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

[2023] SGHC 257

Suit No 520 of 2014

Between

(1) Lim Seong Ong (formerly known as Lim Jing Jie)
(2) Lim Thiam Chai

… *Plaintiffs*

And

Panshore Engineering Pte Ltd

… *Defendant*

Suit No 1182 of 2020

Between

Lim Thiam Chai

… *Plaintiff*

And

Ng Joo Kheong

… *Defendant*

JUDGMENT

[Tort — Inducement of breach of contract — Premises provided to company's counterparty under joint venture agreement occupied by other companies — Whether director knew company's counterparty was contractually entitled to whole of premises]
[Tort — Inducement of breach of contract — Loan money disbursed to director misappropriated — Whether fellow director knew the loan was to the company]
[Contract — Breach — Whether obligation to provide loan subject to condition precedent]
[Tort — Misrepresentation — Fraud and deceit — Amount of company's debts understated — Whether director liable for fellow director's misrepresentation]
[Contract — Breach — Identification of parties to the contract — Whether consideration was intended to be nominal or substantial]
[Tort — Causing loss by unlawful means — Shareholder claiming for loss caused to company — Whether shareholder was proper plaintiff to sue for company's loss]

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v
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13 September 2023 Judgment reserved.

Andre Maniam J:

Introduction

1 The claims in this matter stem from a joint venture between two companies: Panshore Engineering Pte Ltd ("Panshore") and Asia Link Marine Industries Pte Ltd ("Asia Link"). Asia Link was wound up on 1 March 2013 and thereafter Panshore brought claims against Mr Lim Seong Ong ("Kenny") and his brother Mr Lim Thiam Chai ("Roland"), who were Asia Link's directors and shareholders when the joint venture was entered into. In turn, Roland brought claims against one Mr Ng Joo Kheong ("Mr Ng") who was a third director of Asia Link for around a year in the course of the joint venture.

2 Many of the claims involve issues as to directors' liabilities to third parties, for their conduct as directors.

Background

3 Kenny and Roland were the first to initiate court proceedings. Kenny (in S 520/2014 ("Suit 520")) and Roland (in S 521/2014 ("Suit 521")) each claimed $765,000 from Panshore on the basis that Panshore had agreed to buy a 51% interest in Asia Link, *ie*, 765,000 shares from each of them, for $1 per share. Panshore's position was that each transfer of 765,000 shares from Kenny and Roland, was for only nominal consideration of $1 per transfer. Panshore also brought a counterclaim against Kenny and Roland.

4 Suits 520 and 521 were consolidated, and the proceedings continued as Suit 520. Roland then discontinued his claim against Panshore, and the Official Assignee on behalf of Kenny (who had been made bankrupt) did likewise for Kenny's claim. Panshore discontinued its counterclaim against Kenny in view of his bankruptcy, and Panshore's counterclaim against Roland proceeded to trial.

5 In HC/S 1182/2020 ("Suit 1182"), Roland sued Mr Ng, a director of Asia Link from 6 July 2011 until July 2012. Suit 1182 was tried immediately after Suit 520.

Claims

Panshore's counterclaim in Suit 520

6 By its counterclaim, Panshore sought the following primary relief:

(a) declarations and related orders regarding the transfers of Kenny's and Roland's shares (counterclaim relief prayers (1), (1A) and (1B));

(b) damages for breach of contract (counterclaim relief prayer (2));

(c) further or alternatively, damages for misrepresentation (counterclaim relief prayer (3));

(d) further or alternatively, damages for Panshore's loss of investment to be assessed (counterclaim relief prayer (4));

(e) further or alternatively, damages for misrepresentation pursuant to s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) (counterclaim relief prayer (5)); and

(f) alternatively, damages to be assessed (counterclaim relief prayer (6)).

7 Following the discontinuance of Kenny's and Roland's claims, however, it appears that Panshore no longer pursues its claims for declaratory and related orders regarding the transfers of shares. From the issues listed in Panshore's closing submissions (at para 36), Panshore still pursues the following claims:

(a) Roland's inducement of Asia Link's breach of the 1 March 2011 joint venture agreement ("JVA") by allowing Kenny's and his related companies to continue operating on Asia Link's premises;

(b) Roland's inducement of Asia Link's breach of an oral loan agreement in or around May 2011 pursuant to which Panshore lent Asia Link $400,000, by Roland failing to ensure that the moneys were utilised for the repayment of Asia Link's debts;

(c) Roland's breach of his contractual obligations under a 7 September 2011 agreement with Panshore by failing to ensure the repayment to Asia Link of the $400,000 loan which was misappropriated by Kenny; and

(d) Roland fraudulently misrepresenting to Panshore that Asia Link's debts only amounted to around $2 million, when in fact those debts amounted to around $4.5 million.

8 By consent, it was ordered that the hearing of Suit 520 be bifurcated, with the trial on liability to be heard separately from, and prior to, the hearing of an assessment of damages (if any).[1] For Suit 520, this judgment thus deals only with the issues of liability in relation to Panshore's counterclaim against Roland.

Roland's claim against Mr Ng in Suit 1182

9 Roland seeks from Mr Ng the sum of $765,000 for his 765,000 shares that were transferred to Panshore, and further, damages to be assessed. Roland does not seek to undo the transfer; what he seeks is payment from Mr Ng.

