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

[2023] SGHC 328

Originating Application No 781 of 2023

Between

Gazelle Ventures Pte Ltd

… *Claimant*

And

(1) Lim Yong Sim
(2) GuGong Pte Ltd
(3) No Signboard Holdings Ltd

… *Defendants*

JUDGMENT

[Civil Procedure — Injunctions — *Quia timet* injunctions]
[Civil Procedure — Injunctions — Precautionary injunctions]
[Civil Procedure — Injunctions — Freestanding injunctions]
[Breach of Contract — Remedies — Injunctions]
[Contract — Privity of contract — Contracts (Rights of Third Parties) Act]
[Injunctions — Injunction *quia timet*]
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v
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20 November 2023 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Interlocutory injunctions are granted incidental to the enforcement of substantive rights. They lie in relation to causes of action that the enjoiner has now or may have against the person enjoined if the injunction is not granted and the enjoined act occurs. The interlocutory injunction may have a *direct* relationship to an *existing* cause of action: for example, where the interlocutory injunction enjoins an act in respect of which a permanent injunction is to be sought at trial or where the injunction is to preserve an asset that is the subject-matter of the dispute. The interlocutory injunction may have a *direct* relationship to a *potential* cause of action; thus, *quia timet*, or precautionary, injunctions are granted to enjoin an act that if committed would be a legal wrong against the enjoiner and give rise to a cause of action, for example, in tort or for

breach of contract. The relationship between interlocutory injunction and cause of action may in other instances be *indirect* where the court grants an injunction to protect the due administration of justice, such as a freezing order that ensures that a judgment if eventually given would not merely issue on paper.

2 Before me, it was suggested that there is now a new category of "freestanding injunctions" granted to prevent injustice, regardless of whether there is a cause of action present or future. I do not agree. The word "freestanding" is not a legal term. Prior to recent *dicta* which I consider at [67] to [71] below, it has been used in reference to two situations:

(a) the historical debate over whether and to what extent interlocutory injunctions may be granted in relation to proceedings on a cause of action being pursued elsewhere, whether in foreign courts or foreign-seated arbitrations, and where the forum court has no jurisdiction over that cause of action; and

(b) the grant of injunctions that are interlocutory in nature because they do not finally resolve substantive rights of the parties (*ie*, they are pending resolution of the underlying dispute in another forum, or in support of the enforcement of a judgment or award), but are granted on final applications (*ie*, originating applications or previously originating summonses) precisely because the main proceedings are not taking place before the court hearing the application for an interlocutory injunction. Such injunctions have been described as freestanding because the proceeding in which they are granted concludes with the grant of such injunction. Interlocutory injunctions granted on *final applications* are treated differently from those granted on *interlocutory applications* in terms of appeal rights: see s 29A(1)(*c*) of the Supreme

Court of Judicature Act 1969 (2020 Rev Ed) read with para 3(1) of its Fifth Schedule. However, this difference does not change the juridical nature of the injunction: an injunction pending resolution of a dispute in an arbitration is as interlocutory (or as interim, if this word is preferred) as an injunction pending resolution of the dispute in court. The difference in appeal rights depending on the nature of the application was explained by the Court of Appeal in *Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [16]:

> … Whether a particular decision is one that has been made upon an interlocutory application depends in the first place on the nature of the *application* which is the subject matter of the decision. Where, as in the present case, the nature of the application takes the form of an originating summons and the substantive merits are being determined in another forum, it would be wrong to characterise the *application* as interlocutory in nature: see further *Wellmix Organics (International) Pte Ltd v Lau Yu Man* [2006] 2 SLR(R) 525 at [16].
>
> [emphasis added]

3 The use of the word "freestanding" in such situations is only a description of a procedural aspect. The jurisdiction of the court to grant interlocutory injunctions is broad (whenever "just and convenient") but the *exercise* of that jurisdiction remains incidental to and dependent upon the enforcement of a substantive right.

4 HC/OA 781/2023 ("OA 781") is an application by Gazelle Ventures Pte Ltd ("Gazelle") for an injunction restraining the first defendant, Mr Lim Yong Sim ("Mr Lim"), the second defendant, GuGong Pte Ltd ("GuGong"), and the third defendant, No Signboard Holdings Ltd ("No Signboard") from taking steps to pass certain shareholder resolutions at a general meeting of No Signboard's shareholders. Mr Lim and GuGong are the actors while

No Signboard is the stage on which they are playing, joined only as a nominal defendant and not represented before me. Gazelle seeks a *quia timet* injunction or, alternatively, a "freestanding" one.

5 I have already indicated that I do not accept that an injunction may properly be granted independent of an enforceable right: there is no such thing as an injunction freestanding in that sense. Hence, the proper lens for considering Gazelle's application is that of *quia timet*, or precautionary, injunctions. In the remainder of this judgment, I generally adopt the English word "precautionary" and not the Latin label. To grant such an injunction, I must first find that the act enjoined would if committed give rise to a cause of action, either in itself or upon causing damage (which I would have to assess as being likely to follow).

