) and in writing (by way of Documents 1 to 3), and Compass's entitlement to the Bonus Shares and the Cash Fee is subject to the $30m Condition which had not been satisfied.

31 Second, even if the Agreement was not subject to the $30m Condition, it would nevertheless be unenforceable because Compass had not provided any valid consideration.

32 Third, the Judge erred in deciding to award interest from the date when the cause of action arose (*ie*, 18 February 2019), as the Bonus Shares could only have been transferred on or after 13 November 2019 due to a share moratorium.

33 In response, Compass takes the position that CA 23 should be dismissed as the Judge was right to conclude that the Agreement did not contain the $30m Condition for the following reasons:

(a) The Lims are not entitled to rely on any discussions preceding the 17 July 2017 Meeting as they did not plead these in their Defence (Amendment No 1) filed on 25 February 2022 ("Defence").

(b) The objective evidence shows that Kelvin did not propose the $30m Condition prior to the 17 July 2017 Meeting.

(c) The Judge's finding is consistent with the contents of Documents 1 to 3. In particular, Compass alleges that *neither* party took the position in the court below that the Agreement was partly written and partly oral. Instead, both parties' cases had been that the terms of the Agreement

found expression in the 17 July Documents. Accordingly, if the $30m Condition was not stated in the 17 July Documents, it could not have been part of the Agreement.

(d) The subsequent conduct of contractual parties should be generally admissible as an aid to contractual interpretation. In the present case, the Lims' conduct subsequent to the 17 July 2017 Meeting is consistent with the Judge's finding that the $30m Condition does not exist.

(e) Mr Ong was neither a neutral nor reliable witness and therefore his evidence with regard to the $30m Condition should be rejected.

34 Further, Compass argues that it provided valid consideration for the Bonus Shares and the Cash Fee. In any case, the Lims did not plead want of consideration in their Defence.

35 Finally, Compass claims that it is entitled to interest from the date of the completion of the RTO (*ie*, 18 February 2019), as that was the date on which it became entitled to the Bonus Shares.

CA 24

36 In CA 24, Compass argues that the Judge erred in deciding that it was not entitled to the Cash Fee for the following reasons:

(a) The Lims had agreed to pay the Cash Fee as part of Compass's fees for the RTO. This agreement was binding and enforceable.

(b) The Lims were contractually obliged to provide Compass or its nominee(s) with the "corporate advisory service agreement" referred to in Document 2.

(c) The Lims were under an implied duty to co-operate with Compass, which they breached.

(d) By the operation of the prevention principle, the Lims are not entitled to rely on the fact that the parties never entered into the corporate advisory service agreement to escape their obligations to pay the Cash Fee.

37 In addition, Compass argues that given that it was the successful party, the Judge erred in deciding that it was not entitled to any costs of the action.

38 Conversely, the Lims contend that the Judge's decision on both the Cash Fee and costs ought to be affirmed. In relation to the Cash Fee, the Lims maintain their position that Compass is not entitled to it for the following reasons:

(a) The $30m Condition was not satisfied upon the completion of the RTO.

(b) The Cash Fee is only payable if Compass or its nominee had entered into a corporate advisory service agreement and provided services pursuant thereto.

(c) The agreement relating to the Cash Fee is an agreement to agree, and in any case, too uncertain to be enforced.

(d) Compass's argument on the implied duty to co-operate should be rejected as it was not pleaded.

(e) Compass's purported application of the prevention principle is flawed.

39 In relation to costs, the Lims argue that the Judge properly exercised his discretion in ordering the parties to bear their own costs given that they each prevailed on one of the main heads of claim.

40 For the avoidance of doubt, the Judge's findings that Compass was the proper plaintiff and that the Agreement was not tainted by illegality have not been challenged by the parties in CA 23 and CA 24. Accordingly, these aspects of the Judge's decision do not arise for our consideration.

Our decision

41 The relevant issues in these two appeals must be set against the background that it is undisputed that the Agreement regarding the Bonus Shares and the Cash Fee was concluded at the 17 July 2017 Meeting.

42 The principal issue which divides the parties is whether the Agreement was subject to two conditions *ie*, the 65% Condition and the $30m Condition, as contended by the Lims, or only the 65% Condition as contended by Compass. It, however, bears mention that Compass's initial pleaded case was that the Agreement was not even subject to the 65% Condition. As we shall see, this is relevant to demonstrate how Compass's case on the governing terms of the Agreement evolved in the course of the proceedings below.

43 As it is common ground that Lereno paid consideration of $26.4m for KTA, the dispositive issue before this court is whether the $30m Condition was a condition of the Agreement. If it was, Compass's claim for both the Bonus Shares and the Cash Fee falls away. In deciding this issue, it is first necessary to examine the *nature* of the Agreement, which then impacts the determination of its terms, bearing in mind the text and context of the 17 July Documents.

44 After considering the evidence before the court and the parties' submissions, we are satisfied that the $30m Condition was in fact a condition of the Agreement. Since that condition was not satisfied, the Bonus Shares and the Cash Fee are not payable under the Agreement. We set out below the reasons for our decision.

CA 23

The nature of the Agreement

45 Before ascertaining the terms of the Agreement, we must first consider the crucial anterior question of what the nature of the Agreement is.

46 In the court below, the Judge proceeded on the basis that the Agreement was wholly contained in writing, and therefore focused on the single question of whether Document 3 should be read together with Documents 1 and 2 as part of the Agreement. He did not accept that the parties intended to supplement the contents of the documents with unrecorded oral terms (Judgment at [68]). In our judgment, the Judge erred in adopting this approach. He should instead have first applied his mind to the issue of whether there was a set of oral terms in light of which the 17 July Documents were meant to be construed, and if so, what these terms were.

47 We say this for two main reasons. First, despite it being *undisputed* that an agreement on the Bonus Shares and the Cash Fee was reached at the 17 July 2017 Meeting, the 17 July Documents do not either singly or collectively spell out the agreement pertaining to the Bonus Shares and the Cash Fee, or stipulate the precise condition(s) under which those incentives would become payable to Compass. While it can be inferred that the Scheme Spreadsheet annexed to Document 1 referred to the Bonus Shares and the Cash Fee (*ie*, under the row "Compass" indicated by "500,000" and the footnote "* PLUS Service agreement … of S$480K per pax for 2 to 3 yrs" respectively), the terms as to when they would be payable were not expressly identified. As can be seen from the Scheme Spreadsheet which we reproduce below, the document mainly comprised a set of items and figures which were by themselves of no significance without any further context or oral explanation.