10 Roland claims:

(a) that Mr Ng owes him $765,000 for his transferred shares;

(b) that Mr Ng caused him loss by unlawful means, in that Mr Ng (as a director of Asia Link) neglected Asia's Link's business, and deliberately engaged in conduct that negatively impacted Asia Link's

[1] Consent order made on 28 July 2017 on HC/SUM 3430/2017.

financial situation – which caused loss to Roland and Kenny as shareholders of Asia Link; and

(c) that Mr Ng conspired with others to defraud Roland.

Findings on Panshore's counterclaim in Suit 520

Inducing breach of the 1 March 2011 JVA

11 It is common ground that Panshore and Asia Link entered into a joint venture on the terms of the 1 March 2011 JVA. Panshore says that the JVA was updated on 1 April 2011; Roland disputes that, and says that the purported 1 April 2011 amendment was added later, and backdated. For present purposes, nothing turns on that amendment.

12 The 1 March 2011 JVA[2] is a one-page document between Panshore and Asia Link. Clause 1 states that "Panshore and Asia Link will enter into a Project Joint Venture for marine offshore engineering work to be carried out at the premises, yard and waterfront at No. 17 Tuas Crescent, Singapore 638711 ("the Premises")". By clause 2, Asia Link agreed to "provide the use of the Premises, cranes, forklift and all other facilities on the Premises, and electricity on the Premises up to S$6,000.00 per month". By clause 3, Panshore agreed to "provide project management by bringing marine offshore engineering work to be carried out at the Premises, and be responsible for managing such work and projects". Clause 9 provided that "[a]fter accounting for all costs and expenses, the nett profits for each project completed on the Premises will be shared 50/50 between Panshore and Asia Link."

2 Mr Kang's AEIC, Tab 20.

13 The 1 March 2011 JVA was negotiated on behalf of Asia Link by Kenny as Asia Link's managing director. It does not appear that Roland was involved in that regard. The updated 1 April 2011 JVA[3] was signed on behalf of Asia Link by Kenny.

14 Panshore's case was that from the inception of the joint venture, Asia Link was in breach of contract in that Asia Link was supposed to provide Panshore with the use of *the whole of* the Premises, but Asia Link never did. Panshore did not get to use the whole of the Premises, for the Premises were partially occupied by certain other companies that Kenny, Roland, or their family members, had interests in.

15 Roland contends that the JVA never obliged Asia Link to provide Panshore with the use of *the whole of* the Premises, but only such part of the Premises as was then unoccupied by the other companies.

16 Panshore claims that Roland induced Asia Link's breach of contract, in that Roland took no steps to get the other companies to vacate the Premises.

17 The elements of the tort of inducing breach of contract were set out as follows by the Court of Appeal in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [16]–[18]:

> 16 …To knowingly procure or induce a third party to break his contract to the damage of the other contracting party without reasonable justification or excuse forms the basis of the tort of inducing a breach of contract.
>
> 17 An act of inducement *per se* is not by itself actionable. The plaintiff must satisfy a two-fold requirement in order to found a sustainable cause of action: first, he must show that

[3] Mr Kang's AEIC, Tab 21.

> the procurer acted with the requisite knowledge of the existence of the contract (although knowledge of the precise terms is not necessary); and second, that the procurer intended to interfere with its performance. Intention in this case is to be determined objectively. It is not sufficient that the resulting breach of contract was a mere natural consequence of the defendant's conduct. In addition, the contract in question must also be shown to be a valid one…
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> 18 The relevant mental state is thus that of intention: the defendant must intend to interfere with the plaintiff's contractual rights, in the sense of doing so knowingly. Malice or spite in the form of a personal animus against the defendants or an illegitimate motive however is not required. It is sufficient if the defendant knows of the existence of the contract or turns a blind eye to its existence or is reckless as to the consequence of his actions in the sense of being indifferent whether or not a breach happens…It is not necessary that the defendant should have been aiming to hurt or injure the plaintiff although some deliberate conduct on the defendant's part is normally required to ground liability. Mere negligent invasions of contractual rights however are not actionable….
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> [emphasis in original]

18 Where, as here, the claim is that a director of a company induced the company's breach of contract, the plaintiff must additionally satisfy the requirements in *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 ("*Sandipala*") at [50], [53], [62], and [65]:

> 50 The question before this court, as we alluded to at the beginning of the judgment, is when a director should be held personally liable for the consequences arising from his company's breach of a contract, to which only the company, and not he himself, is party. A company often acts through its directors, who in turn may decide that it is sometimes in the company's interest for it to breach its contract and compensate the other contracting party rather than continuing to perform. To hold that a director may be liable for taking such a decision, notwithstanding that he is acting in the company's best interests and is not himself a party to the contract, is not only unduly onerous on the director but also effectively penalises the company when the director refrains from directing a breach of contract for fear of personal liability even though it may be in

> the best interests of the company to do so. The limits to such personal liability must therefore be clearly demarcated, and it is in this context that we evaluate the present law.
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> …
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> 53 … in relation to all the above causes of action, the courts have accepted that a director is immune from personal liability if he falls within the application of the principle in *Said v Butt* ([4] *supra*) which provides that when a director acts *bona fide* within the scope of his authority, he is immune from tortious liability for procuring his company's breach of contract…
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> …
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> 62 … In our judgment, the *Said v Butt* principle should be interpreted to exempt directors from personal liability for the contractual breaches of their company (whether through the tort of inducement of breach of contract or unlawful means conspiracy) if their acts, in their capacity as directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company.
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> …
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> 65 … a director would ordinarily be immune from tortious liability for authorising or procuring his company's breach of contract in his capacity as a director, unless his decision is made in breach of any of his personal legal duties to the company. *In our judgment, the principle operates as a requirement of liability and not a defence; in other words, the onus is on the plaintiff to prove that the defendant-directors' acts were in breach of their personal legal duties to the company*. Such breach may be a breach of a fiduciary duty to act in the best interests of the company, or it may be a breach of his contractual duty towards the company to act within the scope of his authority as granted by the company…
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> [emphasis added]