6 Gazelle has sought the precautionary injunction not on the basis that steps likely to be taken by Mr Lim and GuGong will be a breach of contract on the part of any of the defendants but that they would amount to overt acts of causing loss by unlawful means, or of a conspiracy whether by lawful means or unlawful means. It will be immediately obvious that it is challenging to establish the conditions for grant of a precautionary injunction in the context of complex torts (as compared to the contexts of contract or simple torts), because there will have to be close consideration of possible interrelated future acts along with the intention with which they may be carried out. Moreover, it is inherently difficult to enjoin an act that is otherwise lawful on the basis that it may be part of a conspiracy. Having considered the parties' arguments and evidence, I am not persuaded to grant the precautionary injunction Gazelle seeks. I therefore dismiss OA 781 for the reasons that follow.

Facts

The parties

7 No Signboard is a public company, incorporated in Singapore, listed on the Catalist Board of the Singapore Exchange. It is primarily in the business of operating restaurants. Mr Lim, a Singapore citizen, is No Signboard's Chief Executive Officer and Executive Chairman of its board of directors. He owns 0.12% of No Signboard's issued shares. No Signboard's majority shareholder is GuGong, who owns 54.91% of No Signboard's issued shares. Mr Lim owns 93.6% of GuGong's shareholding and is one of its two directors.[1]

8 Gazelle is a private holding company incorporated in Singapore, used as an investment vehicle to invest in other companies and assets.[2]

Background to the dispute

9 On 24 January 2022, the public trading of No Signboard's shares was suspended because the company was "unable to demonstrate that it was able to continue as a going concern".[3] Sometime afterwards, in early 2022, Gazelle and No Signboard entered into negotiations for the former to provide the latter with rescue financing in return for equity in No Signboard. In this connection, Gazelle and No Signboard entered into a non-binding Memorandum of Understanding dated 30 April 2022 (the "MOU").[4]

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1 Lim Teck-Ean's 1st Affidavit at p 54.

2 Lim Teck-Ean's 1st Affidavit at para 4.

3 Lim Teck-Ean's 1st Affidavit at p 348, at para 1.1.

4 Lim Teck-Ean's 1st Affidavit at pp 247–255.

10 Under the terms of the MOU, Gazelle would invest up to $5m into No Signboard. This sum comprised of two parts: (a) $500,000 (the "Subscription Amount"), by which Gazelle would subscribe to shares in No Signboard such that Gazelle would own a 75% shareholding in No Signboard upon trading of the latter's shares resuming on the Catalist Board; and (b) $4.5m, by way of either debt or equity for the purpose of providing working capital to No Signboard.[5]

11 Following which, Gazelle and No Signboard entered into two subsequent agreements: first, the Super Priority Financing Agreement signed on 24 May 2022 (the "SPFA");[6] and second, the Implementation Agreement signed on 30 June 2022.[7]

The Super Priority Financing Agreement

12 Under the SPFA, Gazelle would provide rescue financing, within the meaning of s 67 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed), in the sum of $450,000 to No Signboard. This sum is to be attributed to part of the Subscription Amount. The basic purpose of the SPFA was to meet No Signboard's emergency funding requirements while the terms of the Implementation Agreement were being negotiated.

13 On completion of the SPFA, the $450,000 would be deposited into a segregated bank account to be drawn down pursuant to the terms of the SPFA. Such completion was subject to the satisfaction of various conditions precedent

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5 Lim Teck Ean's 1st Affidavit at p 247, para 3.

6 Lim Teck-Ean's 1st Affidavit at para 29 and pp 257–275.

7 Lim Teck-Ean's 1st Affidavit at para 38 and pp 289–313.

found at cl 3 of the SPFA.[8] Among other conditions, Gazelle would appoint two nominees to No Signboard's board of directors.[9] These two nominated directors would be the only signatories to the segregated bank account such that moneys could only be disbursed from said account with their approval.[10] In this connection, Mr Lim Teck-Ean and Mr Tan Keng Tiong were nominated by Gazelle and appointed as directors of No Signboard on 14 June 2022.[11]

14 The loan moneys were subsequently deposited by Gazelle in July 2022 in two tranches.[12] It is not disputed that those moneys have already been disbursed to fund No Signboard's operations.[13]

The Implementation Agreement

15 The Implementation Agreement was executed in furtherance of the MOU. Under which, the parties agreed that Gazelle would invest a sum up to $5m in No Signboard in the following manner: (a) $500,000, *ie*, the Subscription Amount, by which Gazelle would be allotted and issued 75% of issued and paid-up share capital in No Signboard; and (b) $4.5m, by which Gazelle would be allotted and issued a number of convertible redeemable preference shares.[14] Upon completion of the Implementation Agreement, the full amount invested by Gazelle is available for drawdown by No Signboard.[15]

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8 Lim Teck-Ean's 1st Affidavit at p 264, at cl 3.1.