PRIVATE AND CONFIDENTIAL
PROPOSED SCHEME

PROJECT LIBRA	Shares	%	S$ Value	Main Cap	Type of shares
Listco	73,630,000	2.2%	0.010	736,300	
Debt Conversion	480,000,000	14.4%	0.010	4,800,000	New
Knit/professional fees	150,000,000	4.5%	0.010	1,500,000	New
Compass	110,000,000	3.3%	0.010	1,100,000	New
Subtotal	813,630,000	24.3%		8,136,300	
Knit valuation, say	2,530,000,000	75.7%	0.010	25,300,000	New
Total	3,343,630,000	100.0%		33,436,300	
Knit	2,100,000,000	62.8%	0.010	21,000,000	
Compass	50,000,000	1.5%	0.010	500,000	Vendor
Premium	380,000,000	11.4%	0.010	3,800,000	Vendor
	2,530,000,000	75.7%		25,300,000	
Total Knit	67.3%				

* PLUS Service agreement for OPK and Compass of S$480K per pax for 2 to 3 yrs

48 It is thus clear that the 17 July Documents, on their face, do *not* set out the *entire* agreement pertaining to the Bonus Shares and the Cash Fee. In the circumstances, regard must inevitably be had to the parties' evidence of what was *orally* discussed and agreed at the 17 July 2017 Meeting. Only then can the court make sense of the 17 July Documents and determine what were the terms of the Agreement that was concluded.

49 Second, we stress that it was *both* parties' positions that the Agreement was partly written (*ie*, evidenced in the 17 July Documents) and partly oral (*ie*, as agreed verbally at the 17 July 2017 Meeting). Indeed, given that the 17 July Documents are not self-explanatory on their face (as we have just explained above), it is unsurprising that both parties acknowledged that this was so. Nonetheless, given that there was some initial disagreement on this point at the hearing before us, it is useful at this juncture to revisit the parties' cases in the court below.

50 We begin with the parties' respective pleadings. In Compass's SOC, it pleaded broadly that on 17 July 2017, an agreement was reached between the parties that: (a) the final amount payable to Compass by the Lims upon completion of the RTO was $2.08m; and (b) therefore, in addition to the fee of $1.1m under the 2nd LOE, the Lims would pay Compass $500,000 worth of Bonus Shares in the listed company and a $480,000 Cash Fee over a period of 24 to 36 months from the completion of the RTO. Further, this Agreement was "*contained in and/or recorded and/or evidenced by* two letters [*ie*, Documents 1 and 2] enclosing the RTO scheme addressed to [Mr Ong] and [Kelvin] which were signed by the [Lims]" [emphasis added].

51 On the other hand, the Lims pleaded in their Defence that "Documents 1, 2 and 3 are to be read together". They further averred that at the 17 July 2017

Meeting, Kelvin had "represented to the [Lims] that he might be able to procure that the RTO take place such that the [Lims'] shares would amount to more than 65% of the ordinary shares of the listed entity (as documented in Document 2), and would be worth at least S$30 million (as documented in Document 3)". Kelvin thus proposed that, "in the event he was able to secure this outcome, he would like to be given an additional S$500,000 worth of the shares in the listed entity. In addition, both [Mr Ong] and he should be engaged under a '*corporate advisory service agreement*' (referred to in Document 2)" [emphasis in original]. Ultimately, the Lims "agreed to [Kelvin's] proposal for him (and [Mr Ong]) to be given these additional benefits, subject to the conditions which he proposed" [emphasis in original].

52 We note that neither party *expressly* pleaded that the Agreement was partly written and partly oral. Although the parties' pleadings could have been framed in clearer terms, we are satisfied that the parties' pleadings were phrased broadly enough to support a case that the Agreement was partly written and partly oral in nature. Specifically, as this court held recently in *COT v COU and others and other appeals* [2023] SGCA 31 at [83], the words "contained in or evidenced by" are broad enough to encapsulate an oral contract outside of and on terms broader than that which is contained in a written document.

53 In any event, despite the relative ambiguity of the parties' positions in their pleadings, it is clear from their submissions at the close of the trial below that they *both* took the position that the Agreement was partly written and partly oral. In Compass's closing submissions, it submitted that "the agreement concerning the Bonus Shares and the Cash Fee was made orally between the [Lims] and Compass' representatives … at the 17 July 2017 Meeting and Documents 1 and 2 were then prepared to record the fact that an agreement was reached". It further stressed that, while both documents "evidence[d] the

bargain that was made between the parties with respect to the Bonus Shares and the Cash Fee, it is clear that Documents 1 and 2 were not intended to serve as a formal written contract containing all the terms of the agreement". Thus, Compass argued that "in the final analysis, *the agreement concerning the Bonus Shares and the Cash Fee should be treated as a contract which is partly written and partly oral*. The contract is partly in writing given that Documents 1 and 2 were prepared and signed by the [Lims]" [emphasis added]. As for the Lims, they contended in their closing submissions that "the contents of Documents 1, 2 and 3 *evidence and corroborate* the [Lims'] position that the additional benefits which were agreed at the meeting on 17 July 2017, are subject to the 2 Conditions [*ie*, the 65% Condition and the $30m Condition]" [emphasis added].

54 There is thus no question that by the close of the trial below, both parties had *accepted* that the Agreement was partly written and partly oral in nature. Indeed, the Judge acknowledged that it was Compass's case that the Agreement was partly written and partly oral (Judgment at [68]). Yet, as explained above, he declined to accept this on the facts of the case and found instead that the Agreement was wholly written (see [46] above).

55 At the hearing before us, Compass attempted to resile from its position in the court below. Counsel for Compass, Mr Paul Ong, submitted that at all times, Compass's position was that "all the material terms governing the [B]onus [S]hares and the [C]ash [Fee], were recorded in [D]ocuments 1 and 2", and that it was not the case that there were other terms "agreed between the parties orally" which were not reflected in the 17 July Documents. When we pointed out that the contents of the 17 July Documents did not expressly contain any terms stipulating the conditions for the Lims' contractual obligations in respect of the Bonus Shares and the Cash Fee, Mr Paul Ong conceded that

without any sort of oral explanation for the items and figures, especially those found on the Scheme Spreadsheet, it was not possible to understand the import of the Documents. Simply put, Mr Paul Ong accepted that the 17 July Documents could not be understood in isolation, and that the entire Agreement had to include orally agreed terms which supplemented and explained the contents of the Documents.

56 The parties' final position in these appeals was therefore that the Agreement was partly written and partly oral. In our judgment, this must be so. As we have explained above, the 17 July Documents by themselves are far from self-explanatory, and they do not expressly set out the precise terms governing the parties' contractual relationship in respect of the Bonus Shares and the Cash Fee. This clearly indicates that it is necessary to consider the parties' oral evidence in relation to the 17 July Documents in order to provide context to these documents. As the Lims contend, the 17 July Documents at best *evidence* the Agreement that was concluded, but cannot, on their face, be the full agreement between the parties.

The terms of the Agreement

57 In that light, we turn to consider the terms of the Agreement which was concluded at the 17 July 2017 Meeting. We pause here to stress that the key issue in the present appeals is the *existence* of a particular term (*ie*, the $30m Condition). Accordingly, unlike situations where the court is concerned with the proper *interpretation* of a term in a contract, the court's approach to receiving evidence of the background or context in which the contract was concluded is wider, as "there is no restriction on the evidence which the court may consider": *The "Luna" and another appeal* [2021] 2 SLR 1054 ("*The 'Luna'*") at [30]. The parol evidence rule and the principles governing the

admission of extrinsic evidence set out in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), which apply in the context of contractual interpretation, do not constrain us here.