19 I accept Roland's evidence that he believed that under the JVA, Asia Link was not obliged to provide Panshore with the use of *the whole of* the Premises, but only such part as was then unoccupied by the other companies. It follows that in not taking steps to get the other companies to vacate the Premises, Roland was not intending to interfere with Panshore's contractual rights under the JVA: he did not think Panshore had a right to use *the whole of*

the Premises. If the JVA did oblige Asia Link to provide Panshore with the use of *the whole of* the Premises, Asia Link would be in breach of contract, and Roland's belief would be incorrect, but he would still not be liable for inducing breach of contract because the relevant mental state would be absent.

20 Roland does not need to rely on the principle in *Sandipala*, for the elements of the tort of inducing breach of contract are not made out in the first place.

21 I find Roland's evidence believable in the circumstances:

(a) at the time the JVA was entered into, the other companies were already occupying part of the Premises, but after the JVA his brother Kenny (who had negotiated and entered into the JVA) took no steps to get the other companies to vacate the Premises;

(b) Panshore's case is that from the time of the 1 March 2011 JVA, Asia Link was in breach in not providing Panshore with the use of *the whole of* the Premises, but when the JVA was updated, dated 1 April 2011, and signed by Kenny, Panshore did not take the opportunity to spell out in the updated document that it was to get the use of *the whole of* the Premises;

(c) when the 7 September 2011 agreement was entered into between Panshore, Kenny, and Roland, Panshore did not take the opportunity to spell out in that document that it was to get the use of *the whole of* the Premises;

(d) there is no evidence that Panshore sent anything in writing to assert that Asia Link was in breach of the JVA; Panshore's Mr Kang

Wak Chia ("Mr Kang") says that he did ask for more space, and that he asked Roland on multiple occasions when the other companies were moving out of the Premises[4] but that is not inconsistent with Roland's belief that Asia Link was not contractually obliged to provide Panshore with the use of *the whole of* the Premises; and

(e) Panshore became the majority shareholder of Asia Link in July 2011 when a 51% shareholding in Asia Link was transferred to Panshore,[5] but there is no evidence that Panshore thereafter – as majority shareholder – took any steps to get Asia Link to require the other companies to leave the premises, such as by Panshore convening an Asia Link shareholders' meeting to pass a resolution to that end.

22 In finding that Roland is not liable for inducing breach of contract, I am not making a finding that Asia Link was not in breach of the JVA in not providing Panshore with the use of *the whole of* the Premises. I leave that to be resolved between Panshore and Asia Link's liquidator, in Asia Link's liquidation.

Inducing breach of the May 2011 loan agreement

23 Unlike the JVA which was in writing, the loan agreement was an oral agreement. Like the JVA, it was Kenny, not Roland, who negotiated and entered into the loan agreement.

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4 NE 14 March 2023 page 55 at lines 7 – 16; see also Mr Kang's AEIC, paras 56 – 58.

5 Mr Ng's AEIC, para 63 and exhibit at page 48 of "NJK-1".

24 The $400,000 which Panshore loaned was disbursed by a cheque issued in the name of Kenny, rather than in the name of Asia Link. Panshore says this was done at Kenny's request, for Kenny represented that Asia Link's bank account was garnished by creditors.[6] Kenny signed an IOU[7] dated 9 June 2011 saying, "I confirm and acknowledge that I have received the total amount of Singapore dollars Four Hundred Thousand Only (S$400,000.00) from Panshore Engineering Pte Ltd being a loan, repayable on demand, with or without interest and or on any other terms to be determined."

25 Panshore says the loan was made to Asia Link, and the money was to be used to pay Asia Link's creditors; however, Kenny did not use the money to pay Asia Link's creditors, as he admitted to Panshore.[8]

26 Roland says he believed the loan was a personal loan from Panshore to Kenny, rather than a loan from Panshore to Asia Link.

27 Panshore claims that Roland induced Asia Link's breach of the loan agreement – Panshore submits that Roland knew that Kenny had misappropriated the loan for his personal benefit, yet wilfully turned a blind eye to Kenny's misconduct.[9] Panshore does not expressly say what Roland did (or failed to do) which amounts to him inducing Asia Link to breach of the loan agreement – presumably, Panshore's contention is that Roland should have done

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6 Panshore's Defence and Counterclaim (Amendment No 4), para 5(aa); Mr Kang's AEIC, para 67.

7 Mr Kang's AEIC, Tab 26.

8 Panshore's Defence and Counterclaim (Amendment No 4), paras 5(z), (cc), (dd); Mr Kang's AEIC, paras 90 – 91.

9 Panshore's closing submissions, paras 75, 80.

something to get Kenny to use the $400,000 that Panshore had paid Kenny, to pay Asia Link's creditors.