9 Lim Teck-Ean's 1st Affidavit at p 263, at cl 3.1(e).

10 Lim Teck-Ean's 1st Affidavit at p 262, at cl 2.2.

11 Lim Teck-Ean's 1st Affidavit at para 33.

12 Lim Teck-Ean's 1st Affidavit at para 36.

13 Lim Teck-Ean's 1st Affidavit at para 125.

14 Lim Teck Ean's 1st Affidavit at p 295, at cll 2, 2.1, and 2.2(a).

15 Lim Teck-Ean's 1st Affidavit at p 304, at cl 4.4.

Further, No Signboard is deemed to have repaid the $450,000 deposited as rescue financing.[16]

16 Gazelle's investment into No Signboard is subject to several conditions set out in cl 3 of the Implementation Agreement (the "IA Conditions").[17] These conditions are to be satisfied by 31 December 2023.[18] Failing which, the Implementation Agreement terminates, and, among other things, the parties' prospective rights and obligations thereunder will be extinguished.[19]

17 The IA Conditions are of central importance to the present application. I set out some salient conditions here. First, cl 3.1(g) requires an extraordinary general meeting ("EGM") to be convened to obtain shareholder approvals of various matters specified therein.[20] Additionally, cl 3.1(j) of the Implementation Agreement makes completion conditional on Mr Lim and GuGong "providing an undertaking to vote in favour of the resolutions to be obtained at the [aforementioned] EGM".[21] In satisfaction of this clause, GuGong and Mr Lim each executed a deed containing the requisite undertakings on 8 November 2022 in favour of No Signboard.[22] Following which, an EGM was convened and the necessary approvals were given on 30 November 2022. I will refer to this EGM as the "30 November 2022 EGM", and the resolutions passed at that EGM as the "30 November 2022 Resolutions".

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16 Lim Teck-Ean's 1st Affidavit at p 304, at cl 4.5.

17 Lim Teck-Ean's 1st Affidavit at pp 300–303, at cl 3.

18 Lim Teck-Ean's 1st Affidavit at para 45 and p 314, at paras 3–4.

19 Lim Teck-Ean's 1st Affidavit at p 302, at cl 3.7.

20 Lim Teck-Ean's 1st Affidavit at p 300, at cl 3.1(g).

21 Lim Teck-Ean's 1st Affidavit at p 301, at cl 3.1(j).

22 Lim Teck-Ean's 1st Affidavit at pp 317–322 and pp 324–330.

18 In the deed executed by GuGong, GuGong's undertaking was expressed as given in consideration of No Signboard's agreement to, amongst other things, (a) sell to GuGong certain intellectual property within three months of the Implementation Agreement's completion; and (b) appoint GuGong as a business consultant from the date on which the Implementation Agreement is completed.[23] In relation to which, two agreements were subsequently concluded between No Signboard and GuGong on 9 December 2022, namely (a) an Intellectual Property Sale and Purchase Agreement (the "IP SPA");[24] and (b) an Independent Contractor Agreement (the "ICA").[25]

19 Clause 3.1(i) of the Implementation Agreement requires No Signboard's shareholders to vote in favour of a "whitewash resolution" by which they waive their right under prevailing corporate takeover regulations to receive a mandatory general offer from Gazelle and its concert parties.[26] This resolution was passed at the 30 November 2022 EGM.

20 Finally, cl 3.1(k) of the Implementation Agreement makes completion conditional on the Securities Industry Council (the "SIC") granting Gazelle and its concert parties a waiver of its obligation to extend a mandatory general offer to No Signboard's members under prevailing corporate takeover regulations.[27] I will refer to this waiver as a "whitewash waiver".

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23 Lim Teck-Ean's 1st Affidavit at p 324, at cl 2.

24 Lim Teck-Ean's 1st Affidavit at pp 421–431.

25 Lim Teck-Ean's 1st Affidavit at pp 432–441.

26 Lim Teck-Ean's 1st Affidavit at p 301, at cl 3.1(i).

27 Lim Teck-Ean's 1st Affidavit at p 301.

21 The SIC initially granted No Signboard a whitewash waiver,[28] but that waiver lapsed and the SIC declined to grant a fresh waiver. Primarily, the IP SPA and ICA would be regarded as interested-party transactions, in breach of Chapter 9 of the Catalist Rules. As such, these agreements had to be terminated if a fresh waiver were to be given. Accordingly, No Signboard notified GuGong on 28 February 2023 that the IP SPA and ICA were to be terminated with immediate effect.[29] Dissatisfied with this, GuGong commenced arbitration and court proceedings against No Signboard for wrongful termination of the two agreements.[30]

22 Matters came to a head on 16 June 2023, when GuGong issued a requisition notice for No Signboard to hold an EGM.[31] The resolutions tabled by GuGong, if passed, would result in, among other things, (a) the removal of all of No Signboard's current directors, save for Mr Lim; (b) the appointment of five replacement directors; and (c) the annulment of the 30 November 2022 Resolutions. I will refer to this intended EGM as the "Requisitioned EGM", and the resolutions sought to be passed at the Requisitioned EGM as the "Requisitioned Resolutions".

