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

[2023] SGHC 361

Suit No 939 of 2018

Between

(1) Marten Joseph Matthew
(2) Thames Global Enterprises Ltd

… *Plaintiffs*

And

(1) AIQ Pte Ltd (in liquidation)
(2) The Carrot Patch Pte Ltd (in liquidation)
(3) Goh Soo Siah
(4) Goh Boon Huat
(5) Marcus Sunny Tan Sen Kit
(6) Loo Kian Wai
(7) Seah Ting Han Jeffrey

… *Defendants*

GROUNDS OF DECISION

[Companies — Oppression — Minority shareholders — Locus standi of nominee holding company to bring oppression action for acts done to beneficial shareholder]
[Companies — Oppression — Minority shareholders — Rights issue to raise urgently needed funds for company not oppressive conduct even if other shareholders are diluted]
[Companies — Directors — Shadow directors]
[Companies — Oppression — Minority shareholders — *Qua* member rule]

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[Companies — Oppression — Minority shareholders — Reflective loss principle]
[Companies — Oppression — Minority shareholders — Whether there was an understanding and agreement between two shareholders that gave rise to equitable considerations]
[Companies — Oppression — Minority shareholders — Acts of shareholder bring oppression suit to be considered when determining if conduct complained of is unfair, as long as no tit-for-tat behaviour]
[Tort — Conspiracy — Unlawful means conspiracy — Whether breach of company constitution is a wrongful act]
[Tort — Conspiracy — Lawful means conspiracy]

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Marten, Joseph Matthew and another
v
AIQ Pte Ltd (in liquidation) and others

[2023] SGHC 361

General Division of the High Court — Suit No 939 of 2018
Mavis Chionh Sze Chyi J
11-12 August, 15-19 August, 22-26 August, 29-31 August, 1 September 2022, 21 February, 20 March, 26 June, 18 August 2023

29 December 2023

Mavis Chionh Sze Chyi J:

Introduction

1 HC/S 939/2018 started as a dispute between two major shareholders of the 1st Defendant, AIQ Pte Ltd ("**AIQ**"); namely, the 1st Plaintiff – Marten Joseph Matthew ("**Joe**") – and the 3rd Defendant, Goh Soo Siah ("**GSS**"). The dispute initially arose from these two shareholders' disagreement over their respective funding responsibilities for AIQ and its subsidiary, the 2nd Defendant, The Carrot Patch Pte Ltd ("**TCP**"). As AIQ became mired in financial difficulties, the dispute between the two shareholders spilled over into other areas, with the directors of AIQ being drawn into the fray as well. Joe was eventually removed as a director of both companies. Shortly thereafter, he and the 2nd Plaintiff – Thames Global Enterprises Ltd ("**Thames**", a company registered in the British Virgin Islands) – commenced the present suit against

GSS and AIQ's directors (the 4th to 7th Defendants). The Plaintiffs alleged, in gist, that the 3rd to 7th Defendants had oppressed their interests as minority shareholders of the two companies and that they had also conspired to injure the Plaintiffs by unlawful as well as lawful means. The companies, AIQ and TCP, were joined as nominal defendants to the Plaintiffs' action.

2 At the conclusion of the trial, I dismissed the Plaintiffs' action. I now set out my reasons in these written grounds.

Facts

The parties

3 AIQ, which was previously known as iQnect Pte Ltd, dealt with the development and sale of artificial intelligence and the offering of offline-online-offline integrated solutions. AIQ's core business included the development of software, including a visual recognition technology software meant for use in Android or iOS based mobile devices. AIQ's main assets were the visual recognition technology (the "**VRT**") that was being developed and the intellectual property rights thereto.[1] TCP, its subsidiary, was in the business of operating a co-working space.[2]

4 Joe is a registered shareholder of TCP. In the present suit, he also claimed to be the beneficial owner of the shares in AIQ held by Thames. In gist, on 14 December 2017, Joe had transferred to Thames his entire shareholding in AIQ. According to Joe's claims at trial, Thames was wholly owned by him and held its 27.42% shareholding in AIQ as a "nominal shareholder", with Joe

1 SOC (Amendment No.3) at para 4; AEIC of 1st Pf at para 5.

2 AEIC of 1st Pf at para 6.

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owning the entire beneficial interest in those shares.[3] I add that although the term used in the Plaintiffs' pleadings was "*nominal* shareholder",[4] the Plaintiffs made it clear in their submissions that they meant to refer to Thames as a "*nominee* shareholder", in the sense in which the latter term was used in cases such as *Atlasview Ltd v Brightview Ltd* [2004] 2 BCLC 191 ("*Atlasview*").

5 Joe was also a director of AIQ, as well as its Chairman,[5] and a director of TCP[6], up till the point when he was removed from these positions on 28 May 2018[7] and 29 March 2019[8] respectively.

6 GSS is a shareholder of AIQ. GSS presently holds 50.04% of shares in AIQ.[9]

7 The 4th Defendant Goh Boon Huat ("**Leslie**"), was appointed as a director of AIQ on 27 September 2016 and as a director of TCP on 12 May 2017.[10] Leslie is GSS' son and his nominee on the AIQ board.[11]

8 The 5th Defendant, Marcus Sunny Tan Sen Kit ("**Marcus**"), joined AIQ as a consultant in February 2017.[12] He was appointed as AIQ's Chief Executive

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3 SOC (Amendment No.3) at para 2; AEIC of 1st Pf at para 7.

4 SOC (Amendment No.3) at para 2.

5 SOC (Amendment No.3) at para 1; AEIC of 1st Pf at para 9.

6 SOC (Amendment No.3) at para 1A.

7 AEIC of 1st Pf at para 147, p 637-642; AEIC of 3rd Df at paras 106-107.

8 AEIC of 1st Pf at paras 152-157, p 695-699.

9 3rd Df Defence (Amendment No.2) at para 16; SOC (Amendment No.3) at para 5; AEIC of 1st Pf at para 8.

10 AEIC of 4th Df at para 9.

11 AEIC of 4th Df at p 29-30.

12 AEIC of 5th Df at para 7.

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Officer ("CEO") on 6 March 2017.[13] He was subsequently appointed as a director of AIQ on 17 March 2017 and as a director of TCP on 12 May 2017.[14] Marcus is GSS' nephew and Leslie's cousin.[15]

9 The 6th Defendant, Loo Kian Wai ("**Kian Wai**") initially joined AIQ as a finance and human resources director in April 2017.[16] He was subsequently promoted to become AIQ's vice-president ("VP") of finance and human resources in July or August 2017, eventually becoming the Chief Financial Officer ("CFO") in October 2017.[17] Kian Wai was appointed as a director of both AIQ and TCP on 20 November 2017.[18]

10 The 7th Defendant Seah Ting Han Jeffrey ("**Jeffrey**") started providing advisory services to AIQ in mid-2015 and eventually entered into a formal "Advisor Agreement" with AIQ on 18 October 2016.[19] He was appointed as a director of AIQ on 9 January 2017 and as a director of TCP on 12 May 2017.[20]

Background to the dispute

11 As noted earlier, Joe and Thames brought the present suit against the other significant shareholder in AIQ (GSS) and the directors (Leslie, Marcus, Kian Wai and Jeffrey), claiming that they (Joe and Thames) were victims of minority oppression, and conspiracy by both unlawful and lawful means. The

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13 AEIC of 5th Df at para 15; p 118-120.

14 AEIC of 5th Df at para 16; p 123-125.

15 AEIC of 5th Df at para 6.

16 AEIC of 6th Df at para 8; p 43-50.

17 AEIC of 6th Df at para 10; p 55.

18 AEIC of 6th Df at para 10; p 57-58.

19 AEIC of 7th Df at para 10; p 71-75.

20 AEIC of 7th Df at para 12-13; p 82-84.

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facts relied on by Joe and Thames in support of their claims have been set out in detail in their Statement of Claim. Not surprisingly, the Defendants disputed the Plaintiffs' version of events and pleaded their own version. The Defendants also raised objections to the case advanced by the Plaintiffs at trial, on the ground that the latter had – in their closing submissions – departed from their pleaded case.[21] To provide context, therefore, I outline below the background facts and the undisputed timeline of key events, before summarising the parties' pleaded cases.

12 As a start-up which was incorporated in Singapore on 17 February 2014,[22] AIQ relied on investors to fund its business operations. Over the years post incorporation, it raised such funds by acquiring more shareholders. AIQ had a portfolio of patents acquired from a company called Logovision; and these were eventually consolidated into two patents which constituted what came to be known as the secured patents (at [14] below).[23] Joe became a director of AIQ from 14 July 2014.[24] At that time, the other major shareholder of AIQ besides Joe was one Carl Johan Freer ("**Carl Freer**") (who was the owner of Logovision), whose son Adam Carl-Johan Agerstam ("**Carl Johan**") was appointed as a director in AIQ.[25]

13 Sometime in 2015, Joe was introduced to Leslie (the 4th Defendant).[26] After a meeting at which they discussed AIQ's business and future potential,

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21 3rd Df Reply Submissions at paras 18, 23, 27, 36-37 and 42; 4-7th Df Reply Submissions at paras 2-60.

22 AEIC of 1st Pf at para 5.

23 AEIC of 1st Pf at para 10.

24 AEIC of 1st Pf at para 9.

25 AEIC of 1st Pf at para 15.

26 AEIC of 1st Pf at para 12.

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Joe was informed that GSS (Leslie's father) was interested in investing in the company.[27] GSS subsequently acquired a shareholding of about 5.86% in AIQ[28]. At that point, the company was said to be valued at US$75 million (although there does not appear to have been any official valuation report as such).[29]

14 Eventually, the potential acquisition of AIQ by a company called Powa Technologies ("Powa") fell through, and Carl Freer left AIQ.[30] Left to fund AIQ by himself, Joe approached GSS through Leslie, to ascertain if GSS was willing to co-fund AIQ.[31] This led to AIQ entering into a convertible loan agreement with GSS on 19 July 2016 whereby GSS agreed to provide a loan of US$1 million to AIQ ("**Convertible Loan Agreement**").[32] In tandem with this Convertible Loan Agreement, two supplemental agreements were entered into: a supplemental deed to the Convertible Loan Agreement dated 30 November 2017,[33] and a deed of patent charge dated 15 December 2017 ("**Deed of Patent Charge**").[34] The Deed of Patent Charge contained *inter alia* the following key terms:

(a) AIQ assigned GSS a first legal charge over its patents as a continuing security for any debts due under the Convertible Loan Agreement ("**Secured Patents**");[35]

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27 AEIC of 1st Pf at paras 12-17.

28 AEIC of 1st Pf at paras 18-19.

29 AEIC of 1st Pf at p 183.

30 AEIC of 1st Pf at para 21.

31 AEIC of 1st Pf at para 22.

32 AEIC of 1st Pf at para 23 and p 192-197.

33 AEIC of 1st Pf at para 25 and p 200-203.

34 AEIC of 1st Pf at para 25 and p 206-219; 11ABOD at p 700-715.

35 11ABOD at p 702.

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(b) This was to be a continuing security until the Convertible Loan Agreement was repaid in full or until GSS discharged the Deed of Patent Charge in writing;[36]

(c) The various specified events of default included *inter alia* the failure of AIQ to pay any principal, interest or other sum payable under the Convertible Loan Agreement on the day on which such payment was due and payable;[37]

(d) Upon the occurrence of an event of default, GSS or his nominees would have (as they saw fit in their absolute discretion) the authority to sell, dispose of or realise all or any parts of the Secured Patents towards the discharge of the costs thereby incurred and the debts owed.[38]

15 TCP was incorporated in Singapore on 12 May 2017.[39]

16 On 2 October 2017, Joe and GSS executed a document known as the **Share Transfer Deed**.[40] The Share Transfer Deed contained *inter alia* the following key terms:

(a) Joe was to transfer to GSS 235,000 AIQ shares for consideration of the sum of $1;[41]

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36 11ABOD at p 703.

37 11ABOD at p 705.

38 11ABOD at p 707.

39 AEIC of 1st Pf at para 6.

40 11ABOD at p 633; AEIC of 1st Pf at para 62.

41 11ABOD at p 636.

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(b) GSS and AIQ agreed that the sum of $3,979,694.19 previously advanced by Joe to AIQ (the "**JMM Loan**") was to be accepted and reflected in AIQ's books and records as a "loan payable to [Joe] absolutely and without any deduction or set-off whatsoever". AIQ's board confirmed that it had, "together with the CFO of [AIQ]", verified "that the JMM Loan [was] fully payable without any deduction to [Joe]";[42]

(c) AIQ's board "confirms" that there would be no deduction of the JMM Loan on account of any acts or omissions, whether negligent or otherwise, for the acts of Carl Freer and Carl Johan;[43] and

(d) The board "agree to accept" a pre-determined treatment for past transactions by AIQ which had been flagged by the company's auditors as being problematic; namely, the "Medical Application Purchase" and the "FilmFunds Transaction".[44]

17 On 3 October 2017, Joe transferred 235,000 AIQ shares to GSS for the consideration of $1, pursuant to the terms of the Share Transfer Deed.[45] As part of the arrangements for the transfer of shares, Joe was also to transfer another 100,000 AIQ shares that he had been holding on trust for one MacFadden back to the latter.[46] Following the share transfers, Joe held 765,000 shares (44.75% shareholding) in AIQ while GSS had 315,908 shares (18.48% shareholding).[47]

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42 11ABOD at p 638.

43 11ABOD at p 638.

44 11ABOD at p 638-639.

45 5ABOD at p 44-46.

46 AEIC of 1st Pf at para 61; AEIC of 3rd Df at para 83.

47 AEIC of 3rd Df at para 83-84; AEIC of 1st Pf at p 348-349.

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18 Sometime on 25 January 2018, emails were sent to Joe and GSS by Kian Wai, asking both parties to provide bridging loans to AIQ and TCP. Both companies were then facing severe cash flow problems and were struggling to repay their debts.[48] Joe responded by offering to sell GSS his entire shareholding in AIQ and TCP for a total of US$3.8m – an offer which was rejected by GSS.[49] Further email correspondence discussing a potential buy out by GSS of Joe took place over the course of the following week, but no agreement was reached.[50]

19 On 30 January 2018, an invitation to subscribe in the share capital increase of AIQ was sent by AIQ to all its shareholders ("**Rights Issue**"). The subscription price of the Rights Issue was $0.28 per share.[51] Joe sent a letter to the directors via email on 31 January 2018 to express his concerns about the Rights Issue.[52] On 4 February 2018, Marcus responded via email to Joe's stated concerns.[53] In turn, Joe sent another email on 6 February 2018 responding to Marcus.[54]

20 AIQ proceeded with the Rights Issue. On 26 February 2018, AIQ informed its shareholders in a letter that a total of 1,080,000 shares had been taken up in the Rights Issue over two rounds of subscription.[55] These shares

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48 AEIC of 3rd Df at para 100 and p 526-529.

49 AEIC of 3rd Df at paras 101-102, p531-532.

50 AEIC of 3rd Df at para 103 and p 534-538.

51 AEIC of 1st Pf at para 117 and p 542-545; 6 ABOD at p 225-227; AEIC of 6th Df at p 347-361.

52 AEIC of 1st Pf at para 120 and p 547-552.

53 AEIC of 1st Pf at para 121 and p 555-559.

54 AEIC of 1st Pf at para 122 and p 561-568.

55 AEIC of 1st Pf at para 124, p 570-572.

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were allotted or issued on 16 March 2018.[56] Following the issuance of the shares, GSS became the majority shareholder of AIQ, with a shareholding of 1,395,908 shares (50.04% shareholding) in AIQ while Joe's shareholding remained at 765,000 shares (27.42% shareholding) in AIQ.[57]

21 On 10 May 2018, a notice was sent to all shareholders – including Joe – of an EGM to be held on 28 May 2018 ("**28 May 2018 EGM**").[58] The resolutions put up for the EGM included a resolution calling for a special audit by an independent third-party of AIQ's accounts and transactions for the financial years 2014 and 2015 ("**Special Audit**") and resolutions calling for the re-election of AIQ's board of directors (including Joe).[59] Joe wrote to the AIQ directors, through his lawyers, on 11 May 2018 and 22 May 2018, stating his objections to the 28 May 2018 EGM notice and the proposed resolutions.[60] The directors did not reply to his lawyers' letters.[61]

22 At the 28 May 2018 EGM, Joe was not re-elected as a director of AIQ. He was therefore removed from the AIQ board.[62] The Special Audit was approved as well at the 28 May 2018 EGM.[63]

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56 AEIC of 1st Pf at para 124 and p 570-572.

57 AEIC of 1st Pf at para 125.

58 AEIC of 1st Pf at para 142, p 599-600; 6ABOD at p 802-804.

59 AEIC of 1st Pf at para 142; AEIC of 3rd Df at para 106; 6ABOD at p 802-804.

60 AEIC of 1st Pf at para 143 and p 602-609.

61 AEIC of 1st Pf at para 145.

62 AEIC of 1st Pf at para 147 and p 637-642; AEIC of 3rd Df at paras 106-107.

63 AEIC of 3rd Df at para 107, p 548-550.

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23 The Special Audit was carried out by a company named TRS Forensics Pte Ltd ("**TRS Forensics**").[64] A report was produced at the end of the Special Audit ("**Special Audit Report**"), and a summary of the results was sent to all shareholders on 14 August 2018.[65] The findings reported in the Special Audit Report are dealt with below (at [444444]–[445445]).

24 On 29 March 2019, TCP held its first Annual General Meeting ("**29 March 2019 AGM**"). The resolutions put forward at this AGM included resolutions for the re-election of all directors, including Joe.[66] Joe – who did not attend the AGM – was not re-elected as a director. He was removed from the TCP board despite his protests.[67]

25 By this time, AIQ had run into significant financial difficulties due to the lack of funding from its shareholders.[68] On 19 June 2019, GSS informed AIQ that he was giving notice of his demand for repayment of the outstanding sum of US$1,124,864.00 under the Convertible Loan Agreement. This sum of US$1,124,864.00 comprised the principal amount of US$1m and the outstanding interest of US$124,864.00.[69] No payment being forthcoming from AIQ, GSS' lawyers served a statutory demand on the company on 16 December 2019, demanding payment of the sum of US$1,124,864.00. After AIQ failed to comply with the statutory demand, it was wound up on 5 June 2020. Joe did not

64 AEIC of 3rd Df at para 110.

65 AEIC of 1st Pf at para 149 and p 644-648.

66 1ABOD at p 602-604, 599-600.

67 AEIC of 1st Pf at paras 152-157 and p 695-699.

68 AEIC of 3rd Df at paras 117-118.

69 AEIC of 3rd Df at paras 121-122 and p 570.

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resist the winding-up application. The liquidator whom Joe nominated was appointed as AIQ's liquidator – instead of the liquidator nominated by GSS.[70]

26 Prior to the winding-up of AIQ, AIQ had on 23 October 2019 assigned its Secured Patents to GSS. Marcus signed the agreement to assign the Secured Patents ("**Assignment Agreement**") on behalf of AIQ.[71]

27 On 16 December 2019, TCP was similarly served by GSS' lawyers with a statutory demand for the repayment of loans amounting to $572,127.18. As TCP failed to comply with the statutory demand, it too was wound up on 5 June 2020. Again, Joe did not resist the winding-up application.[72] The liquidator whom Joe nominated was also appointed as TCP's liquidator.

The parties' pleaded cases

28 I next summarise the parties' pleaded cases.

Plaintiffs' pleaded case

29 In their Statement of Claim, the Plaintiffs pleaded two causes of action against the 3rd to 7th Defendants: first, a cause of action in minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("**Companies Act**"); and second, the common law tort of conspiracy with intent to injure and/or to cause loss to the Plaintiffs.

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70 AEIC of 3rd Df at paras 124-125 and p 572-573; AEIC of 1st Pf at para 162.

71 AEIC of 1st Pf at para 167 and p 762-769.

72 AEIC of 3rd Df at paras 126-127, p 576-577.

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Key allegations of the Plaintiffs' pleaded case

30 Much of the Plaintiffs' case rested on two central propositions. The first was that a mutual understanding and agreement existed between Joe and GSS ("**Understanding and Agreement**"), which – according to the Plaintiffs – was entered into sometime in early 2017.[73] According to the Plaintiffs, this Understanding and Agreement was intended by Joe and GSS to govern the future conduct and management of AIQ and TCP, and formed the basis on which Joe and GSS were to continue funding AIQ. The terms of the Understanding and Agreement were said to include the following:[74]

(a) From January 2017 until the point in time when AIQ became financially independent, Joe and GSS would bear AIQ's costs and expenses, with GSS bearing two-thirds of these costs and expenses and Joe bearing one-third ("**2:1 Funding Agreement**");

(b) Joe would receive full financial information about AIQ's business and its progress;

(c) Joe would remain a director and the Chairman of AIQ for which he would continue to receive his agreed remuneration;

(d) Joe and GSS' nominees would be directors of AIQ and would participate in the conduct of AIQ's business;

(e) GSS' nominee-directors would utilise the funding provided to advance the development and sale of artificial intelligence and the offering of offline-online-offline integrated solutions ("**Principal**

73 SOC (Amendment No.3) at para 19.

74 SOC (Amendment No.3) at para 19; AEIC of 1st Pf at para 40.

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Object"), particularly the development and commercialisation of AIQ's VRT;[75]

(f) TCP was to be incorporated so that it would become an additional source of revenue for AIQ, and also so that it would provide AIQ with a talent pool to recruit from and to look to for the generation of business ideas;

(g) Joe would receive full financial information about TCP's business and its progress; and

(h) Joe and GSS' nominees would be directors of TCP and would participate in the conduct of the business of TCP.

31 The Plaintiffs also pleaded that "(b)y reason of the Understanding and Agreement and close business relationship", Joe (through Thames) and GSS were "in a quasi-partnership as the largest shareholders of [AIQ] and the only parties continuing to fund [AIQ]" as at 2017.[76]

32 The second proposition underlying the Plaintiff's case concerned GSS' role in AIQ and TCP: the Plaintiffs claimed that GSS played a far bigger role than that of a shareholder in AIQ. According to the Plaintiffs, GSS was a shadow director of AIQ and TCP who exercised control over the two companies through the directors, *ie*, the 4th to 7th Defendants.[77]

33 In gist, the Plaintiffs claimed that the 3rd to 7th Defendants had teamed up to drive Joe out of AIQ and to obtain the Secured Patents for themselves. *Per*

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75 SOC (Amendment No.3) at para 4.

76 SOC (Amendment No.3) at para 23.

77 SOC (Amendment No.3) at para 20B.

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the Plaintiffs' pleaded case, this campaign against Joe started with GSS covertly usurping control of the AIQ board by getting the 4th to 7th Defendants appointed as directors[78]. Having been so appointed, the 4th to 7th Defendants then acted in accordance with GSS' instructions and directions. Their actions allegedly included the following: excluding Joe from the day-to-day management of AIQ and TCP;[79] spending funds meant for AIQ on TCP expenses instead;[80] pressuring Joe to transfer some of his AIQ shares to GSS for nominal consideration;[81] denying Joe's right to inspect the books and records of AIQ and TCP;[82] refusing to pay Joe his outstanding salary; and refusing repayment of the loans made by Joe to AIQ.[83]

34 While the 4th to 7th Defendants were carrying out these alleged acts against Joe, GSS himself was alleged to have breached the Understanding and Agreement with Joe by reneging on the 2:1 Funding Agreement.[84] Without funding, AIQ floundered. Sometime in late January to early February 2018, the Rights Issue was carried out for the stated purpose of raising funds for AIQ's financial needs – despite Joe having pointed out various concerns. It was this Rights Issue which caused substantial wrongful dilution to Joe's AIQ shareholding.[85]

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78 SOC (Amendment No.3) at para 20.

79 SOC (Amendment No.3) at para 25.

80 SOC (Amendment No.3) at paras 31-39.

81 SOC (Amendment No.3) at paras 40-41A.

82 SOC (Amendment No.3) at paras 48-51A and 59A.

83 SOC (Amendment No.3) at paras 60-81B.

84 SOC (Amendment No.3) at para 38.

85 SOC (Amendment No.3) at paras 42-45.

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35 Subsequent to the Rights Issue, Joe was removed as a director of AIQ at AIQ's EGM on 28 May 2018 – despite the presence of procedural irregularities.[86] The same EGM also approved the resolution calling for a Special Audit. According to the Plaintiffs, the 3rd to 7th Defendants procured the Special Audit Report for the purpose of using it to level accusations against Joe, thereby compelling him to leave AIQ and Singapore altogether.[87] At TCP's EGM on 29 March 2019, Joe was also removed as a director of TCP – despite the meeting being inquorate.[88]

36 In a final blow to the Plaintiffs, GSS applied to wind up AIQ and TCP on 5 June 2020. *Per* the Plaintiffs' case, this was done for the purpose of causing further prejudice to the Plaintiffs. The Plaintiffs charged that it was the 3rd to 7th Defendants who had actually caused AIQ to cease commercial efforts and thus to fail. As part of AIQ's winding-up, the 3rd to 7th Defendants also caused AIQ to dispose of the Secured Patents to GSS, so that he could continue to commercialise the VRT without Joe being involved.[89]

37 *Per* the Plaintiffs' pleaded case, this series of acts – and each individual act – was oppressive vis-à-vis the Plaintiffs within the meaning of s 216 of the Companies Act. Further, these acts constituted a breach by GSS of the Understanding and Agreement and also constituted a conspiracy by the 3rd to 7th Defendants to breach the Understanding and Agreement.[90] In gist, the Plaintiffs alleged that GSS had conspired and combined with the 4th to 7th

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86 SOC (Amendment No.3) at paras 54B-54G.

87 SOC (Amendment No.3) at paras 82-84.

88 SOC (Amendment No.3) at paras 59B-59F.

89 SOC (Amendment No.3) at paras 85C-86.

90 SOC (Amendment No.3) at paras 39, 45A, 54G, 59G, 68A, 71A, 81B, 85B and 86.

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Directors wrongfully and with intent to injure the Plaintiffs, and/or that they had conspired and combined together with the sole or predominant intention of injuring the Plaintiffs.[91]

38 The Plaintiffs claimed that they had suffered the following losses as a result of the above actions by the 3rd to 7th Defendants:[92]

(a) Loss of investment capital in the form of equity capital paid by Joe as his initial investment in AIQ, due to AIQ's liquidation;

(b) Impairment of Joe's ability to recover from AIQ outstanding loan amounts, due to AIQ's liquidation;

(c) Impairment of Joe's ability to recover outstanding salary owed to him by AIQ, due to AIQ's liquidation;

(d) Damage done to Joe in the form of dilution of his AIQ shareholding and substantial loss in the value of his shares;

(e) Costs and expenses incurred by the Plaintiffs in pursuing their claims for the repayment of outstanding loans and the payment of Joe's outstanding salary;

(f) Costs and expenses incurred by Joe and business or investment opportunities lost by him in having to leave Singapore to avoid the embarrassment and reputational damage caused by the publication of the Special Audit Report.

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91 SOC (Amendment No.3) at paras 86A, 86B.

92 SOC (Amendment No.3) at para 86C.

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39 I have set out at [30]–[36] the two key themes in the Plaintiffs' pleaded narrative because I found it useful to bear these in mind when considering the Plaintiffs' case at the end of the trial. The Plaintiffs put forward multiple allegations against the 3rd to the 7th Defendants in their pleadings as well as in their closing submissions; and the ostensible complexity created by the multitude of allegations was not helped by the Plaintiffs apparently deciding to change their position on crucial parts of their case only in closing submissions (see *eg* [215]–[217], [283]–[284] below). What did not change in closing submissions, however, was the Plaintiffs' insistence on an overarching narrative which posited an Understanding and Agreement between Joe and GSS, and depicted the latter as a shadow director who controlled the actions of AIQ's and TCP's Directors.

40 I should add that this overarching narrative also applied to the Plaintiffs' case in unlawful means and lawful means conspiracy.

3rd Defendant's (GSS') pleaded case

41 GSS denied the two central propositions underlying the Plaintiffs' case in minority oppression. First, GSS denied the existence of an "Understanding and Agreement" between him and Joe as pleaded by the Plaintiffs (at [30] above).[93] GSS also asserted that although he and Joe were the largest shareholders of AIQ as at 2017 and although they were the only two shareholders providing funding to AIQ at that time, there was no "close" business relationship between them; much less a "quasi-partnership".[94]

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93 3rd Df Defence (Amendment No.2) at para 23.

94 3rd Df Defence (Amendment No.2) at para 29.

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42 Second, GSS asserted that he had never been a "shadow director" of AIQ and TCP – nor had he acted together with the 4th to 7th Defendants to injure the Plaintiffs' interests in the two companies.[95] At all material times, he was simply an investor and shareholder in AIQ and the 4th to 7th Defendants were not accustomed to act in accordance with his directions or instructions.[96] While he had nominated Leslie to AIQ's board of directors, Joe remained the Executive Chairman of AIQ between July 2014 and 28 May 2018. It was Joe, therefore, who was in charge of AIQ during that period of time.[97] As for TCP's board of directors, GSS played no part in nominating the 4th to 7th Defendants to the TCP board, nor did he have any knowledge of the matters relating to TCP's shareholding.[98]

43 In fact, according to GSS, as he was not involved in the management of AIQ and TCP, he had no knowledge of most of the matters alleged by the Plaintiffs. These included the following allegations:

(a) That there was deliberate exclusion of Joe from the management and commercial direction of AIQ and TCP;[99]

(b) That funds meant for AIQ had been diverted to TCP instead;[100]

(c) That Joe was denied access to TCP's financial information;[101]

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95 3rd Df Defence (Amendment No.2) at para 9.

96 3rd Df Defence (Amendment No.2) at para 10; AEIC of 3rd Df at paras 24-34.

97 3rd Df Defence (Amendment No.2) at para 24.

98 3rd Df Defence (Amendment No.2) at para 25-26.

99 3rd Df Defence (Amendment No.2) at para 31.

100 3rd Df Defence (Amendment No.2) at para 32.

101 3rd Df Defence (Amendment No.2) at para 35.

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(d) That Joe had to file an application in HC/OS 624/2018 under ss 199(3) and 199(5) of the Companies Act to inspect and take copies of AIQ's and TCP's accounting and other records ("**Inspection Application**"), which was resisted by the 4th to 7th Defendants;[102]

(e) That the 4th to 7th Defendants denied Joe payment of his outstanding salary;[103] and

(f) That the 4th to 7th Defendants also denied Joe the repayment of outstanding loans owed by AIQ to him.[104]

44 In respect of the remaining allegations, GSS contended that the acts complained of by the Plaintiffs – such as the EGM which led to Joe's removal from the AIQ board – were all above-board and that there was no ulterior motive behind these acts. There was thus no basis for the Plaintiffs to claim that they were victims of minority oppression, let alone a conspiracy to injure them.[105]

4th-7th Defendants' pleaded cases

45 As for the 4th to 7th Defendants, they did not plead to the Understanding and Agreement.[106] They also denied that GSS was a shadow director of AIQ and TCP and/or that they had been accustomed to acting in accordance with his instructions. At all material times from the date of their respective appointments as AIQ directors, they had acted independently, and in the best interest of AIQ,

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102 3rd Df Defence (Amendment no.2) at para 54.

103 3rd Df Defence (Amendment No.2) at para 56.

104 3rd Df Defence (Amendment No.2) at para 60.

105 3rd Df Defence (Amendment No.2) at paras 41, 46-49 and 67.

106 4th-7th Df Defence (Amendment No.1) at para 24.

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in the discharge of their duties and responsibilities.[107] Further, the 4th to 7th Defendants denied that they had combined or agreed (whether with each other or with any other Defendant) to cause loss to the Plaintiffs pursuant to a conspiracy or at all.[108]

46 In respect of the individual acts of oppression alleged by the Plaintiffs, the 4th to 7th Defendants contended that many of these alleged acts had in fact been carried out in the best interests of AIQ (*eg* the Rights Issue was carried out to raise much needed fresh capital for AIQ's operational expenses)[109], and/or that the alleged acts had not in fact occurred (*eg* the 4th to 7th Defendants had already met Joe's request for information relating to AIQ and TCP).[110] In any case, according to the 4th to 7th Defendants, the Plaintiffs were unable to demonstrate that they had suffered any loss or damage.[111]

Issues to be determined

47 The following issues arose for my determination:

(a) Whether the Plaintiffs had the *locus standi* to bring the present action for minority oppression under s 216 of the Companies Act;

(b) Whether Joe's actions were relevant to the court's assessment of whether there was "commercial unfairness" for the purposes of the claim for minority oppression;

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107 4th-7th Df Defence (Amendment No.1) at para 4, 25.

108 4th-7th Df Defence (Amendment No.1) at para 5.

109 4th-7th Df Defence (Amendment No.1) at para 36.

110 4th-7th Df Defence (Amendment No.1) at paras 38-39.

111 4th-7th Df Defence (Amendment No.1) at para 47.

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(c) If the Plaintiffs had requisite *locus standi* to bring the action under s 216 of the Companies Act, whether their claim of minority oppression was made out;

(d) Whether there was a conspiracy between the 3rd to 7th Defendants to injure and/or cause loss to the Plaintiffs by unlawful means;

(e) Whether there was a conspiracy between the 3rd to 7th Defendants with the sole or predominant intention to injure the Plaintiffs and/or cause loss to the Plaintiffs by lawful means.

48 I consider these issues in *seriatim*.

Pleadings: General principles

49 At the outset, the 3rd to 7th Defendants' contention that the Plaintiffs' closing submissions departed from their pleaded case in a number of significant ways.[112] In these written grounds, I will explain my findings in respect of the Plaintiffs' alleged attempts to deviate from their pleaded case. For ease of reference, I first summarise below the principles which I bore in mind in considering the Defendants' objections.

50 As a general rule, a "court may not make a finding or give a decision based on facts not pleaded and a finding or decision so made will be set aside" (*Wei Ho-Hung v Lyu Jun [2022] 2 SLR 1066* at [62]–[63]; *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] 2 SLR(R) 479 ("*China Construction*") at [26]; *Lu Bang Song v Teambuild Construction Pte*

[112] 3rd Df Reply Submissions at paras 18, 23, 27, 36-37 and 42; 4-7th Df Reply Submissions at paras 2-60.