28 I accept Roland's evidence that he believed the $400,000 loan was a personal loan from Panshore to Kenny, rather than a loan from Panshore to Asia Link. It follows that Roland is not liable for inducing Asia Link's breach of the loan agreement, for he did not even think there was a Panshore – Asia Link loan agreement to begin with.

29 I find Roland's evidence believable in the circumstances:

(a) unlike the JVA, which was in a written document naming Asia Link as a party, the loan agreement was orally agreed between Kenny and Panshore's representatives;

(b) the IOU which Kenny signed, did not refer to Asia Link – Kenny simply confirmed and acknowledged that he had received $400,000 from Panshore being a loan, repayable on demand;

(c) Panshore did not seek to prove that Asia Link's account was garnished by creditors, and Roland says that in fact this had not happened[10] – this supposed garnishment is the reason Panshore says Kenny requested that payment be made to Kenny directly – this does not mean that Kenny did not represent that to Panshore, but to Roland's mind there was no impediment to Panshore paying the money to Asia Link if in fact it were a loan from Panshore to Asia Link;

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10 Roland's closing submissions, para 50.

(d) not only was the loan agreement oral (in contrast with the written JVA between Panshore and Asia Link), there is no evidence of Panshore writing to Asia Link to assert that Asia Link had breached the oral loan agreement by not using the $400,000 (that Panshore had paid to Kenny) to pay its creditors; and

(e) there is no evidence that Panshore – as Asia Link's majority shareholder from July 2011 – took any steps to compel Kenny to use the $400,000 that Panshore had paid him, to pay Asia Link's creditors.

30 Panshore did enter into the 7 September 2011 agreement with Kenny and Roland, and Panshore says that that was meant to achieve the objective of getting $400,000 to Asia Link for Asia Link to pay its creditors. I will address this below. Panshore also relies on the 7 September 2011 agreement to submit that Roland knew that the May 2011 loan agreement was an agreement between Panshore and Asia Link. I will examine that contention when I deal with Panshore's claim in relation to the 7 September 2011 agreement. For the present claim, however, whatever Roland might have gathered from the 7 September 2011 agreement that he signed, it does not follow that *prior to the 7 September 2011 agreement* he knew that $400,000 was lent by Panshore to Asia Link (rather than by Panshore to Kenny).

31 As with the earlier claim, Roland does not need to rely on the principle in *Sandipala*, for the elements of the tort of inducing breach of contract are not made out in the first place. I am also not making a finding that the $400,000 was in fact a loan to Asia Link and not to Kenny personally. I leave that to be resolved between Panshore and Asia Link's liquidator, in Asia Link's liquidation.

Breach of the 7 September 2011 agreement

32 The 7 September 2011 agreement is another one-page document. It is described as an agreement made between Panshore, Roland, and Kenny. It recites that Panshore had entered into a JVA on 1 March 2011 with Asia Link, that both Roland and Kenny are directors and shareholders of Asia Link, and that the 7 September 2011 agreement was made in order to facilitate the implementation of the JVA. However, although Asia Link was mentioned in that preamble, and in various clauses of the agreement, Asia Link was not described as a party to the agreement. Instead, the agreement appears to be a shareholders' agreement between the three shareholders of Asia Link (Panshore, Roland, and Kenny) regarding the affairs of Asia Link.

33 Panshore is claiming against Roland for breach of *his own* contractual obligation(s) under the 7 September 2011 agreement, and it is not material to that whether Asia Link is regarded as a party to the agreement.

34 Clause 1 of the agreement stipulated that Panshore would provide a loan of $1 million to Asia Link to be disbursed in three tranches: a first tranche of $400,000 and two subsequent tranches of $300,000 each. The first tranche of $400,000 was said to have been "[a]lready disbursed on 9th June 2011".

35 Panshore says that Roland would have known from that (if he had not already known) that the $400,000 paid by Panshore to Kenny on 9 June 2011 was a loan from Panshore to Asia Link pursuant to the May 2011 loan agreement. I do not reach that conclusion. Clause 1 of the 7 September 2011 agreement might simply mean that Panshore, Roland, and Kenny agreed that the $400,000 paid by Panshore to Kenny would be treated *henceforth* as a loan from Panshore to Asia Link, whether or not it was such a loan *at the time the*

money was paid in June 2011. This does not contradict Roland's belief that when the money was lent, it was a personal loan from Panshore to Kenny.

36 In any event, Panshore says that the return of the $400,000 (paid to Kenny) to Asia Link to pay its creditors, was meant to be achieved by another clause in the 7 September 2011 agreement, namely clause 2. Clause 2 stipulated that Roland and Kenny would provide a loan of $400,000 to Asia Link to be disbursed in two instalments of $200,000 each, "[s]uch loan to be repayable on demand, with or without interest, and or on any other terms to be determined". Clause 3 then stipulated that Asia Link would undertake to utilise and apply the loan for the repayment of the company's trade debts.

37 Mr Kang explains that Panshore "inked the 7 September 2011 Agreement primarily because we wanted to ensure that Kenny repaid to Asia Link the amount of $400,000 that he had misappropriated".[11] Panshore submits: "Roland had breached his obligations under the 7 September 2011 Agreement. Roland was obliged under the said agreement to ensure the repayment of the $400,000 loan disbursed on 9 June 2011 to Asia Link but failed to do so."[12]

38 It is strange to use the mechanism of a fresh loan (from Roland and Kenny to Asia Link) to get Asia Link the $400,000 that Panshore had paid to Kenny. This would involve Asia Link borrowing $400,000 twice over – first from Panshore, and then from Roland and Kenny – whilst only receiving $400,000 to use. Be that as it may, Panshore says that that is what the obligation on Roland and Kenny to lend Asia Link $400,000 was meant to achieve.