23 In response, Gazelle filed OA 781, whereby it seeks a precautionary injunction, or in the alternative, a "freestanding" injunction, to restrain the defendants from taking steps to pass the Requisitioned Resolutions.

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28 Lim Teck-Ean's 1st Affidavit at paras 84–85.

29 Lim Teck-Ean's 1st Affidavit at para 99 and p 539.

30 Lim Teck-Ean's 1st Affidavit at paras 103–106.

31 Lim Teck-Ean's 1st Affidavit at para 121 and pp 587–590.

Precautionary injunction

24 The inquiry into whether a precautionary injunction should be ordered proceeds in two stages, *per Bhavin Rashmi Mehta v Chetan Mehta and others* [2022] SGHC 173 at [43], adopting the formulation of the English High Court in *Vastint Leeds BV v Persons Unknown* [2019] 4 WLR 2 at [31(3)]:

> (a) at the first stage, the question is whether there is a "strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights"; and
>
> (b) if the first question is answered in the affirmative, then at the second stage the question is whether the harm resulting from the breach would be:
>
> > … so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of *actual* infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate.
> >
> > [emphasis in original]

25 Implicit in the first question is that the claimant has rights that the defendant may breach if unrestrained or, to put it another way, that the acts restrained would be legally actionable wrongs against the claimant. I turn to this question first, considering the position of Gazelle against Mr Lim and GuGong and then against No Signboard.

Gazelle would have no cause of action against Mr Lim and GuGong even if the Requisitioned Resolutions were passed

Breach of contract

26 Neither Mr Lim nor GuGong are parties to the Implementation Agreement. Gazelle has not contended that Mr Lim or GuGong would be liable for inducing a breach by No Signboard of the Implementation Agreement if the Requisitioned Resolutions are passed. Instead, Gazelle has contended that Mr Lim and GuGong will be in breach of their respective deeds if the Requisitioned Resolutions are passed.

27 In my view, this submission fails in two distinct ways. First, the deeds were executed by Mr Lim and GuGong in favour of No Signboard and not Gazelle. Both deeds also contain clauses excluding third party rights under the Contracts (Rights of Third Parties) Act 2001 (2020 Rev Ed).[32] Gazelle simply has no standing to enforce the undertakings contained in the deeds.

28 Second, I am not persuaded that if Mr Lim and GuGong vote in favour of the Requisitioned Resolutions this would breach their undertakings to No Signboard. Clause 5.1 of both deeds provide that "[e]xcept as expressly provided otherwise herein, this Deed shall come into force and be binding upon us from the date of this Deed until the close of the EGM".[33] Provisionally, my view is that the reference to "the EGM" in cl 5.1 means "the extraordinary general meeting to be convened by the Company" in respect of matters described in cl 2 of both deeds.[34] The plain effect of cl 5.1, therefore, was to bring to an end the obligations under the deeds at the close of the 30 November

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32 Lim Teck-Ean's 1st Affidavit at p 321, at cl 6.10 and p 328, at cl 6.11.

33 Lim Teck-Ean's 1st Affidavit at pp 319 and 326.

34 Lim Teck-Ean's 1st Affidavit at pp 317 and 324.

2022 EGM. Moreover, again provisionally, my view is that as drafted the obligations under the deeds were duly performed by Mr Lim and GuGong at the 30 November 2022 EGM and so discharged by performance.

29 It might be thought that there could be a term implied in fact that having performed their undertakings Mr Lim and GuGong should not be entitled to take steps to reverse the 30 November 2022 Resolutions at subsequent EGMs. That is exactly what Mr Lim and GuGong now propose to do. However, it was not argued that there was such an implied term, and any such argument would have its own difficulties (including the presence of the exclusion of implied terms by the prefatory phrase "except as expressly provided otherwise herein"). It may be that the undertakings were drafted in the form that they were precisely to permit the possibility of later reversal. In any event, this would not eliminate the problem of the lack of privity that Gazelle faces.

30 Accordingly, I am unable to accept at this stage of the matter that Gazelle has a contractual right against Mr Lim and GuGong that would be protected by the precautionary injunction sought.

The tort of causing loss by unlawful means

31 Gazelle then submits that unless Mr Lim and GuGong are restrained by the injunction prayed for, they are likely to commit the tort of causing Gazelle loss by unlawful means.[35]

32 To make out the tort of causing loss by unlawful means, the claimant must show, *per Raffles Education Corp Ltd and others v Shantanu Prakash and another* [2023] SGHC 89 ("*Raffles Education*") at [239] (applying the test set

[35] Claimant's Written Submissions at paras 21–22 and 30–37.

out in *Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd* [2014] 4 SLR 574 at [83]), that:

(a) the defendant committed an unlawful act affecting a third party;

(b) the defendant acted with an intention to injure the claimant; and

(c) the defendant's conduct in fact resulted in damage to the claimant.