58 In our judgment, the factual background leading up to the conclusion of the Agreement, as well as the contents of the 17 July Documents, both weigh in favour of the conclusion that the parties *did* agree to the $30m Condition at the 17 July 2017 Meeting. We address each of these points in turn, before making some observations about the parties' subsequent conduct.

(1) The background to the Agreement

59 We begin by setting out the undisputed evidence relating to Compass's engagement as project manager for the RTO. As noted at [12]–[13] above, Compass was first appointed as project manager for the RTO pursuant to the 1st LOE dated 3 May 2017. Shortly after, the parties attended a "kick-off meeting" on or around 11 May 2017. Compass did not challenge the Lims' evidence that at the kick-off meeting, the Lims had indicated their desire to own 65% of the shares in the listed entity upon completion of the RTO. This was reflected in an e-mail from Kelvin dated 23 May 2017, where Kelvin stated that he had communicated to Mr Ong the Lims' objective of holding 65% of the shares in the listed entity:

> … The proposed scheme/plan is moving along based on what we discussed on the white board at your office. … We look forward to meet up [*sic*] to fine-tune tune [*sic*] the scheme hopefully soon. [KTM's] objective of achieving 65% post RTO has been communicated and understood by Mr Ong (as discussed – bearing in our mind 60–65% is acceptable – being a buffer for nego).
>
> …

60 Following the kick-off meeting, the parties proceeded to sign the 2nd LOE on 15 May 2017. Clause 1 of the 2nd LOE provided that Compass agreed to carry out specified tasks, including to "search for a suitable listed company (Listco) for the purposes of injecting [KTM] and its subsidiary and related companies (KTM or the Group) into". Clause 2 further stated that based on the "indicative transaction structure", Compass's "fees for the services under this engagement letter [were] estimated to be S$1,100,000". However, the amount of $1.1m could be "adjusted subject to mutual agreement should there be a change in the scope or finalised transaction structure".

61 We pause to note that based on the background above, it is clear that by May 2017, the parties had agreed on an RTO as the indicative structure for the transaction *and* that Compass's fees for its role in the RTO would be $1.1m. Crucially, the parties had also already contemplated that the Lims would hold around 65% of the shares in the listed entity upon completion. Logically then, the question that arises is this: why would the Lims, having agreed to pay $1.1m to Compass for its role in the RTO, then agree to pay an additional $980,000 worth of incentives to Compass at the 17 July 2017 Meeting?

62 To this, the parties provided differing accounts of why the Bonus Shares and the Cash Fee were promised to Compass. On the one hand, the Lims claimed that in the lead-up to the 17 July 2017 Meeting, Kelvin had proposed that he would achieve the 65% Condition *and* the $30m Condition, in exchange for the said incentives. Specifically, at the Batu Pahat Meeting, Kelvin had stated that he "may be able to structure the proposed RTO such that, on completion, [the Lims] would have more than 65% of the shares in Lereno", and that he would "try to achieve a result where [the Lims'] shares would be worth at least S$30 million". In return, if this was achieved, Kelvin proposed that he and Mr Ong should receive additional incentives. Specifically, Kelvin and Mr Ong

would be paid $500,000 and $3.8m worth of bonus shares in the listed entity respectively, and would both be appointed under a service agreement to provide services to the listed entity for a cash fee of $480,000 each. The Lims agreed to this proposal on one of Kelvin's subsequent visits to the Batu Pahat office. Kelvin then informed the Lims that he would discuss with Mr Ong and arrange for an in-person meeting.

63 The parties and Mr Ong subsequently met at the 17 July 2017 Meeting. At that meeting, Kelvin allegedly raised the issue of the additional incentives again and made the same proposal that he did at the Batu Pahat Meeting. After the Lims confirmed their agreement, Kelvin showed Documents 1 to 3 to the Lims, and explained that the documents "when executed and read together [would] confirm [the Lims'] personal agreement to provide the additional incentives" to both Kelvin and Mr Ong, subject to the 65% Condition and $30m Condition. These documents were then duly signed by the Lims.

64 The Lims' account of the events which transpired is corroborated by Mr Ong. According to Mr Ong, Kelvin visited his office at Science Park sometime prior to the 17 July 2017 Meeting (*ie*, the Science Park Meeting). Kelvin had told Mr Ong that he was "confident" that he could structure the RTO such that the 65% Condition and the $30m Condition would be achieved. On that basis, Kelvin proposed that he and Mr Ong ask the Lims for additional incentives in the form of: (a) $500,000 and $3.8m worth of shares in the listed entity to be paid to himself and Mr Ong respectively; and (b) a payment of $480,000 in cash to each of them. Mr Ong claimed that he then told Kelvin that while he was happy to receive additional incentives, he was uncomfortable with receiving cash from the Lims directly. Accordingly, Mr Ong suggested that he and Kelvin should instead provide professional advisory or consultancy services

to the listed entity after completion of the RTO, in consideration for payment of $480,000 to each of them.

65 Mr Ong also claimed that at the 17 July 2017 Meeting, Kelvin verbally informed the Lims that he would endeavour to achieve the 65% Condition and the $30m Condition, and had proposed the payment of additional incentives if such an outcome was achieved. Mr Ong recounted that Kelvin had assured the parties that he would be able to achieve a higher valuation of KTM than was earlier envisaged:

> Q. … I would suggest to you that at the meeting on 17 July 2017, nobody, not yourself, not the Lims, not Mr Chin, not Ms Chong, contemplated that the KTM Group could be sold for as much as $30 million, and that is why the agreed valuation, as per document 1, was much less than $30 million, specifically, $26.4 million, if you include the $1.1 million due to Compass. Would you agree or disagree with that?
>
> A. I disagree with that. The 26.4 million … is the value that this KTM can shows, but our great friend *Mr Chin says that he can – he's a professional valuer himself, he's able to value it at a higher value, at 30 million. Verbally. And that's why he can get benefit for both of us.* That's why I said, okay in this case, you ask them to put in writing that it's 30 million so that I can show it to the board. Right? If I were to show the board, you know, it's 26.4 only, then later on, if it's value[d] at 30 million, the board will ask question why. Why is it more expensive, why increase price?
>
> [emphasis added]

66 According to Mr Ong, the Lims stated that they would be "quite happy to share more" with him and Kelvin, if both Conditions were achieved. Kelvin then showed Documents 1 to 3 to the Lims, who signed these documents.

67 Compass, on the other hand, provided two alternative explanations for the Lims' agreement to the payment of the Bonus Shares and the Cash Fee:

(a) First, Compass's position in the court below was that in the lead-up to its engagement as project manager for the RTO, Compass had informed the Lims that it expected to receive a total fee of $2.08m in relation to the RTO and the Lims did not object to this. Accordingly, the parties had understood that the amount of $1.1m stated in the 2nd LOE was only *part* of Compass's fees. The Bonus Shares and the Cash Fee constituted the balance of Compass's fees that Compass expected to receive upon completion of the RTO. This was consistent with Compass's pleaded case, which was that its entitlement to the Bonus Shares and the Cash Fee was *not* subject to any condition, including the 65% Condition and the $30m Condition (see [20] above).