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11 Mr Kang's AEIC, para 97.

12 Panshore's closing submissions, para 82.

39 It follows from what Panshore says, that after the 7 September 2011 agreement was entered into, it was not expecting Roland to pay *two* sums of $400,000 to Asia Link, but only *one* sum of $400,000 – by way of a loan from Kenny and Roland pursuant to clause 2 of the 7 September 2011 agreement. Put another way, although Panshore brought claims against Roland for inducing breach of the May 2011 loan agreement, and for his own breach of the 7 September 2011 agreement, following the 7 September 2011 agreement Panshore was looking to clause 3 of the 7 September 2011 agreement (rather than the May 2011 loan agreement) to get Kenny and Roland to provide Asia Link with $400,000 in funds.

40 In the event, after the 7 September 2011 agreement Kenny and Roland did not lend Asia Link $400,000, or any sum. Roland's defence to Panshore's claim for breach of contract, is that the 7 September 2011 agreement was subject to a condition precedent of Panshore producing the joint venture accounts.[13] Nothing in the 7 September 2011 agreement says that it (or any aspect of it) is subject to such a condition precedent, and I find that Roland failed to prove that the 7 September 2011 agreement (or his obligations under it) were subject to such a condition precedent. Indeed, the terms of the 7 September 2011 agreement go against the existence of such a condition precedent – the monies lent, or to be lent, by Panshore, Kenny and Roland, were meant to be used to repay Asia Link's trade debts (comprising judgment debts, money for legal cases, and trade creditors), per clause 3; and under clauses 5 and 6 respectively, Panshore, and Kenny and Roland, undertook that if Asia Link so required, they would provide further loans to Asia Link "for the resolution of its current liabilities". The 7 September 2011 agreement was about providing Asia Link

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13 Reply and Defence to Counterclaim (Amendment No 3), para 26.7.

with money to pay debts that it already had, *ie*, current liabilities; and it does not appear from the debts listed that they were incurred by Asia Link in relation to the joint venture. The 7 September 2011 agreement was not about providing Asia Link with money to meet liabilities that had arisen from the joint venture, or future liabilities that might arise from the joint venture, it was about providing Asia Link with money to meet *its own* current liabilities. It makes no sense to subject Asia Link's receipt of money to meet its own current liabilities, to a condition precedent of Panshore first producing the joint venture accounts. The 7 September 2011 agreement was not subject to any such condition precedent.

41 It follows that Panshore succeeds in its claim that Roland breached the 7 September 2011 agreement by not lending Asia Link $400,000 as Roland had contracted to per clause 2 of the agreement.

42 As the matter has been bifurcated, the assessment of what damage (if any) Panshore has suffered because of Roland's breach in not lending Asia Link $400,000, will take place at a later stage.

Fraudulent misrepresentation

43 Panshore pleaded that at all material times, Kenny was the managing director and *alter ego* of Asia Link[14] and that Kenny, acting on Asia Link's behalf, fraudulently misrepresented the size of the debts and liabilities of Asia Link and, in so doing, induced Panshore to enter into the joint venture with Asia Link.[15] Thus pleaded, the misrepresentations as to the extent of Asia Link's debts and liabilities were first made prior to the 1 March 2011 JVA, for Panshore

14 Panshore's Defence and Counterclaim (Amendment No 4), para 3A.

15 Panshore's Defence and Counterclaim (Amendment No 4), para 3A(1).

says that it entered into the JVA in reliance on those representations. Further, Panshore said that the misrepresentations were made by Kenny on behalf of Asia Link, and further that Kenny was the managing director and *alter ego* of Asia Link. There was no mention of Roland in that context.

44 However, Panshore went on to plead in its counterclaim that Kenny (on behalf of himself, Roland, and Asia Link) fraudulently represented to Panshore that "[t]he total liabilities of Asia Link in or around 1 March 2011 was at the most S$2.2 million".[16] Panshore then repeated what it had pleaded in its defence, but that did not attribute to Roland the misrepresentations made by Kenny as to the extent of Asia Link's debts and liabilities in or around 1 March 2011.

45 Mr Kang seeks to link Panshore's misrepresentation claim with the 7 September 2011 agreement – he says that one of Panshore's objectives behind the 7 September 2011 agreement, was that Panshore "wanted it recorded that Kenny represented to us from the start and at the series of meetings in late 2011 that Asia Link's debts only amounted to approximately $2 million."[17] He does not however mention Roland in that regard.

46 Clause 3 of the 7 September 2011 agreement stated that Asia Link would undertake to utilise and apply the loan for the repayment of the company's trade debts in a particular order. The sums listed amount to $2,306,951.89, but in the context that appears to be a current figure as at the date of the agreement (7 September 2011) or thereabouts, rather than a historical figure as at 1 March 2011 – which is what Panshore's pleaded misrepresentation claim is about.

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16 Panshore's Defence and Counterclaim (Amendment No 4), para 17.