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Ltd and another and another appeal [2009] SGHC 49 ("*Lu Bang Song*") at [16]). Facts that are material to a party's claim or a party's defence must be pleaded (*Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 ("*Multi-Pak*") at [22]–[23]). The definition of "material" in this context has been explained by the High Court in *UJT v UTR and another matter* [2018] 4 SLR 931 ("*UJT v UJR*") (at [48]):

> "Material" means necessary for the purpose of formulating a complete cause of action, and if any one material statement is omitted, the statement of claim is bad: *Bruce v Odhams Press Ltd* [1936] 1 KB 697 at 712 per Scott LJ, approved by the Singapore High Court in *Multi-Pak Singapore Pte Ltd v Intraco Ltd* [1992] 2 SLR(R) 382 at [29]. And even if the facts are not material to the cause of action, they may be facts in issue at the trial, and they would therefore be material facts that must be pleaded to avoid surprise at trial: see *Millington v Loring* (1881) 6 QBD 190 at 195 per Lord Selborne LC.

51 The above principle is also encapsulated in O 18 r 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which states:

> **Facts, not evidence, to be pleaded** (O.18, r.7)
>
> 7.—(1) Subject to this Rule and Rules 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

52 The rationale behind this principle is to prevent surprises from arising at trial by defining the issues in dispute between the parties (*Lu Bang Song* at [17]; *UJT v UJR* at [48]) and also to provide the opposing party with adequate opportunity to prepare and present his own case, by informing the opposing party in advance of the case to be met (*China Construction* at [26]; *Multi-Pak* at [22]–[23]).

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53 Departure from this general principle is normally permitted only in limited circumstances. Although a court retains the discretion to allow an unpleaded point to be raised, this is done chiefly when no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court to withhold its permissions (*Malayan Banking Bhd v ASL Shipyard Pte Ltd and others* [2019] SGHC 61 ("*Malayan Banking*"),at [42]–[43]).

Whether the Plaintiffs had *locus standi* to bring proceedings under s 216 of the Companies Act in respect of the alleged oppression of their rights as members of the 1st Defendant (AIQ)

54 I first address the preliminary issue of *locus standi*. This arose in respect of the allegations of oppression of the Plaintiffs' rights as *members of AIQ*.

55 The Plaintiffs' *locus standi* to bring the AIQ-related claims of oppression was put in issue by the 3rd to 7th Defendants in their closing submissions. They contended that Joe lacked the *locus standi* to bring the AIQ-related claims because Joe ceased to be a member of AIQ after transferring his shares to Thames on 14 December 2017. As at the date when the present suit was filed on 25 September 2018, therefore, Joe had no standing to pursue the oppression claim under s 216 of the Companies Act insofar as it related to AIQ.[113]

56 As for Thames, the Defendants contended that it too had no *locus standi* to bring the AIQ-related claims of oppression, despite being a registered member of AIQ as of 25 September 2018.[114] This, according to the Defendants, was because the AIQ-related allegations of oppression concerned acts which

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113 3rd Defendant Closing Subs at paras 13-20.

114 3rd Defendant Closing Subs at para 19; 4th to 7th Defendants' Closing Subs at para 12.

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were said to have been commercially unfair to Joe. These allegations had nothing to do with Thames; and Thames could not claim that it had been oppressed. In particular, Thames could not claim to have been oppressed by breaches of the purported Understanding and Agreement when – on the Plaintiffs' own case – Thames was not a party to the agreement.[115]

57 Initially, the Plaintiffs attempted to ward off the Defendants' challenge to their *locus standi* by arguing that the point had never been pleaded in their respective defences and should therefore not be raised in closing submissions.[116] I rejected this objection. An examination of the parties' pleadings showed that the Plaintiffs had pleaded at para 10 of their Statement of Claim that they were seeking relief under s 216 of the Companies Act "in their respective capacities as beneficial shareholder and registered shareholder of the [AIQ], and [Joe] in his capacity as the beneficial and registered shareholder of [TCP]". In response, GSS and the 4th to 7th Defendants had in their respective Defences pleaded a denial of this particular paragraph of the Statement of Claim.[117] GSS had further pleaded that "[i]n particular, [GSS] denies that the Plaintiffs are entitled to seek relief under section 216 of the Companies Act".[118]

58 In any event, given that *locus standi* was a threshold issue, I was disinclined to dismiss the point solely on the technical basis that it had not (according to the Plaintiffs) been expressly pleaded by the Defendants. It was incumbent on the Plaintiffs to address fully the issue of *locus standi*, and even

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115 3rd Defendant Closing Subs at para 19; 4th to 7th Defendant Closing Subs at paras 11-12.

116 Plaintiff's Reply to Closing Subs at para 4.

117 3rd Df Defence (Amendment No.2) at para 19; 4th-7th Df Defence (Amendment No.1) at para 18.

118 3rd Df Defence (Amendment No.2) at para 19.

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more fundamentally, to ensure that they had the requisite standing to bring the present action in respect of AIQ.

59 As the issue of the Plaintiffs' *locus standi* was not fully addressed in the closing submissions, I directed parties to file further submissions on this issue (amongst others).[119] I summarise below the parties' further submissions on the *locus standi* issue before explaining my decision.

Chronology of the Plaintiffs' shareholding changes in AIQ

60 By way of background, I reproduce substantially below a table provided by the Plaintiffs which shows the timeline of the oppressive acts alleged against the 3rd to 7th Defendants, as well as the status of the Plaintiffs' shareholding at the relevant times.[120]

Date	Oppressive Act	Status of the Plaintiffs' AIQ shareholding
February / March 2017	Understanding and Agreement entered into with GSS	Partly Joe, partly *via* Biotech 1 Limited (a company which Joe had 50% shareholding in at the material time)
10 October 2017	Breach of the 2:1 Funding Agreement	Joe

119 Minutes of 21 February 2023 hearing at p 1-3.

120 Pf Further Submissions at para 4.

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16 May 2017 to 9 November 2017	Wrongful diversion of funds and resources from AIQ to TCP Unauthorised loans from AIQ to TCP in breach of section 163 of the Companies Act	Joe
14 November 2017	Wrongful denial of Joe's requests to inspect, have access to information of AIQ and TCP (1st request)	Joe
15 January 2018 to 10 May 2018	Wrongful denial of Joe's requests to inspect, have access to information of AIQ and TCP (2nd to 4th requests)	Thames
27 January 2018	Wrongfully procuring AIQ to deny liability for outstanding salary and loans owed by AIQ to Joe	Thames
30 January 2018	Wrongful dilution of Joe's / Thames' shareholding through the 2018 Rights Issue	Thames
28 May 2018	Wrongful removal of Joe as director of AIQ	Thames
9 April 2018 to 14 August 2018	Procuring the issuance of the Special Audit Report	Thames

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29 March 2019	Wrongful removal of Joe as a director of TCP	Thames
23 October 2019	The Assignment Agreement	Thames
15 January 2020 to 5 June 2020	Wrongfully engineering the winding up of AIQ and TCP	Thames

Joe's standing to bring the oppression claim

Parties' positions

61 I address first the issue of Joe's *locus standi* to bring suit in respect of the AIQ-related allegations of oppression. All parties were agreed that as a starting point, a claimant wishing to bring a minority oppression suit under s 216 Companies Act must be a registered member of the company: non-registered beneficial shareholders do not have standing to bring a suit under s 216.[121]

62 All parties were also agreed that there were two exceptions to this general rule. Firstly, s 216(7) Companies Act provides that s 216 applies to a person who is not a member of the company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company. Parties were agreed that s 216(7) had no application in the present case.

63 Secondly, there is case law which establishes that a defendant to a minority oppression suit brought by a non-member may be estopped from

[121] Pf Further Submissions at para 6; 3rd Df Further Submissions at para 5; 4th-7th Df Further Submissions at paras 3-5.

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relying on the claimant's lack of *locus standi* if the defendant is guilty of unconscionable or inequitable conduct (*Kitnasamy s/o Marudapan v Nagatheran s/o Manogar* [2000] 1 SLR(R) 542 ("*Kitnasamy*") at [26]–[27]; and *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd* [1996] 1 MLJ 113 ("*Owen Sim*") at 135).[122] In the present case, the bone of contention between the Plaintiffs and the 3rd to 7th Defendants centred on whether such an estoppel arose in Joe's favour.

64 The Plaintiffs argued that such an estoppel did arise in their favour in the present case. This, according to the Plaintiffs, was based on the 3rd to 7th Defendants' conduct in having continued to treat Joe as the shareholder of AIQ despite their being aware that he had transferred his shares to Thames.[123] For example, they had continued to approach Joe directly when seeking to raise funds for AIQ. In the circumstances, it would have been apparent to the 3rd to 7th Defendants that Joe's participation in the affairs of AIQ remained unaffected by the transfer of his shareholding to Thames; and this extended to the Understanding and Agreement. According to the Plaintiffs, therefore, the 3rd to 7th Defendants had effectively represented that they would continue to treat Joe and Thames as "one and the same". This meant that they were now estopped from asserting that Joe and Thames should be treated separately for the purpose of assessing their interest and *locus standi*.[124]

65 The 3rd to 7th Defendants argued, on the other hand, that the estoppel exception did not apply in this case. In *Kitnasamy* and *Owen Sim,* the claimants were not registered members of the companies in question *because of the*

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122 Pf Further Submissions at para 7; 3rd Df Further Submissions at para 10; 4th-7th Df Further Submissions at para 16.

123 Pf Further Submissions at para 26.

124 Pf Further Submissions at para 27.

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actions and omissions of the respondents. It was this specific factor that caused the respondents to be estopped from challenging the appellants' *locus standi*. Indeed, the court in each of these two cases concluded that it would be unjust and inequitable to allow the respondents to do so. In contrast, in the present case, Joe had transferred his AIQ shares to Thames and ceased to be a member of AIQ *of his own volition*; the 3rd to 7th Defendants were not involved in Joe's decision nor in the transfer of the shares in any way.[125] Having transferred his shares to Thames of his own accord, there was no basis for Joe to complain of inequitable conduct *on the part of the 3rd to 7th Defendants*. As the court in *Lim Seng Wah and another v Han Meng Siew and others* [2016] SGHC 177 ("*Lim Seng Wah*") (at [13]) pointed out, "where a registered shareholder has freely disposed of his shares … he will no longer have *locus standi* once he has ceased to be registered as a member".[126]

My Decision

66 Having considered parties' submissions, I concluded that Joe had no *locus standi* to bring minority oppression proceedings against the 3rd to 7th Defendants insofar as the allegations of oppression related to his rights as a shareholder of AIQ. My reasons were as follows.

67 As all parties have acknowledged in their submissions, for the purposes of minority oppression proceedings under s 216 of the Companies Act, only a party who is a registered member of the company as at the time of commencing the proceedings has *locus standi* to seek relief under s 216 of the Companies Act. Sections 216(1) and (7) of the Companies Act make provision as to who may apply for relief under s 216; namely, any member of the company or any

125 4th-7th Df Further Submissions at paras 16.

126 3rd Df Further Submissions at paras 10-13; 4th-7th Df Further Submissions at para 17.

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person who is not a member but to whom shares in the company have been transmitted by operation of law:

> **Personal remedies in cases of oppression or injustice**
>
> 216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part 9, the Minister, may apply to the Court for an order under this section on the ground —
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).
>
> …
>
> (7) This section applies to a person who is not a member of a company but to whom shares in the company have been transmitted by operation of law as it applies to members of a company; and references to a member or members are to be construed accordingly.

68 The term "member" is defined in s 19(6) of the Companies Act:

> **Members of company**
>
> (6) The subscribers to the constitution are deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members —
>
> (a) in the case of a public company, in the register of members kept by the public company under section 190; or
>
> (b) in the case of a private company, in the electronic register of members kept by the Registrar under section 196A.

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> (6A) Apart from the subscribers mentioned in subsection (6), every other person who agrees to become a member of a company and whose name is entered —
>
> (a) in the case of a public company, in the register of members kept by the public company under section 190; or
>
> (b) in the case of a private company, in the electronic register of members kept by the Registrar under section 196A,
>
> is a member of the company.
>
> (7) Upon the application of a company and payment of the prescribed fee, the Registrar shall issue to the company a certificate of confirmation of incorporation.

69 Read together, the above provisions make it clear that *locus standi* to bring a claim in oppression depends on the would-be claimant being a registered member of the company. This condition applies even if the would-be claimant is the beneficial owner of shares held by registered shareholders of the company (*Tan Chin Hoon and others v Tan Choo Suan and others* [2010] SGHC 340 ("*Tan Chin Hoon*") at [54]). This is because trusts (whether express, implied or constructive) are not recognised under the Companies Act by virtue of s 195(4), which states that:

> **Limitation of liability of trustee, etc., registered as holder of shares**
>
> …
>
> (4) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered in a register or be receivable by the Registrar and no liabilities shall be affected by anything done in pursuance to subsection (1), (2) or (3) or pursuant to the law of any other place which corresponds to this section and the company concerned shall not be affected by notice of any trust by anything so done.

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70 Joe was not a registered member of AIQ at the point the present suit was commenced.[127] Joe would need, therefore, to show that he fell within one of the recognised exceptions to the statutory requirement of registered membership. As all parties were agreed that the exception in s 216(7) did not apply to Joe, I do not address s 216(7) in these written grounds. Instead, Joe argued that the 3rd to 7th Defendants were estopped from denying his *locus standi* to pursue the AIQ-related oppression claim, *per* the exception allowed by the courts in *Kitnasamy* and *Owen Sim*.

71 In *Owen Sim*, the first respondent was a private company. The appellant was a registered shareholder of the company who held 1,500 shares. The company wrote to the appellant alleging that he owed it a sum of RM111,734.60. Although the appellant denied owing this sum, the company took action against him by passing a board resolution to sell his shares in satisfaction of the alleged debt. The proceeds from the sale of the shares proved insufficient to satisfy the alleged debt, and the company continued to press the appellant to pay the balance. The appellant brought a minority oppression action under s 181 of the Companies Act 1965. At first instance, the company's application to strike out the petition was allowed by the trial judge, who cited as one of his reasons the appellant's lack of standing to bring the action.

72 On appeal, the Malaysian Federal Court disagreed with the trial judge's reasoning. The court accepted, as a starting point, the general rule that a petitioner bringing an action under s 181 had to be able to "demonstrate that his name appeared on the company's register of members at the date of presentation of the petition". If this could not be done, then the petitioner had no standing. However, the Federal Court stressed that this was merely a general – and not a

127 Pf Further Submissions at para 4.

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universal – rule; and that there were cases where it would be unjust to apply the general rule. The Court gave the following example:

> Take, for instance, the case of a person who has agreed to become a member, but whose name has been omitted from the register of members. If it transpires that prior to the dispute leading to the presentation of the petition, a company or its board had always treated the complainant as a member, it would not be open to them to assert that the petitioner lacked locus standi. Examples may be multiplied without any principle emerging from them. Take the facts of this very case. Here, we have a fact pattern where the appellant`s membership of the company had been terminated in circumstances which are being challenged by him on substantial grounds. The substantial ground he complains of is the deprivation of his membership in the company. He says that the circumstances attending this deprivation of membership falls within the framework of s181(1)(a) and (b). It is the company, acting through its board, that had deprived the appellant of the status of a member. Can the company be now heard to say that the appellant is no longer a member and is therefore disentitled from moving the court under s 181 of the Act and from questioning that very deprivation in proceedings brought under the section? **We think not. For it does not lie in the mouth of the alleged wrongdoers to say that the appellant has no ground to stand on after having cut the very ground from under his feet.**
>
> [emphasis added in bold]

73 On the above basis, the Federal Court took the view that the doctrine of estoppel could be applied to "prevent or preclude a litigant from raising the provisions of a statute in answer to a claim made against him in circumstances where it would be unjust or inequitable to permit him so to do". As the Court put it, "a respondent who is guilty of unconscionable or inequitable conduct [would] not be permitted to raise or rely upon the requirement of membership in order to defeat a petitioner`s standing as this would amount to his using statute as an engine of fraud". The company, having deprived the appellant of his membership, was estopped from asserting that he lacked the requisite standing to bring a claim for minority oppression.

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74 In *Kitnasamy*, the appellant and the first respondent ("Nagan") shared a decade-long friendship. The second respondent ("Siva") was Nagan's uncle. The appellant had experience in track-laying works from his job as a piling and civil engineering contractor. Nagan had approached the appellant and informed him that there was a project for track-laying works for the new North-East MRT line. A joint venture ("TUS") consisting of Tekken Corporation ("Tekken"), Union Construction Co Ltd and Singapore Piling and Civil Engineering Pte Ltd was seeking to secure the project. The appellant, Nagan and Siva agreed that they would be equal partners if they were successful in obtaining a subcontract from TUS in relation to the project, and that the appellant would be made a director and shareholder in the company to be used as the vehicle for carrying out the project. However, Siva failed to transfer the shares to the appellant. A search that was subsequently done at the Registry of Companies ("RCS") showed the appellant to be registered as a director, but not a shareholder, of the company. When the appellant queried the company's auditor, he was told that the RCS would update the records after the annual returns were filed, and that 33,333 shares had been issued and registered in his name.

75 Sometime after the company secured the project, the appellant received a notice calling for an extraordinary general meeting for the purpose of removing him as a director. He applied to court for an interlocutory injunction to restrain the respondents from proceeding, arguing *inter alia* that their conduct was oppressive. The case went on appeal after the first-instance judge refused to grant the interlocutory injunction. One issue which arose on appeal was whether the appellant had *locus standi* to sue under s 216. The Court of Appeal ("CA") acknowledged (at [25]) that under s 216, only a member or a holder of a debenture of a company was entitled to seek relief, and that a registered shareholder was a member. It was essential for this purpose that a shareholder's name be on the register. That being said, while the RCS search did not show

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that the appellant was a registered shareholder of the company, this was not conclusive. The CA pointed out that the appellant had been informed that he *was* a registered shareholder and that the RCS records would be updated after the annual returns were filed. Referencing *Owen Sim*, the CA noted (at [26]) that the Federal Court had held in that case that "under certain circumstances, it would be possible for a person whose name was not on the register of members to petition under s 181 of the Companies Act 1965 (the Malaysian equivalent of our s 216)". Noting that this exception operated on the basis that the respondents would be estopped from raising an objection to the petitioner's *locus standi*, the CA held (at [27]) that the respondents in *Kitnasamy* were estopped from asserting that the appellant was not a member. The CA pointed out that the appellant had agreed to become a shareholder of the company and had rendered invaluable services to it: it was entirely the default of those responsible for the administration of the company (including the respondents) that the appellant's name had not been entered in the register of the company. The appellant's belief that he was a member was reinforced not only by what the company's auditor told him, but also by the fact that he had been sent the notice of the EGM and a proxy form – *ie*, documents which were only despatched to members.

76 From the above, it may be seen that the facts of the present case were clearly distinguishable from the facts of *Kitnasamy* and *Owen Sim*. Unlike the respondents in *Kitnasamy* and *Owen Sim* whose inequitable conduct was found to have resulted in the appellants not being registered members, the 3rd to 7th Defendants in this case had no part to play in Joe ceasing to be a registered member of AIQ.

77 More fundamentally, the judgments in *Kitnasamy* and *Owen Sim* made it clear that they were allowing only a narrow exception to the statutory requirement that a claimant in a minority oppression suit must be a registered

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member: in order for a non-member to assert successfully that the defendant was estopped from denying his standing to bring the suit, there must be shown an element of unconscionability in the defendant's conduct, and this unconscionable conduct had to relate to the circumstances in which the claimant's name was omitted from the register of members. In both *Kitnasamy* and *Owen Sim*, the respondents' conduct had led to the appellants/ claimants not being registered members of the company; and without being registered members, the appellants had no standing to pursue their claims of oppression against the respondents. This meant that in substance, the respondents' wrongful actions against the appellants not only led to wrongdoing against the appellants, but also caused the latter to lack the standing to pursue their claims in respect of such wrongdoing. In such a scenario, the respondents would clearly be using the Companies Act as an "engine of fraud" if they were to invoke the appellants' lack of *locus standi* (*Owen Sim* at 135). It was in these circumstances that an element of unconscionability was found to arise in both *Kitnasamy* and *Owen Sim:* in each case, the respondents' wrongful actions against the appellant constituted *the reason* for the latter's lack of standing under the Companies Act, and it was therefore inequitable for the respondents to rely on the requirements of the statute in denying the appellants' lack of standing.

78 In the present case, the Plaintiffs contended that the 3rd to 7th Defendants had treated Joe "as if" he was the registered shareholder of AIQ, and that Joe himself had acted on the basis that he – "being one and the same as Thames"[128] – would for all intents and purposes continue to be the registered shareholder. In these circumstances, the Plaintiffs argued, it would be unconscionable of the 3rd to 7th Defendants to object at this juncture to Joe's standing to sue under s 216 of the Companies Act.

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128 Pf Reply Submissions at para 11.

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79 In my view, the present case simply did not fit within the narrow confines of the estoppel exception allowed in *Kitnasamy* and *Owen Sim*. To reiterate, the present case was one where Joe had *voluntarily transferred* his AIQ shareholding to Thames: Joe did not cease to be a member of AIQ as a result of anything done (or omitted to be done) by the 3rd to 7th Defendants. In fact, it should be highlighted that it was Joe himself who had "long requested" and insisted that the 3rd to 7th Defendants effect the transfer of his AIQ shares to Thames, his "children's trust".[129] There was no basis, therefore, for the Plaintiffs to accuse the 3rd to 7th Defendants of unconscionable conduct in relation to Joe's present status as a non-member.

80 In coming to the above conclusion, I found support in the High Court's judgment in *Lim Seng Wah* (at [12]–[13]). In that case, Chua JC (as he then was) distinguished *Kitnasamy* on the basis that the appellant in *Kitnasamy* "was for all intents and purposes a shareholder except that the company had not registered him as one". As such, the respondents – who had failed to effect the registration – could not challenge the appellant's *locus standi* of the applicants. Chua JC also cited with approval the statement in R Hollington QC, *Hollington on Shareholders' Rights* (Sweet & Maxwell, 7th Ed, 2013) at para 9-15, that "where a registered shareholder has ***freely*** disposed of his shares … he will no longer have *locus standi* once he has ceased to be registered as a member" [emphasis added in bold italics]. This was because (at [13]):

> it is trite that the matters complained of under s 216 must affect the applicant *qua* shareholder and that the court's powers under s 216(2) are to be exercised "with a view to bringing to an end or remedying the matters complained of". **With one exception, it is difficult to see how a plaintiff would still be entitled to a remedy under s 216 if he has ceased to be a shareholder. In such circumstances, it seems to me quite**

[129] 5ABOD at p 300-301.

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> **pointless to allow the plaintiff to carry on with the action. The one exception is where the events which caused the plaintiff to cease to be a shareholder are also the subject matter of the complaint under s 216**.
>
> [emphasis added in bold]

81 Finally, it must be pointed out that having voluntarily transferred the AIQ shares to Thames, if Joe was (as he claimed) the sole beneficial owner of these AIQ shares, he could have arranged for Thames to transfer the shares back to him prior to seeking relief under s 216 for the alleged oppression of his rights as an AIQ shareholder. After all, s 216 plainly requires that a claimant be a registered member. For reasons best known to the Plaintiffs, they failed to take any steps to resolve the issue of Joe's *locus standi* before filing the suit. The procedural bind they have ended up in is, unfortunately, entirely of their own making.

Thames's standing to bring the oppression claim

Parties' positions

82 I address next Thames' *locus standi* to seek relief under s 216 of the Companies Act in respect of the AIQ-related allegations of oppression.

83 *Prima facie*, Thames, as the registered member of AIQ, has *locus standi* to seek relief under s 216.[130] However, the 3rd to 7th Defendants contended that Thames lacked *locus standi* in the present suit. *Per* the 3rd to 7th Defendants, Thames had no basis to complain about its rights as a member being oppressed, because on the Plaintiffs' own case, the oppressive acts were directed at Joe and not Thames. Moreover, some of the oppressive acts had allegedly been carried

130 Pf Further Submissions at para 6; 3rd Df Further Submissions at para 14; 4th-7th Df Further Submissions at para 21.

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out against Joe after Thames became the registered shareholder in place of Joe. Thames could not complain of having suffered commercial unfairness as a result of the alleged acts of oppression. Since Thames and Joe were not one and the same entity, the interests of Thames and Joe were not one and the same. In this connection, the Defendants cited *inter alia* the case of *Suying Design Pte Ltd v Ng Kian Huan Edmund* [2020] 2 SLR 221 ("*Suying Design*") (at [123]), where the CA held that ultimately "the conduct complained of under s 216 must affect the member *in his capacity as member*" [emphasis added].[131]

84 Further, *per* GSS, insofar as the Plaintiffs' allegations of oppression were premised on breaches of the Understanding and Agreement, this was (according to the Plaintiffs themselves) an agreement entered into only as between Joe and GSS. The Plaintiffs did not allege that Joe had entered into the Understanding and Agreement as Thames' agent or representative; nor was it ever part of the Plaintiffs' case that Thames had become a party to the Understanding and Agreement upon becoming an AIQ shareholder. Since Thames was not a party to the Understanding and Agreement, it followed that Thames could have no legitimate expectations under the Understanding and Agreement; and it therefore could not rely on any alleged breaches of the Understanding and Agreement in support of its minority oppression claim.[132]

85 According to the 4th to 7th Defendants, Thames' inability to demonstrate that its interests as shareholder had been prejudiced was fatal to its attempt to seek relief under s 216 of the Companies Act, because "an applicant under [s 216] has to show that he is an aggrieved shareholder, i.e. that the

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131 3rd Df Further Submissions at para 18; see also, 4th-7th Df Further Submissions at paras 22-23.

132 3rd Df Further Submissions at para 22.

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conduct complained of is commercially unfair to him": see *Lim Seng Wah* (at [20])[133]; also *Chow Kwok Ching v Chow Kwok Chi and others* [2008] 4 SLR(R) 577 ("*Chow Kwok Ching*") (at [89]), where the court held that s 216(1)(*a*) required the oppression complained of to affect the complainant and not only another shareholder who is not also a complainant.[134]

86 The Plaintiffs, for their part, did not dispute the proposition that in bringing proceedings under s 216 in its own name, Thames was required to show that it had suffered prejudice to its interests which amounted to commercial unfairness. Indeed, the Plaintiffs could not dispute this proposition, given the clear state of the authorities: see *Lim Seng Wah* and *Chow Kwok Ching*. However, the Plaintiffs argued that as the registered shareholder, Thames was merely holding the AIQ shares as Joe's nominee; that Joe remained the beneficial owner of the AIQ shares; and that Thames's interests were thus co-extensive with Joe's. On this basis, the Plaintiffs contended, it would be artificial for the court – when assessing the s 216 claim brought in Thames' name – to ignore the oppressive acts committed by the 3rd to 7th Defendants against Joe in the period prior to Thames becoming a registered shareholder.[135]

87 In support of the above proposition, the Plaintiffs cited *inter alia* *Atlasview*.[136] In *Atlasview*, at [38], the court – in refusing to allow an application to strike out proceedings brought under s 459 of the UK Companies Act 1985 (which is *in pari materia* with the local s 216 Companies Act provision) – found it "well arguable" that the "interests" of a nominee shareholder under s 459 of

133 4th-7th Defendants' Further Submissions at para 22.

134 4th-7th Defendants' Further Submissions at para 23.

135 Pf Further Submissions at para 14.

136 Pf Further Submissions at paras 16-17.

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the UK Companies Act 1985 could include "the economic and contractual interests of the beneficial owners of the shares".[137] The Plaintiffs argued that since Thames was a "nominee shareholder" for Joe, Thames' interests, for the purposes of its s 216 claim, should be capable of including Joe's "economic and contractual interests".[138]

88 Further, the Plaintiffs argued, in seeking relief under s 216 of the Companies Act, a member of the company was able to rely on oppressive acts that had been done before he became a member of the company:[139] *Lim Seng Wah* at [23], *Lloyd v Casey* [2002] 1 BCLC 454 ("*Lloyd*") at [50], and *Tyrion Holdings Ltd v Claydon* [2015] NZHC 428 ("*Tyrion Holdings*") at [23]. As such, in bringing a suit under s 216, Thames could rely on the oppressive acts committed against Joe in the period before it became a member of AIQ.[140] According to the Plaintiffs, not allowing Thames to rely on the oppressive acts committed during Joe's time as a shareholder for the purposes of Thames's own oppression claim would amount to imposing an "arbitrary" restriction on the scope of the term "interests" in s 216 of the Companies Act and lead to absurd results. It would mean that no matter how unfairly the 3rd to 7th Defendants had treated Joe, Joe would "have an interest but no *locus standi",* whereas Thames would "have *locus standi* but no interest", such that neither of them would be able to seek relief. This, according to the Plaintiffs, was an arbitrary result which the parliamentary draftsman could not have intended.[141]

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137 Pf Further Submissions at para 18.

138 Pf Further Submissions at para 19.

139 Pf Further Submissions at para 11.

140 Pf Further Submissions at para 13.

141 Pf Further Submissions at para 25.

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89 The Plaintiffs' assertion that Thames held the AIQ shares as a bare nominee or trustee for Joe was disputed by the 4th to 7th Defendants, who sought to point to evidence refuting this assertion.[142] The 4th to 7th Defendants also highlighted the case of *Re Edwardian Group Ltd, Estera Trust (Jersey) Ltd and Anor v Singh and Ors* [2018] EWHC 1715 ("*Estera Trust*"). In *Estera Trust*, one of the issues in contention was whether a trustee holding shares in a company on behalf of a beneficiary could assert that its own interests as a member had been prejudiced, on the basis that the beneficiary's personal interest in remaining in management had been prejudiced. The court in *Estera Trust* held that since the trusts were discretionary trusts and not bare trusts, the beneficiary's personal interests could not be conflated with the interests of the trustee.[143] The 4th to 7th Defendants contended, accordingly, that the principles espoused in *Atlasview* were only applicable in a situation where the registered shareholder was a bare nominee or trustee, as both the registered shareholder's and the beneficial shareholder's interests would be aligned and co-extensive in such a situation. If, however, the registered shareholder turned out to not be a bare nominee (as with the discretionary trustee in *Estera Trust*), the beneficial shareholder's personal interests would no longer be aligned with those of the registered shareholder;[144] and in such a situation, it followed that the registered shareholder would not be able to bring an oppression claim asserting the beneficial shareholder's personal interests as its own.

My Decision

90 While the 3rd to 7th Defendants accepted that a member seeking relief under s 216 could in principle rely on oppressive acts that had been done before

142 4th-7th Df Further Submissions at para 29.

143 4th-7th Defendants' Further Submissions at paras 30-31.

144 4th-7th Defendants' Further Submissions at para 32.

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he became a member of the company, they disputed Thames' standing to bring a s 216 claim in respect of acts done to Joe prior to the transfer of his shares to Thames. More generally, they disputed Thames' standing to bring a s 216 claim in respect of acts done to Joe which did not prejudice Thames' interests as the registered member. This included acts which – according to the Plaintiffs – constituted breaches of the Understanding and Agreement between GSS and Joe. In this connection, the 4th to 7th Defendants also disputed the Plaintiffs' assertion that Thames' interests as the registered member were wholly aligned and co-extensive with Joe's interests as the alleged beneficial owner of the shares.

91 Before I address the parties' arguments, I examine the relevant authorities and outline the key legal principles established by these authorities which were relevant to my consideration of Thames' *locus standi* to bring the AIQ-related oppression claims.

(1) The law relating to *locus standi* to bring a minority oppression claim under s 216 Companies Act

(A) A REGISTERED MEMBER CAN BRING AN OPPRESSION SUIT IN RESPECT OF OPPRESSIVE ACTS AGAINST THE BENEFICIAL OWNER OF THE SHARES IF HE IS A NOMINEE FOR THE BENEFICIAL OWNER

92 In *Lim Seng Wah*, Chua JC (as he then was) pointed out, at [20], that "the common thread underlying [s 216 of our Companies Act] is that of unfairness", with "[t]he common test [being] that of 'a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect'". In his view, this meant that "an applicant under s 216 has to show that he is an aggrieved shareholder, *ie*, that the conduct complained of is commercially unfair *to him*" [emphasis in original]. In *Lim Seng Wah*, the plaintiffs ("Mr Lim") and ("Mr Heah") had sold their shares to a

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third party ("Mr Kwok") after failing to sell the shares to the other shareholders. However, the defendants ("Mr Han") and ("Mr Wang"), who were the directors of the company, did not approve the transfer of the plaintiffs' shares to Mr Kwok. Finding themselves unable to exit the company, the plaintiffs commenced an action under s 216 of the Companies Act against the defendants. Unexpectedly, Mr Han and Mr Wang entered into a "Share Sales and Purchase Deed" whereby they undertook to transfer the plaintiffs' shares to Mr Kwok by a certain date – and agreed, in addition, to buy the same shares from Mr Kwok for $19.5m, subject to the latter successfully persuading the plaintiffs to file a notice of discontinuance of their action. The transfer of the shares by the plaintiffs to Mr Kwok was thereafter registered; and Mr Kwok became the shareholder in place of the plaintiffs. However, the plaintiffs did not discontinue their action; and the purchase of Mr Kwok's shares by the defendants did not materialise. Mr Kwok then applied to be joined as a plaintiff to the oppression action; and in so doing, he sought to rely on the claims made by Mr Lim and Mr Heah – as well as the evidence they had already adduced in court. One of the issues in contention before the court was whether Mr Kwok should be allowed to be joined as a plaintiff to the oppression action.

93 Chua JC found (at [160]) that the defendants' misconduct had been commercially unfair to Mr Kwok because notwithstanding the fact that the conduct complained off had taken place before Mr Kwok became a shareholder of the company, the overpayment of directors' fees and the payments to SVF – which were the oppressive acts complained of – had "significantly reduced the funds available to the Company". In the circumstances, the defendants' misconduct was commercially unfair to Mr Kwok.

94 In the present case, in respect of Thames' *locus standi* to bring proceedings under s 216, the key question of principle in contention was

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whether a registered member could sue for oppression in respect of oppressive acts done to the beneficial owner of the shares. While the parties were not able to point me to any relevant local case law on this issue, a number of English authorities were put forward. These appear to establish that a registered member may bring such proceedings if he is a nominee shareholder holding the shares on a bare trust, because in such a situation, the interests of the registered member are regarded as being co-extensive and wholly aligned with the beneficial owner's interests. I refer to the cases of *Atlasview*, *Lloyd*, *Rock Nominee* and *Estera Trust*, which I examine below.