(b) Second, at the commencement of the trial, Compass altered its case and instead accepted that the payment of the Bonus Shares and the Cash Fee *was* subject to the 65% Condition (see [20] above). In its written submissions for these appeals, Compass's final position appears to be that the Bonus Shares and the Cash Fee were promised *in exchange* for Kelvin achieving the 65% Condition. This is also the position which Mr Paul Ong maintained at the hearing before us.

68 In our judgment, there are several fundamental difficulties with Compass's explanations for the payment of the Bonus Shares and the Cash Fee. To begin with, as we have just noted, Compass's final case departs from its pleadings, and no satisfactory explanation has been provided for the change in its case. Be that as it may, the first explanation proffered by Compass (*ie,* that the parties had agreed from the outset that Compass's total fees would be $2.08m) was expressly rejected by the Judge. The Judge found that while Kelvin had *subjectively* desired a $2m fee, there was no evidence that he had informed the Lims directly of his desire for a $2m fee. Kelvin also accepted in cross-

examination that there was no documentary evidence that he had told the Lims that he expected a $2m fee (Judgment at [61]–[63]).

69 The Judge's finding is not seriously challenged by Compass. It is *not* Compass's position in these appeals that its entitlement to the Bonus Shares and the Cash Fee was unconditional and meant to be part of its completion fees. In any event, we agree with the Judge that there is no evidence to support the contention that the parties had agreed that Compass's fees would be $2.08m, and therefore that the Bonus Shares and the Cash Fee were part of the completion fees. Whilst Kelvin did prepare spreadsheets which reflected Compass's fees as around $2m, these spreadsheets were only sent to Mr Ong and not the Lims and hence could not possibly have contractual force *vis-à-vis* the Lims.

70 We next turn to consider Compass's second explanation for why the Lims agreed to the payment of the Bonus Shares and the Cash Fee, namely, that these incentives were promised in consideration for Kelvin achieving the 65% Condition. In its submissions for these appeals, Compass emphasises that the 65% Condition was not "cast in stone" prior to the 17 July 2017 Meeting, and that the Lims only agreed *during* the 17 July 2017 Meeting to provide the Bonus Shares and the Cash Fee in exchange for Kelvin achieving this condition. The challenge here, however, is that the evidence of Compass's witnesses does not support its claim. In his affidavit of evidence-in-chief ("AEIC"), Kelvin aligned himself with Compass's *first* explanation (*ie*, that the Lims had agreed to pay a total fee of around $2m to Compass for its role in the RTO):

> From the outset of our discussions with the Lims in April 2017 concerning the potential deal with Lereno, [Ms Chong] and I had made it clear to the Lims that Compass would charge a completion fee of around S$2 million for its services on completion of the proposed transaction. In this regard, I recall

> that I verbally mentioned to Damien in late April 2017 that Compass' completion fee would amount to 5% of the enlarged share capital of the listed company on completion of the transaction *i.e.* around S$2 million. I also recall mentioning that Compass' completion fee would be equivalent to around S$2 million (i) at a meeting with Mr Chew at Compass' offices in Kuala Lumpur ('KL') sometime between 16 to 21 April 2017 where we discussed the potential deal with Lereno; and (ii) at a meeting with the Lims at their offices in Malaysia sometime in May 2017 where we discussed the scheme for the proposed transaction. I also mentioned that Compass' completion fee would be around S$2 million in my discussions with Mr Ong on the scheme. …
>
> [emphasis in original]

71 Kelvin's position was therefore that the Bonus Shares and the Cash Fee were payable once the RTO was completed in accordance with the Scheme Spreadsheet annexed to Document 1. While Kelvin accepted that this meant that the RTO would have to be completed with the Lims holding no less than 65% of the shares in the listed entity (per the terms of the Scheme Spreadsheet), he did not go so far as to say that the Bonus Shares and the Cash Fee were promised *in exchange* for him achieving the 65% Condition. In other words, it was *not* Kelvin's evidence that the Lims, having initially agreed in May 2017 to pay Compass a fee of $1.1m for its role in the RTO, had then agreed in July 2017 to pay the Bonus Shares and the Cash Fee *because* Kelvin had promised to achieve the 65% Condition:

> (2) At no time during the 17 July 2017 Meeting did [Ms Chong] or I suggest to the Lims that the Bonus Shares and Cash Fee would only be payable to Compass if the Lims' shares in the listed company upon the completion of the Transaction amount to more than 65% of the share capital of the listed company and are worth at least S$30 million. That was not the understanding reached between Compass and the Lims. ***The understanding was for Compass to receive the Bonus Shares and Cash Fee upon the completion of the Transaction with reference to Scheme 2.*** This result was in fact achieved *i.e.* the Transaction

> was completed on the basis of a valuation of S$25.3 million for the KTM Group as per Scheme 2. …
>
> 43. Thus, it is clear that (1) an agreement was reached at the 17 July 2017 Meeting on the scheme for the Transaction *i.e.* Scheme 2; and ***(2) pursuant to Scheme 2, the Lims agreed to pay the Bonus Shares and Cash Fee to Compass upon the completion of the Transaction on the terms of Scheme 2.*** There is no merit to the Lims' contention that their obligation to pay the Bonus Shares and Cash Fee was contingent on certain conditions which did not materialise on completion. The only 'condition' was that the Transaction is completed with the Lims holding no less than 65% of the shares in KTMG as per Scheme 2. That result was, in fact, achieved.
>
> [emphasis added in bold italics]

72 Kelvin's evidence therefore does not support Compass's second explanation that the Lims had agreed to increase Compass's fees in July 2017 (by way of the Bonus Shares and the Cash Fee) in consideration for the 65% Condition. On Kelvin's account, the Bonus Shares and the Cash Fee were simply part of Compass's $2m completion fees. Ms Chong likewise took a similar position in her AEIC:

> … The Bonus Shares and Cash Fee constituted part of the completion fee of S$2.08 million which the Lims had agreed to pay to Compass. This completion fee of S$2.08 million comprised (1) a fee of S$1.1 million as provided for in an addendum to Compass' engagement agreement with the Lims dated 15 May 2017, which was paid to Compass by the issuance of shares in Lereno on the completion of the Transaction in February 2019 at an issue price of S$0.20 per share (the 'Advisor Shares') and (2) the Bonus Shares and Cash Fee (which are collectively worth S$980,000), both of which remain outstanding and payable to Compass.