17 Mr Kang's AEIC, para 97.

Moreover, Panshore's complaint is that Kenny had represented that the total liabilities of Asia Link in or around 1 March 2011 were at the most $2.2 million, whereas the figure of $2,306,951.89 stated in clause 3 of the 7 September 2011 agreement exceeds that, and notes 1 and 2 to clause 3 mention further indebtedness of Asia Link in relation to Orion Logistics Pte Ltd, fees and charges by lawyers, and an amount in respect of a "Yip Holdings case". What was stated in clause 3 of the 7 September 2011 agreement was not the misrepresentation that Panshore had based its pleaded claim on.

47 In any event, I find that Panshore has failed to prove that any misrepresentations made by Kenny as to the extent of Asia Link's debts and liabilities, were made on behalf of Roland. Kenny would be personally liable for any fraudulent misrepresentation to Panshore, as would Asia Link in so far as Kenny was acting in a representative capacity as Asia Link's managing director. It does not, however, follow that just because Roland was also a director and shareholder of Asia Link, or because Roland was also a party to the 7 September 2011 agreement, that whatever Kenny said about Asia Link's debts and liabilities was said on behalf of Roland.

48 Further, I accept Roland's evidence that he left it to Kenny, as Asia Link's managing director, to run Asia Link, while Roland focused on running another business – Chia Hock Trading Co Pte Ltd – that the two of them were also shareholders and directors of. Moreover, Asia Link's accounts had not been audited for some years. I do not believe that Roland knew that Kenny had understated the extent of Asia Link's debts and liabilities.

49 I thus find that Panshore's claim against Roland for fraudulent misrepresentation fails.

Findings on Roland's claim against Mr Ng in Suit 1182

Roland's claim for $765,000 for his shares that were transferred to Panshore

50 Roland initially claimed *from Panshore* $765,000 for his 765,000 shares that were transferred to Panshore. On 19 May 2014, he sued Panshore for that sum in Suit 521, as Kenny had done in Suit 520. Those two suits were then consolidated, and continued as Suit 520.

51 However, Roland, and the Official Assignee on behalf of Kenny, then withdrew their respective claims against Panshore for payment for the transferred shares. Instead, Roland commenced Suit 1182 against Mr Ng, claiming that Mr Ng owed him the same sum of $765,000 for Roland's 765,000 shares that were transferred to Panshore.

52 While the civil proceedings were pending, Kenny was convicted and sentenced to 22 months' imprisonment for (among other things):

(a) fraudulently using as genuine a forged share transfer form for the transfer of 765,000 shares from him to Panshore, by filing it in Suit 520;

(b) intentionally giving false evidence in Suit 520 by stating that Panshore had agreed to buy 765,000 of his shares for $765,000; and

(c) intentionally giving false evidence in Suit 520 by stating that Asia Link's corporate secretary had made a typographical error of stating the consideration for the 765,000 shares as $1 in the share transfer form. (*Public Prosecutor v Lim Seong Ong* [2021] SGDC 114)

53 Kenny's appeal to the High Court against conviction and sentence in HC/MA 9053/2021 was dismissed. The judge noted that Kenny ultimately accepted that the consideration for his shares was *not* $765,000 (but nominal), and that substantial consideration for Kenny's shares would go against the grain of the transaction between Panshore and Kenny.

54 Roland, however, maintains that *he* was supposed to receive $765,000 for *his* 765,000 shares that were transferred to Panshore, except that he now claims payment from Mr Ng rather than from Panshore as he had originally done (as had Kenny).

55 Roland's pleaded case is that his 765,000 shares were sold to *Mr Ng* (rather than to Panshore) for $765,000, and so Mr Ng owed him the sale price of $765,000.[18]

56 Roland's evidence, however, contradicted his pleaded case. He said in his affidavit of evidence-in-chief ("AEIC") that "[s]ometime towards the mid of 2011, I was asked to signed [*sic*] some documents and told that we are required to transfer 51% shares over to Panshore because Keppel will be more comfortable to award projects to majority stakeholder of premise instead of just rag a tag set up".[19] Roland said, his perception was that it was a fair deal.[20] He further stated "[t]hat the Defendant [*ie*, Mr Ng] led me to believed [*sic*] that my shares in Asia Link…were being transferred to Panshore for par value when in fact there was never any intention to pay me at all".[21] On the stand, Roland

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18 Roland's Statement of Claim in Suit 1182, para 6.

19 Roland's AEIC in Suit 1182, para 10.

20 Roland's AEIC in Suit 1182, para 11.

21 Roland's AEIC in Suit 1182, para 5(a).

confirmed that Kenny had told him the shares were to be transferred to Panshore.[22]

57 Roland thus gave no evidence to support his pleaded case that the shares were sold to *Mr Ng*, and were meant to be transferred to *Mr Ng*. His evidence is, rather, that the shares were sold to *Panshore*, and were meant to be transferred to *Panshore*. Indeed, that was the position he took in Suit 521 and Suit 520, until he discontinued his claim against Panshore.

58 From Roland's AEIC, his complaint was not that the shares were sold and transferred to Panshore when he had meant to sell and transfer them to Mr Ng, his complaint was just that he expected to receive $765,000 for his 765,000 shares, rather than for them to be transferred for nominal consideration.

59 On the stand, his evidence was then to the effect that Mr Ng should not be faulted for Panshore not paying him $765,000 for his shares:

(a) Roland confirmed that he had not negotiated the agreement for the transfer of the shares, and neither had Mr Ng, as it was Kenny who had negotiated it with one Mr David Tan;[23]

(b) Roland agreed that Mr Ng had never discussed with him the value of the shares which he was going to transfer to Panshore;[24] and

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22 NE 17 March 2023, page 70 at lines 28 – 32.