95 In *Atlasview*, a company ("Brightview") was incorporated for the purpose of acquiring a number of internet providers, consolidating them and then selling off the business as a going concern. A and B shares were issued. One of the respondents ("Mr Shalson"), controlled the majority of the A shares through a company ("Reedbest"). As for the B shares, the majority were controlled by Mr Barton's wife through another company, JGR. Both Mr Barton and his wife were not registered as shareholders of Brightview, nor was Mr Barton the beneficial shareholder of any shares. The parties had agreed to participate in Brightview on the terms of an investment agreement under which Mr Shalson was obliged to enter into a loan agreement to finance the project. Reedbest later lent Brightview an amount repayable on demand, but the terms of that loan turned out to be more onerous than those in the loan agreement; and no shareholder approval was provided as required by the investment agreement. Brightview was unable to meet Reedbest's demand for repayment which resulted in an administration order being made against Brightview. The company's business was then bought over by Freshbox, a company owned by the A shareholders and the B shareholders consequently lost their financial stake in the company.

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96 Mr Barton, his wife and JGR issued two sets of proceedings. One was an action for breach of contract; the other was a petition under s 459 of the UK Companies Act 1985 which provided:

> **Order on application of company member**
>
> (1) A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
>
> (2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

97 The respondents applied to strike out the s 459 petition and the action for breach of contract. In respect of the s 459 petition, it was argued *inter alia* that as Mr Barton and his wife were not members of a company within s 22 of the UK Companies Act 1985 and held no shares by operation of law within the meaning of s 459(2), they had no *locus standi* to bring the petition and should accordingly be struck out as petitioners.

98 As for JGR, the respondents argued that although JGR was registered as a member of the company, it was but a bare nominee. As such, having no economic interest in the value of the Brightview shares registered in its name, it could not complain of any prejudice to its "interests" under s 459. The respondents highlighted that the dispute arose from an alleged breach of the investment agreement to which JGR is not a party. In essence, it was a dispute between Mr Barton and Mr Shalson. The respondents argued that JGR was not a nominee for Mr Barton, and that Brightview was not a quasi-partnership:

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therefore it could not be permitted to "carry" or otherwise rely on the Bartons' complaints to maintain the s 459 petition in its name (at [35] of *Atlasview*).

99 Jonathan Crow KC, sitting as a Deputy Judge of the High Court, agreed that Mr Barton and his wife had no *locus standi* to bring the action for minority oppression, reasoning (at [31]) that the "right to petition the court under s 459 is conferred only on members and those to whom shares have been transferred by operation of law"; "neither Mr nor Mrs Barton" fell within those categories. In addition, a procedural provision such as CPR 19.2(2)(a), which gave the court the power to add parties, did not assist the petitioner's case. CPR 19.2(2)(a) was "confined to cases where it was desirable" for the party to be added so that the court could "resolve all the matters in dispute in the proceedings". Given that a dispute under s 459 could not be said to have arisen at the suit of a person who was not a member, CPR 19.2(2)(a) could not be invoked to support the joinder of a non-member as a party.

100 As to JGR's *locus standi* vis-à-vis the s 459 petition, however, Jonathan Crow KC declined to strike out JGR's claim on the basis that it was a nominee shareholder. Noting that the interests which s 459 was capable of protecting included matters going beyond the legal owner's economic interest in the shares registered in his name (at [36], citing *O'Neill and another v Phillips and others* [1999] 1 WLR 1092 ("*O'Neill v Phillips*") at 1110–1101), he observed that the phrase "legitimate expectations" may "embrace matters such as an understanding as to the governance of the company, including an understanding that someone other than the registered shareholder should be involved in management" (citing the *obiter* remarks of Hoffmann J in *Re a company (No 003160 of 1986)* [1986] BCLC 391 at 396). He held, moreover, that the respondents' arguments amounted to "imposing an arbitrary restriction on the scope of the word 'interests' in s 459" (at [36] of *Atlasview*):

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> …As a matter of statutory interpretation, there is no justification for doing so. Indeed, it would in my judgment be a thoroughly retrograde step to do so: it would mean that, in a case like this, no matter how disgracefully Mr Shalson might have behaved, Mrs Barton would have an interest but no locus, and JGR would have locus but no interest, so neither could complain. There is no reason at all to infer that the parliamentary draftsman intended such an arbitrary result.

101 In particular, Jonathan Crow KC observed (at [37]) that while this specific point had never been argued or decided, it was "striking" that numerous cases had been argued and decided on the assumed basis that "a nominee shareholder [was] fully entitled to complain under s 459 about any diminution in value of the shares registered in its name, and that its 'interests' [were] for these purposes co-extensive with the interests of the beneficial owner" (*Atlasview* at [37] citing *Estill v Cowling Swift & Kitchin* [2000] Lloyd's Rep PN 378 at [101], *Arrow Nominees Inc v Blackledge* [2000] 1 BCLC 709 at 711, *Lloyd* at [48]–[49], and *Rock Nominees Ltd* at [2]–[3]). Ultimately, in his view (at [38]), it was "well arguable" for the purposes of the striking out application that the 'interests' of a nominee shareholder under s 459 was "capable of including the economic and contractual interests of the beneficial owners of the shares".

102 For completeness, I make two other observations. First, in *Atlasview*, Jonathan Crow KC did state that although all he had to do was consider "whether it [was] properly arguable that the 'interests' of a nominee shareholder under s 459 [were] capable of including the economic and contractual interests of the beneficial owners of the shares", if he had been obliged to decide on the point, he would have found that it was correct.

103 Second, I note that although *Atlasview* was cited locally by the High Court in *Tan Chin Hoon* (at [56]), it was not cited for the proposition that "a

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nominee shareholder [was] fully entitled to complain under s 459 about any diminution in value of the shares registered in its name, and that its 'interests' [were] for these purposes co-extensive with the interests of the beneficial owner". This was because in *Tan Chin Hoon*, the plaintiffs were no longer registered as shareholders of the company by the time the oppression proceedings under s 216 Companies Act were brought; and the court held (at [54]) that their claims to beneficial ownership of the shares held by two of the defendants did not assist them since trusts – whether express, implied or constructive – were not recognised under s 195(4) Companies Act.

104 Turning to *Lloyd*, this was a case where the 1st respondent and the petitioner had formed a company, with the 1st respondent holding 51% of the shares and the petitioner holding 44%. The 1st respondent was appointed as the managing director, while the petitioner continued with his existing employment outside the company formed. As part of an agreement to conceal the petitioner's shareholding from his existing employer, his 44% shareholding was held in trust for him by the 1st respondent. By 1990, the company had grown significantly and needed larger premises. The 1st respondent began to arrange for monies – partly from the company's bank account – to meet the needs of the company. The 1st respondent also paid himself remuneration of £456,417 between 1992 and 1996, with the petitioner receiving in excess of £55,000 during that same period of time. Eventually, the petitioner became dissatisfied with the 1st respondent's management of the company; and at his request, the 44% shareholding held on trust for him was transferred back to him by the 1st respondent in 1997. Shortly after, the petitioner started an oppression claim under s 459 of the UK Companies Act 1985, alleging unfairly prejudicial conduct by the 1st respondent in the form of unequal distributions, excessive payments by the company, and excessive contributions to a pension scheme.

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105 In resisting the oppression claim, the 1st respondent contended *inter alia* that in light of the repeated references to "members" in s 459(1), s 459 must require "that the petitioner shall have been a member of the company at the time the conduct complained of occurred". The 1st respondent submitted that where, "at the time when the conduct complained of took place, the petitioner's shares were held on his behalf by another person as bare trustee for the petitioner", that conduct – assuming it to have been unfairly prejudicial – "was prejudicial not to the interests of the petitioning member but to the interests of the beneficiary under the bare trust (who was not a member at the time) or to the trustee of that trust (who, although then a member, is not the petitioner)". Accordingly, *per* the 1st respondent's submission, s 459 would afford the petitioner no remedy in respect of any conduct complained of unless that conduct was "of such a kind as to be continuing after the petitioner became a member" (*Lloyd* at [48]).

106 Ferris J (at [49]–[50]) rejected such an interpretation of s 459 of the UK Companies Act 1985. He explained his reasons as follows:

> 49 That interpretation of the section would, it seems to me, give rise to some strange results in the circumstances of the present case. ***Let it be assumed that the affairs of the company have been conducted in a manner unfairly prejudicial to the interests of everybody interested in the company except Mr Casey [the 1st respondent] and Mr Holman. There would thus be unfairly prejudicial conduct to Mr Casey's interests as a trustee holding shares on behalf of Mr Lloyd [the petitioner], although not to his interests as holder of his own shares. Clearly Mr Casey would not petition under s 459, and if Mr Lloyd took steps to enforce the trust, the court could not direct Mr Casey to take proceedings against himself. The obvious remedy would be for the court to enforce the trust by directing Mr Casey to transfer the shares to Mr Lloyd himself or to a new trustee who would be independent.*** This is in substance what has in fact happened, because Mr Casey, as he was bound to do when so requested, has transferred Mr Lloyd's shares to Mr Lloyd himself without the need for proceedings to enforce the trust. But if the submission of Mr Bompas QC [counsel for the 1st respondent] were right, this act, while qualifying Mr Lloyd to petition under

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> s 459, has simultaneously provided Mr Casey with a complete defence to that petition because the conduct in question, although prejudicial to the interests of Mr Lloyd's trustee at the time when it took place, was not prejudicial to the interests of Mr Lloyd.
>
> 50 I would be reluctant to construe s 459 as having this effect unless compelled to do so. I think that I am not so compelled because the section applies not only where the conduct complained of is continuing but when it lies in the past – see the words 'the company's affairs are being ***or have been*** conducted in a manner which is unfairly prejudicial'. I do not think that the words in parentheses which require that, where the unfair prejudice is to the interests of part only of the company's members, that part must include at least the petitioner, ought to be allowed to have the effect of requiring that the petitioner shall have been a member when the past conduct took place.
>
> [emphasis added in bold italics]

107 While the reasoning in the above passages focused on the proposition that a member bringing a s 459 petition could rely on unfairly prejudicial conduct which had occurred before his becoming a member (and indeed *Lloyd* was cited by the court in *Lim Seng Wah* for this proposition), the assumption implicit in the portion I have highlighted appeared to be that where the petitioner's shares were held on his behalf by another person as bare trustee for the petitioner, and where the affairs of the company had been conducted in a manner unfairly prejudicial to the interests of its members, there would be unfair prejudice to the interests of the trustee who held the shares on bare trust, and such a trustee would be able to bring a s 459 petition (leaving aside the scenario where the trustee himself was the one accused of the unfair conduct, in which case the "obvious remedy" would be for the court to direct him to transfer the shares to the beneficiary or to an independent new trustee). This was why, in *Atlasview*, Jonathan Crow KC cited *Lloyd* as an example of a case decided on the "assumed basis" that "a nominee shareholder" was entitled "to complain under s 459 about any diminution in value of the shares registered in its name,

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and that its 'interests' [were] for these purposes co-extensive with the interests of the beneficial owner".

108 Another example of such a case which Jonathan Crow KC cited was *Rock Nominees*. In that case, the petitioner ("Rock") brought an oppression claim against, *inter alia*, the 1st respondent ("RCO") and the 2nd respondent ("ISS") under s 459 of the UK Companies Act 1985. Rock held shares equivalent to 2.48% of RCO's issued share capital, as a nominee for two companies ("Gambier" and "Kiwi"). Gambier and Kiwi were thus the beneficial owners of the RCO shares. The facts of the case were somewhat involved. In gist, ISS had launched a takeover bid for RCO because it wanted to take advantage of certain "synergies" that were projected to come about as a result of its acquisition of RCO. ISS was unable to acquire sufficient shares to enable it to compulsorily acquire the shares of the minority shareholders under the "squeeze-out" provisions of the UK Companies Act 1985. Rock's nominee clients wished to retain their shareholding in RCO. ISS then adopted a procedure to acquire the benefit of the synergies and to deprive the minority shareholders of any right to participate in them, pursuant to which it sold the shares in RCO's operating subsidiary to the 3rd respondent which was a member of the ISS group. RCO subsequently went into members' voluntary liquidation. In presenting a petition under s 459 of the UK Companies Act 1985, Rock alleged that its interests as a minority shareholder in RCO had been unfairly prejudiced by the sale, which – according to Rock – was at an undervalue.

109 Peter Smith J dismissed the petition. Although he found that the actions of the respondents and the manner in which they disposed of the assets constituted a breach of fiduciary duty by the officers of RCO, the price paid by the 3rd respondent actually reflected a fair value for the shares which included

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a premium element for synergies. As such, Rock's interests "were neither prejudiced nor prejudiced in an unfair way" (at [141]).

110 Pertinently, in coming to the above conclusion, Smith J also stated that "Rock certainly had an interest to justify presenting a petition". Implicit in this statement was an acceptance that as a nominee shareholder, Rock's interests were the same as the interests of Gambier and Kiwi, who – as the beneficial owners of the shares – were the ones really at risk of suffering any loss in the value of the shares from the allegedly undervalued sale. If it were otherwise, there would have been no "interest to justify" Rock in presenting the s 459 petition.

111 At this point, it should be remembered that in *Atlasview*, Jonathan Crow KC was dealing with an application by the respondents to strike out the s 459 petition, as well as the action for breach of contract, on the basis of (*inter alia*) lack of *locus standi*. Insofar as he had to consider the issue of whether a nominee shareholder's interests under s 459 could include the economic and contractual interests of the beneficial owners of the shares, he considered this issue in the context of determining whether it was "properly arguable" in law. He did not have to decide the disputed issue of fact as to whether JGR was actually a nominee for Mr Barton. In *Lloyd*, it was not disputed that the 1st respondent was a nominee shareholder for the petitioner, who held the latter's 44% shareholding on a bare trust. Similarly, in *Rock Nominees*, there was no dispute that insofar as Rock held 2.48% of RCO's shares in its name, it did so purely as nominee for Gambier and Kiwi.

112 In contrast, in *Estera Trust*, the court declined to find that the registered shareholder was in fact a nominee shareholder holding the shares on bare trust for the beneficial owner of the shares. In that case, the first respondent ("JS"),

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the second respondent ("Verite") and the third respondent ("Jemma") faced an application under ss 994–996 of the UK Companies Act 2006 from the first petitioner ("Estera") and the second petitioner ("HS") who was JS's younger brother. JS's and HS's parents ("BM Singh" and "Mrs Kaur") had established trusts (the "Jersey trusts") which held the shares of the family company. Estera, Verite and Jemma were the trustees of the Jersey trusts. The Jersey trusts were later "divided" between trusts that the settlors wished to be regarded as principally for the benefit for JS's immediate family (the "Jasminder trusts") and those that they wished to be regarded as principally for the benefit of HS's immediate family (the "Herinder trusts"). After a number of years, Estera became the sole trustee of the Herinder trusts while Verite and Jemma were the joint trustees of the Jasminder trusts. In their s 994 action, the petitioners Estera and HS claimed that the affairs of the family company had been conducted in a manner unfairly prejudicial to their interests as members of the company.

113 One of the issues which Fancourt J had to consider was whether Estera could complain that its interests as shareholder in the family company had been unfairly prejudiced by the removal of HS from the board of the family company. Fancourt J noted (at [223]) that it was "difficult to see" how Estera could contend that *it* had a "right for HS to remain a director and senior manager of the Company". Recognising this difficulty, the petitioners sought to advance two arguments: firstly, that the removal of HS from the board was unfairly prejudicial to Estera's interests as shareholder because Estera's interests were best served by having a representative (HS) on the board; secondly, that on the authority of *Atlasview*, the interests of Estera included the interests of its principal beneficiary, HS.

114 The first argument was rejected by Fancourt J (at [225]) on the ground that Estera had no legal or equitable right, as shareholder, to have an appointee

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on the board. The removal of HS thus did not unfairly prejudice its interests as shareholder because it had no such right. As for the second argument, this too was rejected. Referencing *Atlasview*, Fancourt J accepted that in principle, "the interests prejudiced may include the interests of a person for whom the shareholder holds as nominee", and that it was "readily understandable" that in such a situation, "[t]he real shareholder interest is that of the true owner". However, on the facts before him, he found that the Jersey trusts were "discretionary trusts and [were] *not nominees*; and as such –

> 224 …on orthodox principles, it seems very difficult to equate the interests of one only out of a broad class of discretionary objects with the trustee's interests. HS had not been appointed to any interest under the Herinder trusts.
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> …
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> 226 …[I]t is not obvious why it suffices that the removal of HS was unfairly prejudicial to one of the discretionary beneficiaries of the Herinder trusts, even a beneficiary to whose wishes the trustees are requested to have regard.
>
> …
>
> 228 … This is not a case where Estera has suffered prejudice to its interests as a member of the Company and other prejudice to other interests… It is a case where Estera may have suffered some prejudice to its interests as a member of the Company, through having lost a friendly representative on the board, but not unfairly so. HS was not removed in breach of any rights that Estera had, but was removed pursuant to the exercise of Verite/Jemma's rights under the Company's articles. Estera therefore did not suffer prejudice unfairly, since as a minority shareholder it had no right to have a friendly representative on the board of the Company.
>
> 229 It is only if it can properly be said that in some way Estera suffered the unfair prejudice suffered by HS that Estera can legitimately complain under section 994 that the Company's affairs have been conducted unfairly prejudicially to *its* interests as member. There is no authority drawn to my attention for the proposition that a trustee shareholder may rely in that regard

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> on prejudice unfairly caused to someone who is a member of a class of discretionary beneficiaries under the trust. …

115 By way of elaboration, a discretionary trust is one in which the trustees have the discretion to distribute the property as they wish to people from a particular class of potential beneficiaries. The objects of a discretionary trust do not have an equitable proprietary interest in the trust property because the trustee's discretion may not be exercised in their favour. Instead, they only have an expectation that the trustees might exercise the discretion in their favour (*Equity & Trusts: Text, Cases, and Materials* (Paul S Davies and Graham Virgo eds) (Oxford University Press, 3rd Ed, 2019 ("Equity and Trusts") at p 30 and 31). It was in this context that Fancourt J, having found the Jersey trusts to be discretionary trusts, highlighted that "[o]n orthodox principles, it seems very difficult to equate the interests of one only out of a broad class of discretionary objects with the trustee's interests". In this respect, the discretionary trust may be contrasted with a bare trust, where the trustee has no active duties to perform, and merely holds the legal title for the beneficiary. In the meantime, the trustee has no duties to perform and must deal with the trust property in accordance with the instructions of the beneficiary (Jamie Glister & James Lee, *Hanbury & Martin: Modern Equity* (Sweet & Maxwell, 22nd Ed, 2021) ("Hanbury & Martin") at [2-034]). In the case of a bare trust, the beneficiary retains an equitable proprietary interest in the trust property.

116 I should also point out at this juncture that although the parties did not address the definition of a "nominee shareholder", it appeared from their submissions that parties understood this term to refer to a registered shareholder who held the shares on a bare trust for another party, who therefore did not own the beneficial interest in those shares, and who had to deal with the shares according to the instructions of the beneficial owner. For instance, Joe contended that despite his having transferred his AIQ shareholding to Thames

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on 14 December 2017, GSS and the 4th to 7th Defendants continued to treat him effectively as the true shareholder in AIQ – and rightly so too, according to Joe.[145] This understanding of the term "nominee shareholder" would be consistent with the definition accorded to it by the courts. In *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem and others* [2023] SGHC 6, Vinodh Coomaraswamy J considered (at [8]) that the appointment of one of the defendants as a nominee shareholder meant that she held the shares on trust and had "no beneficial interest whatsoever in the [s]hares". In *Hotung and another v Ho Yuen Ki* [2002] 4 HKC 233 ("*Hotung*"), the Hong Kong Court of Appeal ("HKCA") – citing with approval at [14] the definition in *Lewin on Trusts* (17th edn, 2000) at para 1-21 – noted (at [14]–[15]) that:

> 14. A bare or simple trustee, especially of shares in a limited company, is often called a nominee. He is a mere name or "dummy" for the true owner: *Lewin on Trusts* (17th edn, 2000) at para 1-21.
>
> 15. In cases of bare trustee, the beneficiary may call for a conveyance of the legal estate at any time, and the trustee must comply. In the meantime the trustee has no duties to perform and must deal with the trust property in accordance with the instructions of the beneficiary: *Hanbury & Martin on Modern Equity* (16th Ed) p 71.

117 In sum, therefore, where a nominee shareholder holds shares on behalf of the beneficial owner, it holds the legal title to the shares on the latter's behalf and does not own the beneficial interest in those shares; the latter is the true owner of the shares. In such a situation, the English cases cited above appear to accept that the nominee shareholder's interests are one and the same as the beneficial owner's; in the context of a claim by the nominee shareholder that its interests as shareholder have been unfairly prejudiced by the manner in which

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145 Pf Reply Submissions at paras 10-11.

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the company's affairs are conducted, the nominee shareholder's "interests" for the purposes of such a claim may therefore include the economic and contractual interests of the beneficial owners of the shares.

118 In my view, the above position must be correct as a matter of law. If it were otherwise, the nominee shareholder would never be able to bring a claim for oppression under s 216 of the Companies Act in respect of oppressive acts: the nominee shareholder would always have no such interest *per se*, since the interest affected would always be that of the beneficial owner of the shares. As Ferris J noted in *Lloyd*, this would lead to an absurd situation in which the oppressor would be afforded a complete defence. Further, even if the beneficial shareholder were to effect the transfer of the shares to his own name and to register himself as a member, as the new registered member he would still have no interest capable of founding an oppression claim. This is because in a scenario where the nominee shareholder's interests are not treated as being co-extensive with the interests of the beneficial owner, any unfair conduct that occurred prior to the beneficial owner becoming the new registered member would be regarded as having prejudiced the interests of the then nominee shareholder, but not the interests of the then beneficial shareholder. This is unless the unfair conduct that occurred previously remains unfair to the beneficial owner that has become the new registered member (as explained at [120]–[121] below).

119 It should be noted that while *Atlasview* recognises that the interests of the nominee shareholder includes the interests of the beneficial owner for whom it holds the shares, this recognition does not change the fundamental rules about *locus standi* in oppression proceedings: it remains the case that under s 216, only a registered member may sue for oppression – barring the exceptions which

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may arise either by operation of s 216(7) or pursuant to an estoppel arising *per Kitnasamy* or *Owen Sim*.

(B) A CLAIMANT UNDER S 216 MAY RELY ON OPPRESSIVE ACTS THAT WERE COMMITTED BEFORE HE BECAME A MEMBER OF THE COMPANY

120 Assuming it could be shown that Thames was indeed a nominee shareholder whose interests were co-extensive and wholly aligned with Joe's, Thames would – in principle – be entitled to rely on oppressive acts that were done to Joe before Thames became a member of AIQ.

121 In *Lim Seng Wah* (at [18]–[25]), Chua JC observed that Mr Kwok had to cross several hurdles before he could be joined as a plaintiff. One hurdle (at [19]) was that the conduct complained about in the s 216 action by Mr Lim and Mr Heah – which Mr Kwok now sought to rely on – had taken place before Mr Kwok became a shareholder. In the case of *Lloyd*, the UK court had held that an applicant in an oppression action under s 459 of the UK Companies Act 1985 could rely on conduct that had taken place before he became a registered shareholder. Chua JC observed that the reason for this decision lay in the words used in s 459: s 459 provided that "the company's affair are being or have been conducted in a manner which is unfairly prejudicial" (at [50] of *Lloyd*). Insofar as s 216 of the Singapore Companies Act was concerned, Chua JC (at [23]) noted that s 216(1)(*b*) referred to acts that have "been done" and resolutions that have "been passed". In his view, Mr Kwok could rely on acts that were done before he became a member of the company: s 216 merely required Mr Kwok (a) to be a member of the company when he applied for relief, and (b) to show that the defendants' misconduct was commercially unfair to him.

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(C) THE CONDUCT COMPLAINED OF UNDER S 216 MUST AFFECT THE CLAIMANT IN HIS CAPACITY AS A MEMBER OF THE COMPANY

122 It should be highlighted that even assuming Thames was a nominee shareholder whose interests were co-extensive with Joe's, and that for the purposes of these s 216 proceedings, Thames could rely on oppressive acts done to Joe before Thames became a registered member, the Plaintiffs still had to satisfy "the *qua* member requirement". This requires that the conduct complained of under s 216 must affect the claimant in his capacity as a member of the company: see *Suying Design* at [123].

123 In *Suying Design*, the plaintiff ("Mr Ng") and the third defendant ("Ms Tan") had jointly incorporated the first defendant company, Suying Metropolitan Studio Pte Ltd ("SMSPL"). Both Mr Ng and Ms Tan were shareholders and directors of SMSPL Following Mr Ng's resignation from SMSPL, he and Ms Tan agreed to close down the company. Mr Ng subsequently brought a suit for oppression pursuant to s 216, claiming that Ms Tan had engaged in oppressive conduct which included (according to Mr Ng) misappropriating SMSPL's funds, withholding payments he was entitled to, demanding that he return dividends and directors' fees previously paid to him, and repeatedly taking steps "to deny or restrict his access to the books, ledgers, accounts, financial statements and other financial records of SMPSL". In respect of the last allegation, it was shortly after the commencement of the oppression suit that Mr Ng had successfully obtained a court order allowing him to inspect the SMSPL accounts and records in his capacity as a director. Mr Ng claimed that Ms Tan had continued to deny him access to the SMSPL records even after the order for inspection was made.

124 As a preliminary point, the CA observed (at [122]) that the weight of the evidence showed that Ms Tan and SMSPL had in fact denied Mr Ng access to

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SMSPL's financial documents. However, the CA highlighted (at [123]) that Mr Ng faced difficulties in trying to rely on this denial of access to SMSPL's financial documents to support his claim of oppression. The first hurdle the CA identified was the fact that Mr Ng had sought the financial documents "in his capacity as a *director* rather than as a *shareholder* of SMSPL" [emphasis in original]. Citing *Tan Choon Yong v Goh Jon Keat and others and other suits* [2009] 3 SLR(R) 840 ("*Tan Choon Yong*") at [34], the CA pointed out that pursuant to the *qua* member requirement, the conduct complained of under s 216 must affect the claimant *in his capacity as a member*.

125 The CA was at pains to explain that in assessing whether the *qua* member requirement was satisfied by a claimant, "a fact-sensitive approach should be taken", given that "it is common for members to stand in multiple relationships vis-à-vis the company", and 'the scope of a member's interests would depend on the understanding between the parties on the terms upon which they agree to associate together in the company" (at [123] of *Suying Design*). Thus, for example, if there was a clear understanding that the member would be entitled to participate in the management of the company, "the removal of the member as a director, or exclusion of the member from such management may affect the member's rights *qua* shareholder".

126 In *Suying Design*, the CA found (at [124]) that Mr Ng's right to access SMSPL's financial documents was plainly a director's right. As the CA noted, "shareholders do not have a broad right to financial information of a company other than the audited financial statements pursuant to s 203 Companies Act" (*Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd* [2016] 5 SLR 226).

127 In accepting that a fact-sensitive approach should be adopted in assessing whether the *qua* member requirement was fulfilled, the CA pointed

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out that in the context of an unfair prejudice petition under s 459(1) of the UK Companies Act 1985, the House of Lords had observed in *O'Neill v Phillips* (at 1105) that the requirement that the prejudice be suffered as a member "should not be too narrowly or technically construed". It may be noted that similar observations were made by Hoffmann J in *Re a company (No 00477 of 1986*) [1986] BCLC 376 ("*Re a company (No 00477 of 1986*)", at 378). In that case, Hoffmann J opined that "the interests of a member are not necessarily limited to his strict legal rights under the constitution of the company". He highlighted that the use of the word "unfairly" in s 459 of the UK Companies Act 1985 (the then equivalent of our s 216), "like the use of the words 'just and equitable' in s 517(1)(g) enables the court to have regard to wider equitable considerations" (at 379):

> Thus in the case of the managing director of a large public company who is also the owner of a small holding in the company's shares, it is easy to see the distinction between his interests as a managing director employed under a service contract and his interests as a member. In the case of a small private company in which two or three members have invested their capital by subscribing for shares on the footing that dividends are unlikely but that each will earn his living by working for the company as a director, the distinction may be more elusive. The member's interests as a member who has ventured his capital in the company's business may include a legitimate expectation that he will continue to be employed as a director and his dismissal from that office and exclusion from the management of the company may therefore be unfairly prejudicial to his interests as a member.

128 I will say more about the issue of "wider equitable considerations" in the context of oppression proceedings later in these written grounds (see [151151]–[157157]).

129 It was with the above principles in mind that I examined the issue of Thames' *locus standi* to bring the AIQ-related oppression claims.

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(2) Whether Thames has standing to bring the oppression suit against AIQ

130 First, as alluded to earlier (see [8383]–[8585] above), the 3rd to 7th Defendants took the position that since the pleaded acts of oppression had allegedly been done to Joe and some of these acts had moreover been done to him after Thames became the registered member in his place, Thames could not complain that *its* interests as a member had been oppressed. Bearing in mind the reasoning of the courts in *Atlasview* and *Estera Trust*, however, I did not think this objection was sustainable in principle. In their amended statement of claim, the Plaintiffs pleaded that Thames was a nominee shareholder (which they spelt as "*nominal* shareholder" in the statement of claim) holding the AIQ shares on behalf of Joe, who was said to own "100% of [Thames]".[146] *If* Thames was in fact a nominee for Joe and thus "a mere name or dummy" for Joe, then Thames' interests as Joe's nominee would be co-extensive and wholly aligned with Joe's interests; and Thames would have the standing to bring proceedings under s 216 in respect of conduct oppressive to Joe's interests. This would include conduct (allegedly) oppressive to Joe's interests which occurred during the period when Joe was the registered member of AIQ, as well as conduct (allegedly) oppressive to his interests which occurred in the period after he transferred his shares to Thames, assuming it could be shown that such conduct affected Joe or Thames (as the case might be) in their capacity as a member of AIQ; *ie*, that the *qua* member requirement could be satisfied. As to whether or not this assumption was borne out on the evidence in the present case, I deal with this issue in the alternative at [133133] to [142142] below.

131 Similarly, I rejected the 3rd to 7th Defendants' argument that since Joe – and not Thames – was party to the alleged Understanding and Agreement,

146 SOC (Amendment No.3) at para 2.

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Thames should not in principle be able to rely on any breaches of the Understanding and Agreement in support of its oppression claim. I rejected this argument because as noted above, *if* Thames were in fact a nominee for Joe and thus "a mere name or dummy" for Joe, its interests as Joe's nominee would be co-extensive with Joe's. Again, the assumption underlying my rejection of this argument was that the alleged breaches of the Understanding and Agreement affected Joe or Thames (as the case might be) in their capacity as a member of AIQ. As to whether or not this assumption was borne out on the evidence in the present case, I deal with this issue in the alternative at [133] to [142] below.

132 I emphasized above that Thames' interests would be co-extensive with Joe's *if* Thames were in fact a nominee for Joe. The next question, then, was whether Thames was in fact holding the AIQ shares as a mere nominee for Joe. The burden of proving this fact fell on the Plaintiffs, since they were the ones who had asserted it in their pleadings (see *Britestone* at [58] and *SCT Technologies* at [17]).

133 The 3rd to 7th Defendants appeared to accept in their pleaded defences that Joe owned all the shares in Thames, without actually admitting that these shares were held by Thames as his nominee on a bare trust. In any event, I make the following two related points. First, while it is true that s 60(1) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") states that facts admitted by parties to the proceedings need not be proved, s 60(2) of the Evidence Act provides that the court "may, in its discretion, require the facts admitted to be proved otherwise than by such admissions". Second, in this connection, evidence adduced at trial in fact contradicted the proposition that Thames held the AIQ shares *purely as a nominee on behalf of Joe*.

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134 To begin with, evidence adduced at trial of the Certificate of Incumbency in relation to Thames showed that it was in fact a company called NSR Services Ltd which owned 100% of the shares in Thames.[147] A Share Register of Thames dated 17 December 2018 further confirmed that Thames continued to be wholly-owned by NRS Services Ltd as at that date.[148] I noted that in an affidavit filed on 18 December 2018, Joe had adduced a document dated 7 December 2016 which appeared to indicate that NRS was holding the Thames shares on trust for him.[149] But evidence also emerged at trial of admissions previously made by Joe himself as to Thames being *his* "*children's trust*".

135 Thus, for example, the 4th to 7th Defendants referred me to an email sent by Joe to Marcus and Kian Wai on 14 November 2017 wherein Joe had expressly referred to Thames as his "children's trust". This was an email sent by Joe to the 4th to 7th Defendants to set out his conditions for continuing to fund AIQ. I reproduce below the relevant portion of the email:[150]

> …
>
> 6. With these grave concerns in mind, I wish to place several conditions precedent to any further advancement of monies by me as follows:
>
> …
>
> (b) ***My shares in AIQ and Carrot Patch are to be forthwith registered under Thames Global, which is my childrens' trust*** as I have long requested to no avail; and
>
> …
>
> [emphasis added in bold italics]

147 Supplemental 4-7DBOD at p 50.

148 12ABOD at p 685.

149 1ABIA at p 58.

150 5ABOD at p 300.

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136 It should be highlighted that Joe was referred to his email of 14 November 2017 by his own counsel in the course of the trial, and counsel specifically drew his attention to the "four conditions" he had set out in that email for his continuing to fund AIQ – which, as seen from the above extract, included the condition that his shares in AIQ and TCP be "forthwith registered under Thames Global…[his] children's trust".[151] At no point did Joe seek to explain why he had described Thames as his children's trust.[152] The ordinary meaning of the words "*my children's trust*" must surely be that Thames was a trust set up with his children as the beneficiaries.

137 Joe repeated his description of Thames as his "children's trust" in other correspondence with the Defendants. I was referred to a letter dated 23 November 2017 from Joe's then solicitors to the 4th to 7th Defendants, which letter repeated this description of Thames as Joe's "children's trust".[153]

138 From the above evidence, it was plain that far from treating Thames as *his* nominee in respect of the AIQ shares, Joe himself regarded Thames as his "children's trust"; further, that in official or semi-official communications (including communications in which he was advised by lawyers), he also represented Thames to others as his "children's trust".

139 Additionally, it seemed to me odd – indeed, anomalous – that Joe should have omitted to procure the transfer of the AIQ shares from Thames back to himself prior to launching the present s 216 proceedings. Having had the benefit of legal advice and representation from the outset, Joe could scarcely have been

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151 Transcript of 17 August 2022 at p 98 ln 15 to p 99 ln 13.

152 Transcript of 17 August 2022 at p 98 ln 15 to p 99 ln 13.

153 10ABOD at p 245-246.