73 Compass's second explanation is therefore at odds with the evidence of Kelvin and Ms Chong. This inconsistency may have come about as a direct result of Compass's belated change in its case below. In any event, even if Kelvin's and Ms Chong's evidence is put to one side, we do not find it plausible based on the surrounding circumstances for the Lims to have agreed to pay an

additional $980,000 worth of incentives solely in exchange for the satisfaction of the 65% Condition. This is because, as explained at [61] above, the Lims' target of holding 65% of the shares in the listed entity was *already in play* from as early as May 2017. Although the parties may not have formally agreed on the 65% shareholding target as a *condition* of the transaction at that point in time, we nevertheless find it pertinent that the parties had discussed the 65% shareholding target *prior to* the signing of the 2nd LOE, which stated that Compass's fee for its role in the RTO would be $1.1m (see [60] above). This suggests that at the time of the 2nd LOE, the parties had already contemplated that Compass would have to ensure that the Lims held around 65% of the shares in the listed entity upon completion and had agreed to Compass's fee being $1.1m on that basis. It is also worth noting that the 2nd LOE stated that Compass's fee of $1.1m could be adjusted "should there be a change in the scope or finalised transaction structure". Given that the 65% shareholding target had been in play prior to the signing of the 2nd LOE, it could not be said that achieving such a target constituted a change in scope or the transaction structure, which would warrant an adjustment in Compass's fees. In any event, it was never Compass's case that it was entitled to the Bonus Shares and/or the Cash Fee by reason of any change in either the scope or structure of the RTO.

74 In the circumstances, there was no reason for the Lims to agree to nearly double Compass's fees for its role in the RTO, in exchange for the 65% Condition. Put simply, given that the Lims had already agreed to pay Compass $1.1m at a time when the 65% shareholding target was within the parties' contemplation, it did not make sense for the Lims to drastically increase Compass's fees for achieving substantially the same result. At the hearing before us, Mr Paul Ong acknowledged that the 65% Condition was not a point of negotiation between Compass and the Lims, as Compass had merely been the

intermediary between the Lims and Lereno. Nor was it explored at the trial whether the Lims would have been willing to complete the RTO with a shareholding of *less than* 65% in the listed entity. Accordingly, it could not be said that by achieving the 65% Condition, Compass was providing additional value or an additional service to the Lims, which would have justified the payment of the Bonus Shares and the Cash Fee. There was thus no reason for the Lims to agree to the payment of these additional incentives, simply because Kelvin had *promised* to achieve the 65% Condition.

75 In the final analysis, it is for Compass as claimant to establish the basis for its claims. That appears to have been a point overlooked by the Judge. For the reasons set out above, we reject Compass's account of the terms agreed at the 17 July 2017 Meeting, namely that the Bonus Shares and the Cash Fee were promised to it either as part payment of its fees, or in consideration for the 65% Condition. In our view, Compass has not satisfactorily accounted for *why* the Lims would have agreed to such an arrangement. By contrast, it is much more plausible that as the Lims contend, the parties agreed to the payment of the Bonus Shares and the Cash Fee on the condition that the Lims' shares in the listed entity were worth $30m (*ie*, the $30m Condition). Such an outcome was more commercially sensible for the Lims and would have justified the increase of fees to Compass. As Damien explained in cross-examination, the $30m Condition was the "key" to why the Lims had agreed to the payment of the Bonus Shares and the Cash Fee:

> A. No, because I have to state very clearly that it's because -- this one, because Mr Chin come and tell me, that they can actually manage a higher valuation to 30 million. So this is a key of the whole 17 July agreement is. So without this 30 million additional valuation, why would I go and sign this 17 July agreement with Mr Ong and Mr Chin and promise to give them another additional 500,000 and 3.8 million share to Mr Ong?

76 We note, for completeness, that Compass contends that the Lims should not be permitted to rely on the events preceding the 17 July 2017 Meeting to establish their case, as the Lims did not plead these events in their Defence (see [33(a)] above). In our view, there is no merit to this argument. Even if the Lims did not refer specifically to the kick-off meeting, the Batu Pahat Meeting or the Science Park Meeting in their pleadings, Compass cannot claim that it suffered prejudice as these events were set out in the Lims' AEICs. Compass therefore had the opportunity to challenge the Lims' versions of these events in cross-examination. However, it appears that Compass chose not to do so.

77 We therefore prefer the Lims' account that the Bonus Shares and the Cash Fee were promised subject to the 65% Condition *and* the $30m Condition, and that the $30m Condition was thus a term of the Agreement. We next turn to consider the contents of the 17 July Documents. In our judgment, when the 17 July Documents are read together, they collectively evidence the Agreement between the parties regarding the Bonus Shares and the Cash Fee, and reinforce our conclusion that the $30m Condition was a term of the Agreement.

(2) The 17 July Documents

78 In our view, it is important to first consider the parties' evidence of *why* the 17 July Documents were prepared and signed, as that would necessarily inform how the 17 July Documents are to be construed. With that understanding, the court can then examine the contents of the 17 July Documents proper and determine what they reveal about the terms that were agreed at the 17 July 2017 Meeting.

79 We start with the Lims' evidence. As set out at [63]–[66] above, the Lims' evidence was that Kelvin had shown them Documents 1 to 3 at the 17 July

2017 Meeting, and had explained to them that the documents "when executed and read together [would] confirm [their] personal agreement to provide the additional incentives", subject to the 65% Condition and the $30m Condition. Specifically, Damien's evidence was that Document 3 evidenced the $30m Condition, as that document showed that "Lereno would consider … to use S$30 million to purchase the entire stake of KTM Group". Documents 1 to 3 were therefore meant to be read together, and collectively evidenced the Agreement concluded at the 17 July 2017 Meeting. The Lims' evidence was corroborated by Mr Ong, who stated that Kelvin had showed Documents 1 to 3 to the Lims after they had agreed to the payment of additional incentives in exchange for the 65% Condition and the $30m Condition.

80 In addition, Mr Ong's evidence was that Document 3 had in fact been prepared at his request. According to Mr Ong, after Kelvin had mentioned at the Science Park Meeting that he could structure the RTO such that the Lims' shares would be worth at least $30m, Mr Ong asked Kelvin for "formal documentation" which he could present to Lereno's board of directors to: (a) seek the board's approval of the $30m transaction price for the RTO; and (b) show that the Lims genuinely wanted to engage in the RTO and that they "mean[t] business". The resulting document that Kelvin prepared was Document 3.

81 On the other hand, Kelvin's account for why he had prepared the 17 July Documents differed in several respects. On Kelvin's account, *only* Documents 1 and 2 were prepared to evidence the Agreement concluded among the parties on the payment of the Bonus Shares and the Cash Fee. Document 3 had been prepared for a separate purpose, which was that in the course of the 17 July 2017 Meeting, Mr Ong had asked for a document to facilitate his discussions with Lereno's board of directors concerning the consideration to be paid for the

acquisition of KTM. More specifically, Kelvin's evidence was that Mr Ong had requested a document to "kickstart discussions with the Lereno Board and demonstrate that the deal with the Lims was genuine". In addition, Kelvin claimed that Mr Ong also needed to "show to the Lereno Board that he was able to secure more favourable terms for Lereno by negotiating the price for the KTM Group down from a higher amount of S$30 million to the sum of S$25.3 million (as per Scheme 2) and this would help him to appear to the Board that he was acting independently and in Lereno's best interest".