Damage is an essential ingredient of the tort. The passing of the Requisitioned Resolutions would not in itself fulfil this third ingredient, even if the first two elements were fulfilled. That highlights one difficulty in seeking a precautionary injunction in relation to a tort like conspiracy versus breach of contract (which itself constitutes the cause of action) or a simple tort (where the tortious act would itself result in immediate loss or damage, so that the tort would be actionable upon commission of the act). Notwithstanding, I will consider whether the first two ingredients of the tort are made out, in turn.

(1) Are Mr Lim and GuGong likely to commit an "unlawful act"?

33 As regards the first ingredient of the tort, Gazelle submits that the "unlawful act" by GuGong and Mr Lim would consist in:

(a) GuGong and Mr Lim breaching the undertakings contained in their deeds;[36]

(b) Mr Lim inducing GuGong to breach GuGong's deed;[37] and

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36 Claimant's Written Submissions at paras 31–32.

37 Claimant's Written Submissions at para 33.

(c) GuGong and Mr Lim breaching their duty to "exercise their voting power *bona fide* for the benefit of No Signboard as a whole".[38]

34 For reasons set out at [28] to [29] above, I am not persuaded that Mr Lim and GuGong voting in favour of the Requisitioned Resolutions would breach their undertakings to No Signboard. I thus reject Gazelle's submissions on the first and second putative "unlawful acts".

35 I turn to consider the third putative "unlawful act". By a special resolution passed on 30 November 2022, No Signboard's constitution was amended to facilitate Gazelle's acquisition of convertible redeemable preference shares in No Signboard (as envisaged under the Implementation Agreement): see [15] above.[39] If the Requisitioned Resolutions are carried, that special resolution would be annulled and another amendment of No Signboard's constitution would follow.

36 Gazelle says that Mr Lim and GuGong cannot vote in favour of annulling that special resolution without breaching their duty to exercise their voting power "*bona fide* for the benefit of No Signboard as a whole". If Mr Lim and GuGong do so, the resulting breach of duty would be an "unlawful act" for the purposes of the tort.

37 It is settled law that when voting to alter a company's corporate constitution, the company's members must exercise their voting power in good faith for the benefit of the company as a whole: *Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656. The phrase "the company as a whole" means the

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38 Claimant's Written Submissions at para 34.

39 Lim Teck-Ean's 1st Affidavit at p 409.

company's members as a general body, and not the company as a distinct commercial entity: *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286 at 291.

38 Counsel for Mr Lim and GuGong submitted in reply that GuGong has a statutory right under the Companies Act 1967 (2020 Rev Ed) to requisition an EGM.[40] Several cases were cited for the proposition that "the Courts, both in Singapore and in other jurisdictions, are reluctant to interfere with the shareholders' rights to requisition a meeting".[41] However, in principle, such reluctance dissipates where the shareholder has agreed by contract not to exercise such right, and by analogy it could be said that the court might be prepared to stop a meeting from being requisitioned or held on other grounds that might limit the shareholder's right.

39 Counsel for Mr Lim and GuGong also submitted that "the Courts do not act as a supervisory board over the decisions of the majority".[42] This proposition is again uncontroversial so far as it goes, but there are circumstances in which the court may interfere not by way of supervision but by way of policing legality.

40 The fundamental difficulty for Gazelle is a different one. Gazelle is not a shareholder of No Signboard but a creditor. It is only upon completion of the Implementation Agreement that Gazelle would become a shareholder. Any breach of duty to vote "*bona fide* for the benefit of No Signboard as a whole" would be a wrong committed either against No Signboard or against No Signboard's minority shareholders, and not against Gazelle.

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40 1st and 2nd Defendants' Written Submissions at para 24.

41 1st and 2nd Defendants' Written Submissions at paras 26–31.

42 1st and 2nd Defendants' Written Submissions at paras 32–35.

41 The fact that the wrong, if any, would be against No Signboard or No Signboard's minority shareholders is important because it brings into consideration the question of which unlawful acts against third parties count as relevant unlawful means. In *Raffles Education*, Audrey Lim J summarised (at [240]) the two different formulations of the limits proposed in *OBG Ltd v Allan* [2008] AC 1 ("*OBG*"):

> … Lord Hoffmann (for the majority) held that in a three-party setting – namely, where a third party is the victim of the defendant's unlawful act – acts against the third party count as unlawful means only if they are actionable by that third party, or if the only reason why they are not actionable is because the third party has suffered no loss. *Unlawful means, however, do not include acts which may be unlawful against a third party but do not affect his freedom to deal with the claimant*, or criminal acts not actionable in private law… Lord Nicholls preferred a wider approach in that 'unlawful means' embraced 'all acts a defendant is not permitted to do, whether by the civil law or the criminal law', *subject to the qualification that liability should be found only where the claimant is harmed through the 'instrumentality' of a third party …*
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> [emphasis added]

42 The court must then consider whether the passing of the resolutions would affect the freedom of No Signboard or of No Signboard's minority shareholders to deal with Gazelle, *ie*, Lord Hoffman's formulation, or whether they would be the "instrument" through which Gazelle is harmed, *ie*, Lord Nicholls' formulation.