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ignorant of the requirement for the claimant in a s 216 action to be a registered member of the company at the time of commencing the action. If Thames had indeed been a mere nominee holding the AIQ shares on trust for Joe, Joe would have been entitled to call for the shares to be transferred to him prior to commencing the present suit: Thames would have been obliged to deal with the shares according to his instructions (see *eg Hotung* at [14]–[16]). That Joe omitted to take this simple step – and failed, moreover, to explain his omission to take this step – appeared to me to indicate some basis for the suggestion that Thames was actually his "children's trust", not his.

140 Given the above evidence, I was of the view that regardless of any admissions the 3rd to 7th Defendants might have made in their pleadings, the Plaintiffs needed to prove their assertion that Thames was holding the AIQ shares as Joe's nominee. The Plaintiffs did not produce any evidence to back up their assertion. Indeed, they did not even offer any explanations for the various pieces of evidence which contradicted their assertion. In particular, there was no attempt to explain why Joe and his lawyers had on different occasions represented to others that Thames was his "children's trust".

141 To sum up, therefore, evidence adduced at trial contradicted the Plaintiffs' assertion that Thames was holding the AIQ shares *as a nominee for Joe*. The Plaintiffs were unable, in other words, to satisfy me that the interests of the registered member Thames were co-extensive and wholly aligned with Joe's interests. As such, I was unable to agree that Thames had *locus standi* to bring the suit under s 216 in respect of oppressive acts done to Joe (both before and after Thames became the registered member).

142 This was unfortunate for the Plaintiffs, to say the least. Given that Joe did not fall within any of the recognised exceptions to the rule that only a

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registered member may bring proceedings under s 216, and in the absence of *locus standi* on Thames' part to bring such proceedings, the Plaintiffs' AIQ-related oppression claim could not even get off the starting blocks. This was because virtually all the allegations of oppression were pleaded and argued by the Plaintiffs as being conduct which affected *Joe's* rights. For example, the winding-up of AIQ was alleged in the Statement of Claim to have oppressed *Joe's* rights by depriving him of the ability to enforce a summary judgement he had obtained against AIQ. The Plaintiffs did not separately plead – nor did they separately explain – how *Thames'* rights as shareholder were oppressed by the acts alleged.

143 Having found against the Plaintiffs on the issue of Thames' *locus standi*, I did nevertheless – in the interests of completeness – proceed to consider (at [196]–[544544544] below) the viability of the Plaintiffs' AIQ-related oppression claims on the assumption that Thames possessed the standing to sue in respect of acts committed against Joe. I set out these findings in the alternative below.

If the requisite standing was present, whether the claim for minority oppression is made out pursuant to s 216 of the Companies Act

144 At [145] to [190], I first set out the general legal principles applicable to the consideration of oppression claims under s 216 of the Companies Act, before evaluating each of the Plaintiffs' allegations of oppression at [203] to [544543] with the relevant principles in mind.

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The law on minority oppression

The test of "commercial unfairness"

145 The legal principles applicable to s 216 actions are well-established. In *Suying Design*, the CA - citing *inter alia* its earlier judgment in *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 ("*Ascend Field*") – reiterated that while s 216 encapsulated four limbs (oppression, disregard of a shareholder's interests, unfair discrimination, and prejudice), the common element supporting these four limbs was commercial unfairness, which would be found where there had been a visible departure from the standards of fair dealing which a shareholder was entitled to expect (at [29] of *Suying Design*). The CA also emphasised (at [34]) that commercial unfairness "should be assessed against the behaviour the shareholder is entitled to expect or rely on, whether the expectation arises from a formal document or an informal understanding".

146 In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"), the CA elaborated on how the courts would assess commercial unfairness, citing (at [87]) the well-known passage from Lord Hoffmann's judgment in *O'Neill v Phillips* (at 1098-1099). In this passage, Lord Hoffmann was dealing with s 459 of the UK Companies Act 1985 (c 6) (UK), which – as the CA pointed out – was the English equivalent of s 216 Companies Act:

> In the case of section 459, the background has the following two features. First, a company is an association of persons for an economic purpose, usually entered into with legal advice and some degree of formality. The terms of the association are contained in the articles of association and sometimes in collateral agreements between the shareholders. Thus the manner in which the affairs of the company may be conducted is closely regulated by rules to which the shareholders have

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> agreed. Secondly, company law has developed seamlessly from the law of partnership, which was treated by equity, like the Roman societas, as a contract of good faith. One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith.

147 The CA in *Tomolugen* noted (at [88]) that the above extract from Lord Hoffmann's judgment made it plain that "the essence of a claim for relief on the ground of oppressive or unfairly prejudicial conduct lies in upholding the commercial agreement between the shareholders of a company". This was regardless of whether the agreement was "found in the formal constitutional documents of the company, in less formal shareholders' agreements or, in the case of quasi-partnerships, in the legitimate expectations of the shareholders".

148 It should be highlighted that in *O'Neill v Phillips*, Lord Hoffmann expressly cautioned against an overly loose usage of the concept of "legitimate expectations" – an expression he had used in an earlier judgment in *In re Saul D. Harrison & Sons Plc* [1995] 1 BCLC 14. Indeed, in *O'Neill v Phillips*, he opined that it "was probably a mistake to use [the expression "legitimate expectations"]" in the earlier judgment, noting that it had been used as a "new

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label" to "describe a concept which [was] already sufficiently defined in other terms". As he explained (at 1102):

> In saying that [the concept of legitimate expectations] was 'correlative' to the equitable restraint, I meant that it could exist only when equitable principles of the kind I have been describing would make it unfair for a party to exercise rights under the articles. It is a consequence, not a cause, of the equitable restraint. The concept of a legitimate expectation should not be allowed to lead a life of its own, capable of giving rise to equitable restraints in circumstances to which the traditional equitable principles have no application.

149 Referencing the above passage from *O' Neill v Phillips*, Vinodh Coomaraswamy J pointed out in *Lim Kok Wah v Lim Boh Yong* [2015] 5 SLR 307 ("*Lim Kok Wah*") that the concept of "legitimate expectations" was "of limited scope" and would not assist a s 216 claimant who based his claim on nothing more than his subjective expectations – even if there was a reasonable basis for the subjective expectations: *Lim Kok Wah* at [121].

150 In *Lim Kok Wah*, the plaintiffs and the first and second defendants were brothers who were all shareholders in two companies known as "SSH" and "Kenson". The plaintiffs brought a minority oppression action against the first and second defendants under s 216 of the Companies Act. In gist, the plaintiffs claimed that both SSH and Kenson were quasi-partnerships or "akin to quasi-partnerships"; and that accordingly, the court should look beyond the confines of the parties' strict legal rights and obligations and instead look for "informal or implied understandings between the parties which give rise to legitimate expectations between them" (at [88]). It was on this premise that they argued that there was "an informal or implied understanding amongst the parties" that they were entitled to participate in the management of SSH and Kenson.

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151 Coomaraswamy J noted (at [102]) that the starting point in establishing a minority oppression claim was for the claimant to show that the company was subject to equitable considerations which had arisen either at the time the parties' relationship commenced or subsequently, and which made it unfair for those running the company to rely on their strict legal rights under the company's articles of association and under the Companies Act. In this connection, he referred to *Ebrahimi v Westbourne Galleries Ltd and others* [1973] AC 360, where Lord Wilberforce had identified certain elements which may result in the superimposition of equitable considerations on a company:

> *Certainly the fact that a company is a small one, or a private company, is not enough.* There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. *The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.*
>
> [emphasis added]

152 As noted by Coomaraswamy J in *Lim Kok Wah* (at [106]) and subsequently in *Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others* [2018] 4 SLR 331 ("*Leong Chee Kin*" at [49]–[50]) , the quasi-partnership would be the archetypal association formed or continued "on the basis of personal relationships, involving mutual trust and confidence". A quasi-partnership is typically a company whose affairs are conducted with a degree of

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informality, *ie*, where "the members do not transact on an arms-length basis, do not distil their informal agreements into formal contracts, and do not record their understandings in writing" (*Leong Chee Kin* at [50]). Such companies are subjected to greater scrutiny by the courts because the informality with which their affairs are run may leave minority members vulnerable to exploitative conduct by the majority: in such cases, the courts will be more ready to examine the parties' past conduct to ascertain if there are "any informal agreements or understandings between [them] which form the context for considering whether specific conduct is or is not commercially unfair" (*Leong Chee Kin* at [50]). However, it is apparent from Lord Wilberforce's judgement in *Ebrahimi* that the absence of a quasi-partnership in its traditional sense *per se* does not preclude the claimant in a minority oppression action from relying on legitimate expectations that may have arisen from implied or informal understandings between the parties; and if these implied or informal understandings are established on the evidence, they may form the basis for the superimposition of equitable considerations: see *Anita Hatta v Lee Siow Kiang Georgia and others* [2020] 5 SLR 304 ("*Anita Hatta*") at [69].

153 In *Lim Kok Wah*, the court found that the evidence of the manner in which the patriarch of the family had run the two companies before his death did not support the plaintiffs' assertion that the companies were quasi-partnerships or companies akin to quasi-partnerships (at [115]). As for the plaintiffs' assertion that there was an implied or informal understanding between the parties that they (the plaintiffs) were entitled to participate in the management of the companies, there was also no evidence of any such implied or informal understanding (at [122]). There was therefore no basis for the plaintiffs' claim to a "legitimate expectation" to participate in management: they could not rely on any subjective expectation that they might have

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harboured that they would be entitled to participate in the management of either company (at [121]).

154 In *Anita Hatta*, the plaintiff alleged that the 1st defendant's actions between 2012 and 2017 constituted oppression of her interests as a minority shareholder in three companies in which she had invested $2m. The 1st defendant was the sole director of the companies; and the plaintiff had been introduced to her through a mutual friend some years prior to investing in the companies. Valerie Thean J did not accept that the companies in question were quasi-partnerships in the traditional sense, as the evidence showed that this was not a case where the parties worked in circumstances akin to a partnership; the plaintiff's own evidence made it clear that she had not participated in the making of major decisions in the companies. Referencing Lord Hoffmann's judgment in *O'Neill v Phillips*, however, Thean J accepted that outside of a quasi-partnership, "the commercial agreement [between the parties] may be of a different kind, carrying its own informal understanding". Based on the evidence before her, she found that there was in fact an informal understanding between the plaintiff and the 1st defendant, which included elements arising from the plaintiff's responsibility as a 5% shareholder for signing off on financial statements, as well as the object of their joint enterprise as documented by the 1st defendant herself in a text. Thean J found that this informal understanding gave rise to certain legitimate expectations on the plaintiff's part, some of which were breached by the 1st defendant.

155 In *Thio Syn Kym Wendy and others v Thio Syn Pyn and others* [2017] SGHC 169 ("*Thio Syn Pyn*"), the plaintiffs (Wendy, Michael and Serene) were the minority shareholders in three companies (THPL, MDI and URL). They sued their siblings (Ernest and Patrick) and their mother (Mdm Kwik) – the majority shareholders and directors – for minority oppression. The plaintiffs

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claimed *inter alia* that the group of companies was a quasi-partnership; that there was a common understanding that the plaintiffs were entitled to participate and to remain in the management of the group as directors; and that the non-re-election of Wendy and Serene to the boards of THPL and MDI was therefore oppressive of their interests. Judith Prakash JA found, on the evidence before her, that the group was not a quasi-partnership, and that independent of whether the group was a quasi-partnership, there was no such common understanding as alleged among the parties.

156 In respect of other allegations relating to the reduction of Michael's remuneration, the increase in Ernest's and Patrick's remuneration, and the removal of Michael's and Serene's car benefits, however, Prakash JA accepted the plaintiffs' contention that these acts were commercially unfair and therefore oppressive. She noted that based on the evidence, Michael had no legitimate expectation that he would receive a certain amount of remuneration or benefits as part of his employment with MDI. She also noted that the reduction of Michael's salary and the removal of his and Serene's car benefits did not *per se* affect their interests *qua* shareholders. However, she found it significant that Ernest and Patrick had made selective use of a consultants' report to justify reducing Michael's salary and removing his and Serene's car benefits, while increasing their own remuneration in a manner which could not be reasonably explained and which was even (in one instance) contrary to the consultants' recommendation. In respect of the reduction of Michael's salary, there was also evidence that this was done out of spite and not pursuant to rational corporate considerations. Ernest and Patrick were aware that Michael's employment resulted from familial, and not corporate, considerations: Mdm Kwik had wanted his livelihood to be provided for. His position was special, and while he might not have had a basis to expect his salary to be increased along with his brothers', he "would confidently have expected that they would not reduce it so

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as to shrink his rice bowl" (at [85]). Prakash JA found that Ernest and Patrick had effected the salary reduction in order to "rap [Michael] on the knuckles for his disagreements with them and not as a measure for the overall corporate benefit". In sum, her finding was that the two of them had cherry-picked the consultants' comments and used the consultants' report "selectively to benefit (or continue to benefit) themselves while using their power as directors and shareholders to deprive the plaintiffs of long-enjoyed benefits, and in the case of Michael, substantially so" (at [90]).

157 To recapitulate, therefore: in the context of a s 216 claim, an assessment of commercial unfairness requires a consideration of whether there has been a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a member is entitled to expect (*Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [77]); and this in turn requires a consideration of what exactly the member is entitled to expect. The applicable standard of fairness would then differ "depending on the nature of the company and the relationships of the shareholders" (*Lim Kok Wah* at [102]). In this connection, the baseline for determining the applicable standard of fairness is that members are entitled to "rely on their strict legal powers and rights under the company's articles of association and under the Companies Act". To go beyond this baseline, a member must show that the company is subject to equitable considerations arising either at the time when the parties' relationship commenced, or subsequently, which makes it unfair for those conducting its affairs to rely on their strict legal powers and rights under the company's constitution and under the Companies Act (*Lim Kok Wah* at [102]).

158 It should further be highlighted that in determining whether there has been commercial unfairness, it is also important to distinguish unfairness from

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unlawfulness. Conduct that is technically unlawful may not be unfair (*Lim Kok Wah* (at [100]). Breaches of the Companies Act and/or the company's constitution will not necessarily be regarded as oppression of the minority members' interests unless something more is shown (*Lian Hwee Choo Phebe and another v Maxz Universal Development Group Pte Ltd and others and another suit* [2010] SGHC 268 ("*Maxz Universal*") at [60]).

Proper plaintiff rule and no reflective loss principle

159 In considering what a minority shareholder is entitled to expect, the court will also have to consider whether the breach of his expectation amounts to a distinct injury under s 216 Companies Act. The conceptual distinction between corporate rights and personal rights is a critical one. Section 216 is *not* to be used to vindicate wrongs which are in substance wrongs committed against the company, *ie*, wrongs which are corporate rather than personal in nature. This is the proper plaintiff rule: *Suying Design* at [30]; *Foss v Harbottle* (1843) 2 Hare 461. The rule stipulates that the proper plaintiff to sue for a wrong done to a company is *prima facie* the company, which is a separate legal entity from the shareholders.

160 The other side of the proper plaintiff rule is the "no reflective loss" principle. An aggrieved minority shareholder may not sue under s 216 if his loss lies in the diminution of the value of his shares in the company which merely reflects the company's loss, which can be made good if the company were able to and did enforce its rights: *Suying Design* at [30]; *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*") at [61] and [70]; *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 ("*Miao Weiguo*") at [200]–[201].

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161 Further, as alluded to previously (at [122] above), a member claiming minority oppression must show that the distinct injury he has suffered amounts to commercial unfairness against him *as a member of the company*. Section 216 is designed for the protection of members of companies, and it is in that capacity that members of companies seek its protection – not as directors or employees (*Suying Design* at [36]).

162 In *Suying Design,* it will be recalled that the plaintiff Mr Ng had alleged oppressive conduct by the defendant Ms Tan which included misappropriation of SMSPL's funds. *Inter alia,* Mr Ng claimed that Ms Tan's conduct was in breach of an oral agreement which they had for the treatment of post-incorporation invoices. Ms Tan disagreed with Mr Ng as to what they had agreed on. At first instance, the High Court preferred Mr Ng's version of the oral agreement. The High Court held that the injury Mr Ng sought to vindicate was the injury to his investment in SMSPL caused by Ms Tan's breaches; that the misappropriation of funds was in breach of Mr Ng's legitimate expectation as a shareholder that SMSPL's funds would not be siphoned away; and that this had a direct impact on Mr Ng's interests as a shareholder.

163 On appeal, the CA in *Suying Design* held (at [109]) that while the High Court's reasoning appeared *prima facie* to follow closely the reasoning employed in *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae Holdings*"), in *Sakae Holdings* the CA had held that "the real injury sought to be vindicated by the minority shareholder, Sakae, was the injury to its investment in the joint venture and *the breach of its legitimate expectations* as to how the company's affairs and its financial investment were to be managed". Crucially, the CA in *Sakae Holdings* had noted that the High Court judge in that case had "carefully considered how Sakae was personally affected by each of the impugned transactions" before

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finding that with the exception of one, "*the transactions had been carried out in breach of Sakae's rights which had been carefully negotiated* for in, *inter alia*, the joint venture agreement". Sham documents had also been created to conceal these transactions. In addition, Sakae had let one Andy Ong manage the company's affairs because of the longstanding relationship between Ong and the chairman of Sakae's board. This was the basis on which the CA in *Sakae Holdings* had held that Sakae had a legitimate expectation that its funds would not be mismanaged, much less siphoned away in the manner they had been.

164 The CA in *Suying Design* went on to hold (at [110]) that the mere fact that an injury has been caused to a shareholder's investment did not mean that it would suffice to constitute a *distinct personal wrong*. There first needed to be careful consideration of whether the injury to the minority shareholder was merely a *reflection* of the injury caused to the company. Additionally, the CA highlighted that while a shareholder might be entitled to expect certain standards of fair dealing and fair play, especially where the majority shareholder and wrongdoer was also a director of the company, it did not necessarily follow that a breach of such standards necessarily formed a distinct personal wrong. *Sakae Holdings* represented an instance of a "clear, egregious and fraudulent breach of an express understanding" between the parties as to how their joint venture was to be carried out, and was thus distinguishable from the facts in *Suying Design*.

165 On the facts of *Suying Design* (at [111]–[113]), the CA held that Mr Ng did *not* have any basis for any expectations as to how SMSPL would be managed, apart from the basic expectations a shareholder may legitimately hold, *ie*, a reasonable expectation as a shareholder that SMSPL's funds would not be siphoned away. The CA found that such a baseline expectation did not provide a sufficient basis on which to find that Mr Ng had suffered a distinct personal

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injury which would amount to commercial unfairness. To find otherwise would suggest that any misappropriation of moneys by a director would constitute a distinct injury to a shareholder; and this was not acceptable as it would be "too broad a construction of the framework" set out in *Sakae Holdings* and would "make impermissible inroads into the proper plaintiff rule". In any event, even if there were a distinct injury, it did not necessary follow that it would be commercially unfair to Mr Ng if the breaches were not remedied:

> 114 …The claim in respect of the Gratuity Payment therefore should *not* have been brought under s 216. This is not to say that there was no wrongdoing, but rather, that any such wrong was one done to the company, and should therefore have been pursued under a different cause of action – such as a derivative action under s 216A…
>
> [Emphasis in original]

166 As the CA has acknowledged in various cases (see, *eg*, *Sakae Holdings* at [86], *Suying Design* at [32], *Ng Kek Wee* at [62]), there may be cases where conduct amounting to a corporate wrong can also plausibly be said to constitute a personal wrong. How the conduct is to be characterised depends very much on the facts of each case. In *Ng Kek Wee*, the CA cited (at [67]–[68]) the following passage from the judgement of Millett J in *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760 ("*Re Charnley Davies*") for its perceptive articulation of the distinction between unlawful conduct and conduct that is unfairly prejudicial (the UK equivalent to our notion of commercial unfairness) to the petitioner's interest:

> An allegation that the acts complained of are unlawful or infringe the petitioner's legal rights is not a necessary averment in a s 27 petition [the equivalent of our s 216]. In my judgement it is not a sufficient averment either. The petitioner must allege and prove that they are evidence or instances of the management of the company's affairs by the administrator in a manner which is unfairly prejudicial *to the petitioner's interests*. Unlawful conduct

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> may be relied on for this purpose, and its unlawfulness may have a significant probative value, but it is not the essential factor on which the petitioner's cause of action depends.
>
> [Emphasis in original]

167 As the CA in *Ng Kek Wee* stated in summing up the applicable analytical approach, a s 216 action "is appropriately brought where the complainant is relying on the unlawfulness of the wrongdoer's conduct as *evidence* of the manner in which the wrongdoer had conducted the company's affairs in disregard of the complainant's interest as a minority shareholder and where the complaint cannot be adequately addressed by the remedy provided by law for that wrong".

168 It is at this juncture that I should say something about the TCP-related allegations of oppression. In respect of TCP, the Plaintiffs pleaded at [10] of their Statement of Claim that Joe was "*the beneficial and registered shareholder of [TCP]*"[154]. In his AEIC, Joe also stated (at para 7) that he "*personally*" held 22.5% of TCP's shares. This suggested that the Plaintiffs were taking the position that the TCP-related allegations were oppressive of *Joe's personal rights as a shareholder of TCP*. Paragraph 10 of the Plaintiffs' Statement of Claim was denied by GSS and the 4th to 7th Defendants in their respective Defences.[155] In their Defence, the 4th to 7th Defendants also pleaded that TCP was incorporated on the understanding that it was to "be wholly-owned by AIQ", and that this was the basis on which TCP shares had been transferred into the names of its directors – including Joe.[156]

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154 SOC (Amendment No.3) at para 10.

155 3rd Df Defence (Amendment No.2) at para 19; 4th-7th Df Defence (Amendment No.1) at para 18.

156 4th-7th Df Defence (Amendment No.1) at para 24.

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169 What was interesting *and* revealing was that under cross-examination at trial, Joe accepted that insofar as the TCP directors held any TCP shares, *these were held on trust for AIQ*.[157] I say this was interesting *and* revealing because if this were true, the *TCP*-related allegations of oppression could not have injured *Joe's personal rights as a shareholder of TCP*. In his further submissions (at para 72),[158] GSS alluded to this conundrum. Unfortunately, the Plaintiffs did not expressly address this issue either in their closing submissions or in their further submission.

170 Given Joe's testimony in cross-examination and given the *qua member* rule, it would appear that the Plaintiffs' case in oppression vis-à-vis TCP must be that Joe's rights *as a shareholder of AIQ* were oppressed because as a shareholder of AIQ, he had certain legitimate expectations – by virtue of the Understanding and Agreement – as to how TCP would be managed. This was the basis on which I approached the Plaintiffs' TCP-related allegations of oppression, as it appeared to be the only coherent basis on which the Plaintiffs could have pursued their TCP-related oppression claims following Joe's about-face under cross-examination.

The relevance of the Plaintiff's own conduct to the court's consideration of whether there was commercial unfairness

171 The final aspect of the concept of commercial unfairness which I consider in this section of my written grounds concerns the relevance of the Plaintiffs' own conduct to the court's consideration of whether commercial unfairness has been established, and if yes, what reliefs may be appropriate. This issue was relevant in the present case because in respect of several of the

157 Transcript of 16 August 2022 at p 110 ln 17 to p 116 ln 21.

158 3rd Df Further Submissions at para 72.

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Plaintiffs' allegations of oppressive conduct (*eg*, commissioning and issuance of the Special Audit Report at [432]–[471] below, procuring AIQ to resist payment of Joe's salary and loans claims at [472]–[502] below), the Defendants' explanations for some of their actions were premised on Joe having conducted himself in a certain way – including his conduct as a director of AIQ in the period before the 4th to 7th Defendants joined the company.

172 In *Tan Yong San v Neo Kok Eng and others* [2011] SGHC 30 ("*Tan Yong San*"), the plaintiff Tan, who held 0.89% of the shares in a company known as "CHH", brought a suit under s 216 of the Companies Act against the majority shareholder Neo, who held 99.1% of the shares, as well as Neo's wife. Neo and his wife argued *inter alia* that Tan was barred by the equitable doctrine of laches from complaining about oppression of his rights as minority shareholder. Quentin Loh JC (as he then was) noted that since the remedies which Tan was seeking were derived from statute and not from equity, the *prima facie* position was that laches, or other equitable defences, did not bar Tan's right to claim for relief under s 216. However, Loh JC pointed out that such a view was too simplistic because although a s 216 claim was statutory in nature, the principles on what constituted oppressive or unfairly prejudicial conduct were "heavily influenced by considerations of fairness and equity". In his view (at [103]):

> Since considerations of fairness and equity play a crucial role in an action under s 216, a court should rightly be able to take into account the conduct of all the parties in determining whether there has been unfairness as a whole warranting the grant of relief under s 216(2). After all, fairness is a relative concept. Furthermore, because the court has a very wide discretion in granting such relief, it would only be natural to consider the relative equities of both the minority and majority shareholders in determining the appropriate form of relief.

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173 Loh JC (at [104]) also cited with approval the following passage from Robin Hollington QC, *Shareholders' Rights* (Sweet & Maxwell, 5th Ed, 2007) at para 7-123 – wherein the author discussed the application of the "clean hands" doctrine in equity in relation to the UK equivalent of s 216:

> Where the petitioner is relying upon traditional equitable principles to establish unfair prejudice, then it appears that the court will apply the general equitable principle that those seeking equitable relief must come to the court with "clean hands". … Any misconduct on the part of the petitioner, in so far as it relates to the grounds of unfair prejudice relief, must of course be material to the court's assessment of the unfairness of the treatment of the minority by the majority and of the relief that ought to be granted to redress any wrong done.

174 Loh JC went on to hold (at [105]) that the court hearing a s 216 action could take into account equitable defences such as laches and the clean hands doctrine in determining whether there has been oppressive conduct and in awarding the consequential relief.

175 While Loh JC was dealing specifically with the equitable defence of laches in *Tan Yong San*, the principles which he articulated on the relevance of a s 216 plaintiff's conduct to the court's consideration of the plaintiff's complaint of commercial fairness were clearly not intended to be limited to cases involving laches and/or the clean hands doctrine. As he took pains to point out (at [102]), the inquiry into whether a course of conduct may be characterised as unfair was a "multifaceted inquiry" (citing the CA in *Over & Over*). Since fairness was a "relative concept", it made sense that the court should generally be able to consider the s 216 plaintiff's conduct in determining, firstly, whether the element of commercial unfairness had been made out; and secondly, if this element had been made out, what reliefs would be appropriate to grant the said plaintiff.

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176 By way of illustrating his point, Loh JC referred to the English CA's decision in *Blackmore v Richardson* [2006] BCC 276 ("*Blackmore*"). In *Blackmore*, the petitioner and the two respondents had carried on the business of providing a radio taxi service through a partnership, and later through a company in which they were directors and equal shareholders. The respondents subsequently sold their shares to a third party C, who owned a competing business. The petitioner brought a petition under s 459 of the UK Companies Act 1985. The unfair prejudice he complained of included the fact that he had been excluded from the company and that his position in the company had been altered from that of being an equal shareholder with the two respondents to that of being a minority shareholder where the majority shareholder was someone with whom he had never had any dealings and who owned a competing business. In the course of the trial, evidence was given to show that some months prior to the respondents' sale of their shares to C, the petitioner had given them a letter which purported to be an offer for his shares from another taxi company. In fact, the petitioner had forged this letter.

177 At first instance, the trial judge found the petitioner's conduct in forging the letter to be deplorable, but held that the forgery did not automatically discharge the obligations of good faith which he found to be imposed on the former partners towards each other. On appeal, the English CA held (at [52]–[56]) that the trial judge was "plainly right" to take this position. As the English CA noted, the forgery "had no immediate or necessary relation to the circumstances upon which the petitioner's entitlement, or otherwise, to relief depended": "at best", the forgery was "an episode in the background history". The trial judge was right to disregard it in his consideration of whether the conditions under s 459 were satisfied. He was also right to disregard it in relation to the question of whether to exercise his discretion to make any, and if so, what order for relief under s 461.

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178 In *Grace v Biagioli* [2005] EWCA Civ 1222, the company at the centre of the dispute ("Telpro UK") had issued a total of 100 shares, with the petitioner and the three respondents each having 25 shares in the company. The petitioner and the three respondents were also directors of the company. After things soured between then, the petitioner brought proceedings under s 459 of the UK Companies Act 1985, claiming that that the respondents had decided to distribute profits to themselves alone without his knowledge or consent, and that they had also removed him as a director. He sought an order for the respondents to buy out his shares in Telpro UK.

179 At first instance, the trial judge found that unfair prejudice was established in respect of the failure to pay the petitioner dividends, but not in respect of his removal as director. The trial judge held that the petitioner's removal as director was not unfairly prejudicial within the meaning of s 459(1) because the respondents had possessed sufficient cause to remove the petitioner. In gist, the petitioner had put himself in a position of actual or potential conflict with his duties as a director by negotiating to acquire a company dealing in the same line of business as Telpro UK. Having found that there was fault on the part of the petitioner, the trial judge held that this (together with a number of other reasons) should exclude the making of a buyout order and instead ordered the company to pay the petitioner a sum of £20,000 plus interest.

180 On appeal by the petitioner, the English CA held (at [69]) that the trial judge was entitled to conclude that the petitioner's conduct had justified his removal as a director. This was because although the petitioner was entitled to take the view that the difference between him and the respondents made it sensible for him to seek out alternative opportunities for the future, the way in which he had done so – in an underhand and secretive manner, and by negotiating the purchase of a related business – would have placed him in a

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position of conflict with his duties as a director towards Telpro UK. The English CA therefore dismissed the petitioner's appeal against the trial judge's finding that his removal as director had not been unfairly prejudicial. At the same time, however, the English CA held that in respect of the relief granted to the petitioner, the trial judge had exercised his discretion under s 461 on too narrow a basis, and the factors which he had considered as reasons for not making a buyout order did not justify the conclusion reached. The petitioner's appeal against the trial judge's refusal to make a buyout order was accordingly allowed.

181 In *Re R A Noble & Sons (Clothing) Ltd* [1983] BCLC 273 ("*Re Noble*"), a small private company was set up by Mr Noble and Mr Bailey to take over a business previously run by Mr Noble. The parties agreed *inter alia* that Mr Bailey would invest £10,000 in the venture; that Mr Bailey and Mr Noble would each have 50 shares in the company (with Mr Bailey's shares being held by a company he controlled ("Anafield")); that Mr Bailey would bear the expense of fitting out a new shop to be acquired by the company; and that Mr Noble would be responsible for conducting the company's affairs for which he would receive a salary. The working relationship between the parties deteriorated, however, and contact between Mr Bailey and Mr Noble became less frequent. This culminated in Mr Bailey writing to Mr Noble saying that he wished to sever his connection with the company – and also seeking repayment of the loan made as well as payment for work done on renovations for the shop. Subsequently, Anafield also filed a petition seeking relief (*inter alia*) under s 75 of the UK Companies Act 1980 for unfair prejudice to its interests. It was alleged that Mr Noble had improperly assumed control of the company and had excluded Mr Bailey from involvement in the company affairs.

182 In considering whether there was unfair prejudice, Nourse J found that Mr Bailey's exclusion from management of the company was not unfair

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because it was to a large extent due to Mr Bailey's disinterest – and that Mr Noble had simply wanted to get on with the management of the company's affairs and was not guilty of any underhanded conduct. In particular, Nourse J explained that (at p 291-292 of *Re Noble*):

> As to s 75, I certainly think that Mr Noble's conduct, inasmuch as it resulted in the exclusion of Mr Bailey from participation in all major decisions affecting the Company's affairs, could in other circumstances have amounted to conduct unfairly prejudicial to the interests of Anafield, even though the value of its shareholding in the Company may not have been seriously diminished or seriously jeopardised. I entirely agree with Slade J that s 75 cannot be limited to cases of that nature. On the other hand, I have acquitted Mr Noble of any form of underhand conduct. In particular, I acquit him of deliberately deceiving Mr Bailey as to the existence of the substantial overdraft on the Josy Fashions' account. I think that Mr Noble's attitude was that he just wanted to get on with the business without having to consult Mr Bailey about anything upon which he was not forced to consult him. But in all the circumstances of this case, including many to which I have not specifically referred, *I do not think that it can be said that Mr Noble's conduct was unfairly prejudicial to the interests of Anafield.* In my judgment, the crucial word on the facts of this case is 'unfairly'. *It is at this point that Mr Bailey's disinterest becomes a decisive factor.* In the end, and by reference to the test propounded by Slade J, *I do not think that a reasonable bystander, observing the consequences of Mr Noble's conduct and judging it to have been prejudicial to the interests of Anafield, would regard it as having been unfair. I think he would say that Mr Bailey had partly brought it upon himself.* That means that there is no case for relief under s 75.
>
> [emphasis added]

183 To sum up, therefore, the authorities establish that in an oppression claim under s 216 of the Companies Act, the plaintiff's own conduct may be relevant to the court's consideration of whether the treatment he complains of is commercially unfair, and also in the court's consideration of the appropriate relief to be granted in the event commercial unfairness is proven.

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184 Finally, in applying the above principles in its evaluation of an oppression claim, the court should bear in mind the CA's injunction in *Ascend Field* that "the law does not condone a tit-for-tat approach to shareholder relations (*Ascend Field* at [69] citing *Leong Chee Kin* at [76]). Both *Ascend Field* and *Leong Chee Kin* are instructive in the illustration they provide of conduct which may be regarded as having devolved into a tit-for-tat approach between disputing shareholders.

185 In *Ascend Field*, one Mr Tee and one Mr Ng had set up AFPL as equal shareholders. Prior to setting up AFPL, Mr Ng and his wife ("Ms Kor") ran another company ("YFX"). Both AFPL and YFX provided cleaning services to office premises and buildings. Mr Tee's friend and business partner ("Mr Ching") controlled certain businesses ("Oxley businesses"), and AFPL was awarded cleaning contracts by the Oxley businesses. Mr Ng was at the material time the sole director. Eventually, Mr Tee claimed to have discovered various lapses in AFPL's management, which led to the breakdown of the working relationship between Mr Tee and Mr Ng. Mr Tee commenced an oppression suit against Mr Ng, Ms Kor and YFX, claiming that Mr Ng had acted oppressively by *inter alia* diverting AFPL's contracts, employees and resources to YFX; causing AFPL to make wrongful payments to YFX; removing Mr Tee as a bank signatory; and refusing to declare dividends. In relation to Mr Ng's conduct in diverting AFPL's contracts to YFX, Mr Ng and Ms Kor argued *inter alia* that they had acted in response to Mr Ching's conduct in allegedly threatening to close down AFPL and to inform AFPL's customers to contract with a new cleaning company (at [66] of *Ascend Field*).