82 Having considered the different accounts of the provenance of the 17 July Documents, we prefer the evidence of the Lims and Mr Ong that Documents 1 to 3 were meant to be read together, and more specifically, that the purpose of Document 3 was to evidence the $30m Condition. We make two points in this regard.

83 First, the gist of Kelvin's evidence is that Document 3 was a sham document which contained an inflated valuation, so that Mr Ong could appear to negotiate the price of the KTM Group downward. In our view, this is difficult to believe. Kelvin's account is a bare and uncorroborated allegation, and no proper explanation was provided for why Mr Ong had to put up a pretence of negotiating the price of the RTO downward, or how the parties or even Mr Ong had arrived at the figure of $30m to "negotiate down" from. In contrast, the Lims' and Mr Ong's consistent testimony was that Kelvin was the one who had proposed that he could achieve a $30m valuation, and Document 3 was drafted for Mr Ong's use to seek approval from Lereno's board. We find the Lims' and Mr Ong's explanation to be more persuasive in this regard.

84 Second, we disagree with the Judge's reasons for his conclusion that Document 3 is necessarily a standalone document that should not be read

together with Documents 1 and 2. The Judge accepted Kelvin's evidence that Document 3 was only created for Mr Ong to negotiate the price of the RTO downward, as there was "nothing in the evidence that dispels Kelvin's explanation of why Document 3 was needed" (Judgment at [48]). This was an untenable position for the Judge to take because he also *accepted* Mr Ong's evidence, which as noted at [79] above, corroborates the Lims' account that Document 3 served to evidence the $30m Condition and was not simply a standalone document. In fact, the Judge acknowledged that Mr Ong's testimony was that the $30m Condition had been "floated across the parties", and remarked that he treated Mr Ong's evidence "quite weightily because of his neutrality" (Judgment at [69]). In the circumstances, it was clearly inconsistent for the Judge to claim that there was nothing in the evidence that weighed against Kelvin's position.

85 The Judge was also persuaded by the fact that Document 3 was addressed to Lereno's board, while Documents 1 and 2 were addressed to Mr Ong and Kelvin (Judgment at [25] and [51]). To our minds, no particular significance should be attached to the identity of the addressees. It is important to note that while it is not now disputed that the Agreement was concluded between Compass and the Lims, *none* of the 17 July Documents were addressed to Compass. This clearly suggests that the parties did not place particular emphasis on the addressees of the 17 July Documents, and the Judge's observations are therefore neither here nor there. Further, as we have explained above, Mr Ong's evidence is that Document 3 was created for him to secure approval from Lereno's board of directors. It is thus entirely sensible that Document 3 is addressed to Lereno's board of directors, rather than Kelvin or Mr Ong. This fact alone does not show that Document 3 was intended to be a separate, standalone document, which was divorced from Documents 1 and 2.

86 Ultimately, it must be remembered that Documents 1 to 3 were all prepared by the same person (*ie*, Kelvin), and signed at the same time during the 17 July 2017 Meeting. Furthermore, it was no coincidence that each of the 17 July Documents was titled "Project Libra". As counsel for the Lims, Mr Kelvin Poon SC ("Mr Poon"), highlighted at the hearing before us, the order of Documents 1 to 3 was purely incidental. In the absence of any convincing reason why Document 3 should be treated as a standalone document, we are satisfied that Documents 1 to 3 should indeed be read together. On that note, we turn to consider what the terms of the Agreement are in light of the 17 July Documents.

87 In our judgment, once the 17 July Documents are read together, they comport neatly with the oral agreement that the Lims say was reached at the 17 July 2017 Meeting. In particular, we agree with the Lims that the 65% Condition is evidenced by Document 1, while the $30m Condition is evidenced by Document 3. As noted at [15] above, Document 1 refers to the Lims holding 65% of the shares in the listed entity upon completion of the RTO (*ie*, the Lims "hereby agree to the sale of KTM to [Lereno] provided [that their] net share of equity in the listed issuer … is no less than 65% at completion of the Transaction"). Likewise, Document 3 refers to $30m as the consideration that Lereno would pay for the KTM Group (*ie*, that the Lims "hereby agree to the sale of entire equity in KTM to [Lereno] for a consideration of S$30 Million"). We therefore find that the 17 July Documents corroborate the Lims' account that both the 65% Condition *and* the $30m Condition were terms of the Agreement.

88 In its written submissions, Compass argues that Document 3 cannot evidence the $30m Condition, as that document does not expressly mention the Bonus Shares or the Cash Fee. The Judge similarly found that the $30m

Condition cannot be read into Document 3, as nothing in the document explains how it relates to the Bonus Shares and the Cash Fee, or Documents 1 and 2 (Judgment at [65]). In our view, there is nothing to the point that Document 3 does not spell out the $30m Condition in full (*ie*, that the Bonus Shares and the Cash Fee are only payable if the Lims' shares are worth at least $30m upon completion of the RTO). Given our finding that the Agreement was partly written and partly oral, it is entirely consistent that certain terms of the Agreement were not fully expressed in writing. Moreover, as noted at [47] above, it should also be remembered that the 65% Condition was not expressly spelt out in the 17 July Documents either. Thus, even on Compass's case that the Bonus Shares and the Cash Fee were subject *only* to the 65% Condition, that condition did not fully find expression in the 17 July Documents and reference must be had to what the parties *orally* agreed.

89 In a similar vein, Mr Paul Ong submitted at the hearing before us that Document 3 cannot prove the existence of the $30m Condition, as had the parties agreed to the $30m Condition, a reasonable person would have expected it to be reflected in Documents 1 and 2 and not in a standalone document such as Document 3. This argument may have carried more force had the 17 July Documents been drafted by lawyers or with the benefit of legal advice. However, it must be recalled that the 17 July Documents were drafted and put together *solely* by Kelvin. The Lims did not give any input and signed the 17 July Documents after Kelvin had explained that they would collectively evidence the Agreement. In the circumstances, the form of the 17 July Documents was entirely within Kelvin's prerogative, and little can be made of the parties' *objective* intentions based on the form of the 17 July Documents.

90 Finally, Compass contends that the 17 July Documents are in fact *inconsistent* with the existence of the $30m Condition. In this regard, it

highlights that the Scheme Spreadsheet annexed to Document 1 purportedly provided for payment of the Bonus Shares and the Cash Fee even where the KTM Group was valued at $25.3m. In our view, this argument is easily dispensed with once it is appreciated that the Scheme Spreadsheet was prepared *before* the 17 July 2017 Meeting. While there was some dispute as to whether the 17 July Documents were prepared prior to or at the 17 July 2017 Meeting, Mr Paul Ong accepted at the hearing before us that the Scheme Spreadsheet was prepared *prior* to the meeting. This concession is crucial given that on the Lims' case, the $30m Condition was formally agreed to between the parties at the 17 July 2017 Meeting itself. It is thus unsurprising that the $30m valuation did not feature in the Scheme Spreadsheet. For similar reasons, we disagree with the Judge's analysis that Kelvin would not have agreed to the $30m Condition, because on the face of the Scheme Spreadsheet, he was already entitled to the Bonus Shares and the Cash Fee, and he would not have agreed to an additional hurdle to earn his $2m fee (see Judgment at [67]). The key point here is that the Scheme Spreadsheet was prepared *unilaterally* by Kelvin prior to the 17 July 2017 Meeting, and therefore the figures in the Scheme Spreadsheet are of limited relevance.