43 In my view, any argument that GuGong's breach of duty would curtail the freedom of No Signboard's minority shareholders to deal with Gazelle or that Gazelle would be harmed through the "instrumentality" of Gazelle's minority shareholders is not seriously arguable, and was not seriously run by Gazelle.

44 Moreover, in relation to the position of both No Signboard and its minority shareholders, Gazelle's argument takes aim only at certain of the resolutions, namely those that concern No Signboard's constitution, when its real concern is that Mr Lim and GuGong seek to change the composition of the board of No Signboard, and that the new board would thereafter make decisions that would affect Gazelle's position in relation to No Signboard. It is possible that Gazelle might have recourse thereafter in contract against No Signboard, but whether this is the case or not, the composition of a company's board is for its shareholders to decide. This brings the discussion back to Mr Lim's and GuGong's points concerning statutory rights in relation to the governance of No Signboard, not as an automatic disqualifier of injunctive relief generally but as an answer on the facts of this case to any claim by Gazelle that it has enforceable rights in relation to the requisitioning of or voting at shareholders' meetings of No Signboard, in respect of which a precautionary injunction may lie. This is sufficient to dispose of this argument.

45 Nonetheless, it is worth adding a further point, namely that whether the duty to act in good faith in the interests of the body of No Signboard's shareholders as a whole would be breached requires a close and detailed inquiry into the commercial considerations at play. Part of any such inquiry involves considering the position of the minority shareholders and their reasons, if any, for disagreeing with the majority. The majority's reasons would also have to be scrutinised. At the precautionary injunction stage, the court must find a strong probability that the act to be injuncted would constitute a wrong. Here, while it is likely the Requisitioned Resolutions would be passed, I am not able to find a strong probability, on the evidence adduced, that their passage would be a breach of duty.

(2) Is it Mr Lim and GuGong's intention to injure Gazelle by passing the Requisitioned Resolutions?

46 Even if I had concluded that the three putative "unlawful acts" would suffice to establish the likelihood of the tort being committed, if not restrained by an injunction, I am not persuaded that Mr Lim and GuGong are procuring those acts with the intention of injuring Gazelle.

47 No direct evidence was led to prove such an intention. Gazelle's case is that the requisite intention should be inferred from the fact (in its submission) that Mr Lim and GuGong have no commercial grounds for stymieing the completion of the Implementation Agreement.[43]

48 I am not prepared to draw such an inference at this stage of the matter. In Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016), the learned authors observe at para 15.032 that:

> … an intention to cause loss to the claimants as an end in itself or as a means to an end would usually suffice. But if the injury were neither an end in itself nor a means to an end, then mere knowledge that the resultant loss is probable or foreseeable would not suffice.

In my view, it is possible that Mr Lim and GuGong seek the passage of the Requisitioned Resolutions in their own interests, rather than to injure Gazelle as an end in itself or as a means to an end.

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[43] Claimant's Written Submissions at para 39.

The tort of unlawful means conspiracy

49 Gazelle also puts its case another way, namely that Mr Lim and GuGong have conspired to injure Gazelle by unlawful means, and so an injunction should be granted to prevent them from realising that conspiracy.[44]

50 The tort of unlawful means conspiracy requires that "two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved": *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 ("*Quah Kay Tee*") at [45].

51 I am not persuaded that Gazelle is likely to have a cause of action against Mr Lim and GuGong in the tort of unlawful means conspiracy. First, Gazelle is relying on the same "unlawful acts" that found Mr Lim and GuGong's hypothesised liability in the tort of causing loss by unlawful means.[45] The same conception of "unlawful act" must apply to both the tort of unlawful means conspiracy and the tort of causing loss by unlawful means.

52 I concluded at [34] to [45] above that the acts threatened by Mr Lim and GuGong do not qualify as "unlawful acts" for the purposes of the tort of causing loss by unlawful means. It necessarily follows that those same acts do not qualify as "unlawful acts" for the tort of unlawful means conspiracy.

53 Second, and for reasons set out at [46] to [48] above, I was not persuaded that Mr Lim and GuGong are procuring the putative "unlawful acts" with the intention of causing Gazelle injury. Absent proof of that intention, I cannot

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44 Lim Teck-Ean's 1st Affidavit at para 148(c).

45 Claimant's Written Submissions at para 30.

accept Gazelle's submission that liability in the tort of unlawful means conspiracy will attach to Mr Lim and/or GuGong if the Requisitioned Resolutions are passed.