186 At first instance, the trial judge found that the five contracts in question were diverted to YFX from AFPL after the relationship between the parties broke down, and after Mr Ching caused the Oxley businesses to divert their

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contracts from AFPL to a third-party cleaning company. The trial judge held that regardless of such action, Mr Ng "had no excuse to divert the contracts to YFX" (at [67] of *Ascend Field*).

187 The CA agreed with the trial judge's findings on this issue (at [69]). In particular, the CA noted that notwithstanding the breakdown of relations between Mr Ng, Mr Tee and Mr Ching and the alleged threats made by the latter two, Mr Tee and Mr Ching did not have any management control over AFPL and could not have caused it to shut down. The CA held that even if Mr Ching had terminated AFPL's contracts with his Oxley businesses, Mr Ng "was not precluded from ensuring that AFPL performed its other existing contracts"; and "[a]ny grievances that he had could have been managed through proper means, such as his continued participation in the share buyout negotiations or by taking legal action against Mr Ching and Mr Tee for their alleged interference with AFPL's contractual relations". The parties were agreed that AFPL was set up as a quasi-partnership based on a relationship of mutual trust and confidence between Mr Ng and Mr Tee (at [41]); and that Mr Tee had a legitimate expectation that while YFX continued running after AFPL's incorporation, Mr Ng would not be in a position of conflict of interest in relation to it (at [49] and [54]). By diverting AFPL's contracts to YFX, Mr Ng had breached Mr Tee's legitimate expectations (at [69]).

188 In *Leong Chee Kin*, the plaintiff had accepted the second and third defendants' invitation to join their interior design business ("Ideal Design Studio") as a director and a shareholder with a 16.67% stake through shares sold to him by the third defendant. Parties had an understanding that the plaintiff would be paid a certain percentage of the profit on every project he brought in or managed. The plaintiff was set a target of bringing in $200,000 in sales within six months, failing which he was to resign as director and sell his shares back

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to the third defendant at the purchase price. Subsequently, despite failing to meet the targets, the plaintiff refused to resign as director or to sell his shares back to the third defendant. The plaintiff was then removed as a director at an EGM. Subsequently, the defendants incorporated five companies which the plaintiff was excluded from. Each of the five companies had the words "Ideal Design" in its name. The plaintiff found out about these five companies some two years after their incorporation. He commenced oppression proceedings against the second and third defendants, alleging *inter alia* the diversion of business from Ideal Design Studio to the five companies.

189 On the facts, Coomaraswamy J found that the defendants' "real reason for incorporating the five companies was to divert the revenue, and therefore also the profits, of what would otherwise have been Ideal Design Studio's business to entities in which the plaintiff had no shareholding and accordingly no legal entitlement to share in the profits" (at [77] of *Leong Chee Kin*). While Coomaraswamy J found that the plaintiff's refusal to sell back his shares was a breach of the understanding between him and the defendants, such conduct on the plaintiff's part "did not entitle the defendants to approximate the effect of his doing so by incorporating the five companies and diverting business from Ideal Design Studio to them" (at [75]). The diversion of business was not only a breach of the defendants' fiduciary duties to Ideal Design Studio; it "defeated the plaintiff's legitimate expectation as a shareholder" and was "grossly commercially unfair to the plaintiff as a minority shareholder of Ideal Design Studio" (at [77]).

190 Before I leave this section on the applicable legal principles, I note the Plaintiffs have argued that I should not take into account Joe's conduct in determining the existence of commercial unfairness. This was because according to the Plaintiffs, the 3rd to 7th Defendants had failed to plead their

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reliance on the clean hands doctrine and/or any other equitable defence warranting a denial of relief.[159]

191 I rejected the above argument. In the first place, the Plaintiffs' contention that the 3rd to 7th Defendants were seeking to rely on the "clean hands" doctrine was misconceived. From the 3rd to 7th Defendants' pleadings and submissions, it was evident that they were not relying on this equitable doctrine. Instead, their position was that Joe's various actions formed the reason(s) or basis for some of the actions taken against him (*eg*, the commissioning and issuance of the Special Audit Report).

192 As for the Plaintiffs' contention that they were unprepared for the 3rd to 7th Defendants' attempt to rely on Joe's alleged misconduct as a factor militating against a finding of commercial unfairness, a review of the 4th to 7th Defendants' pleadings showed that they had expressly pleaded in their Defence the material facts in respect of their reliance on Joe's conduct as justification for some of the actions taken against him.

193 For instance, it was pleaded that:

> (a) The 4th to 7th Defendants had in the best interests of AIQ engaged TRS Forensics to "investigate and produce the special audit in relation to AIQ's transactions between 2014 and 2015". This included *inter alia* the Medical Application purchase and the authenticity and validity of Joe's Consultancy Agreement with AIQ;[160]

159 Pf Further Submissions at para 35.

160 4th-7th Df Defence (Amendment No.1) at paras 6-9.

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(b) The Special Audit had revealed the Joe's purported employment contract with AIQ dated 15 May 2015 ("**Employment Contract**") was forged and/or only created and signed in or around December 2017;[161]

(c) Such a revelation by the Special Audit raised serious concerns as to whether Joe was entitled to his salary as claimed;[162]

(d) The problems with the Medical Application purchase suggested that there was a potential breach of Joe's fiduciary duties to AIQ;[163] and

(e) The 4th to 7th Defendants would rely on the contents of the Special Audit conducted by TRS Forensics for its full effect at trial.[164]

194 In addition to the pleadings, the AEICs too made it clear beyond doubt that the 4th to 7th Defendants were saying that Joe's conduct had justified some of the actions taken against him. For example, Kian Wai stated in his AEIC that the Special Audit was conducted because certain suspicious transactions which AIQ had been party to during Joe's earlier term as a director had caused AIQ to be unable to finalise its financial statements from FY 2014 to FY 2015, and this had raised concerns amongst the 4th to 7th Defendants. Further, according to Kian Wai's AEIC evidence, Joe was evasive and unable to provide proper documentation for these earlier transactions. Joe's continuing failure to give a satisfactory response to AIQ's auditors led to the eventual decision to commission a Special Audit.[165]

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161 4th-7th Df Defence (Amendment No.1) at para 46.

162 4th-7th Df Defence (Amendment No.1) at para 46A.

163 4th-7th Df Defence (Amendment No.1) at para 46B.

164 4th-7th Df Defence (Amendment No.1) at para 46B.

165 AEIC of 6th Df at paras 19 to 42.

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195 As for the Plaintiffs' argument that Joe's alleged misconduct had no immediate or necessary relation to the oppressive acts and the argument that the 3rd to 7th Defendants were in any event unable to prove such misconduct, these are dealt with in the course of these written grounds.

The Plaintiffs' pleaded case on minority oppression

196 Having set out above the legal principles applicable to the Plaintiffs' claim under s 216 Companies Act, I explain in the next section how I applied these principles in considering the various allegations of oppressive conduct pleaded by the Plaintiffs.

197 It will be recalled that I found that Joe had no *locus standi* to bring the s 216 claim insofar as it related to AIQ, since he was indisputably no longer a registered member of AIQ when the action was commenced and did not fall within any of the recognized exceptions (see [66]–[81] above). I also found that the Plaintiffs had failed to prove that Thames held the AIQ shares purely as Joe's nominee, and that Thames accordingly also had no *locus standi* to bring the s 216 claim insofar as it related to AIQ, since it was premised on Joe's rights under the Understanding and Agreement having been breached (see [130]–[143] above). I have explained that in the interests of completeness, notwithstanding my finding against Thames, I did still proceed to consider the AIQ-related allegations of oppression on the alternative assumption that the Plaintiffs could establish that Thames held the shares as Joe's nominee.

198 The key acts of oppression alleged by the Plaintiffs were as follows:[166]

166 Pf Closing Submissions at para 9.

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(a) Breach of the Understanding and Agreement (including the 2:1 Funding Agreement);[167]

(b) Wrongful diversion of funds and resources from AIQ to TCP, and unauthorised loans from AIQ to TCP in breach of s 163 of the Companies Act;[168]

(c) Wrongful denial of Joe's right to inspect, have access to, and be provided with the financial information, books and records of AIQ and TCP;[169]

(d) Wrongful dilution of Joe's shareholding in AIQ through the Rights Issue;[170]

(e) Wrongful removal of Joe as a director of AIQ and TCP;

(f) Wrongful procurement of the Special Audit Report to cast false aspersions on Joe before AIQ's shareholders and to lend support to the other oppressive acts;[171]

(g) Wrongfully procuring AIQ to deny liability for outstanding salary payments and loan repayments due to Joe;[172] and

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167 SOC (Amendment No.3) at paras 19–21.

168 SOC (Amendment No.3) at paras 25–39.

169 SOC (Amendment No.3) at paras 48–59.

170 SOC (Amendment No.3) at paras 40–47.

171 SOC (Amendment No.3) at paras 82–85B.

172 SOC (Amendment No.3) at paras 60–81.

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(h) Procuring AIQ to enter into the Assignment Agreement and engineering the winding up of AIQ and TCP.[173]

199 *Per* their pleaded case, the Plaintiffs' s 216 claim was *not* premised on the breach of their rights as shareholder under any specific provisions of AIQ's Constitution and/or under the Companies Act. Nor was their claim premised on the assertion that AIQ was a quasi-partnership in the sense that the term has been used in cases such as *Ebrahimi* and *Lim Kok Wah*. It should be noted that although in their pleadings the Plaintiff described *the relationship between Joe and GSS* as being a "quasi-partnership", this very loose use of the term was not explained or clarified in Joe's AEIC and/or in closing submissions. Indeed, in closing submissions, the Plaintiffs did not even touch on their use of the term "quasi-partnership" in their pleadings.

200 Instead, the Plaintiffs' claim of oppression was premised in large part on alleged breaches of the Understanding and Agreement which they said had been concluded between Joe and GSS, the terms of which (according to the Plaintiffs) provided for *inter alia* the 2:1 Funding Agreement, Joe's right to remain as a director and Chairman of AIQ and as a director of TCP, and Joe's right to "full financial information" about AIQ's and TCP's business progress.[174] Although one of the allegations of oppressive conduct concerned the making of unauthorised loans by AIQ to TCP in breach of s 161 Companies Act, bearing in mind the CA's observations about the distinction between unlawful conduct and conduct that is commercially unfair (*Ng Kek Wee* at [67]–[68]), I understood the Plaintiffs to be saying that the unauthorised loans were oppressive because

173 SOC (Amendment No.3) at paras 85C–86.

174 SOC (Amendment No.3) at para 19.

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they were made in disregard of the Understanding and Agreement which stipulated how funding provided by Joe and GSS to AIQ was to be utilised.

The alleged Understanding & Agreement between Joe and GSS

201 I next consider the first of the two key themes in the Plaintiffs' oppression case. As the Plaintiffs' case presented the Understanding and Agreement as the instrument which had given rise to those rights which Joe (and his purported nominee, Thames) were claiming had been breached, it was crucial to consider how it was described in their pleadings. *Per* the Plaintiffs' pleaded case, the Understanding and Agreement was *not* a shareholders' agreement to which *all* the shareholders of AIQ and TCP were a party to. Instead, *per* the Plaintiffs' pleaded case, the Understanding and Agreement was "an express and/or implied agreement, or mutual understanding and trust, between [Joe and GSS]"[175].

202 GSS denied the existence of the Understanding and Agreement.[176]

Whether the Plaintiffs were able to prove the existence of the Understanding and Agreement between Joe and GSS

203 In my consideration of the Plaintiffs' oppression claim, given their pleaded case, the first issue which needed to be determined was whether the Understanding and Agreement – with all its constituent terms, as pleaded – even existed. The Plaintiffs bore the burden of proving the existence of the Understanding and Agreement. On the basis of the evidence before me, I found that the Plaintiffs were unable to discharge this burden of proof. I explain my reasons for this finding at [214]–[274] below.

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175 SOC (Amendment No.3) at para 19.

176 3rd Df Defence (Amendment No.2) at para 23.

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204 I first outline each side's position in respect of the existence of the Understanding and Agreement and its alleged terms.

The parties' respective positions on the Understanding and Agreement

(1) Plaintiff's position

205 It was not disputed that GSS first invested in AIQ in April 2015, via a subscription for 5.86% of the shareholding in AIQ to the tune of US$5 million (as at [13] above). In 2016, after the anticipated acquisition of AIQ by Powa fell through and after Carl Freer left the company, Joe approached Leslie again, hoping to get GSS to co-fund the company together with him. On 19 July 2016, GSS lent US$1 million to AIQ pursuant to the Convertible Loan Agreement (as at [14] above).

206 Against this backdrop, according to the Plaintiffs, the first discussions pertaining to the Understanding and Agreement took place "sometime in or around September/October 2016"[177] between Joe and Leslie (acting as GSS' representative). On 3 February 2017, when Joe and GSS met in person, GSS informed Joe that he was willing to invest more money in AIQ. GSS was told AIQ required an additional $3m in funding. Subsequently, sometime "in or around 1 March 2017", Joe and GSS agreed that together, they would contribute a further $3m in funding to AIQ "on a 1/3 and 2/3 basis respectively". According to the Plaintiffs, this agreement was reflected in the 1 March 2017 email from Joe to GSS. Both parties' contributions were to be "treated as loans with an option to convert to equity…at their respective options"; and there was to be "equal" treatment of the two sets of loans. Additionally, Joe proposed – and GSS agreed – that he (Joe) would remain the Chairman of AIQ and continue

177 Pf FNBP (14 August 2021) at pp 3–5.

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with his existing remuneration package; and that payment of such remuneration would "continue to be deferred and be treated as shareholder loans to [AIQ]".[178]

207 It should be noted that *per* the Plaintiffs' amended Statement of Claim[179] and their further and better particulars of 14 August 2021,[180] there were eight express terms in the Understanding and Agreement, as agreed between Joe and GSS.[181] These have been set out in these written grounds at [30] above, but for ease of reference, I reproduce them below:

> (a) First and foremost, it was agreed that from January 2017 until the point in time when AIQ became financially independent, GSS would bear two-thirds of AIQ's costs and expenses and Joe would bear one-third of the costs and expenses. This was the term which Joe referred to as the 2:1 Funding Agreement;
>
> (b) Joe was to receive full financial information about AIQ's business and its progress;
>
> (c) Joe was to remain a director and the Chairman of AIQ for which he would continue to receive his agreed remuneration;
>
> (d) Joe and GSS' nominees would be directors of AIQ and would participate in the conduct of AIQ's business;
>
> (e) GSS' nominee-directors would use the funding provided for AIQ's "Principal Object" (defined as the development and sale of

178 Pf FNBP (14 August 2021) at pp 3–5.

179 SOC (Amendment No.3) at para 19.

180 Pf FNBP (14 August 2021) at p 5, S/N 2(b)(ii).

181 SOC (Amendment No.3) at para 19; Pf FNBP (14 August 2021) at p 5, S/N 2(b)(i).

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artificial intelligence and the offering of offline-online-offline integrated solutions);[182]

(f) TCP was to be incorporated so that it would become an additional source of revenue for AIQ, as well as a talent pool for recruitment and the generation of business ideas;

(g) Joe would receive full financial information about TCP's business and its progress; and

(h) Joe and GSS' nominees would be directors of TCP and would participate in the conduct of the business of TCP.

208 *Per* the further and better particulars of 14 August 2021, the Plaintiffs also pleaded that the Understanding and Agreement contained the following implied terms:

(a) GSS "shall procure the 4th to 7th Defendants to perform all acts necessary to ensure adherence to the terms of the Understanding and Agreement";

(b) GSS "shall not, whether by himself or through the 4th to 7th Defendants, perform any act that would result in a substantial dilution of [Joe's] (through [Thames']) shareholding";

(c) GSS "shall procure the 4th to 7th Defendants to acknowledge that the funds provided by [Joe] were loans that were repayable on demand";

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182 SOC (Amendment No.3) at para 4.

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(d) GSS "shall procure the 4th to 7th Defendants to utilise [AIQ's] resources (which includes [Joe's] loans to the company" to progress the Principal Object of [AIQ]".

209 Having pleaded the above express and implied terms, the Plaintiffs took a different position in their closing submissions. In their closing submissions, the Plaintiffs took the position that there were only *two* express terms in the Understanding and Agreement: the term referred to as the 2:1 Funding Agreement and the term regarding the incorporation of TCP.[183] As to the other six terms pleaded at paras 19(2)-(5) and (7)-(8) of their amended statement of claim, the Plaintiffs claimed in their closing submissions that these terms "may not have been expressly agreed", but that they would nevertheless "have been required as a form of baseline understanding before the other terms of [the Understanding and Agreement] could be given effect".[184] In the Plaintiffs' closing submissions, these implied terms were described as follows:

(a) That Joe would be fully involved in the management and business of AIQ and TCP as a director and (in the case of AIQ) as Chairman, and would receive full financial information about the companies' progress;

(b) That the funds provided by Joe and GSS would be used towards the development and commercialisation of AIQ's VRT.

210 In their closing submissions, the Plaintiffs also stated that they were relying on the following other implied terms (*per* their further and better particulars of 14 August 2021):

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183 Pf Closing Submissions at para 218.

184 Pf Closing Submissions at para 219.

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(a) That GSS "shall procure the [4th to 7th Defendants]" to perform all acts necessary to ensure adherence to the terms of the Understanding and Agreement;

(b) That GSS "shall not, whether by himself or through the [4th to 7th Defendants]", perform any act that would result in a substantial dilution of Joe's shareholding in AIQ;

(c) That GSS "shall procure [the 4th to 7th Defendants]" to acknowledge that the funds provided by Joe were loans that were repayable on demand. This was because Joe's continued funding of AIQ from 2017 onwards was premised on the Understanding and Agreement; and

(d) GSS shall procure the 4th to 7th Defendants to utilise AIQ's resources (which includes Joe's loans to the company) to progress the Principal Object of AIQ, *ie*, the development and commercialisation of the VRT.

(2) 3rd Defendant GSS' position

211 GSS' case was that the Understanding and Agreement relied on by the Plaintiffs simply did not exist.[185] In respect of the alleged 2:1 Funding Agreement, GSS asserted that while AIQ had indeed been funded initially according to a 2:1 ratio as between him and Joe, he (GSS) had contributed to the funding on a goodwill basis – and not pursuant to any binding agreement with Joe.[186] Contrary to the Plaintiffs' case, therefore, GSS was never under any

185 3rd Df Defence (Amendment No.2) at para 23; 3rd Df Closing Submissions at para 62.

186 3rd Df Closing Submissions at paras 110–111; 3rd Df Defence (Amendment No.2) at para 29.

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obligation or duty to continue providing two-thirds of the funding for the company on an indefinite or even an extended basis. As for the other alleged terms of the Understanding and Agreement (as pleaded at para 19 of the amended statement of claim), GSS asserted that he could not have agreed to these other terms because they all related to management matters which he was not involved in.[187]

212 More generally, GSS also pointed out that despite the purported importance of the Understanding and Agreement in governing the relationship between Joe, GSS and the two companies, it was never reduced to writing, even when the opportunity arose for Joe to do so.[188] As for the various emails and other documents which the Plaintiffs sought to rely on as evidence corroborating their case on the Understanding and Agreement, GSS contended that these documents failed to establish the existence of any such agreement.[189]

(3) 4th to 7th Defendants' position

213 The 4th to 7th Defendants' case was that since the Understanding and Agreement was said to have been entered into between Joe and GSS, they were not party to the alleged agreement and took no position on whether such an agreement existed.[190] Further, since they had no knowledge of such an agreement, they could not have been expected to compel or require GSS to comply with its terms. In particular, they were in no position to compel or

187 3rd Df Closing Submissions at paras 91–96; 3rd Df Defence (Amendment No.2) at para 23.

188 3rd Df Closing Submissions at paras 81–83.

189 3rd Df Closing Submissions at paras 100–108.

190 4th-7th Df Closing Submissions at para 71.

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require GSS to contribute to two-thirds of the funding of AIQ's costs and expenses if GSS declined to do so.[191]

(4) My Decision

214 Having considered the evidence adduced, as well as parties' pleadings and submissions, I found that no Understanding and Agreement was ever entered into between Joe and GSS, whether on the terms pleaded by the Plaintiffs, or on the terms described in their closing submissions. I found the Plaintiffs' claims about the existence of such an agreement to be unsupported by any credible evidence, riddled with inconsistencies, and devoid of merit. My reasons were as follows.

(I) THE PLAINTIFFS' POSITION IN CLOSING SUBMISSIONS AS TO THE TERMS OF THE UNDERSTANDING AND AGREEMENT DEVIATED FROM THEIR PLEADED CASE

215 As a preliminary point, the Plaintiffs' position in closing submissions as to the terms of the alleged Understanding and Agreement deviated from their pleaded case. As I alluded to earlier (at [207]–[209]), whereas in their pleaded case the Plaintiffs had asserted that there were eight express terms in the Understanding and Agreement (as pleaded in para 19 of the amended statement of claim, read together with the response at 2(b)(i) at p 3 of the further and better particulars dated 14 August 2021), the case put forward in their closing submissions posited only two express terms in the Understanding and Agreement: namely, the term referred to as the 2:1 Funding Agreement and the term regarding the incorporation of TCP.[192] The other six terms which had been pleaded as express terms in the amended statement of claim were characterised instead as terms which "would have been implied as part of the [Understanding

191 4th-7th Df Closing Submissions at para 72.

192 Pf Closing Submissions at para 218.

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and Agreement] as it would have been required as a form of baseline understanding before the other terms of the [Understanding and Agreement] could be given effect"[193].

216 I make two points about this shift in the Plaintiffs' case. First, the Plaintiffs made no attempt to apply for leave to amend their pleadings prior to the filing of closing submissions. It is trite that parties are bound by their pleadings, and the court is precluded from deciding on a matter that the parties have not put into issue (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]). After all, the function of pleadings is to give one's opponents fair notice of the case which has to be met and to define the issues which the court will have to decide on so as to resolve the matters in dispute between the parties (*Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [61]). If the Plaintiffs had wanted at the close of the trial to put forward a different case on the terms of the Understanding and Agreement, they should have applied for leave to do so and addressed the issue of prejudice to the Defendants. Having chosen not to make any such application, I did not think they should be allowed to put forward in closing submissions a different case from the case presented in their pleadings.

217 Second, even if I were to overlook the Plaintiffs' procedural lapse on the basis that the Defendants suffered no real prejudice (since their defences would have remained the same whether there were eight express terms or only two in the alleged Understanding and Agreement), the manner in which the Plaintiffs' change in position was presented in their closing submissions gave rise to even more questions. The Plaintiffs did not acknowledge in their closing submissions

193 Pf Closing Submissions at para 219.

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this tangible – indeed, significant – change in their case vis-à-vis the terms of the Understanding and Agreement. If anything, they sought to couch the shift in position rather coyly in equivocal terms. Of the six terms which had been pleaded as express terms at paras 19(2)-(5) and 19(7)-(8) of the amended statement of claim, it was said in the closing submissions that they "*may not* have been expressly agreed". This apparent refusal to take a firm position on whether the six terms were in fact expressly agreed was disconcerting, to say the least, since it suggested that the Plaintiffs themselves were uncertain about the precise terms alleged to have been expressly agreed between Joe and GSS.

(II) THE PLAINTIFFS' APPARENT UNCERTAINTY AS TO THE CIRCUMSTANCES IN WHICH THE EXPRESS TERMS OF THE UNDERSTANDING AND AGREEMENT WERE AGREED

218 This leads me to my next point, and the first of the several reasons why I rejected the Plaintiffs' claim that there was an Understanding and Agreement concluded between Joe and GSS. As with their case on the express and implied terms of the Understanding and Agreement, the Plaintiffs' case as to the circumstances in which the express terms of the said agreement were allegedly agreed between Joe and GSS also went through a number of significant changes. In their further and better particulars of 14 August 2021, the Plaintiffs pleaded *inter alia* the following:[194]

> …[Joe] and [GSS] met in person on 3 February 2017 at the Biopolis where [GSS] informed [Joe] that he was willing to invest more money in [AIQ]. [GSS] was informed that the company required an additional S$3m in funding. ***Shortly thereafter, sometime in or around 1 March 2017, it was agreed that both [Joe] and [GSS] would together contribute a further S$3m in funding to [AIQ] on a 1/3 and 2/3 basis respectively***. Both parties' contributions were to be treated as loans with an option to convert to equity. The 1/3 and 2/3 apportionment was to enable [GSS] to increase his shareholding so that it would be closer to [Joe's]. In addition, the S$3m in

194 Pf FNBP (14 August 2021) at pp 3–4, S/N 2(a).

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> funding was to be disbursed in tranches in the course of 2017 as and when additional funding was required. ***This agreement was reflected in an email dated 1 March 2017 from [Joe] to [GSS]*** in respect of the aforementioned loans where [Joe] confirmed that he "*will be bound by exactly the same terms as [GSS]*"… ***As such, it was a further term of the Understanding and Agreement referred to at paragraph 19 of the [Statement of Claim] that the loans to be provided by [Joe] and [GSS] would be loans convertible to equity at their respective option and that the treatment of the loans, its repayment and/or conversion would be equal for both. In addition, [Joe] proposed and [GSS] agreed, that he would remain the Chairman of [AIQ] and continue with his existing remuneration package and that payment of his remuneration would continue to be deferred and be treated as shareholder loans to [AIQ].***
>
> [emphasis added in bold italics]

219 *Per* the Plaintiffs' pleaded case, therefore, the express terms of the Understanding and Agreement were agreed between Joe and GSS on or around 1 March 2017, before Joe sent his 1 March 2017 email to GSS.[195]

220 In his AEIC, however, Joe gave a different version of events. According to the version recounted by Joe in his AEIC,[196] he and GSS had a meeting on 3 February 2017, at which meeting the 2:1 Funding Agreement was "discussed" and "verbally agreed" upon; and at which it was also agreed that both parties' contributions would be treated as loans with an option to convert to equity. In his AEIC, Joe did not mention any other terms of the Understanding and Agreement being discussed or agreed at the 3 February 2017 meeting. According to the version of events in his AEIC, the agreement about funding which was reached at the 3 February 2017 meeting was "captured in subsequent

195 3ABOD at pp 99–100.

196 AEIC of Pf at paras 42–43.

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correspondence between GSS and [Joe]" – "[f]or instance", the email exchange of 1 March 2017 between GSS and Joe.[197]

221 At trial, Joe's evidence as to the circumstances in which the terms of the Understanding and Agreement were agreed changed again. Under cross-examination, Joe testified that at his 3 February 2017 meeting with GSS, there was no discussion between them about funding AIQ on a "two-thirds/one third" basis. Instead, according to Joe, "the terms going forward" – which apparently included the 2:1 Funding Agreement – were agreed as between him and GSS "in March" 2017 through "*telephone discussions and text messages*".[198]

222 The Plaintiffs' inability to maintain a consistent account of the circumstances in which the terms of the Understanding and Agreement were agreed presented grave difficulties for their case, particularly since – *per* their own case – the Understanding and Agreement was never reduced into writing. The omission to reduce the alleged agreement into writing was another reason why I found the Plaintiffs' claims about the existence of the Understanding and Agreement to be lacking in credibility and devoid of merit. I address this point next.

(III) THE UNDERSTANDING AND AGREEMENT WAS NEVER REDUCED INTO WRITING

223 To begin with, I found it unbelievable that despite having purportedly entered into an agreement which provided for critical matters such as their respective obligations to fund AIQ as well as Joe's right to remain a director of both companies with a certain remuneration package and to participate in the conduct of both companies' business, neither Joe nor GSS apparently found it

197 AEIC of Pf at pp 271–272.

198 Transcript of 11 August 2022 at p 98 ln 10 to p 102 ln 6.

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necessary to reduce their agreement into writing at any point in time. I found this unbelievable, firstly, because both were indisputably experienced businessmen who would have known only too well the importance of reducing contracts into writing. Having a written record of the terms they had agreed upon would have been all the more important when they had no prior working relationship and thus no reason to trust each other blindly. I should add that although Joe claimed somewhat belatedly in cross-examination that the terms of the Understanding and Agreement were discussed and agreed between him and GSS through "*telephone discussions and text messages*"[199] in March 2017, no evidence was produced by the Plaintiffs of any such "*telephone discussions and text messages*".[200]

224 In this connection, I should point out that of all the alleged terms of the Understanding and Agreement, the 2:1 Funding Agreement in particular would have placed both AIQ and Joe in a highly advantageous position, while subjecting GSS to onerous financial obligations. At the time the Understanding and Agreement was purportedly entered into, GSS held only a 4.73% shareholding in AIQ, compared to Joe's 50.60% shareholding (before the share transfer in October 2017). On the Plaintiff's case, despite being a minority shareholder, GSS agreed to bind himself to funding AIQ together with Joe on a 2:1 ratio – an arrangement which Joe testified at trial was to carry on "indefinitely".[201] This meant that for an indefinite period of time, GSS would bear twice the burden of funding AIQ as compared to Joe, while Joe would stand to gain more than ten times of any upside that GSS would gain in the event of AIQ's success. This simple calculation did not even account for the roughly

199 Transcript of 11 August 2022 at p 98 ln 10 to p 102 ln 6.

200 Transcript of 11 August 2022 at p 98 ln 10 to p 102 ln 6.

201 Transcript of 11 August 2022 at p 134 ln 18 to p 136 ln 21.

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45% of other shareholders in AIQ who were not providing any further funding to AIQ at that point in time and who only stood to gain the upside from any success by AIQ. Given these circumstances, I found it unbelievable – absurd, even – that Joe should have omitted to ensure the 2:1 Funding Agreement was reduced into writing.

225 Further, the Plaintiffs themselves accepted that tensions and disagreements between Joe and GSS surfaced soon after the purported conclusion of the Understanding and Agreement in March 2017. It was not disputed that these tensions and disagreements arose in part from GSS' dissatisfaction with Joe's alleged failure to follow through on his promises to transfer to GSS shares in AIQ and in another company called AFAR, even as GSS was continuing to co-fund AIQ. Thus, for example, in an email dated 27 September 2017 from Marcus to Joe and the other directors (which was copied to GSS), Marcus informed Joe that GSS had stopped his funding of AIQ for the month of September 2017 until the "share transfer issues" were "sorted out" between GSS and Joe. In the same email, Marcus expressed worry that AIQ was short of funds to pay suppliers; and he urged Joe to "have a conversation directly with GSS" on the issue of "further funding from GSS" and a "resolution for the share transfers agreement".[202]

226 It was against this backdrop that the Share Transfer Deed dated 2 October 2017 was entered into. As Marcus highlighted in his email of 27 September 2017, GSS' shareholding-related dissatisfaction had led to the stoppage at one point of his funding of AIQ; and *per* Joe's own narrative in his AEIC, the Share Transfer Deed was intended *inter alia* to "placate GSS in

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[202] 4ABOD at pp 442–443.

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respect of the equalisation of [their] shareholdings".[203] Indeed, Joe's evidence in cross-examination was that the Share Transfer Deed was entered into "to resolve *all outstanding issues* between the two of [them, *ie*, Joe and GSS] and the board, so that [they] could put the company on a sound footing" and so that there would be "no more arguing going forward".[204] Joe also gave evidence that in entering into the Share Transfer Deed, he took the "opportunity" to "resolve several audit-related issues" concerning AIQ's past transactions on which he had been facing queries from the other directors and the company's auditors.[205]

227 Given the circumstances leading to the execution of the Share Transfer Deed, it was baffling that Joe – of all people – apparently did not think to include in the said deed any mention of the 2:1 Funding Agreement, his right to remain as a director of the two companies, and the other alleged terms of the Understanding and Agreement. What was even more baffling was Joe's repeated assertion in cross-examination that the Share Transfer Deed "stated that [they, *ie*, GSS and Joe] would continue to fund [AIQ] on a two-thirds/one-third basis" when it plainly said no such thing.[206]

228 The fact that the Understanding and Agreement was never reduced into writing, despite the numerous important matters it supposedly provided for, ran contrary to the Plaintiffs' contention that such an agreement was entered into. The fact that Joe failed to ensure that the terms of this agreement were properly documented when the opportunity arose for him to do so through the Share

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203 AEIC of Pf at para 63.

204 Transcript of 11 August 2022 at p 119 ln 17 to p 120 ln 9.

205 AEIC of Pf at para 63.

206 Transcript of 11 August 2022 at p 117 ln 21 to p 118 ln 6.

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Transfer Deed strongly suggested that there was no such agreement in the first place.

(IV) THE PLAINTIFFS FAILED TO ADDUCE ANY DOCUMENTARY OR OTHER OBJECTIVE EVIDENCE OF THE EXISTENCE OF THE UNDERSTANDING AND AGREEMENT AND/OR ITS ALLEGED TERMS

229 The Plaintiffs appeared to me to be cognisant of the difficulties they faced as a result of the absence of any written record of the Understanding and Agreement because midway through the trial, Joe sought leave to be given time to check through the agreed bundles of documents and to collate – with the assistance of his counsel – documents which he claimed would "confirm there was an understanding and agreement in place".[207] The collation of "potentially useful documents" which the Plaintiffs subsequently put forward[208] may be divided into two broad categories. The first category (which formed the bulk of the collated documents) comprised emails and minutes of board meetings about funding for AIQ. I understood the Plaintiffs to be relying on this category of documents as evidence which supported their case about the existence of the 2:1 Funding Agreement. The second category of documents consisted of an email and a set of minutes of a board meeting. These concerned the proposal for the setting-up of TCP. I understood the Plaintiffs to be relying on this category of documents as evidence supporting their case about another alleged express term of the Understanding and Agreement, *viz*, the term concerning the incorporation of TCP and the reasons for its incorporation.

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207 Transcript of 12 August 2022 at p 95 ln 6 to ln 21.

208 3rd Df Closing Submissions at pp 138–149.

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230 None of the documents in the Plaintiffs' collated bundle had any relevance to the six other terms of the Understanding and Agreement pleaded in paras 19(2)-(5) and 19(7)-(8) of the amended statement of claim.

231 I did not find the documents in either category at all helpful in establishing the existence of the Understanding and Agreement. My reasons were as follows.