91 In sum, once it is recognised that the Agreement was partly written and partly oral, it is essential to examine the parties' oral evidence and the 17 July Documents in order to make sense of the terms of the Agreement. In that respect, given that Compass has not provided any satisfactory explanation for why the Bonus Shares and the Cash Fee were promised to it, coupled with the fact that Document 3 corroborates the existence of the $30m Condition, we find it clear that the $30m Condition is indeed a term of the Agreement.

(3) The parties' subsequent conduct

92 For the reasons explained above, we are satisfied that the parties agreed that the payment of the Bonus Shares and the Cash Fee was subject to the $30m Condition (in addition to the 65% Condition). For completeness, we turn to address Compass's argument that the parties' subsequent conduct supports its position that the $30m Condition was not part of the Agreement.

93 In the court below, the Judge held that he did not strictly have to consider whether the parties' subsequent conduct supported the presence or absence of the $30m Condition, in view of his finding that based on Documents 1 and 2 alone, the Agreement did not contain such a condition. Nevertheless, he went on to observe in *obiter* that the parties' subsequent conduct also showed that they did not agree to the $30m Condition. The Judge observed that in *The "Luna*", this court held that "it is permissible to consider evidence of subsequent conduct for contract *formation* but *not interpretation*" [emphasis in original]. He opined that such a distinction may be untenable and urged us to take the next available opportunity to clarify that evidence of subsequent conduct can be admitted for contractual interpretation on the satisfaction of the *Zurich Insurance* tripartite requirements of relevance, reasonable availability, and clear and obvious context, and the other criteria laid down in *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* [2016] 2 SLR 1083 ("*Hewlett-Packard*") at [55] (Judgment at [72]–[73]).

94 On the facts of the present case, the Judge found that the evidence of the parties' subsequent conduct satisfied the *Zurich Insurance* tripartite requirements, and that it supported the absence of the $30m Condition (Judgment at [74]–[80]).

95 In these appeals, Compass submits that the Judge's finding should be upheld. It relies on the following instances of subsequent conduct:

(a) The fact that none of the parties spoke of the $30m Condition after the 17 July 2017 Meeting.

(b) Following an independent valuation conducted by Jones Lang Lasalle Corporate Appraisal and Advisory Limited that valued the KTM Group at $30.4m (the "JLL Valuation"), neither the Lims nor Lereno attempted to adjust the consideration for the RTO to $30.4m despite being entitled to do so under the Option Agreement. The Judge found that had the $30m Condition been part of the Agreement, "then one would expect the parties to have adjusted the consideration to meet the $30m threshold because the Lims would receive more consideration shares in Lereno, and Compass and Mr Ong would be paid their additional bonuses due to the (alleged) $30m Condition being satisfied" (Judgment at [75]).

(c) Kelvin and Ms Chong did not mention the $30m Condition in any of their communications following the 17 July 2017 Meeting. On the contrary, in a note dated 15 March 2019 addressed to the Lims, Kelvin had stated that the "total agreed remuneration" due to Compass upon completion of the RTO was $2.08m, without mention of the $30m Condition.

(d) The Lims' conduct after completion of the RTO in February 2019 shows that they did not believe the $30m Condition was part of the Agreement:

(i) The Lims made no attempt to refute Compass's demands for payment. In particular, the Lims did not respond to an e-mail sent by Kelvin on 26 March 2019 which asked the Lims to advise on the "settlement period" for the Cash Fee.

(ii) At a meeting between Damien and Kelvin in Kuala Lumpur on 26 March 2019, Damien had offered to purchase at least half of the Bonus Shares from Compass and to transfer the balance of the Bonus Shares to Compass. Damien also offered to pay $200,000 in immediate settlement of the Cash Fee, without mentioning the $30m Condition.

(iii) During a telephone call between Damien and Ms Chong on 22 July 2019, Damien said that the Lims intended to buy all the Bonus Shares from Compass and would pay the Cash Fee when they had money to do so. No mention was made of the $30m Condition.

96 At the outset, we stress that it remains an open question whether evidence of subsequent conduct may be admitted for the purposes of contractual *interpretation*: *Hewlett-Packard* at [56]. To be clear, the Judge was not quite correct when he observed that the decision in *The "Luna"* can be read as authority for the proposition that it is *impermissible* to consider evidence of subsequent conduct in such circumstances. In *The "Luna"* at [33]–[34], this court referred to the views expressed in *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 on the admissibility of subsequent conduct, to make the point that evidential rules may *differ* in contractual formation and interpretation cases:

> 33 The distinction between formation and interpretation was also raised by this court in *Simpson Marine (SEA) Pte Ltd v*

> *Jiacipto Jiaravanon* [2019] 1 SLR 696, albeit in the context of considering whether evidence of subsequent conduct could be taken into consideration in formation and interpretation cases. This court observed at [78]–[79] as follows:
>
> > 78 … The admissibility and relevance of subsequent conduct in the formation and interpretation of contracts has yet to receive detailed scrutiny by this court. We have in the past opined that, while there is no absolute prohibition against evidence of subsequent conduct in interpreting a contract, such evidence is likely to be inadmissible in construing a written contract because it does not elucidate the parties' objective intentions or relate to a clear or obvious context … However, where the court is ascertaining whether a contract has been formed, evidence of subsequent conduct has traditionally been regarded as admissible and relevant, although there is some instability in this rule … It may be argued that a distinction between the evidential rules applicable to the formation and interpretation of contracts is untenable … On this basis, a case could be made that the restrictive approach adopted in respect of contractual interpretation ought to be extended to contractual formation, though the case for consistency could equally lead to the opposite conclusion because the decision whether to adopt a consistently restrictive or consistently liberal approach depends on arguments of policy and principle …
> >
> > 79 … Since we have not heard argument on this issue, we decline to reach any firm views on the admissibility, relevance and probative value of subsequent conduct for the purpose of either contract formation or interpretation. …
> >
> > [emphasis in original]
>
> 34 Notably, this court was considering the specific question of whether evidence of subsequent conduct may be taken into consideration in formation and interpretation cases. Any concerns as to inconsistency should therefore be understood in that context. In other words, this court was not suggesting that the distinction between formation and interpretation cases should be done away with entirely. On the contrary, for the reasons explained above, such a distinction is justified on the basis of principle and authority.

97 The court in *The "Luna"* therefore did not take a view on the admissibility of subsequent conduct in contractual interpretation cases. In any event, this question also does not arise for our determination here. As explained

at [57] above, the key issue in these appeals pertains to the *existence* of a particular term (namely, the $30m Condition), and not the interpretation of a term. We are therefore not concerned with the parol evidence rule or the principles that would govern the admissibility of extrinsic evidence in a case of contractual interpretation, and "there is no restriction on the evidence which the court may consider": *The "Luna"* at [30].