The tort of lawful means conspiracy

54 Finally, Gazelle submits that it is likely to have a cause of action in the tort of lawful means conspiracy.[46] To make out the tort of lawful means conspiracy, the plaintiff must prove that two or more persons combined to commit an act for the *predominant* purpose of causing damage or injury to the plaintiff: *Quah Kay Tee* at [45].

55 Gazelle has failed to demonstrate that Mr Lim and GuGong are acting with an intention – still less a *predominant* intention – of causing Gazelle injury. I thus reject Gazelle's submission on this point.

Gazelle's reliance on Mr Lim and GuGong's undertakings

56 Gazelle has sought to impress upon me two things. First, the full investment amount of $5m has already been disbursed to No Signboard, as at 28 November 2022, *ie*, even *before* the 30 November 2022 EGM.[47] Second, approximately $2m has already been spent in funding No Signboard's operations since April 2022.[48] These disbursements and drawdowns were despite No Signboard being only contractually entitled to draw on Gazelle's deposits upon completion of the Implementation Agreement. It was suggested

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46 Claimant's Written Submissions at paras 28 and 39.

47 Lim Teck-Ean's 1st Affidavit at paras 48, 55, and 62–63.

48 Lim Teck-Ean's 1st Affidavit at paras 125 and 127.

on affidavit that Gazelle permitted these drawdowns in reliance on the undertakings Mr Lim and GuGong gave in their deeds.[49]

57 However, it was not suggested at the hearing or in the parties' submissions that Gazelle is asserting an estoppel preventing Mr Lim and GuGong from requisitioning an EGM and voting in favour of the Requisitioned Resolutions.

58 As I was not addressed on the circumstances in which the drawdowns were permitted, I say nothing further concerning whether Gazelle has a viable cause of action in respect of the sums already disbursed. Moreover, such a claim, if it arises, could be pursued in damages.

Gazelle would have no cause of action against No Signboard even if the Requisitioned Resolutions were passed

59 For completeness, and even though the contrary was not pressed by Gazelle, it is my view that No Signboard would not be in breach of the Implementation Agreement even if the Requisitioned Resolutions were passed. Gazelle did not point to any term of the Implementation Agreement that would be breached if the Requisitioned Resolutions were passed.

60 Rather, Gazelle's argument was that the Requisitioned Resolutions, if carried, would doom the Implementation Agreement to failure by leaving several of the IA Conditions unsatisfied. However, the IA Conditions merely stipulate the state of affairs that must subsist by 31 December 2023, failing which the Implementation Agreement will come to an end. Gazelle and No Signboard have no primary contractual right to the fulfilment of the IA

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[49] Lim Teck-Ean's 1st Affidavit at para 148(d).

Conditions. At the hearing, counsel for Gazelle sensibly conceded that the IA Conditions cannot be interpreted as contractual promises to procure their satisfaction.

61 The provision that comes the closest to assisting Gazelle is cl 6.1(a) of the Implementation Agreement.[50] That provision sets out No Signboard's undertaking to "convene an EGM to seek the approval of Shareholders and Independent Shareholders for the matters referred to in Clauses 3.1(g) and 3.1(i) respectively". Even then, on a provisional basis, I do not interpret this undertaking as an undertaking by No Signboard *not* to convene further EGMs for the purpose of annulling resolutions previously passed in satisfaction of cll 3.1(g) and 3.1(i). Such a blanket undertaking for the future would be commercially onerous as it would deprive No Signboard of flexibility to respond to changed circumstances. Clear language would be required to impose such an undertaking and the language used in fact suggests that all that was agreed pertained to the initial setting up of the arrangement by convening the first EGM.

Gazelle has not demonstrated that irreparable harm is likely to result if a precautionary injunction is not granted

62 My conclusions on the first stage of the analysis are sufficient to dispose of the application. For completeness, I am also not persuaded that Gazelle is likely to suffer irreparable harm if a precautionary injunction is not granted.

63 It is far from certain that the Implementation Agreement will be completed even if the injunction were granted. Other conditions may foreclose completion regardless of the parties' conduct. If it is not completed for other

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50 Lim Teck-Ean's 1st Affidavit at p 305.

reasons, Gazelle may not have any claim against No Signboard, Mr Lim or GuGong. Gazelle's case, taken at its highest, is that it will lose a *chance* of completing the Implementation Agreement if the injunction is not granted.

64 That the Implementation Agreement may not be completed even if the injunction is granted makes it difficult to conclude in advance that grave and irreparable harm is likely to be suffered by Gazelle unless the injunction is granted. After all, what is alleged to be grave and irreparable harm may happen anyway, albeit for other reasons.

65 I would go further: what loss to Gazelle for which Mr Lim and GuGong may be potentially liable is hard to identify and define in advance. Without such identification, the court is not in a position to conclude that such loss is irreparable and not capable of compensation in damages.