(a) The first category of documents: Documentary evidence relating to the funding of AIQ

232 I address first the documents in the first category, *ie*, the emails and minutes of board meetings concerning the funding of AIQ by Joe and GSS. It will be remembered that the Plaintiffs' case was that an express term of the Understanding and Agreement – the 2:1 Funding Agreement – obliged GSS and Joe to fund AIQ in the ratio of 2:1 on an indefinite basis, "until such time as [AIQ] was in a position to independently raise finance for its working capital".[209] In contrast, GSS' case was that there was no Understanding and Agreement – and thus no 2:1 Funding Agreement. Insofar as GSS had funded AIQ together with Joe in a 2:1 ratio for some time, this was done voluntarily out of goodwill on his part and not pursuant to any binding agreement: as such, he was free to stop funding AIQ in this ratio at any point in time.

233 Having reviewed the emails and minutes of board meetings in the first category, I found that they did not assist the Plaintiffs in proving the existence of the 2:1 Funding Agreement.

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209 SOC (Amendment No.3) at para 19(1).

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234 In respect of the 4 February 2017 (10.10am) email, the material parts of the email were as follows:[210]

> I would also like to thank you for arranging a presentation by the team
>
> . [*sic*] However I must say I am truly surprised by your revised offer (barely 4 hours after our meeting) in your email of 4:52 PM yesterday.
>
> I recall that at our meeting your offer (confirmed by Leslie) is:
>
> a) What you call a 2m to 1m injection of fresh funds into the Company by the two of us
>
> b) For my 2m I will be given an additional 15% of the Company's capital increasing my interest in the Company to 25%.
>
> We also discussed other issues like accelerated development of our product , [*sic*] more focus on marketing.
>
> Joe I seek your confirmation on what you wish to offer me –the one at our meeting or the revised one as in your email.
>
> …

235 Clearly, at most, the above email showed that GSS understood Joe to have suggested at their 3 February 2017 meeting that GSS and he (Joe) inject fresh funds of "2m" and "1m" respectively into the company, in return for which GSS would receive additional shares to bring his shareholding in AIQ up to 25%. Nothing in the email showed that a binding agreement had been reached between the two men, or even that a binding agreement was imminent. If anything, GSS' stated intention in sending the email was to clarify with Joe an apparent change in the latter's offer following the meeting.

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[210] 2ABOD at p 757.

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236 Likewise, the 1 March 2017 (2.50pm) emails did not assist the Plaintiffs' case either. These emails contained the following exchange between GSS and Joe:[211]

> [On 1 March 2.41pm from GSS]
>
> Hi Joe,
>
> Glad to have you back.
>
> As spoken , to clear February salaries, (about S$150,000)
>
> I will put in a cheque of S$100,000 tomorrow payable to iQNECT to match your payment of S$ 50,000.
>
> Kindly acknowledge receipt of this S$100,000 as well as my previous remittance of S$200,000 on 10/2/17.
>
> Regards,
>
> Soo Siah
>
> [On 1 March 2.50pm from Joe]
>
> Hi Soo Siah,
>
> Good to be back!
>
> I confirm that I will transfer $50k tomorrow and that your $100k together with the $200k from you and $100k from me last month will be treated as a loan to the company with an option to convert to equity at a valuation of US$20m. I further confirm that I will be bound to exactly the same terms as you.
>
> I have agreed with Marcus that he will come to the office on Friday to formalise the terms of his employment.
>
> Joe

237 At best, the above email exchange established the fact that in March 2017, GSS had contributed funding of $100,000 to match Joe's contribution of $50,000. This fact in itself was not helpful to the Plaintiffs' case, since nothing in the above emails alluded to the payments being made *in compliance with the*

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211 3ABOD at pp 95–96.

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2:1 Funding Agreement. Joe himself conceded in cross-examination that no mention was made in these emails of the "one-third/two-third" funding ratio.[212] Further, while the Plaintiffs argued that the ratio of the two men's financial contributions ($100,000 versus $50,000) demonstrated the existence of the 2:1 Funding Agreement, I found no merit in this argument: after all, the fact that GSS had put in funding of $100,000 to match Joe's $50,000 was equally consistent with GSS' account of events, in which he had provided two-thirds of AIQ's funding out of goodwill.

238 As for the 10 October 2017 (3.39pm) email[213] from GSS, this too did not assist the Plaintiffs in proving the existence of the 2:1 Funding Agreement, let alone the Understanding and Agreement, when read in the context of the relevant email chain. I summarise in chronological order below the relevant emails:

(a) On 9 October 2017 (at 3.15pm), GSS wrote to Joe, thanking him for the transfer of 235,000 AIQ shares to GSS, but also criticising him for not having met his "commitment to equalize [their] shareholdings" by transferring 450,000 shares. GSS also raised potential issues with maintaining AIQ's localised status vis-à-vis restrictions on share transfers to foreign shareholders;[214]

(b) On 9 October 2017 (at 5.48pm), Kian Wai replied to state that with the completion of the "localization exercise of AIQ" as at that date, AIQ was now 31.27% locally owned, and that in order to maintain the "minimum threshold of 30%" local ownership, there was a need to

212 Transcript of 11 August 2022 at p 106 ln 10 to ln 13.

213 5ABOD at p 83.

214 5ABOD at pp 97–98.

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restrict the transfer of shares from local shareholders to foreign shareholders;[215]

(c) On 10 October 2017 (3.39pm), GSS wrote again to Joe to bring up the issue of funding AIQ. GSS alluded to the two convertible loans he had given AIQ up to that date; the first being a convertible loan of US$1m, for which he had extended the deadline on Joe's request); the second being the convertible loan of US$2m, of which $1,846,000 had already been utilised. Noting that the drawdown on his second convertible loan had "been on a ratio of GSS/Joe 2:1", GSS stated that upon reflection, he "now realized" he had been "over generous"; and that a "much fairer formula [was] to align lending to shareholding interests". Noting further that he himself held at that stage 315,908 shares versus Joe's 765,000 shares, GSS stated that the "lending ratio should now be adjusted to GSS/Joe 1:2.42". GSS also made it clear that this ratio of 1:2.42 was to apply to the next injection of funds which Marcus and Kian Wai were then seeking on behalf of AIQ, such that he would provide $175,438.59, while Joe would provide $424,561.41;[216]

(d) On 12 October 2017 (3.27pm), Kian Wai reminded Joe and GSS that AIQ needed the funds submitted before 15 October 2017;[217]

(e) On 12 October 2017 (8.24pm), GSS replied to Kian Wai stating that he was ready to submit $175,438.59 as his portion of the $600,000 needed by AIQ. GSS added that as there had been no protest from Joe,

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215 5ABOD at pp 96–97.

216 5ABOD at pp 94–95.

217 5ABOD at pp 93–94.

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he assumed that Joe agreed "the revised funding method [was] more equitable";[218]

(f) On 12 October 2017 (8.29pm), Joe emailed GSS apologising for the delay in his response caused by technical issues and stating that he would reply to both of GSS' emails "tomorrow" (presumably 13 October 2017);[219]

(g) On 14 October (12.02pm), Joe wrote to GSS (copying the 4th to 7th Defendants). In this email, Joe stated that it was "never [his] intention to give away 50% of [his] shareholding" in AIQ. Joe claimed that this matter had been discussed at the last board meeting and that Leslie had accepted that it was his (Leslie's) misunderstanding. Joe also alluded to being "down" more than $14m (presumably a reference to losses sustained in his investments) and stated that if he was going to "stand any chance of getting this back", "handing over 50% of [his] shareholding for $1 [was] never going to work". Joe then told GSS:[220]

> In short, I agreed to transfer approx 25% of my shareholding to assist the company/shareholders and indeed in recognition of your continued funding commitment. As I see it, you agreed to fund an additional $2m earlier this year and I have given you $2m worth of shares back(applying the same discounted valuation I acquired Freer's shares).
>
> Going forward, given that you are contributing to the on going funding on a 2:1 basis, your holding will increase so as to ensure we satay [*sic*] above the 30% local requirement. In addition, I will if necessary sell some of my holding at fair market value to local investors.
> Finally, I have been in discussions with Joaquin Rodriguez who holds 12% of the company and would like to sell. He wants

218 5ABOD at pp 93–94.

219 5ABOD at p 92.

220 5ABOD at p 96.

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> $750k(giving an implied valuation of $5.6m) however, I think I can bash him up a little more and get him lower (possibly $400k). I am happy to do this together if of interest.

239 I make three points about the above email exchange. First, GSS was clearly of the view that he had the right to change the funding ratio as and when he saw fit. When dissatisfied with Joe's perceived failure to equalise their respective shareholdings, GSS showed no compunctions about taking steps to change the funding ratio after concluding that a "much fairer formula" was to "align lending to shareholding interests".

240 Second, when GSS announced that the funding ratio should be "adjusted to GSS/Joe 1:2.42", Joe did not protest that GSS had no right to "adjust" the ratio unilaterally. Neither did he point out to GSS that he was breaching the 2:1 Funding Agreement by doing so. Indeed, no mention was made by Joe of GSS' obligations under the Understanding and Agreement which the two of them had supposedly entered into a mere six months ago. Instead, Joe sought to placate GSS by assuring him that since they needed to ensure AIQ's local shareholding stayed above 30%, GSS' shareholding would increase as he continued to fund AIQ on a 2:1 ratio. Joe also offered to get another shareholder to sell his shares to GSS.

241 Third, while Joe referred at one point to GSS' "continued funding commitment", no mention was made of the express terms of the Understanding and Agreement which – according to the Plaintiffs – formed the basis for this "funding commitment". It should also be noted that whereas the Understanding and Agreement as pleaded by the Plaintiffs did not provide for GSS to receive a certain percentage of Joe's AIQ shares in consideration of his agreeing to fund two-thirds of AIQ's expenses, in his 14 October 2017 email Joe described

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himself as having "agreed to transfer approx. 25% of [his] shareholding" to GSS "in recognition of [GSS'] continued funding commitment".

242 In light of these three points, not only did the contents of the emails from 9 October 2017 to 14 October 2017 fail to support the Plaintiffs' case as to the Understanding and Agreement, some of the statements made by Joe himself in these emails were plainly inconsistent with the terms of the Understanding and Agreement (as pleaded by the Plaintiffs).

243 I address next the minutes of the board meetings on 21 September 2017, 27 October 2017 and 15 November 2017. The relevant portions of the 21 September 2017 minutes were as follows:[221]

> **Funding Issues**
>
> - It was also brought to the Board attention that the company is still funded by loans from GSS and JM on 2/3 and 1/3 share respectively on a month to month basis.
> - The board discussed that once the local shareholding issue is sorted out, a longer term funding plan will be put forward to the shareholders via new share issue or rights issue.
>
> …
>
> - KW noted that without the funding support from GSS & Joe, the company will run out of fund.

244 I did not find the above minutes to be of any assistance to the Plaintiffs in proving the existence of the Understanding and Agreement. No mention was made of 2:1 Funding Agreement in the minutes. The observation that up until 21 September 2017, AIQ had been "funded by loans from GSS and JM on 2/3

[221] 5ABOD at pp 17, 20.

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and 1/3 shares respectively on a month-to-month basis", did not in any way support the Plaintiffs' claim that this funding ratio was put in place pursuant to a binding agreement between Joe and GSS. If anything, this observation was also consistent with GSS' account of a voluntary arrangement based on goodwill on his part.

245 As for the minutes of the 27 October 2017 board meeting, the relevant portions were as follows:[222]

> **Funding Issues**
>
> - MT highlighted to the board that funding remains a concern for the company and is one of the key challenges that will allow the executive team to implement the business plan presented.
> - JM has reaffirmed his commitment to fund the company via convertible loans and will sort out the joint funding agreement with GSS by the following week.
> - KW further reminded that there was a funding shortfall of $275k as per the Oct to Dec cash requirement forecast submitted which needs to be remitted by 31 October.
> - JM agreed that this is top priority and will resolve it with GSS and update the board.

246 A plain reading of these minutes did not reveal any material information that would support the Plaintiffs' case as to the existence of the Understanding and Agreement. If anything, Joe's statements that he would "sort out the joint funding agreement with GSS by the following week" and that he would "resolve" the "funding shortfall" with GSS suggested that as at 27 October 2017, GSS was *not* legally bound or obliged to continue funding AIQ with Joe on a 2:1 basis.

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222 5ABOD at pp 145, 151.

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247 Turning to the minutes of the 15 November 2017 board meeting, the relevant portions were as follows:[223]

> **JM funding ratio with GSS**
>
> - JM highlighted that despite all the ups and downs the company had gone through since its inception, he has put in all his resources in terms of time and monies to ensure the company is still operating.
> - He has also looked after all the shareholders interest (past and present) by not resorting to any means to dilute their shareholdings by continuing to fund the company via convertible loans rather than new share placements.
> - Privately he had to pay large sums of monies to remove previous management rogue staff who were compromising the companies interests.
> - The current board appreciates JM's commitment and look forward to his continued support.
> - The funding ratio since Jan 2017 via loan between GSS and JM was 2:1 respectively.
> - However, GSS proposed a change to JM – 2.42 vs GSS – 1 to align to the relative shareholding each owns of the company for October onwards. JM does not agree to this funding ratio and thus we need to establish a compromise on the funding ratio.
> - LG recommended that KW will propose a new funding ratio to the two key shareholders not later by 20th November.
> - It is critical for both parties to agree so that funding is not impeding the company's implementation of its business plan.

248 As with the board minutes of September 2017 and October 2017, the minutes of the 15 November 2017 board meeting also did not assist the Plaintiffs' case. The observation that GSS and Joe had been funding AIQ on a

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223 5ABOD at pp 329, 331.

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2:1 basis since January 2017 did not in itself amount to proof that this funding ratio had been put in place as part of a binding agreement between the two men: to reiterate, this observation could also be said to be consistent with GSS' account of a voluntary arrangement based on goodwill on his part. Moreover, the minutes showed the AIQ directors – including Joe – discussing GSS' proposal that he and Joe should fund the company on a 1:2.42 basis, in line with their respective shareholding; and although Joe expressed disagreement with this proposal, he said nothing about GSS being bound by the Understanding and Agreement to continue funding the company on a 2:1 basis.

249 As for Kian Wai's email to Joe on 1 December 2017 (10.59am),[224] this too was of no help to the Plaintiffs case. Other than stating the details of the convertible loan disbursed to AIQ by Joe and GSS (*ie*, that Joe had committed US$1m and GSS, US$2m), this email added nothing useful.

250 The final set of documents in the first category comprised the various emails sent periodically by Marcus and Kian Wai to ask for funding from Joe and GSS. The emails singled out by the Plaintiffs were:

(a) An email dated 17 July 2017 (10.27am) in which Marcus – in informing Joe and GSS of AIQ's need for funding of $300,000 in July 2017 – stated that $200,000 of this amount was to come from GSS, and $100,000 from Joe;[225]

(b) An email dated 22 September 2017 (11.04am) in which Marcus – in informing Joe and GSS of AIQ's need for funding of $240,000 in

224 5ABOD at pp 390–391.

225 4ABOD at p 340.

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September 2017 – stated that $160,000 of this amount was to be contributed by GSS, and $80,000 by Joe.[226]

251 I did not find these emails to be of any help to the Plaintiffs' case. While they showed Marcus asking GSS and Joe for funding on a 2:1 ratio, such requests *per se* did not establish that this funding ratio was implemented pursuant to a binding agreement between Joe and GSS. Again, this was evidence which could also be said to be consistent with GSS' account of a voluntary arrangement based on goodwill.

(b) Kian Wai's and Marcus' evidence about the funding arrangements

252 In this connection, I noted that in addition to relying on the above emails, the Plaintiffs submitted that their case as to the 2:1 Funding Agreement was buttressed by Kian Wai's and Marcus' testimony about the manner in which GSS and Joe had been funding AIQ.[227] In respect of Kian Wai, the Plaintiffs pointed to his evidence that when he joined AIQ, he had been informed by Marcus that the funding for the company was "split" between Joe and GSS on a 2:1 basis; and that having been so informed, he had proceeded to seek funding from Joe and GSS based on this ratio.[228] In respect of Marcus, the Plaintiffs pointed to his evidence that he knew GSS and Joe had been funding the company on a 2:1 basis since January 2017.[229]

253 Having examined Kian Wai's and Marcus' testimony, however, I found their evidence about the funding ratio to be neutral at best in terms of its impact

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226 4ABOD at p 441.

227 Pf Closing Submissions at para 43.

228 Transcript of 23 August 2022 at p 10 ln 11 to ln 22.

229 Transcript of 25 August 2022 at p 38 ln 10 to ln 14.

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on the Plaintiffs' case. In respect of Kian Wai, when asked whether Marcus' instructions to him about the 2:1 funding split between GSS and Joe showed "clearly" the existence of "some agreement" between those two individuals on the funding ratio, Kian Wai stated that he had "no visibility whether there is such an arrangement".[230] Even when pressed to confirm that there "must" have been such an agreement, Kian Wai demurred:[231]

> I cannot say for sure because I have not seen it and I am not aware through my course of interaction.

254 As for Marcus' testimony, although he was asked whether he knew GSS and Joe had been funding AIQ according to a 2:1 ratio since January 2017, the Plaintiffs did not ask him specifically about the existence of the 2:1 Funding Agreement.[232] Marcus' evidence that he was aware of the funding split between GSS and Joe did not assist the Plaintiffs, since GSS did not dispute having funded two-thirds of AIQ's expenses: what was disputed was whether he had been bound to do so by the terms of the alleged Understanding and Agreement, or whether he had done so purely out of goodwill. Ultimately, Marcus' testimony did not assist the Plaintiffs in proving the former.

(c) The second category of documents: Documentary evidence relating to the incorporation of TCP

255 I next address the second category of documents collated by the Plaintiffs mid-trial. As I noted earlier, these comprised one email and one set of board minutes. According to the Plaintiffs, these two documents pointed to there having been express discussion and agreement between GSS and Joe that TCP

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230 Transcript of 23 August 2022 at p 10 ln 23 to p 11 ln 2.

231 Transcript of 23 August 2022 at p 11 ln 3 to ln 5.

232 Transcript of 25 August 2022 at p 37 ln 11 to p 38 ln 14.

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should be incorporated as a wholly owned subsidiary of AIQ and a source of "instant revenue".

256 I found no merit in the Plaintiffs' arguments. There was no mention at all in these two documents of GSS and Joe having discussed and agreed on the terms of TCP's incorporation. On the contrary, an examination of the relevant documentary evidence indicated that the idea of setting up TCP was conceived by Leslie and Marcus, and that it was something they discussed in depth with Joe without GSS involved.

257 In particular, the email sent by Leslie on 22 March 2017[233] showed that it was Leslie who first came up with the suggestion to set up a co-working space as a "very nice way" of bringing AIQ some "instant" revenue and allowing AIQ to "talent spot a nice pool of engineers/programmers". A day later (on 23 March 2017), Leslie sent GSS a summary of a discussion which he had engaged in with Joe on 21 March 2017.[234] In this summary, Leslie informed GSS that he had "discussed Co-working space (The Carrot Patch)" with Joe, who had "liked the idea very much and agreed that it would likely bring in much needed shorter term revenue". According to Leslie, Joe had even discussed various operational details with Leslie, such as the need to hire a "new OM" (presumably, operations manager) in the event they were to "go into the co-working project".

258 In short, therefore, the contemporaneous email evidence pointed to Leslie and Joe having had extensive discussions about the setting-up of TCP, without GSS having been party to such discussions.

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233 3ABOD at pp 227–229.

234 3ABOD at pp 235–237.

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259 As for the minutes of the 28 April 2017 board meeting, the relevant portions of the minutes were as follows:[235]

> **Potential tenant for Carrot Patch**
>
> - JS has recommended a company called Knorex to be a potential anchor tenant for Carrot Patch coworking space business as they may take up as much as 5,000 sqft. They are in the adtech business.
> - JS also declared that he has vested interest in this company and is currently acting as adviser to the company.
> - MT will contact Knorex to discuss on the possibility of having them as anchor tenant and the commercial arrangement.
>
> **Carrot Patch – separate legal entity**
>
> - It was also *agreed by the board* that a separate company would be incorporated to manage the co working business. This new company will be 100% owned by AIQ Pte Ltd. [emphasis added]

260 From the above extract, it will be seen that at this meeting, it was "agreed by the [AIQ] board that a separate company [TCP] would be incorporated to manage the co working business". GSS was not a member of AIQ's board at the material time – or indeed, at any time. Neither was he present at the board meeting. These board minutes were therefore of no assistance at all to the Plaintiffs in proving that GSS and Joe had discussed and agreed on the incorporation of TCP.

261 The Plaintiffs argued that GSS must not have raised any objection to the matters recorded in these board minutes because given his status as one of AIQ's two main funders, the AIQ board "would not have progressed further with the TCP idea without his approval".[236] This argument appeared to me to be neither

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235 3ABOD at p 288.

236 Pf Closing Submissions at para 218.

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here nor there. Even if GSS had approved the AIQ board's plans for the setting-up of TCP, this was still fundamentally a very different thing from GSS and Joe expressly reaching an agreement to incorporate TCP for specific purposes. As I have noted, of the latter, there was no evidence adduced by the Plaintiffs.

262 I should add that insofar as the above emails in March 2017 touched on Leslie's proposal for the setting-up of TCP, this evidence actually militated against the Plaintiffs' assertion that the express term concerning the incorporation of TCP was agreed between Joe and GSS by the time of their 1 March 2017 email exchange. As pointed out earlier, Leslie's proposal was sent to Joe and GSS via email on 22 March 2017; and it was clear from Leslie's email summary to GSS on 23 March 2017 that he (Leslie) had discussed the idea for the setting-up of a co-working space with Joe for the first time on 21 March 2017. It was simply not possible, therefore, that Joe and GSS could have agreed on the express term concerning the incorporation of TCP by the time of their email exchange on 1 March 217.

263 In sum, therefore, none of the documents collated by the Plaintiffs mid-trial proved to be of any assistance in establishing the existence of the Understanding and Agreement – or indeed, of any of its terms.

(V) THE UNDISPUTED EVIDENCE SUPPORTED GSS' VERSION OF EVENTS RATHER THAN THE PLAINTIFFS' VERSION

264 Finally, I found that quite apart from there being no documentary or other objective evidence of the existence of the Understanding and Agreement, the undisputed evidence actually supported GSS' version of events rather than the Plaintiffs'. In this connection, there were two things which stood out.

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(a) There was no cogent reason for GSS to agree to such one-sided terms

265 The first was something I alluded to earlier (at [224]): the highly advantageous position which the alleged 2:1 Funding Agreement would have placed AIQ and Joe in, versus the onerous financial obligations which GSS would have been subjected to. In gist, *per* the Plaintiffs' case, GSS was obliged to shoulder two-thirds of the burden of funding AIQ for an indefinite period, despite holding a minority stake of less than 5% at the time, as compared to Joe's 50.60% stake (before the share transfer in October 2017). Further, although Joe claimed in an email dated 14 October 2017 that he had "agreed' to transfer 25% of his AIQ shareholding to GSS "in recognition of [his] continued funding commitment", *per* the Plaintiffs' case, the (allegedly) projected transfer of shares to GSS was never made a term of the Understanding and Agreement. In other words, therefore, the 2:1 Funding Agreement worked to GSS' detriment while substantially benefiting AIQ and Joe himself.

266 Given GSS' experience as a businessman (which the Plaintiffs themselves were at pains to highlight), I found it frankly unbelievable that he would have agreed to such a one-sided and unfavourable contractual term.

(b) Joe failed to bring up the Understanding and Agreement on the numerous occasions when its terms were allegedly breached by GSS

267 Secondly, it was telling that despite claiming that GSS would have been bound by the terms of the Understanding and Agreement from March 2017 onwards, Joe failed to bring up the agreement on the numerous occasions when its terms were allegedly breached by GSS.

268 Thus, for example, as seen earlier (at [238]–[240]), when GSS unilaterally declared in his email of 10 October 2017 that the "lending ratio should now be adjusted to GSS/Joe 1:2.42", one would have expected Joe to

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remind GSS that the 2:1 Funding Agreement was an express term of their Understanding and Agreement which GSS was bound to comply with until such time as AIQ could achieve financial independence.

269 Indeed, when Joe's lawyers brought up the 2:1 funding ratio in their letter to GSS' lawyers on 23 November 2017,[237] the narrative which they presented was entirely inconsistent with the Plaintiffs' eventual case at trial. According to the Plaintiffs, the 2:1 Funding Agreement was one of the express terms agreed between Joe and GSS *by March 2017* – although, as I noted earlier (as at [218]–[222] above), Joe wavered between claiming in his AEIC that the funding ratio was agreed at their 3 February 2017 meeting and was "captured in subsequent correspondence" such as the 1 March 2017 emails, and claiming in his testimony that the agreement was reached in March 2017 through telephone conversations and text messages. In their letter of 23 November 2017, however, Joe's lawyers stated that Joe's "point" was that the 2:1 funding ratio was agreed *when "[Joe] delivered some 13% of his shareholding to [GSS] without requiring consideration*".[238] Indisputably, this transfer of shares by Joe to GSS took place on 3 October 2017, a day after the signing of the Share Transfer Deed. Clearly, therefore, the assertion by Joe's lawyers that the 2:1 funding ratio was agreed only upon this transfer of shares on 3 October 2017 – and their omission to mention any earlier funding agreement – gave the lie to the Plaintiffs' case at trial about the Understanding and Agreement having been concluded by March 2017.

270 Elsewhere, Joe's lawyers also failed on numerous occasions to bring up the Understanding and Agreement between Joe and GSS when one would have

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237 10ABOD at pp 245–247.

238 10ABOD at p 246 at para 10.

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expected them to. Thus, for example, in their letter to GSS' lawyers on 27 February 2018, Joe's lawyers brought up Joe's complaint (*inter alia*) that the other directors of the AIQ board had diverted the monies advanced by him to payment of "top heavy staff salaries" and "salary increments".[239] Joe's lawyers asserted that Joe had advanced the monies to AIQ "with the intention that the monies would be applied to harness and improve the Al technology that was ready for commercialisation", that the other directors had applied the monies to other uses "[i]n disregard of [Joe's] intention", and that a "substantial portion" of Joe's funds were being "indirectly and directly paid to [GSS'] family and friends". It will be recalled that *per* the Plaintiffs' pleaded case,[240] one of the eight express terms of the Understanding and Agreement was that "[GSS'] nominee-directors would continue to and utilise the funding provided to progress the Principal Object of [AIQ], particularly the development and commercialization of [AIQ's] VRT". Yet, unaccountably, no mention was made by Joe's lawyers of this express term – or of the Understanding and Agreement in general.

271 As another example, in their letter to GSS' lawyers on 30 August 2018,[241] Joe's lawyers asserted that Joe did not accept that he had been "properly and legally removed" as a director of AIQ at the 28 May 2018 EGM and that the removal was not in accordance with "the Memorandum and Articles of Association of the Company". Again, there was no mention of the Understanding and Agreement between Joe and GSS – or of the express term in this agreement which stipulated that Joe was to "remain a director and the

239 10ABOD at p 508 at paras 7, 9.

240 SOC (Amendment No.3) at para 19(5); Pf FNBP (14 August 2021) at p 5 S/N 2(b)(i).

241 10ABOD at p 547.

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Chairman of [AIQ] for which he would continue to receive his agreed remuneration" (*per* the Plaintiffs' pleaded case).[242]

272 Given the gravity of the accusations which were being levelled against GSS in the letters of 27 February 2018 and 30 August 2018, it made no sense that Joe would not have instructed his lawyers to bring up the Understanding and Agreement and the obligations which its express terms imposed upon GSS. In my view, the ineluctable inference to be drawn from Joe's silence on the Understanding and Agreement, in the face of supposedly flagrant breaches of its terms by GSS, was that no such agreement existed at all.

(VI) THE ALLEGED IMPLIED TERMS OF THE UNDERSTANDING AND AGREEMENT

273 In addition to the eight express terms of the Understanding and Agreement pleaded in their amended statement of claim (read with their further and better particulars of 14 August 2021),[243] the Plaintiffs also pleaded a number of implied terms.[244] Given my finding that the Understanding and Agreement never existed, I did not find it necessary to address each of the implied terms pleaded.

274 I noted earlier that in their closing submissions, the Plaintiffs sought to recast six of the eight express terms as "implied terms". I have made it clear that I did not think this belated attempt to depart from their pleaded case should be allowed. Even if it were to be allowed, it would not assist the Plaintiffs – given my finding that the Understanding and Agreement never existed.

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242 SOC (Amendment No.3) at para 19(3); Pf FNBP (14 August 2021) at p 5 S/N 2(b)(i).

243 SOC (Amendment No.3) at para 19; Pf FNBP (14 August 2021) at p 5 S/N 2(b)(i).

244 Pf FNBP (14 August 2021) at pp 5–6 S/N 2(b)(ii).

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Whether GSS was a shadow director of AIQ and TCP / whether GSS usurped control of the boards of AIQ and TCP

275 I should, however, address at this juncture the second key premise of the Plaintiffs' oppression case – namely, GSS' alleged role as a shadow director of AIQ and TCP. An examination of the implied terms pleaded in the Plaintiffs' further and better particulars of 14 August 2021 will show that they were framed so as to require GSS to procure the 4th to 7th Defendants to do certain acts (or to refrain from doing them) and/or to refrain from doing certain acts "through the 4th to 7th Defendants".[245] As I noted earlier (at [39]–[40]), the underlying proposition – that GSS was a shadow director of AIQ and TCP from whom the 4th to 7th Defendants were accustomed to taking instructions in respect of their decisions and actions as directors[246] – formed a central theme in both the Plaintiffs' oppression claim and their conspiracy claim. It is apposite, therefore, for me to address at this juncture my findings on the Plaintiffs' allegations.

(1) Plaintiffs' position

276 In closing submissions, the Plaintiffs contended that as the relationship between Joe and GSS soured, the 4th to 7th Defendants all took their cue from GSS. According to the Plaintiffs, the 4th to 7th Defendants had to listen to GSS' instructions since he controlled the financial tap; otherwise AIQ and presumably TCP would have to cease operations. This allowed GSS to "pull the strings" for his own benefit.[247] In particular, the Plaintiffs alleged that the 4th to 7th Defendants had sided with GSS on the issue of the funding ratio and thus allowed GSS to ratchet up the financial pressure on Joe. The 4th to 7th

245 Pf FNBP (14 August 2021) at pp 5–6 S/N 2(b)(ii).

246 SOC (Amendment No.3) at paras 20, 20B, 25, 51A and 86A(1).

247 Pf Closing Submissions at para 209.

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Defendants were also alleged to have involved GSS in many of the critical corporate decisions and actions which they took on behalf of AIQ – and from which Joe was excluded despite his also being a director. The Plaintiffs claimed that based on various emails and text messages, it was clear that GSS had been involved in major company decisions, including the manner by which the company was to progress should funding from Joe no longer be forthcoming. In other words, the 4th to 7th Defendants had treated GSS as a key-decision maker and had simply proceeded in accordance with his instructions.[248]

(2) 3rd Defendant GSS' position

277 GSS disputed the Plaintiffs' claim that he had gained control of AIQ's board after manoeuvring himself into the position of sole funder (effectively) of AIQ. Moreover, according to GSS, the objective evidence actually showed that the 4th to 7th Defendants had not sided with him on the issue of the funding ratio and that they had instead tried to get him and Joe to compromise by agreeing to fund in equal proportions – even though Joe was a majority shareholder at that point.[249]

278 More fundamentally, GSS submitted that on the evidence, there was no discernible pattern of compliance by the 4th to 7th Defendants with instructions or directions from GSS (*Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2010] SGHC 163 ("*Raffles Town Club*")).[250]

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248 Pf Closing Submissions at para 209(f); 3ABOD at pp 202, 285, 610, 617; 4ABOD at pp 338, 376, 667; 5ABOD at pp 17, 101, 107, 145, 246, 328, 371, 800; 6ABOD at pp 118, 124, 176.

249 3rd Df Closing Submissions at paras 52–58.

250 3rd Df Closing Submissions at paras 59–61.

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(3) 4th to 7th Defendants' position

279 The 4th to 7th Defendants, for their part, maintained that in carrying out their duties as directors of AIQ and TCP, they had never preferred GSS' interests over the Plaintiffs,[251] and had instead acted in the best interests of the two companies.[252]

(4) My Decision

(I) THE LEGAL PRINCIPLES RELATING TO SHADOW DIRECTORS

280 Directors of companies may be formally appointed (*de jure*), not formally appointed but acting as if they had been (*de facto*), and the puppeteer pulling the strings from above (shadow) (*per* Judith Prakash JA (as she then was) in *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 73 ("*Gryphon*") at [33]). Whether he is a *de jure*, *de facto* or shadow director, such a person owes the same duties to the company under the Companies Act and at general law. A shadow director is someone in accordance with whose directions or instructions the directors of a corporation are accustomed to act, even though such a person claims not to be a director (*per* Prakash JA (as she then was) in *Gryphon* at [33], citing *Walter Woon on Company Law* (Sweet & Maxwell, Rev 3rd Ed, 2009) at paras 7.3 and 7.20). The enquiry as to whether a person is a *de facto* or a shadow director is a question of fact and degree (*Gryphon* at [33] citing *Smithton Ltd (formerly Hobart Capital Markets Ltd) v Naggar* [2014] EWCA Civ 939 at [45]).

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251 AEIC of 4th Df at para 24; AEIC of 7th Df at para 24.