23 NE 17 March 2023, page 70 at lines 18 – 21.

24 NE 17 March 2023, page 71 at lines 30 – 31 and page 72 at lines 1 – 2.

(c) Roland admitted that because the shares were being transferred to Panshore, Mr Ng was not aware of any intention not to pay for those shares.[25]

60 Roland's claim against Mr Ng is to the effect that Mr Ng had contracted to buy 765,000 of his shares (to be transferred to Mr Ng) for the price of $765,000, but Mr Ng had then engineered the transfer to Panshore rather than Mr Ng, and Panshore did not pay Roland $765,000.

61 Roland has no evidence to support his allegations against Mr Ng, and indeed, his own evidence contradicts his pleaded case:

(a) Roland has no evidence that Mr Ng agreed to buy his shares – his evidence is that the persons involved in the negotiation were Kenny and Mr David Tan.

(b) Roland has no evidence that the shares were meant to be transferred to Mr Ng – his own evidence is that the shares were meant to be transferred to Panshore. This contrasts with his closing submissions at para 24, where he says he only signed on a share transfer form where the transferee was Mr Ng, for a consideration of $1. However, he has not produced that share transfer form, and in any case, it would not assist him in claiming $765,000.

(c) Roland has no evidence that Mr Ng somehow amended the share transfer form, or forged Roland's signature on another share transfer form, such that the transferee became Panshore and not Mr Ng.

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[25] NE 17 March 2023, page 72 at lines 31 – 32 and page 73 at lines 1 – 2.

> Moreover, Roland's own evidence is that the intended transferee was Panshore. Roland's plea at para 37 of his closing submissions that he is at a loss as to how his signature appeared on the share transfer form with Panshore as transferee cannot make up for the lack of evidence implicating Mr Ng in some way.

62 I find that Roland has failed to prove his claim that Mr Ng owes him $765,000 for the 765,000 of his shares that were transferred to Panshore. Conversely, I accept Mr Ng's defence that he never agreed to buy any shares in Asia Link, he was never the intended transferee of Asia Link shares, he never received any share transfer forms naming him as transferee, and that the consideration for the share transfers was always intended to be nominal.

63 In so far as Roland seeks payment from Mr Ng not just based on a contract (for Mr Ng to buy his shares for $765,000), but also based on claims for causing loss by unlawful means, or conspiracy, on the evidence I find those claims in relation to Roland's shares to fail as well.

Causing loss by unlawful means

64 Roland claims that Mr Ng intended to cause him loss by unlawful means, in that Mr Ng (as a director of Asia Link) neglected Asia's Link's business, and deliberately engaged in conduct that negatively impacted Asia Link's financial situation – which caused loss to Roland and Kenny as shareholders of Asia Link.

65 Although Roland's complaint is framed as Mr Ng intending to cause him loss by unlawful means, it is really a complaint that Mr Ng, as a director of Asia Link, had breached his duties to Asia Link. Roland confirmed in his AEIC at

para 4 that his claim against Mr Ng is for "his actions while being appointed as director of [Asia Link] which I had a stake in it".

66 Under cross-examination, Roland agreed that:

(a) if Mr Ng had breached his duties to Asia Link, that may have caused loss to Asia Link, but it did not cause Roland loss personally;

(b) it should be for Asia Link's liquidator to bring any claim against Mr Ng for breach of duties; and

(c) Mr Ng never had any intention to cause any loss to him.[26]

67 Those admissions by Roland, which undermine his claim, accord with the legal position.

68 In *Hengwell Development Pte Ltd v Thing Chiang Ching and others* [2002] 2 SLR(R) 454 ("*Hengwell*") the court recognised the principle from the House of Lords decision in *Johnson v Gore Wood & Co (a firm)* [2001] 1 All ER 481 that only a company can maintain an action to recover reflective losses and a shareholder is precluded from doing so. Lord Bingham put it thus at 503, in a passage quoted in *Hengwell* at [18]:

> These authorities support the following propositions. (1) Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss. No action lies at the suit of a shareholder suing in that capacity and no other to make good a diminution in the value of the shareholder's shareholding where that merely reflects the loss suffered by the company. A claim will not lie by a shareholder to make good a loss which would be made good if the company's assets were replenished through action against the party responsible for the loss, even if the company, acting through its constitutional

[26] NE 17 March 2023, page 68 at 18 – 22.

> organs, has declined or failed to make good that loss. So much is clear from *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] Ch 204, particularly at pp 222–223, *Heron International* [1983] BCLC 244, particularly at pp 261–262, *George Fischer* [1995] 1 BCLC 260, particularly at pp 266 and 270–271, *Gerber* [1997] RPC 443 and *Stein v Blake* [1998] 1 All ER 727, particularly at pp 726–729. (2) Where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder in the company may sue in respect of it (if the shareholder has a cause of action to do so), even though the loss is a diminution in the value of the shareholding. This is supported by *Lee v Sheard* [1956] 1 QB 192, 195–196, *George Fischer* and *Gerber*. (3) Where a company suffers loss caused by a breach of duty to it, and a shareholder suffers a loss separate and distinct from that suffered by the company caused by breach of a duty independently owed to the shareholder, each may sue to recover the loss caused to it by breach of the duty owed to it but neither may recover loss caused to the other by breach of the duty owed to that other. I take this to be the effect of *Lee v Sheard*, at pp 195–196, *Heron International*, particularly at p 262, *RP Howard*, particularly at p 123, *Gerber* and *Stein v Blake*, particularly at p 726. I do not think the observations of Leggatt LJ in *Barings* at p 435 and of the Court of Appeal of New Zealand in *Christensen v Scott* at p 280, lines 25–35, can be reconciled with this statement of principle.