No such thing as a "freestanding" injunction unrelated to a cause of action or enforcement of a legal right

66 I turn to consider Gazelle's alternative argument for a "freestanding" injunction. In this connection, Gazelle submits that "[e]ven if the facts do not disclose an actual or threatened cause of action or support the grant of *quia timet* relief … [the] Court has power to grant a freestanding injunction".[51]

67 For this contention, Gazelle relies on the case of *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd and another* [2020] 5 SLR 634 ("*Sulzer Pumps*"). This case was cited for its *dicta* that "the court has power to grant a freestanding injunction to prevent injustice, in exercise of its equitable jurisdiction" (at [91]) and "the court has equitable

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[51] Claimant's Written Submissions at para 43.

jurisdiction to issue freestanding injunctions even when there is no cause of action" (at [93]). Gazelle says that the injustice lies in how Mr Lim and GuGong have "repeatedly sought to prevent the performance of the Implementation Agreement and are abusing their majority power".[52]

68 Respectfully, I do not adopt or follow these *dicta*. The court's jurisdiction to issue injunctions is indeed wide, arising historically as an incident of its inherent jurisdiction and today confirmed in the Civil Law Act 1909 (2020 Rev Ed). Section 4(10) provides that injunctions (as with mandatory orders and appointments of receivers) may be made "by interlocutory order of the court … in all cases in which it appears to be just or convenient that such order should be made". Interlocutory orders may be granted before judgment or after judgment: see the Court of Appeal's decision in *Telecom Credit Inc v Midas United Group Ltd* [2019] 1 SLR 131 at [26].

69 The jurisdiction is broad, but the exercise of that jurisdiction is not: see, for example, the exposition in *Snell's Equity* (John McGhee QC ed) (Sweet & Maxwell, 34th Ed, 2021) at para 19-046. The jurisdiction is exercised to grant injunctions incidental to and dependent on the enforcement of a substantive legal right. This ordinarily relates either to an accrued cause of action or a cause of action that would arise if the act enjoined were left free to occur.

70 There are other passages in *Sulzer Pumps*, such as at [92], which speak instead of the grant of a freestanding injunction where there are no underlying substantive proceedings. That is a different point. It is one of procedure concerning how applications for interlocutory injunctions may be made and not one of substance concerning the basis on which they may be ordered. *Sulzer*

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52 Claimant's Written Submissions at para 45.

Pumps concerned an application for an injunction restraining a contractor from making a call on a performance bond provided to it by its supplier. The contract between contractor and supplier was subject to arbitration, and no arbitration had yet been commenced. In those circumstances, the application made to court was made by originating summons, *ie*, the predecessor of today's originating application. Depending on the rules chosen for the arbitration, such interlocutory relief might have been sought from an emergency arbitrator or from the arbitral tribunal if constituted. In a sense, the proceedings before the court could appropriately be described as "freestanding", as there were no other proceedings yet afoot. But restraining a call on a performance bond is connected to a cause of action, namely the performing party's cause of action for payment for its performance against the paying party. The paying party calls upon a bond in support of its own cause of action against the performing party for damages for non-performance. Indeed, wrongfully calling on a performance bond may constitute an abuse of a contractual power which equity will restrain, albeit in limited circumstances: in England only on the ground of fraud but in Singapore also on the broader ground of unconscionability.

71 I would, for the same reasons, respectfully disagree with recent *dicta* in *Tanoto Sau Ian v USP Group Ltd and another matter* [2023] SGHC 106 at [73] and [74], following *Sulzer Pumps*.

72 Having held that there is no such thing as a freestanding injunction to prevent injustice independent of substantive rights, I do not accept Gazelle's alternative contention.

Conclusion

73 I dismiss this originating application entirely and award costs to the defendants against Gazelle. If quantum is not agreed within 14 days of this

judgment, the defendants may write in to court for me to fix the amount, and all parties may make submissions on quantum by letter to court.

74 I end with three remarks. First, the dismissal of this originating application is not an endorsement of the content of the Requisitioned Resolutions. Gazelle has pointed out that the Requisitioned Resolutions, if carried, would result in five of Mr Lim's family members being appointed to No Signboard's board of directors and there no longer being independent directors. Any corporate governance issue arising from this is not a matter for this court but for consideration elsewhere. Secondly, Gazelle is concerned that the sums it has already disbursed to No Signboard are practically irrecoverable given No Signboard's financial state. Again, this is not a matter before me, and I make no comment on Gazelle's potential legal options hereafter. Thirdly, nothing in this judgment should be taken as foreclosing potential causes of action that Gazelle may have for remedies in damages, including the potential causes of action raised by Gazelle before me. In this judgment, I have been called upon only to consider the arguments in terms of prior restraint and not in analysis of events which have happened.

Philip Jeyaretnam
Judge of the High Court

Yeo Lai Hock Nichol, Qua Bi Qi and Zhang Jun (Nine Yards Chambers LLC) for the claimant;
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The third respondent unrepresented.