252 AEIC of 4th Df at para 24; AEIC of 5th Df at para 91; AEIC of 6th Df at para 85; AEIC of 7th Df at para 24.

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281 In *Raffles Town Club*, Chan Seng Onn J (as he then was) cautioned (at [46]) that in pursuing this enquiry, the courts should not introduce concepts such as "manipulation" and "puppeteering" into the definition of a "shadow director". As Chan J explained:

> 46 … I find that the introduction of an element of "manipulation" or "puppeteering" into the definition generates more confusion. The rationale for the concept of a "shadow director" was, in all likelihood, to circumvent the difficulty of imputing directorship to an individual who had not put himself out as a director of the company and had not acted as if he was on equal standing with the *de jure* directors, yet exerted real influence on the corporate decisions of the company. To call such an individual a "director" would create a schism in one's ordinary understanding of a "director" since, in most cases, such an individual would have taken the greatest caution not to come across as being on par with the *de jure* directors and would not be perceived as a director at all – whether *de jure* or *de facto*. Yet, as someone who was directing the directors in important corporate decisions, the definition of a director had to be extended so that the law could hold him responsible for his actions. This is where the concept of a "shadow director" is helpful.
>
> 47 Consequently, ***if a board of directors exercising independent judgment finds itself consistently complying with the alleged shadow director's instructions or directions, such an individual is as much a shadow director as one whose instructions or directions are consistently complied with by a board which does not exercise independent judgment but simply abides by or follows those instructions or directions***. This might be counter-intuitive since the term "shadow director" has over time, acquired a pejorative meaning – with phrases such as "lurking in the shadows", "puppet master", "cat's paw" tacked to it. However, it must be borne in mind that incorporating such additional requirements into the definition would defeat the rationale of the "shadow director definition" (which is an extended definition of "director") as "it would be all too easy for the [board of] directors to recite that, having considered the 'advice' of the alleged shadow director, they had on their judgment decided to follow that advice" (N R Campbell, "Liability as a Shadow Director" [1994] JBL 609 at 613). Indeed, ***the raison d'être of this concept is to ensure that those who are responsible for the important corporate decisions of a company are held to task regardless of what they are***

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> ***called and their motives or manner in making such corporate decisions***.
>
> ***48 The test is, thus, simple: is there sufficient evidence showing that the directors of a corporation are accustomed to act on the directions or instructions of that person? If yes, then the status of a shadow director may be imputed to him. Whether the board has exercised its decision independently or otherwise is irrelevant*** and has to be so: otherwise, the rationale underpinning the "shadow director" concept would be subverted.
>
> [emphasis added in bold italics]

282 In *Parakou Investment Holdings Pte Ltd and another v Parakou Shipping Pte Ltd (in liquidation) and other appeals* [2018] 1 SLR 271 ("*Parakou*"), the CA – citing Chan J's judgment in *Raffles Town Club* – held that in order for the court to find that a person was a shadow director, what was needed was a "discernible pattern of compliance"; and "occasional departures from the pattern would not detract from this finding" (*Parakou* at [49] citing *Raffles Town Club* at [45]). In *Parakou* (at [49]), the CA upheld the trial judge's finding that one C C Liu was a shadow director of the company Parakou. It was held that Liu's role as patriarch of the family business did not preclude a finding that he was a shadow director. The CA noted, moreover (at [49]), that there was evidence of Liu having instructed the other directors on certain matters such as appointing a lawyer to represent Parakou and of Parakou's senior manager having asked the "bosses" (including Liu) to instruct him on how to proceed. Liu himself had also confirmed that he had a "certain influence" over Parakou. These instances, in the CA's view, showed that Liu had played more than an advisory role in Parakou.

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(II) THE EVIDENCE DID NOT SUPPORT A FINDING THAT GSS WAS A SHADOW DIRECTOR OF AIQ AND TCP

283 In applying the above principles to the present facts, I should first highlight that GSS was correct in pointing out that the Plaintiffs' closing submissions presented a different case on GSS' purported status as a shadow director from the case pleaded in their amended statement of claim. In their amended statement of claim, the Plaintiffs had pleaded that GSS "gradually usurped control" of the AIQ board "through subtle and covert manipulation, influence and control", by dint of getting his "family members and other directors loyal to [him]" appointed to the board.[253] *Per* the Plaintiffs' pleaded case, it was "[f]ollowing the appointment of the 4th to 7th Defendants to the board of directors" of AIQ and TCP that GSS "was able to and did exert control over" AIQ and TCP "directly and/or via his nominees (*ie*, the 4th to 7th Defendants)".[254] In their closing submissions, however, the Plaintiffs disavowed the narrative set out in their pleadings. Instead, they claimed that it was "*not* the Plaintiffs' case that the 4th to 7th Defendants were put on the board to serve GSS", but rather, that as GSS effectively became "the only funder of AIQ" after proposing a new funding ratio to Joe's detriment, the 4th to 7th Defendants "had to bow to [GSS] and dance to his tune as AIQ, and presumably TCP, would otherwise have to cease operations".[255]

284 Plainly, the Plaintiffs' closing submissions on the issue of GSS' status as a shadow director represented a material departure from their pleaded case on the same issue. Again, no application was made by the Plaintiffs for leave to amend the relevant portions of their pleadings; and again, GSS and the 4th to

253 SOC (Amendment No.3) at para 20.

254 SOC (Amendment No.3) at para 20B.

255 Pf Closing Submissions at para 209.

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7th Defendants had no opportunity to cross-examine Joe on the version of events advanced in the Plaintiffs' closing submissions. Having regard to my earlier comments on the importance of holding parties to their pleadings, I did not think the Plaintiffs should be permitted to mount an entirely different case in their closing submissions.

285 Further and in any event, however, the evidence before me supported neither of the Plaintiffs' versions of events vis-à-vis GSS' status as a shadow director. Fundamentally, the Plaintiffs were unable to muster sufficient evidence to show a "*discernible pattern of compliance*" by the 4th to 7th Defendants with instructions or directions from GSS. Having focused most if not all of their efforts on showing that GSS had been copied on various communications and/or updated about decisions taken at board meetings,[256] the Plaintiffs were unable to point to any evidence which showed GSS actually giving instructions to the 4th to 7th Defendants on corporate decisions and actions, and/or the 4th to 7th Defendants complying with instructions from GSS. As GSS pointed out in his reply submissions,[257] despite having highlighted in their closing submissions a number of emails and other communications on which GSS was copied by the 4th to 7th Defendants, the Plaintiffs were unable to pinpoint any instance where GSS had responded to these communications with instructions or directions to the 4th to 7th Defendants. For example, while Kian Wai's email of 27 January 2018[258] recounted the advice from AIQ's lawyers on the proposed rights issue and its impact on Joe's shareholding was sent to the other Directors as well as GSS, there was no evidence of any

256 Pf Closing Submissions at para 209.

257 3rd Df Reply Submissions at para 25.

258 6ABOD at p 190.

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instructions or directions from GSS on the matters mentioned in Kian Wai's email.

286 Indeed, beyond being unable to pinpoint any evidence of a "discernible pattern of compliance" by the 4th to 7th Defendants with instructions from GSS, in respect of the key acts of oppression relied on in their claims (in particular, the alleged breach of the 2:1 Funding Agreement and the Rights Issue), the Plaintiffs were conspicuously unable to explain away evidence which showed the 4th to 7th Defendants *declining* to comply with GSS' urging and suggestions.

287 Thus, for example, despite GSS having proposed a new funding ratio of 1:2.42 as between him and Joe, the contemporaneous documentary evidence showed that instead of endorsing this new funding ratio and insisting on Joe's compliance with it, the 4th to 7th Defendants made considerable efforts to get *both* GSS and Joe to compromise: they suggested, for example, that each of them bear equal responsibility for AIQ's funding.[259] This was a suggestion which was not in GSS' favour, since GSS wanted to align the two men's funding contributions with their shareholding interests – and at that point, Joe was still the majority shareholder. In short, as Joe himself conceded at trial, Kian Wai "was trying to seek a compromise" vis-à-vis the funding issue and was not saying that Joe "had to go with what [GSS] was proposing".[260]

288 As another example, even though GSS made numerous suggestions that the 4th to 7th Defendants mount a rights issue, the 4th to 7th Defendants chose not to do so for some time and instead made efforts to raise funds via an interim

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259 5ABOD at p 344.

260 Transcript of 17 August 2022 at p 17 ln 3 to p 18 ln 6.

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bridging loan. It was only when AIQ found itself unable to pay its staff their salaries for the month of January 2018 that the 4th to 7th Defendants took the decision to mount a rights issue to raise the urgent funds required by AIQ.[261]

289 For the reasons set out above, I found that the Plaintiffs were unable to substantiate their claims about GSS having been a shadow director of AIQ and TCP and/or GSS having "usurped control" of the boards of these companies. As I have alluded to, this finding had repercussions for certain aspects of the Plaintiffs' claims in minority oppression and in conspiracy, which I touch on in the later parts of these written grounds.

There was no Understanding and Agreement between Joe and GSS

290 Reverting to the issue of the Understanding and Agreement, it will be recalled that according to the Plaintiffs' case, this agreement was the source of those shareholder rights which Joe (and his purported nominee, Thames) were claiming had been breached. On the basis of the evidence adduced, I found that in fact, the Understanding and Agreement never existed. The Plaintiffs' story of this agreement – and the varying iterations of its express and implied terms – was clearly an afterthought, fabricated for the purpose of supporting their claims against the 3rd to 7th Defendants. Since the Understanding and Agreement never existed, the 3rd to 7th Defendants could not have breached any of its purported terms – including the express term regarding the 2:1 Funding Agreement. It followed that the Plaintiffs could not rely on the Understanding and Agreement – and the 3rd to 7th Defendants' alleged breaches of it – as the basis for establishing the element of commercial unfairness in the various instances of allegedly oppressive conduct.

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[261] 6ABOD at pp 67–68, 129–132, 203–204.

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291 Leaving aside the alleged breaches of the 2:1 Funding Agreement, I proceeded in any event to deal with each of the other instances of allegedly oppressive conduct in turn, to examine whether – absent the "Understanding and Agreement" – there was any basis for finding the conduct commercially unfair vis-à-vis the Plaintiffs' rights as members.

Wrong diversion of funds, resources and unauthorised loans made from AIQ to TCP

(1) Plaintiffs' position

292 According to the amended statement of claim, the 3rd to 7th Defendants were responsible for the wrongful diversion of funds and resources from AIQ to TCP, as well as unauthorised loans by AIQ to TCP, which constituted oppressive conduct vis-à-vis the Plaintiffs. In this connection, the alleged Understanding and Agreement formed the main plank of the Plaintiffs' case. The Plaintiffs contended that the Understanding and Agreement required that the funding provided by Joe and GSS to AIQ would be used towards the development and commercialisation of the company's VRT;[262] that Joe had never agreed to the loans he had advanced to AIQ being used for TCP's purposes; and that he would also never have agreed to his loans to AIQ being used for TCP's purposes in circumstances where TCP was not a wholly owned subsidiary of AIQ.[263] In other words, according to the Plaintiffs' case, Joe was entitled by virtue of the Understanding and Agreement to expect that the funds he provided AIQ would be used only for specific purposes; and the Defendants' unauthorised use of the funds for other purposes gave rise to commercial unfairness vis-à-vis Joe and/or his purported nominee Thames. Further, the

262 Pf Closing Submissions at para 219(b).

263 Pf Closing Submissions at para 232; Transcript of 16 August 2022 at pp 108–109.

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Plaintiffs charged that if the Defendants had not diverted AIQ's funds to TCP, there would have been more funds to pay for AIQ's expenses.[264]

293 In addition, according to the Plaintiffs, the 4th to 7th Defendants had made unauthorised loans from AIQ to TCP in breach of s 163 of the Companies Act. According to the Plaintiffs, at the time the loans were made, the 4th to 7th Defendants were collectively interested in more than 20% of TCP. This meant that shareholder approval was required for such a transaction, and since none had been obtained, the 4th to 7th Defendants were in breach.[265]

(2) 3rd Defendant GSS' position

294 GSS, for his part, took the position that he had no knowledge of – and no involvement in – the alleged wrongful diversion of funding from AIQ to TCP and/or unauthorised loans from AIQ to TCP.[266]

(3) 4th to 7th Defendants' position

295 The 4th to 7th Defendants contended that Joe was well aware all along that part of the funding he and GSS provided to AIQ was being channelled to TCP. This was because whenever Kian Wai asked Joe and GSS for funding, he would give both of them the projected cash flow requirements for both AIQ and TCP, in order to keep them updated on how the requested funds would be

264 Pf Closing Submissions at para 233.

265 Pf Closing Submissions at para 234.

266 3rd Df Closing Submissions at para 173.

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used.[267] Joe had never protested the use of the funding for TCP's purposes and could not now belatedly claim to have been ignorant of it.[268]

296 The 4th to 7th Defendants also explained that since TCP did not initially have a bank account,[269] funds had to be routed through AIQ. Following the opening of TCP's account,[270] Kian Wai had (with the full knowledge of Joe and GSS), regularised the inter-company balances between AIQ and TCP such that the funds used to pay TCP's renovation and related expenses would be repaid to AIQ.[271]

(4) My Decision

297 In respect of the Plaintiffs' reliance on the Understanding and Agreement, given my finding that this agreement never existed and my further finding that GSS was not a shadow director, there was no basis for the Plaintiffs' contention that GSS had an obligation to "procure" the 4th to 7th Defendants to utilise funding only for the advancement of AIQ's Principal Object. To reiterate, there could be no question of any "commercial unfairness" arising from the any alleged breach of the Understanding and Agreement.

298 Nevertheless, I did consider in the alternative whether the usage of AIQ funds for TCP's purposes could be said in any way to have been commercially unfair. My conclusion was that it could not – for two key reasons. First, on the evidence adduced, I found that Joe was well aware all along that TCP required

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267 4th-7th Df Closing Submissions at para 152; 3ABOD at pp 410–423, 524–525; 4ABOD at pp 340–343, 572–575; 5ABOD at pp 55–58, 752.

268 4th-7th Df Closing Submissions at para 153.

269 Transcript of 24 August 2022 at p 112 ln 19 to p 113 ln 10.

270 AEIC of 6th Df at paras 66–67; 1ABOD 576–577; 4ABOD 572–575.

271 4th-7th Df Closing Submissions at para 154; AEIC of 6th Df at paras 66–67.

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funds and that these funds would come from AIQ. Second, I found that TCP was always meant to be a wholly-owned subsidiary of AIQ, in which the 4th to 7th Defendants had no beneficial ownership.

(I) JOE WAS AWARE THAT TCP REQUIRED FUNDS AND THAT THESE FUNDS WOULD COME FROM AIQ

299 In respect of the setting-up of TCP, it will be recalled that the email correspondence from Leslie to GSS and Joe on 22 March 2017 (4.35pm)[272] and from Leslie to GSS on 23 March 2017 (9.56am)[273] showed that Joe had engaged in fairly detailed discussions with Leslie on the setting-up of the proposed co-working space business. Based on Leslie's email update to GSS on 23 March 2017, he and Joe had even discussed the proposed new company's resource needs, such as getting the appropriate centre manager and the compensation to be paid to such a manager.

300 Prior to TCP being incorporated on 12 May 2017,[274] the board of AIQ also held a board meeting where they approved the incorporation of TCP.[275] In gist, AIQ's board – including Joe – agreed that "a separate company would be incorporated to manage the co working business" and that "this new company will be 100% owned by AIQ Pte Ltd". In short, therefore, Joe was fully aware that TCP was to be set up as a "100% owned" subsidiary of AIQ and had given his approval to the proposal.

301 Following the incorporation of TCP, as the 4th to 7th Defendants pointed out, Joe was kept updated on TCP's funding needs and financial

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272 3ABOD at p 227-229.

273 3ABOD at p 235-237.

274 AEIC of 4th Df at para 9.

275 3ABOD at p 288.

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situation through projected cash flow requirements which were provided to GSS and Joe whenever funding was requested for AIQ and TCP. Thus, for example, there was evidence of emails sent by Kian Wai and Marcus on 16 May 2017 (at 11.42am)[276], 6 June 2017 (at 11.12am)[277], 17 July 2017 (at 10.26am)[278], 5 September 2017 (at 11.10am)[279], 5 October 2017 (at 12.22pm)[280], 28 October 2017 (at 2.43pm)[281], 9 November 2017 (at 3.58pm)[282], 1 December 2017 (at 10.59am)[283], and 5 January 2018 (at 4.59pm).[284]

302 It is useful to refer to the contents of some of these emails, as they illustrate clearly how Joe was kept constantly informed not only of the amount of funds required for both companies, but also – specifically and explicitly – of the usage of part of those funds for TCP's purposes. For example, in the email sent to GSS and Joe on 16 May 2017, Marcus notified them that $420,000 was required for the month of May, of which $125,000 was to cover TCP's "renovation deposits", $195,000 was to cover "salary and CPF", and the remainder for "office rental, fees to directors and etc".[285]

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276 3ABOD at p 409-413.

277 3ABOD at p 414-417.

278 3ABOD at p 418.

279 4ABOD at p 572-575.

280 3ABOD at p 419.

281 3ABOD at p 420-421.

282 3ABOD at p 422.

283 5ABOD at p 752-756.

284 3ABOD at p 423.

285 3ABOD at p 412.

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303 By way of further illustration, the email from Kian Wai to GSS and Joe on 5 October 2017[286] alluded to the $240,000 funding provided in September 2017 and stated that another $1.2 million would be required in fresh funds for the month of October 2017 in order to "process payroll and Oct's commitments". In the email, Kian Wai went on to provide GSS and Joe with the breakdown of both AIQ's and TCP's financial commitments. In respect of TCP, Kian Wai expressly highlighted to GSS and Joe that of the $1.2 million in fresh funds being requested, "a final cost of $295k" was needed to "settle all TCP setup and renovation costs", while "20k per month till Dec" was budgeted for the ramping up of TCP's marketing in the initial three months to acquire members". In the same email, Kian Wai also reminded GSS and Joe that he had previously informed them that they needed "to inject funds to TCP to clear all outstanding balances previously paid by AIQ on behalf of TCP which [was] amounting to $500k"; and he put forward a proposal as to how the fresh funds would be split as between AIQ and TCP.

304 It should also be noted that in an email dated 1 December 2017,[287] Kian Wai had (pursuant to Joe's request) updated Joe on the total amounts disbursed by him and GSS for the period 1 January 2017 to 30 November 2017, pursuant to their convertible loans with AIQ. Kian Wai reported to Joe that for the said period, Joe had disbursed a total of US$930,714 while GSS had disbursed a total of US$1,569,198. These sums comprised monies injected by both men to meet the funding needs of AIQ and TCP, pursuant to the various requests from Kian Wai and Marcus in the preceding months.

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286 3ABOD at p 419.

287 5ABOD at p 752.

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305 The irresistible inference which arose from the contemporaneous documentary evidence was that Joe knew very well where his loans to AIQ were going: he knew part of the funds were being used to pay for TCP's expenses, and he raised no objections when informed of such usage. In the face of the documentary evidence, there was simply no merit in his argument that the idea for TCP came about after he (and GSS) had provided convertible loans to AIQ and that the convertible loans were thus intended only for AIQ's benefit.

306 Indeed, as the 4th to 7th Defendants pointed out, under cross-examination Joe himself admitted that Kian Wai and Marcus had always informed him via email as to how the funds that he and GSS were being asked to put in were intended to be applied. Joe also admitted that he was "always told that insofar as part of those funds were going to be used for TCP's purposes,… what those purposes were and approximately how much would be used".[288]

307 What Joe did try to emphasise in cross-examination, though, was that he had agreed to part of AIQ's funds being used for TCP's expenses on the basis that TCP "ought to be" wholly owned by AIQ. This brings me to the Plaintiffs' other argument; *viz*, that loans by AIQ to TCP were made in breach of s 163 of the Companies Act because at the time the loans were made, the 4th to 7th Defendants were collectively interested in more than 20% of TCP, and yet no shareholder approval was obtained for these loans. For the reasons outlined below, I found no merit in this argument either.

(II) THE 4TH TO 7TH DEFENDANTS DID NOT HAVE BENEFICIAL OWNERSHIP OF TCP

308 As I alluded to earlier (at [300300300]), all parties – including the Plaintiffs – were agreed at trial that the intention all along was for TCP to be a

[288] Transcript of 16 August 2022 at p 117 ln 2 to ln 11.

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wholly-owned subsidiary of AIQ.[289] Notwithstanding that the TCP shares were not wholly held by AIQ, all parties – including the Plaintiffs – were also agreed at trial that insofar as any of them (*ie* Joe and the 4th to 7th Defendants) held TCP shares at some point or other, these were always held on trust entirely for AIQ.[290] As a result of this arrangement, on 10 July 2018,[291] Leslie, Jeffrey and Marcus transferred their TCP shares (total of 77.5% shareholding in TCP) to AIQ *in compliance with Joe's demand for them to do so* (dated 14 November 2017).[292] In fact, despite Joe's demand for TCP to "become a wholly-owned subsidiary of AIQ" as previously agreed upon, it was Joe himself who failed to transfer his TCP shares to AIQ – a fact which in my view underscored the insincerity of his complaints about the 4th to 7th Defendants' alleged interests in TCP.

309 Given the above circumstances, AIQ would have controlled more than half of the voting power of TCP – both before and after the transfer of shares from the 4th to 7th Defendants to AIQ, which would make TCP a wholly-owned subsidiary of AIQ pursuant to s 5(1)(*a*)(ii) of the Companies Act:

> 5.—(1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if –
>
> (a) that other corporation –
>
> (i) controls the composition of the board of directors of the first-mentioned corporation; or
>
> (ii) controls more than half of the voting power of the first-mentioned corporation; or
>
> (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

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289 3ABOD at p 288.

290 Transcript of 16 August 2022 at p 114 ln 18 to p 115 ln 10.

291 AEIC of 5th Df at p 212.

292 5ABOD at p 299-301.

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310 Since TCP was a subsidiary of AIQ, s 163 did not apply to loans made from AIQ to TCP by virtue of s 163(4)(*a*) of the Companies Act:

> (4) This section does not apply –
>
> (a) to anything done by a company where the other company (whether that company is incorporated in Singapore or otherwise) is its subsidiary or holding company or a subsidiary of its holding company; or
>
> …

311 Further and in any event, even assuming there was a breach of s 163 of the Companies Act, the onus remained on the Plaintiffs to demonstrate that this constituted commercially unfair conduct vis-à-vis Joe and/or Thames. As I noted earlier, conduct that is technically unlawful may not be unfair (*Lim Kok Wah* at [100]). In this respect, the Plaintiffs failed entirely to explain how a breach of s 163 was commercially unfair – and thus oppressive of *the Plaintiffs'* rights. In my view, given Joe's own conduct, and in particular, his clear knowledge of the loans from AIQ to TCP as well as the lack of any objections thereto, the Plaintiffs had no grounds whatsoever to complain of commercial unfairness arising from any (purported) breach of s 163.

312 In sum, for the reasons stated at [297]–[311], I rejected the Plaintiffs' claim of oppression arising from the allegedly wrongful diversion of funds from AIQ to TCP and the allegedly unauthorised loans.

Wrongful denial of information to Joe from AIQ and TCP

(1) Plaintiffs' position

313 The next allegation of oppressive conduct which I address is the Plaintiffs' allegation that Joe was wrongfully denied his right to receive financial information on AIQ, TCP and the progress of these companies.

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314 In this connection, the Plaintiffs claimed that by virtue of the Understanding and Agreement, Joe had a right to receive full financial information on AIQ, TCP and the progress of these companies.[293] Joe's right to the companies' financial information was pleaded as an express term of the Understanding and Agreement, although as noted earlier, in the Plaintiffs' closing submissions it was said to be an implied term. According to the Plaintiffs, this was *not an express term* of the Understanding and Agreement but was an *implied term*.[294]

315 Further, the Plaintiffs contended that pursuant to s 199 of the Companies Act, Joe was entitled in any event, as a director, to inspect AIQ's documents and records.[295] This right would be independent of the Understanding and Agreement.

316 In claiming that Joe's right to the companies' financial information was wrongfully denied and that this denial was oppressive of their shareholder rights, the Plaintiffs contended that in the period between the signing of the Share Transfer Deed and Joe's removal from the AIQ board, the 3rd to 7th Defendants had given "half-hearted" responses to Joe's various requests for information and documents.[296] In particular, the Plaintiffs pointed to the four requests made on 14 November 2017, 15 January 2018, 18 April 2018, and 10 May 2018.[297]

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293 SOC (Amendment No.3) at para 19(2),(7).

294 Pf Closing Submissions at para 219(a).

295 Pf Closing Submissions at para 250(b).

296 Pf Closing Submissions at para 112.

297 Pf Closing Submissions at para 112; 5ABOD at p 300, p 611; 6ABOD at p 77, p 695; 10ABOD at p 532.

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(2) 3rd Defendant GSS' position

317 As for GSS, he asserted that he was not involved in the alleged denial of financial information to Joe from AIQ and TCP; that he had no knowledge of the events relating to the alleged denial of information; and that he had no involvement in the affairs of companies beyond funding them through loans.[298]

(3) 4th to 7th Defendants' position

318 The 4th to 7th Defendants, for their part, contended that Kian Wai had done his best to answer Joe's requests for information as they were made and that the Plaintiffs had no factual basis for claiming that Joe's requests for information were denied.[299]

319 Further, the 4th to 7th Defendants highlighted that it was only in the closing submissions that the Plaintiffs put forward for the first time a purported summary of the "key information and documents" which they claimed Joe had unsuccessfully sought. This summary was not included in either the Plaintiffs' pleadings or in Joe's AEIC, which meant that the 4th to 7th Defendants were deprived of the opportunity to respond to it.[300]

(4) My Decision

320 In respect of the Plaintiffs' reliance on the Understanding and Agreement, given my finding that there was never any such agreement, it followed that Joe could not claim to be entitled to financial information on AIQ and TCP by virtue of any term in such an agreement.

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298 3rd Df Closing Submissions at para 164.

299 4th-7th Df Closing Submissions at paras 115-119.

300 4th-7th Df Reply Submissions at para 67.

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321 In respect of Joe's right under s 199 of the Companies Act to inspect AIQ's and TCP's financial records in his capacity as a director, the Plaintiffs had no coherent explanation as to how any breach of this right could constitute oppression of Joe's rights *as a shareholder* of the two companies. As the CA pointed out in *Suying Design*, "shareholders do not have a broad right to financial information of a company other than the audited financial statements pursuant to s 203 of the Companies Act" (*Suying Design* at [124]). Even assuming there was a breach of Joe's right as a director under s 199 to inspect the companies' financial records, the *qua member* rule would preclude the Plaintiffs from relying on such a breach for the purposes of their minority oppression claim (see [122]–[126] above for the references to caselaw on the *qua member* rule).

322 Further and in any event, the Plaintiffs' claim of wrongful denial of information was not supported by the evidence. On the evidence before me, I was satisfied that Kian Wai did in fact do his best to respond to Joe's requests for information – and that he also instructed the relevant AIQ staff to assist with the gathering of information requested by Joe. The facts relating to the alleged wrongful denial of Joe's requests for financial information are examined in greater detail in the section on the Plaintiffs' conspiracy claim (at [557]–[562] and [568]–[573] below).

323 In sum, for the reasons stated at [320]–[322], I rejected the Plaintiffs' claim of oppression arising from the alleged wrongful denial of Joe's right to financial information on AIQ and TCP.

Wrongful dilution of Joe's shareholding through the Rights Issue

324 The next allegation of oppressive conduct I address concerns the Rights Issue of 30 January 2018, which the Plaintiffs claimed was carried out in order

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to dilute Joe's shareholding in AIQ. The key events relating to the Rights Issue have been summarised previously in the written grounds (see [18]–[20] above).

(1) The Plaintiffs' position

325 According to the Plaintiffs, the 3rd to 7th Defendants had decided that Joe should be exited from AIQ and that his shareholding should be diluted in order for GSS to obtain majority shareholding control of AIQ. This was to be done through the conduct of a right issue at a severe undervalue – which Joe would be incapacitated from participating in, by virtue of the 3rd to 7th Defendants piling the pressure on Joe in respect of the audit issues. In their closing submissions, the Plaintiffs termed this the "**Incapacitation Strategy**".[301]

326 The Plaintiffs alleged that the following matters (which they claimed to have proven at trial) showed that the Rights Issue was carried out with the predominant purpose of diluting Joe's shareholding – and was thus oppressive:

(a) Joe was excluded from all discussions relating to the Rights Issue. He was also bamboozled by the speed at which the Rights Issue was conducted and had no time to react before the offer was sent out to the shareholders. Despite his having expressed objections to the Rights Issue, the 4th to 7th Defendants still went ahead with the Rights Issue.[302]

(b) The 4th to 7th Defendants did not allow Joe's request on 5 March 2018 to convert his loans to equity. According to the Plaintiffs, there should have been no issues accepting such a proposal as it would have

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301 Pf Closing Submissions at paras 169-170; Transcript of 22 August 2022 at p 11, 17 and 18; Transcript of 26 August 2022 at p 97 ln 1 to ln 5; Transcript of 25 August 2022 at p 172.

302 Pf Closing Submissions at para 173.

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the effect of reducing AIQ's overall liabilities while helping maintain the status quo in terms of shareholding allocation between Joe and GSS.[303]

(c) The total amount of the Rights Issue was only $302,400, which amount would have lasted AIQ only for slightly over a month. Kian Wai and GSS had confirmed that further rights issues would be needed to raise more funds in the future.[304]

(d) The final version of the invitation letter was not the same as the draft invitation letter that was approved by the board.[305]

(e) The low price of the Rights Issue where it was carried out an undervalue of 28 cents per share, when no independent valuation had been done in respect of the price. GSS had also only subscribed to a limited number of shares to increase his shareholding to a majority of 50.04% after the Rights Issue. According to the Plaintiffs, this reflected the reality that the Rights Issue was a cheap way for GSS to obtain majority control of AIQ at the expense of Joe.[306]

(f) By the time the invitation letter was sent out, the 3rd to 7th Defendants knew that Joe would not subscribe to the Rights Issue.[307]

327 The Plaintiffs claimed that their version of the events leading up to the Rights Issue in late January 2018 was supported by various email

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303 Pf Closing Submissions at para 177.

304 Pf Closing Submissions at para 167(b.

305 Pf Closing Submissions at para 167(j);.

306 Pf Closing Submissions at paras 178, 179(b),(c).

307 Pf Closing Submissions at para 174.

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communications between the 4th to 7th Defendants, GSS and Joe. According to the Plaintiffs, sometime after the board meeting on 15 November 2017, where Joe had disagreed with GSS' proposed new funding ratio, the 3rd to 7th Defendants had commenced discussions about working towards kicking Joe out of AIQ in January 2018.[308] By 7 January 2018, the 3rd to 7th Defendants were having discussions about the audit issues relating to Joe.[309] It was at this time that GSS encouraged the 4th to 7th Defendants to seriously consider a rights issue to keep AIQ going for the next few months.[310]

328 On 15 January 2018, Kian Wai proposed that GSS and Joe (and the other AIQ shareholders) provide interim bridging loans to AIQ and TCP as a temporary measure. This proposal failed as there was no take-up from any of AIQ's shareholders.[311]

329 The Plaintiffs claimed that even as the 4th to 7th Defendants were trying to raise a bridging loan, they were planning with GSS to incapacitate Joe's ability to participate in any rights issue, by pressuring him on the audit issues. This included bringing up the audit issues at an urgent board meeting on 23 January 2018.[312] According to the Plaintiffs, the plan to incapacitate Joe from participating in any rights issue (the "Incapacitation Strategy") was fleshed out in Kian Wai's email of 18 January 2018.[313] The Plaintiffs claimed that the cumulative pressure applied by the 3rd to 7th Defendants took its toll on Joe,

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308 Pf Closing Submissions at paras 120-127; 1ABOD at pp 365-366; 5ABOD at pp 617-619; Transcript of 30 August 2022 at p 115 ln 11 to p 116 ln 6.

309 Pf Closing Submissions at paras 135-136; 5ABOD at p 768.

310 Pf Closing Submissions at para 137; 5ABOD at p 770.

311 Pf Closing Submissions at paras 146-149; 6ABOD at pp 87-90, 145-148.

312 Pf Closing Submissions at paras 157-159; 6ABOD at pp 156, 178.

313 Pf Closing Submissions at paras 150-153; 6ABOD at p 129-132.

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who offered to sell all his AIQ shares to GSS on 25 January 2018, for US$3.8m. This offer was not accepted by GSS.[314]

330 On 29 January 2018, a directors' resolution approving the launch of the Rights Issue was sent to all Directors; and soon after, an offer letter for the Rights Issue was sent to all shareholders. The Plaintiffs took issue with this offer letter on the basis that its wording was not identical to the wording in the draft approved by the directors' resolution.[315]

331 According to the Plaintiffs, the 3rd to 7th Defendants continued to discuss Joe's participation in the Rights Issue even after round 1 of the Rights Issue had commenced;[316] and on 4 February 2018, the 4th to 7th Defendants sent a reply to Joe's email of 31 January 2018 in which he had raised objections to the Rights Issue. The Plaintiffs claimed that the 4th to 7th Defendants' actions were calculated to put further pressure on Joe. After the conclusion of round 1 of the Rights Issue on 13 February 2018, GSS emerged as the only subscriber. As a result, GSS was invited to participate in round 2 of the Rights Issue on 19 February 2018.[317]

(2) 3rd Defendant GSS' position

332 Both GSS and the 4th to 7th Defendants urged me not to allow Joe to advance a case theory based on the Incapacitation Strategy because this was something which he had failed to plead (and which he had also failed to mention in his AEIC).

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314 Pf Closing Submissions at paras 160-162; 6ABOD at pp 170, 172.

315 Pf Closing Submissions at paras 165-166; 6ABOD at pp 209-211, 367-373.

316 Pf Closing Submissions at para 167.

317 6ABOD at pp 364, 367-373.

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333 GSS' position was that even if the Plaintiffs' arguments about the Incapacitation Strategy were to be considered, the Rights Issue was not commercially unfair to the Plaintiffs because it was conducted for a genuine commercial purpose; namely, to raise funds for AIQ[318] – and not for the purpose of diluting Joe's shareholding. There were also good commercial reasons for pricing the Rights Issue at $0.28 per share. The entire process for the conduct of the Rights Issue was transparent; and Joe was not incapacitated from participating in the Rights Issue: he simply chose not to.

334 GSS also asserted that he did not set off any part of his loans to AIQ to pay for the Rights Issue.[319]

(3) The 4th to 7th Defendants' position

335 The 4th to 7th Defendants also took the position that the Rights Issue was carried out for a genuine commercial purpose, *ie* to raise funds urgently for AIQ's operational expenses[320]; and that it was priced at $0.28 per share so as to entice as many shareholders as possible to participate.[321] Like Joe, GSS too was not allowed to subscribe by setting off loans owed by AIQ to him.

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318 3rd Df Closing Submissions at paras 122-128.

319 3rd Df Closing Submissions at paras 134-138.

320 4th-7th Df Closing Submissions at paras 83-84, 99-100.

321 4th-7th Df Closing Submissions at paras 85-87.

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(4) My Decision

(A) THE LAW RELATING TO RIGHTS ISSUES IN OPPRESSION CLAIMS

336 Before I address the Plaintiffs' various allegations, I first outline the legal principles which govern the conduct of rights issues in the context of oppression claims.