69 Roland's claim in the present case falls squarely within the first of Lord Bingham's categories – that the company (Asia Link) has suffered loss caused by a breach of duty owed to it (by Mr Ng), and a shareholder (Roland) says he has suffered loss because he was a shareholder of the company. The law is that only the company may sue in respect of that loss.

70 Accordingly, Roland's claim against Mr Ng fails. In any event, I find that Roland has failed to prove his complaints against Mr Ng; I accept Mr Ng's evidence that he had discharged his duties as a director of Asia Link. I elaborate on this in the next section.

Conspiracy to defraud

71 Finally, Roland advanced a claim for conspiracy to defraud. Curiously, he alleged that "the Defendant [*ie*, Mr Ng], Mr David Tan, and the Other Directors of Panshore (or any two or more together)" conspired to defraud him.[27] That pleading leaves open the possibility that the alleged conspiracy did not involve Mr Ng at all, but instead any two or more of the other persons named.

72 As noted above, Roland admitted under cross-examination that Mr Ng never had any intention to cause loss to him, which goes against Mr Ng being a party to a conspiracy to defraud Roland.

73 In so far as the particulars of fraud relate to the transfer of Roland's 765,000 shares to Panshore, I have already found that Roland's claims in relation to that transfer (and the payment of $765,000 that he seeks for it) all fail.

74 The next three particulars of fraud all pertain to matters that are properly the subject of a claim by Asia Link (if at all), rather than by Roland as a shareholder of Asia Link:

(a) neglecting Asia Link's business;

(b) engaging in conduct which negatively impacted the financial situation of Asia Link; and

(c) making dishonest statements to the liquidator of Asia Link.[28]

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27 Roland's Statement of Claim in Suit 1182, paras 24 and 25.

28 Statement of claim para 25(d), (e), (f).

75 The final particular of fraud is that "such fraud" was concealed from Roland, but that particular by itself is of no avail to Roland unless there is some "fraud" actionable by him to begin with.

76 As with the previous claim for causing loss by unlawful means, in so far as the conspiracy claim relates to Mr Ng's conduct as a director of Asia Link, any action for breach of Mr Ng's duties to Asia Link can only be brought by Asia Link, and not by Roland as a shareholder of Asia Link to recover a diminution in the value of his shareholding in Asia Link (which is reflective loss – it merely reflects the loss suffered by the company).

77 In any event, I find that Roland has failed to prove his pleaded allegations against Mr Ng. On the contrary, I accept Mr Ng's evidence that he had discharged his duties as a director of Asia Link. Asia Link was wound up for unpaid taxes, and its tax liabilities dated from a period prior to Mr Ng's appointment as director. Mr Ng assisted Asia Link's auditors with finalising the accounts for the financial years ended 30 June 2007, 30 June 2008, and 30 June 2009, and then negotiated with IRAS officers – that resulted in Asia Link facing a significantly lower tax liability of some $800,000 rather than over $2 million. Even so, Asia Link did not pay that reduced tax liability and was wound up.

78 Instead of putting forward any evidence of Mr Ng's supposed wrongdoings as a director of Asia Link, Roland engaged in speculation that Mr David Tan sought to take advantage of Asia Link or to destroy it. Roland's starting premise is that Asia Link was a valuable company, but the evidence shows that from the time Panshore entered into the joint venture on 1 March 2011, Asia Link was in financial trouble until it was wound up on 1 March 2013. Moreover, the evidence shows that Asia Link's financial troubles were not due

to Mr Ng, or Mr David Tan, or Panshore, or Panshore's directors; rather, Asia Link's financial troubles were due to Asia Link's management, in particular Kenny, its managing director.

Conclusion

79 In Suit 520, I find that Panshore has proved its breach of contract claim against Roland: that Roland breached the 7 September 2011 agreement by failing to lend Asia Link $400,000 as Roland had contracted to. I grant Panshore interlocutory judgment for damages to be assessed in respect of that claim. Other than that, I dismiss Panshore's claims against Roland.

80 In Suit 1182, I dismiss all of Roland's claims against Mr Ng.

81 On costs:

(a) For Suit 520, I reserve the question of costs to the judge or registrar conducting the assessment phase. Although Panshore has succeeded on liability for one of its claims (breach of contract by Roland), it has yet to be determined whether Panshore will be awarded substantial or nominal damages. Moreover, Panshore has failed on its other claims. At the assessment stage, Panshore and Roland can address the court further on the question of costs.

(b) For Suit 1182, Roland is to pay Mr Ng costs to be assessed if not agreed.

82 For avoidance of doubt, the time for any appeal against this judgment shall run from the date of this judgment.

Andre Maniam
Judge of the High Court

The second plaintiff in Suit 520 of 2014 and plaintiff in Suit 1182 of 2020 in person;
Low Peter Cuthbert, Low Ying Ning Elaine (Liu Yingning) and Nelson Chee (Peter Low Chambers LLC) for the defendant in Suit 520 of 2014;
David Nayar (David Nayar and Associates) for the defendant in Suit 1182 of 2020.