98 In any case, the parties' subsequent conduct does not assist Compass's case. With regard to the JLL Valuation, we disagree with the Judge that the parties' omission to adjust the consideration sum for the RTO in light of it necessarily meant that the $30m Condition was not part of the Agreement. Crucially, as Mr Paul Ong accepted at the hearing before us, this assertion was not put to the Lims in cross-examination, nor was it otherwise explored in the evidence at the trial. Compass's contention regarding the JLL Valuation was only raised for the first time in its closing submissions, by which time the Lims no longer had an opportunity to offer an explanation for why the consideration was not adjusted. No weight or significance can therefore be ascribed to the JLL Valuation. It suffices for us to note that the JLL Valuation was a point which might potentially have been relevant to Compass's case, but which it curiously chose not to raise at the trial.

99 As for the fact that the Lims did not refute Compass's demands for payment, or otherwise mention the $30m Condition after the 17 July 2017 Meeting, we find such evidence to be of limited assistance given the passage of time from the 17 July 2017 Meeting to the time when these communications occurred. We agree with Mr Poon's submission that the present case is readily distinguishable from *Seah Han v Onwards Media Group Pte Ltd* [2021] SGHC 179 ("*Seah Han*"). In that case, Philip Jeyaretnam JC (as he then was) considered a written summary of an oral agreement sent from one party to

the other one day after it was made to be "persuasive evidence" of what had been orally agreed, even if the other party did not respond (at [37]). By contrast, almost two years had passed between the 17 July 2017 Meeting and the communications which Compass relies on. The mere fact that the Lims did not raise the $30m Condition in their communications therefore does not prove that that condition was not part of the Agreement. Moreover, in *Seah Han*, Jeyaretnam JC was considering an oral contract and seeking to determine what precise term regarding commission that the parties had agreed on; this being a different inquiry from the interpretation of a contractual term. Thus, similar to the present case, there is no restriction on the evidence which the court may consider in the exercise of ascertaining what the terms of the oral agreement are.

100 It is also pertinent to note that the Judge found that Kelvin was likely a "disruptive figure" in the RTO (Judgment at [95]). In the circumstances, Damien's claims that he did not respond to Compass's demands for payment because he wanted to avoid conflict and "fighting" with Kelvin, and because Mr Ong had warned him to be "very cautious" with Kelvin, are not inherently unbelievable.

101 To summarise, we are satisfied that the $30m Condition was a term of the Agreement, and the parties' conduct following the 17 July 2017 Meeting does not detract from this. Given that it is not disputed that the $30m Condition was not in fact achieved, it follows that Compass is not entitled to the Bonus Shares and the Cash Fee. We therefore allow the appeal in CA 23.

(4) Lack of consideration

102 Given our decision above, it is not necessary for us to deal with the Lims' alternative submission in CA 23 that the Agreement is unenforceable for

want of consideration (see [31] above). Nonetheless, we make some brief comments on this argument.

103 In gist, the Lims' argument is that if the $30m Condition is not part of the Agreement, then Compass did not provide fresh consideration for the Bonus Shares and the Cash Fee, as the 65% Condition was already part of the transaction structure prior to the 17 July 2017 Meeting. The Lims acknowledge that this defence was not squarely pleaded in the court below, but claim that they are not required to do so as this contention arose out of the Judge's finding that the Agreement was subject *only* to the 65% Condition but not the $30m Condition. We do not express a view at this juncture on whether it was for the Lims to plead the lack of consideration. We say this given that the terms of the 2nd LOE provide that Compass's fee of $1.1m can be "adjusted subject to mutual agreement should there be a change in the scope or finalised transaction structure", which raises an interesting question as to whether it was for Compass as the claimant to establish the requisite consideration by way of a change in the scope or structure of the RTO to justify the variation in its fees. However, as this issue does not arise for our consideration, we say nothing further on it.

Calculation of pre-judgment interest

104 Given our decision to allow the appeal in CA 23, it follows that the Judge's order concerning pre-judgment interest is to be set aside. Nevertheless, we make two brief remarks in respect of this order. First, in so far as the order stipulated that interest was awarded "pursuant to s 12 of the [CLA] from the date when the cause of action arose (that is, 18 Feb 2019) to the *date of payment*" [emphasis added], this is erroneous. Section 12 of the CLA provides for the court's discretion to award *pre-judgment* interest (*ie*, interest up to the date of judgment, rather than the date of payment of the judgment debt). The court's

power to award interest on the judgment debt is separately provided for in O 42 r 12 of the Rules of Court (2014 Rev Ed). Second, in any event, we would have been minded to award pre-judgment interest commencing from the date the share moratorium was lifted on 13 November 2019. It is undisputed that Compass had at all material times been aware of the share moratorium and its effect, and it should not be left better off by virtue of these proceedings than it would have been had the Lims transferred the Bonus Shares after the share moratorium was lifted on 13 November 2019, in accordance with *both* parties' expectations.

CA 24

105 In view of our decision in CA 23 that Compass is not entitled to the Bonus Shares, specifically, our finding that the $30m Condition was one of the terms of the Agreement, it follows that Compass is also not entitled to the Cash Fee. We therefore dismiss Compass's appeal in CA 24.

106 In any event, the Judge's decision to disallow the claim for the Cash Fee was plainly correct. Compass as the claimant bears the burden of proof. However, its pleaded case that the parties had intended for the Cash Fee to be payable upon completion of the RTO, and *not* pursuant to any corporate advisory service agreement, is simply not borne out by the evidence. As noted at [64] above, Mr Ong's evidence was that he had told Kelvin at the Science Park Meeting that he was uncomfortable with receiving cash from the Lims directly, and had instead suggested that he and Kelvin provide advisory or consultancy services to the listed entity in return for a cash fee of $480,000 per person. The Judge regarded Mr Ong's evidence "weightily because of his neutrality" (Judgment at [69]) and we likewise see no reason to disbelieve Mr Ong's account. Mr Ong's evidence is also corroborated by the wording of

Document 2, which refers to the Lims' agreement to "provide both [Mr Ong] and [Kelvin] and/or their nominated representatives a corporate advisory service agreement (Agreements) for a period of 2 to 3 years from completion of [the RTO]." Given that no such corporate advisory service agreement was entered into, it is clear that Compass is in no position to claim for the Cash Fee.

Conclusion

107 For the reasons set out above, we allow the Lims' appeal in CA 23 and dismiss Compass's appeal in CA 24. Accordingly, we set aside the order of costs made by the Judge in the court below. The parties are to file written submissions on the costs of the proceedings below and the present appeals within 14 days of the date of this judgment limited to 15 pages, unless they are able to come to an agreement.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Kelvin Poon Kin Mun SC, Cheng Wai Yuen Mark and Tan Tian Hui (Rajah & Tann Singapore LLP) for the appellants in CA/CA 23/2023 and the respondents in CA/CA 24/2023;
Ong Min-Tse Paul (Paul Ong Chambers LLC) for the respondent in CA/CA 23/2023 and the appellant in CA/CA 24/2023.