337 As a starting point, *The Wellness Group Pte Ltd v OSIM International Ltd* [2016] 3 SLR 729 ("*The Wellness Group*") is instructive as to when the conduct of a rights issue may be held by the courts to have given rise to commercial unfairness. In *The Wellness Group*, the 1st plaintiff ("TWG") sued the 1st to 6th defendants for oppressive conduct under s 216 of the Companies Act, while the 2nd plaintiff ("Manoj") sued the 1st to 3rd defendants for conspiracy to injure. The 2nd defendant ("Ron Sim") was the founder, chairman and CEO of the 1st defendant ("OSIM") and a director of a company ("TWG Tea") and the 4th defendant ("Paris"). Paris was wholly owned by OSIM and a shareholder of TWG. The 3rd defendant ("Taha") was a director and the CEO of TWG Tea. The 5th defendant ("Peng Soon") was a director of Paris and TWG Tea, while the 6th defendant ("Peter Lee") was a director of OSIM, Paris and TWG Tea. TWG Tea was first incorporated as a wholly-owned subsidiary of TWG. Eventually, Ron Sim through an investment company ("EQ Capital") invested in TWG. Paris and OSIM became shareholders in TWG Tea with TWG.

338 At an EGM on 17 December 2013 (which TWG and Manoj chose not to attend), TWG Tea shareholders approved a resolution presented by the board calling for a rights issue of up to 77,000 shares. Ron Sim subsequently asked TWG's directors to subscribe to the rights issue, but TWG did not accept the new shares allocated to it pursuant to the rights issue. OSIM and Paris together

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subscribed for the entire 77,000 shares. This resulted in OSIM controlling 69.9% of the shares in TWG Tea (up from 53.7% previously). Soon after, TWG commenced minority oppression proceedings. *Inter alia*, they claimed that Ron Sim had proposed, and OSIM and Paris had approved, the rights issue which was not for commercial reasons and was instead intended to dilute TWG's shareholding.

339 In dismissing the Plaintiffs' claim that the rights issue was oppressive, Chua JC (as he then was) noted at [183] (citing the CA's judgment in *Over & Over* at [122]) that the issue of shares for any reason other than to raise capital – for instance, to dilute the voting power of others – amounted to a breach of fiduciary duties by the directors of the company and could be set aside by the court. Further, if directors representing majority shareholders abused voting powers by voting in bad faith or for a collateral purpose, oppression could be said to have been established.

340 Chua JC further held that a rights issue would be unfair within the meaning of s 216 of the Companies Act if (a) there was no commercial reason to raise capital through a rights issue; or (b) the dominant purpose of the rights issue is to dilute non-subscribing shareholders. He noted that these were the two most common – albeit non-exhaustive – grounds.

341 With respect to (a), Chua JC held (at [185]) that where there was no commercial reason to raise capital through a rights issue, a rights issue would be unfair to shareholders even if the pricing of the rights issue was fair and reasonable. Because a rights issue required shareholders to invest more money in the company by subscription to the rights issue, or face dilution to the value and voting power of their shareholding, shareholders "were entitled to expect that they [would] not be subject to this dilemma unless the company [had] a

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commercial reason to have a rights issue". In practice, where there was no commercial reason for a rights issue, it was invariably found that the purpose of the rights issue was to dilute the shareholding of non-subscribing shareholders: see *Over & Over* at [127]; *Sharikat Logistics Pte Ltd v Ong Boon Chuan* [2014] SGHC 224 ("*Sharikat*") at [188]; *Maxz Universal* at [108].

342 As Chua JC pointed out, the question of whether there was a commercial reason for a rights issue would be a finding of fact in every case. Generally, there could be no commercial reason for a rights issue "unless (a) the company [was] in need of funds, and (b) raising such funds via a rights issue, rather than other means of financing such as bank loans, [was] a reasonable option".

343 On the facts of *The Wellness Group*, Chua JC found that there were commercial reasons to raise capital through a rights issue. First, there was a $5.6m loan from OSIM that was due to be repaid within a month's time, failing which the loan interest would jump to a higher rate (at [140]–[146]). TWG also had to repay $6m to UOB at around the same time that the OSIM loan fell due. The repayment of the OSIM loan and the UOB loan thus constituted a *bona fide* reason for the rights issue (at [148]–[149]). In addition, there were other legitimate expenses for which reasonable amounts had been budgeted; and on top of these legitimate payments due from TWG Tea, TWG Tea also needed to fund its expansion plans, which would cost approximately $10.4m (at [153]–[154]). In the circumstances, Chua JC found that there were commercial reasons for the rights issue (at [155]).

344 In *Swee Wan Enterprises Pte Ltd v Yak Thye Peng* [2019] SGHC 149 ("*Swee Wan*"), two brothers ("YTP" and "YTL") fell out over the control and management of two family-owned companies ("SWE" and "SWT"). The daughter of YTL ("YCW") was also a party to the proceedings. One of the

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issues was whether a rights issue conducted by SWE in June 2017 amounted to oppression of YTP's rights as a shareholder. In gist, following approval given at an EGM on 7 June 2017, a rights issue of 1,771,910 ordinary shares at par value of $1 per share was offered to existing shareholders in proportion to their current shareholdings (at [36]). YTP was of the view that this rights issue was simply an attempt to dilute his shareholding in SWE as YTL and YCW knew that YTP would not be able to meet his obligations in respect of the rights issue. YTP had written to YTL's and YCW's lawyers threatening legal proceedings. The lawyers replied that the rights issue was necessary to ensure that SWE could meet its liability in respect of a loan from ABN AMRO Bank and that it was not an attempt to dilute YTP's shareholding. After the rights issue was carried out, YTP's shareholding in SWE shrank from 40% to 20.79% (at [37]–[39]).

345 On the facts, Hoo J found that the ABN AMRO loan had been taken out for business purposes; that it had been negotiated and managed by YTP; and that it had been secured by SWE's properties as well as a personal guarantee from YTP. Unfortunately, the loan facility was cancelled on 28 March 2017, following which the loan had to be repaid within three months. YTL and YCW had nothing to do with this cancellation. Hoo J found that YTL was under no obligation to use funds that he was personally entitled to for the discharge of SWE's liability to ABN AMRO (at [111]). Nevertheless, YTL and YCW had taken reasonable steps to find alternative means of funding, including *inter alia* unsuccessful attempts to obtain re-financing from four different banks (at [107]–[110]). Hoo J rejected YTP's allegation that "there was short notice given to him, that no proper explanation for the number of shares to be issued had been given, and that no valuation was done to support the share price" (at [112]). She accepted YTL's and YCW's explanation that the short notice was due to the urgency of the situation, and that this urgency had in part been caused by YTP's behaviour in doing nothing when he first received notice of the cancelled

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loan. The rights issue was at par value and each shareholder was entitled to subscribe for shares. Although on the face of it, the quantity of shares issued appeared to be far in excess of what was required for paying off the ABN AMRO loan, Hoo J accepted YCW's explanation that there was insufficient time to call for multiple rights issues if the first did not raise the $900,000 outstanding to ABN AMRO, and that YCW had operated on the assumption that only YTL would be willing to subscribe for more shares so as to raise the amount required (at [113]–[115]).

346 As to the valuation of the shares, Hoo J held that a lack of any serious attempt to ascertain the market value of shares alone did not demonstrate a lack of good faith (at [116]). While YTP complained that the price of the rights issue could have been set lower than book value, Hoo J pointed out that a lower share price would also mean that more shares would have to be issued to raise the same amount of funds should YTL be the only one to subscribe; and this would actually have resulted in a more serious dilution of YTP's shareholding. Further, Hoo J noted YCW's evidence that a rights issue would be conducted at less than current value so that existing shareholders could have a chance to participate, and so as to incentivize them to do so. YTP himself had no satisfactory explanation as to why he had not subscribed for the shares if he thought that the price was low.

347 Ultimately, therefore, Hoo J found that the decision to carry out a rights issue was made for a genuine commercial reason, *viz* to raise capital for SWE – and not to dilute YTP's shareholding as he claimed (at [116]–[117]).

348 In *Sharikat*, there was a dispute amongst the shareholders of the 5th defendant ("TG-SN"). The shareholders were the plaintiff ("Sharikat") with 40% of the shareholding in TG-SN, the 4th defendant ("TGDPL") with 51% of

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TG-SN's shareholding, and the 3rd defendant ("KYL"), with the remaining 9% of TG-SN's shareholding. TG-SN was set up to tender for and to undertake a development project at Banyan Drive ("the Project"). Sharikat brought an oppression action, claiming that one "OBC" (the sole director and controlling shareholder of TGDPL) had used TGDPL's position as majority shareholder of TG-SN to oppress Sharikat as a minority shareholder. *Inter alia,* Sharikat claimed that following its commencement of the action, OBC had sought to raise a rights issue on the basis that TG-SN needed to repay a construction loan and to pay for future expansion. Sharikat countered that there was no urgency to repay the loan; that TG-SN was a single purpose vehicle set up to develop and manage the Project; and that the true purpose of the rights issue was to dilute Sharikat's shareholding in TG-SN (at [19]).

349 Prakash J (as she then was) accepted that TG-SN was incorporated as a single purpose vehicle. As such, there could be no question of future projects to be undertaken without the consent of Sharikat; and by the time the rights issue was proposed, this consent was very unlikely to be given since Sharikat and TGDPL were on bad terms by then. In other words, "there was little, if any, prospect of Sharikat agreeing to expand the business" of TG-SN. OBC must have realised that Sharikat would not want to invest additional funds in the company, and thus he could not have sincerely considered that Sharikat would participate in the rights issue in order raise funds for TG-SN to undertake further business (at [181]). Furthermore, Prakash J did not accept that OBC could have truly believed TG-SN was at that time experiencing a cash crunch. *Inter alia,* he had neglected to accept another bank's offer of a reduced interest rate, which would have saved TG-SN money. As at end-2010, TG-SN also had cash reserves of approximately $700,000; all the units in the Project were occupied; rental was forthcoming; and the company's cash position had been constantly improving while its liability decreased. In the circumstances, Prakash J

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concluded that there was no valid commercial reason for the rights issue and that it was aimed at diluting Sharikat's shareholding (at [182]–[188]). The calling of the 8 September 2011 EGM and the passing of the resolution for a rights issue were accordingly held to be oppressive actions on the part of TGDPL and OBC vis-à-vis Sharikat.

350 In any inquiry into the existence (or not) of commercial reasons for a rights issue, it should be remembered that even if there are good commercial reasons for the rights issue, it is a fact that every rights issue will dilute the shareholding of those shareholders who choose not to subscribe it (*The Wellness Group* at [188]). As Chua JC pointed out in *The Wellness Group*, a non-subscribing shareholder cannot complain about the mere fact of dilution because there can be no general expectation that the shareholding of a company will remain constant. Neither can a shareholder complain about the mere fact that the price is too low. However, a shareholder *is* entitled to not be unfairly treated. A rights issue "would be unfair if its dominant purpose is to dilute the non-subscribing shareholder"; and such a dominant purpose would be an improper purpose which the court would not permit (at [188]).

351 Further, as Chua J observed in *The Wellness Group*, the intention to dilute non-subscribing shareholders often has to be inferred. The absence of commercial reasons for a rights issue is one obvious indicator of such an intention. Another strong indicator is a low issue price where there is no good commercial reason for the low price. This is because the lower the issue price, the more shares will be issued and this in turn leads to a greater dilution of the non-subscribing shareholder's shareholding (at [190]). As for the majority's knowledge that a minority shareholder cannot or may not take up the issue, this factor does not necessarily mean that the rights issue is unfair – but it will be a factor which the court will consider (at [190], citing *Over & Over* at [76]). At

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the end of the day, the question whether a company is in need of funds – as well as the question of whether raising funds via a rights issue is a reasonable option – are matters for the company's management; the court will be slow to question a *bona fide* management decision honestly arrived at (at [186] of *The Wellness Group*, citing *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821 at 832; and *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [30]).

352 In this connection, as Chua JC observed (at [193]–[194]):

> 193 Using the dilutive effect for the purpose of encouraging shareholders to subscribe to a rights issue is conceptually different from using the dilutive effect for the purpose of diluting non-subscribing shareholders. It may be difficult in some cases to differentiate between the two on the evidence. However, this difficulty should not stop the court from recognising and giving effect to the distinction.
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> 194 The distinction may be better explained by considering two different factual scenarios. In the first scenario, the majority shareholder wants to increase his shareholding and either knows or hopes that the minority will not take up the rights shares. He then prices the rights issue at the low end of a reasonable range in order to increase the dilutive effect on the non-subscribing shareholder. In the second scenario, the majority shareholder is not looking to increase his shareholding and would like all shareholders to contribute proportionately to the financing of the company by subscribing to the rights issue. The rights issue is again priced at the low end of a reasonable range but this time the intention is to incentivise the shareholders to subscribe to the rights issue. In my view, the two scenarios deserve very different treatments even though the dilutive effect in both cases may be similarly disadvantageous to the non-subscribing shareholder. The decision for the low issue price in the first scenario would be unfairly prejudicial to the non-subscribing shareholder. However, I see no reason why the decision in the second scenario should constitute unfairly prejudicial conduct. Since there is a commercial reason for the rights issue, it would not be wrong for a majority shareholder to expect all shareholders to subscribe to the rights issue, or to price the rights issue low so that shareholders will be incentivised to subscribe in order to avoid the dilutive effect of not subscribing. It would also not be wrong, in the second scenario, if one of the reasons for the low issue price is to make it more attractive for the majority shareholder to take up the shares not taken up by the non-subscribing shareholder, so

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> that the company is able to raise the full amount of financing needed.

(B) WHETHER THERE WERE *BONA FIDE* COMMERCIAL REASONS FOR THE RIGHTS ISSUE

353 Bearing in mind the principles I have outlined at [336]–[352] and having examined the evidence adduced, I found that there were *bona fide* commercial reasons for the Rights Issue to be carried out.

(I) AIQ WAS IN URGENT NEED OF FUNDS WITHIN A VERY SHORT TIMELINE

354 First, it was not disputed that at the material time, AIQ had only a small sum of money left in its bank account. To be precise, AIQ had only $4,636.81 in its account as at 9 February 2018,[322] which would obviously have been inadequate to satisfy AIQ's current liabilities and future expenses. That such a dire cash crunch had been AIQ's reality for some time was evidenced by Kian Wai's email of 19 January 2018[323] to Joe and GSS, in which Kian Wai pointed out that if a viable funding solution could not be reached (as between Joe and GSS), the 4th to 7th Defendants would have to discuss shutting down "operations for both companies" as they were "really running out of cash to pay our bills and should not accrue more liabilities if [they could not] see them being paid". The dismal extent of AIQ's financial woes was further demonstrated by its inability to pay its own staff their salaries for the month of January[324] – and the prospect of being unable to pay these salaries even before the Lunar New Year.

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322 11ABOD at p 764.

323 AEIC of 3rd Df at p 216-217.

324 6ABOD at p 203-204.

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355 AIQ's pressing need for funds, and in particular, the need to pay outstanding staff salaries, thus constituted a genuine commercial reason for the Rights Issue.

(II) THERE WERE NO ALTERNATIVE MEANS OF FUNDING

356 Second, at the time when the Rights Issue was proposed as the answer to AIQ's financial woes, there were no alternative means of funding that the 4th to 7th Defendants could tap on. On the facts, it did not appear that loans from banks or other financial institutions represented a viable funding option. Indeed, the Plaintiffs themselves have never mentioned bank loans as one of AIQ's funding options.

357 Instead, the Plaintiffs' only suggestion as to alternative means of funding was that the 4th to 7th Defendants should have looked first to GSS, and exhausted GSS' portion of the funding under the 2:1 Funding Agreement first, before approaching Joe. Such an approach, so the Plaintiffs claimed, might have made Joe more receptive to any proposal for a rights issue.[325]

358 I found the Plaintiffs' suggestion to be devoid of any merit. First, for the reasons explained earlier at [215]–[274] and [290], I rejected the Plaintiffs' contention that there was a "2:1 Funding Agreement" between Joe and GSS. Second, I considered it entirely unreasonable for the Plaintiffs to suggest that the 4th to 7th Defendants should have approached GSS first and exhausted GSS' portion of the funding under the 2:1 Funding Agreement first, before approaching Joe. Given the fraught relationship which existed between Joe and GSS by early 2018, such a one-sided approach would in all likelihood have resulted in GSS digging in his heels and refusing to heed any of the 4th to 7th

[325] Pf Closing Submissions at para 176.

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Defendants' pleas for funding. By this stage, the 4th to 7th Defendants had already had made several attempts to persuade GSS and Joe to agree on a workable funding arrangement – and these attempts had been rebuffed by both men.[326] There was a real limit to what the 4th to 7th Defendants could do to get either man to cooperate in funding AIQ: after all, if Joe or GSS declined to provided further funding, the 4th to 7th Defendants had no powers to compel either man to fund AIQ.

359 In the circumstances, I was satisfied that the Rights Issue represented the only viable funding solution at the material time.

(III) A RIGHTS ISSUE HAD ALWAYS BEEN CONTEMPLATED BY THE BOARD AS A VIABLE FUNDING STRATEGY

360 Third, it should be noted that a rights issue had always been contemplated by the AIQ board as a viable strategy for raising funds. While I did not necessarily accept GSS' contention that the Rights Issue which was launched had always been contemplated in exactly the same form that it took on 30 January 2018, the point I make here is that rights issues in general had already been contemplated by the board (Joe included) as a potential fundraising strategy for AIQ even before 30 January 2018.[327] This would tend to militate against the suggestion that the Rights Issue was a stratagem conceived by the 3rd to 7th Defendants for the specific purpose of diluting Joe's shareholding interest after relations with him soured.

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326 5ABOD at pp 333-334, 344, 587-589, 615-616.

327 3ABOD at pp 271-272, 279-280, 286-287; 4ABOD at pp 377, 405-406, 673-674; 5ABOD at pp 20, 68-69, 256-258, 336-337, 341-342, 637-638, 770.

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(C) WHETHER THE DOMINANT INTENTION OF THE 3RD TO 7TH DEFENDANTS WAS TO DILUTE JOE'S SHAREHOLDING IN AIQ

361 Having found that the evidence disclosed a genuine commercial purpose for the Rights Issue, I next examined the evidence which – according to the Plaintiffs – gave rise to the inference that the 3rd to 7th Defendants nevertheless had a dominant intention to dilute Joe's AIQ shareholding.

(I) EXCLUSION OF JOE FROM ALL DISCUSSIONS RELATING TO THE RIGHTS ISSUE DUE TO THE SPEED AT WHICH IT WAS CONDUCTED – JOE OBJECTED TO THE RIGHTS ISSUE

362 At the outset, I rejected Joe's contention that he was caught off-guard by the launch of the Rights Issue and "bamboozled" by the speed at which it was carried out. In fact, on the documentary evidence before me, not only was Joe kept informed all along of the proposal to conduct the Rights Issue, he held a meeting with Kian Wai and Marcus to discuss it in some detail on 26 January 2018.[328]

363 Thus, for example, between 5 January 2018 to 22 January 2018, Kian Wai had tried unsuccessfully to get Joe, GSS, and eventually shareholders holding at least 5% of AIQ, to provide funds or a bridging loan to AIQ.[329] Joe was well aware of these unsuccessful efforts to raise funds as he was one of the recipients of Kian Wai's various emails updating on his efforts – and their lack of success.[330] On 17 January 2018, for example, Kian Wai stated in an email to Joe and GSS that AIQ had been operating "on 'hand to mouth' situation for at least past 12 months" and that the company had almost needed to stop salary payments and cease operations in December 2017. In the same email, Kian Wai

328 6ABOD at p 183-185.

329 6ABOD at p 145-148.

330 6ABOD at p 146.

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informed Joe and GSS that "[t]he plan [was] to seek the board's approval for a rights issue and subsequently sanctioned by members vote in an AGM or EGM".

364 On 23 January 2018, there was an AIQ board meeting at which the board discussed a funding arrangement involving an interim loan scheme to fund AIQ's urgent short-term needs, followed by a rights issue to get shareholders to fund AIQ's operations[331]. Not only was Joe the chair of this meeting, he was accompanied by both his "legal representative" (one Nikko Isaac from the firm Tito Isaac & Co LLP) and his "accounting representative" (one Lucius Wong from the firm TIC Corporate Advisory Pte Ltd).[332] The minutes of the board meeting showed that all the board members, including Joe, had agreed that these two options were to be implemented to resolve the company's funding issues.

365 Following the 23 January 2018 board meeting, Kian Wai again tried to get Joe, GSS and other shareholders to provide a bridging loan to AIQ – but his efforts were in vain.[333] Then, on 28 January 2018, AIQ found itself unable to pay the salaries of its employees.[334] This meant that the first limb of the two-pronged approach approved by the board on 23 January 2018 had failed (*ie* no interim loan could be obtained). This also meant that since Kian Wai had failed to persuade Joe, GSS and other shareholders with more than 5% shareholding to provide interim financing, it was reasonable to move on to the Rights Issue which had been envisaged as the second limb of the two-pronged approach. In

331 1ABOD at p 372.

332 1ABOD at p 371.

333 6ABOD at p 176-177.

334 6ABOD at p 203-204.

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other words, it would not have come as a surprise at all to Joe when the 4th to 7th Defendants moved to proceed with the Rights Issue.

366 Furthermore, Joe was kept informed by Kian Wai about the preparations for the launch of the Rights Issue pursuant to the board meeting on 23 January 2018[335]; and as I noted earlier, Joe had a meeting with Kian Wai and Marcus on 26 January 2018[336]. According to Kian Wai's email to Joe on the same day, the three of them (Joe, Kian Wai and Marcus) discussed various details regarding the Rights Issue, including the proposal for the Rights Issue to be "9 for 1 shares at $0.28".[337] At Joe's request, Kian Wai and Marcus had also run through with Joe various scenarios in relation to his participation in the Rights Issue.[338] I add that although Joe denied having engaged in such discussions with Kian Wai and Marcus, I preferred Kian Wai's version of events as it was supported by evidence of contemporaneous emails the veracity and existence of which Joe had never objected to. The 4th to 7th Defendants' subsequent reply (via email on 2 February 2018) to Joe's objections (via email on 31 January 2018[339]) to the Rights Issue further corroborated their assertion that they *had* included Joe in discussions about the launch of the Rights Issue:[340] in particular, the reply email stated that Joe "did not object to the rights issue and had in fact, on 26 January 2018, had an in-depth discussion with Kian Wai for the rights issue".[341]

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335 6ABOD at p 176.

336 6ABOD at p 183-184.

337 6ABOD at p 183-185.

338 6ABOD at p 183-185.

339 6ABOD at p 238-243.

340 6ABOD at p 276-280.

341 6ABOD at p 277.

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367 For the reasons stated in [362]–[366] above, I rejected the Plaintiffs' complaint that Joe had been caught off-guard and "bamboozled" by the launch of the Rights Issue.

368 As to the Plaintiffs' contention that the Rights Issue had been carried out quickly and in spite of Joe's objections, neither of these things *per se* constituted a basis for finding commercial unfairness. As Chua JC pointed out in *The Wellness Group* (at [199]), as a matter of law, it was not incumbent upon directors to consult shareholders on the terms of the rights issue. Although Chua JC noted that it would be useful in some circumstances for consultations to be held, any decision whether to do so was best left the directors to take. In the present case, given that the 4th to 7th Defendants had genuine commercial justification for the Rights Issue, the fact that they proceeded in spite of Joe's objections could not *per se* be a ground for finding the Rights Issue commercially unfair to Joe.

369 Similarly, on the facts of the present case, the 4th to 7th Defendants should not be faulted for the speed at which the Rights Issue was carried out. As I highlighted earlier, by January 2018 AIQ had already failed to pay staff salaries for the month of January, and its bank balance stood at less than $5,000. All attempts to persuade Joe and GSS to agree on a new funding arrangement and/or to raise a bridging loan from shareholders had failed. There was thus good reason for the Rights Issue being carried out swiftly to raise funds for AIQ. In this connection, it may be noted that in *Swee Wan,* Hoo J also rejected the minority shareholder's complaints about the "short notice" given of the rights issue as she found that there was a genuine reason for urgency in that case.

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(II) NOT ALLOWING JOE TO SET OFF HIS CONVERTIBLE LOANS WITH THE SHARES ISSUED UNDER THE RIGHTS ISSUE

370 Next, the Plaintiffs argued that the Rights Issue was oppressive because:

(a) GSS was permitted to and did subscribe to the Rights Issue by setting off part of the loans owed by AIQ to GSS, whereas Joe was not allowed to do so.[342]

(b) The 4th to 7th Defendants did not accede to Joe's request on 5 March 2018 to convert his loans to equity. Even if GSS had not asked for it, there should have been no issue accepting Joe's proposal since it would have had the effect of reducing AIQ's overall liabilities and would also have helped to maintain the status quo in terms of shareholding allocation between Joe and GSS.[343]

371 I found the above submissions to be baseless and misleading. First, the objective evidence available showed that GSS had not in fact been permitted to subscribe to the Rights Issue by way of set-off against his loans to AIQ. The Plaintiffs have not produced any scrap of evidence to substantiate their claim. At one point, the Plaintiffs alleged that a debt of $302,400 from GSS to AIQ dated 14 February 2018 was used to set off the amount payable for his subscription to shares in the Rights Issue which was supposed to close on 23 February 2018.[344] However, this allegation was completely baseless. On the evidence before me, there was no "set-off": the sum of $302,400 from GSS to AIQ was always intended to be payment for GSS' subscription for shares in the Rights Issue; and the only reason why the monies came in before the close of

342 SOC (Amendment No.3) at para 45(2).

343 Pf Closing Submissions at para 177; 6ABOD at p 472.

344 6ABOD at p 372.

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the Rights Issue was because Kian Wai had requested early payment from GSS in order to allow the company to pay its staff their overdue salaries before the Lunar New Year: see *eg* the email exchange between Kian Wai and GSS dated 13 February 2018 showing Kian Wai's request for early payment to meet AIQ's January payroll for its staff,[345] and GSS' accommodation of the request.

372 As for the Plaintiffs' argument that the 4th to 7th Defendants' refusal to allow Joe's 5 March 2018 request to convert his loans to equity constituted oppression of his rights, I also rejected this argument as being equally baseless. What the Plaintiffs were really saying was that although Joe himself had elected not to participate in the Rights Issue, the 4th to 7th Defendants should nevertheless have let him convert his existing loans to equity,[346] so as to allow him to "equalise" his shareholding vis-à-vis GSS' increased shareholding. This argument was obviously premised on the assumption that Joe had the right under the alleged Understanding and Agreement *not* to have his shareholding diluted (as an *implied term* of the Understanding and Agreement) (at [208] above). Absent the Understanding and Agreement, there was no basis for any expectation on Joe's part that he should be allowed to "equalise" his shareholding with GSS, in the event GSS increased his stake by participating in the Rights Issue when Joe did not do so. I add that based on the contemporaneous documentary evidence, Joe was in fact afforded an equal opportunity during the launch of the Rights Issue to subscribe for new shares in AIQ in proportion with his shareholding.[347] Had he chosen to do so, his shareholding in AIQ *would not have been diluted*.

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345 4th-7th Df Closing Submissions at para 96; 6ABOD at p 364-366; 4th-7th Df Closing Submissions at para 97; Transcript of 22 August 2022 at p 40 ln 4 to p 41 ln 10.

346 6ABOD at p 472-473.

347 6ABOD at p 212.

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373 Finally, it should be pointed out that Joe's request on 5 March 2018 to convert his loans to equity ran contrary to the very objective of the Rights Issue. The whole point of the Rights Issue was to raise fresh capital for AIQ. By the time the Rights Issue was launched, AIQ was already in a parlous financial position. It was challenging, to say the least, to get investors to risk more of their money by injecting fresh capital into the company. If the 4th to 7th Defendants had allowed Joe to convert his loans into equity, there was nothing to prevent GSS or any other shareholders from demanding the same treatment the next time AIQ tried to raise funds through another rights issue.

(III) TOTAL AMOUNT OF THE RIGHTS ISSUE BEING ONLY $302,400, WHICH WOULD HAVE ONLY LASTED AIQ FOR SLIGHTLY MORE THAN A MONTH

374 Next, the Plaintiffs took issue with the fact that the Rights Issue raised only $302,400. According to the Plaintiffs, this amount would have lasted AIQ for about a month[348]; and further rights issues would then be needed to raise more funds – something GSS and Kian Wai had confirmed under cross-examination. The Plaintiffs' position appeared to be that since the Rights Issue had produced a less than stellar result in terms of the amount raised, this proved that the Defendants' intention all along in conducting the Rights Issue must have been to dilute Joe's shareholding rather than to raise funds.

375 I did not find any merit in the above argument. A less than ideal result in terms of the amount raised by the Rights Issue could not *per se* suggest a dominant intention on the 4th to 7th Defendants' part to dilute Joe's shareholding. Regard must be had to all the other surrounding circumstances. These include *inter alia* the reasons for the rights issue; whether there were other

[348] Pf Closing Submissions at para 167(h); Transcript of 25 August 2022 at p 28 ln 21 to ln 23.

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fundraising options explored before the launch of the rights issue; and whether there were steps taken to incentivise shareholders to participate in the rights issue. AIQ's management had the responsibility *inter alia* to ensure sufficient commercial reason to launch a rights issue, decide on an appropriate price, and carry out the rights issue in a proper manner. Whether or not the rights issue would ultimately be successful in achieving the objective of raising funds was something far out of the control of management.

376 Further and in any event, it made no sense for the Plaintiffs to cavil at the less than stellar result of the Rights Issue. Had the Rights Issue been much more successful and raised more money, Joe's shareholding in AIQ would have been diluted to an even greater extent. As Hoo J observed in *Swee Wan*, YTP's argument that the rights issue in that case was wrongly-priced and that it could have been set at below book value was a double-edged sword: more shares would have to be issued to raise the same amount of funds, resulting in an even more serious dilution of YTP's shareholding. The same reasoning applied in the present case vis-à-vis Joe.

(IV) LOW PRICE OF THE RIGHTS ISSUE AND LACK OF INDEPENDENT VALUER

377 In addition to complaining about the speed at which the Rights Issue was purported conducted, the Plaintiffs contended that the "heavily discounted price" of the Rights Issue and the lack of a valuation by an independent valuer also demonstrated a dominant intention on the Defendants' part to dilute his shareholding.[349]

[349] Pf Closing Submissions at para 179(b); Transcript of 22 August 2022 at p 35 ln 12 to ln 19; Transcript of 23 August 2022 at p 130 ln 14 to ln 17; Transcript of 26 August 2022 at p 111 ln 4 to ln 9; Transcript of 31 August 2022 at p 97 ln 10 to ln 19.

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378 As Hoo J pointed out in *Swee Wan*, a lack of any serious attempt to ascertain the market value of shares does not *per se* demonstrate a lack of good faith (at [116]). In the present case, AIQ's urgent need for funds necessitated prompt action in the conduct of the Rights Issue. In any case, since a rights issue could generally be used to incentivise shareholders to invest in the company (under the appropriate circumstances), it made sense that management was able to dictate, to a certain extent, the price of such a rights issue to create that incentive – independent of the market value of the shares.

379 As Chua JC observed in *The Wellness Group* (at [194]), in a scenario where there is a commercial reason for a rights issue, it "would not be wrong for a majority shareholder to expect all shareholders to subscribe to the rights issue", or to "price the rights issue low so that shareholders will be incentivised to subscribe in order to avoid the dilutive effect of not subscribing". In the present case, it must be remembered that all through 2017 up until the launch of the Rights Issue, Joe and GSS had been the two primary funders of AIQ through convertible loans. The other shareholders, who collectively held around 30.92% of AIQ's shareholding[350] did not in any way contribute to AIQ's funding during this period. It must also be remembered that AIQ had been a loss-making venture since its incorporation in 2014. The approximate total losses of AIQ, from incorporation up to end-FY 2019, amounted to around $25,870,069.[351] This meant that Joe and GSS, as the sole funders of AIQ, had been the only two shareholders taking on the significant risk of losing the funds that they had been injecting into AIQ since the start of 2017 – while the other shareholders got to enjoy the benefits of their funding. Since by January 2018 Joe and GSS were no longer willing to fund the company, the only alternative left to the 4th to 7th

350 SOC (Amendment No.3) at para 41.

351 AEIC of 3rd Df at para 10.

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Defendants was to raise funds from all shareholders through a rights issue, such that instead of having only one or two shareholders bear all the risk of funding AIQ, all shareholders would now be expected to do so equally in proportion to their stake in AIQ. In these circumstances, it was reasonable for the 4th to 7th Defendants to expect all shareholders (including the other 30.92% who had not been funding the company) to fund AIQ via subscription, *and* to seek to incentivise them to do so in order to avoid being diluted.

380 Following from this, given AIQ's urgent need for funds, it was also reasonable for the 4th to 7th Defendants to price the Rights Issue at a low price, so as to make it more attractive for shareholders to subscribe to the shares.

381 The Plaintiffs also complained that at a price of 28 cents a share, if the Rights Issue had been fully subscribed, this would have resulted in each AIQ share having a valuation of $1.1626, as compared to a pre-Rights Issue valuation of $9.106 per share.[352] Further, as GSS ultimately subscribed to only a limited number of shares, the Plaintiffs claimed that he must have calculated the specific number of shares he needed to acquire a majority stake of 50.04%, and that this behaviour demonstrated that the Rights Issue was really a cheap way for GSS to acquire majority control at Joe's expense.[353]

382 Again, I found no merit in the Plaintiff's argument. If Joe had truly believed that the price of 28 cents per share represented a "heavy discount", it would have occurred to him that this was a "cheap way" *for him* to acquire more AIQ shares. If the price was a bargain for GSS, it would have been a bargain for Joe as well. Both men were offered the same subscription price; both had the

352 Pf Closing Submissions at para 179(c)(iii).

353 Pf Closing Submissions at para 179(c)(iv).

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same opportunity to prevent their shareholding in AIQ from being diluted and even to expand their stake by taking up shares left by non-subscribing shareholders.

383 In my view, the important question here was whether Joe *could* have participated in the Rights Issue. Tellingly, in cross-examination, Joe conceded that if he "wanted to subscribe for the shares [he] could".[354] Although Joe claimed that he chose not to do so because "if [he] were to put a cheque in, what was to stop it being used to pay back GSS immediately or be diverted into TCP?", essentially saying that he felt he "had no control whatsoever"[355], I found his purported explanation to be glib and wholly baseless. The documentation for the Rights Issue expressly specified that it was to "address AIQ's operational needs and for repayment of the interim bridging loan(s) to AIQ obtained after 29 January 2018 and covering the period between 30 January 2018 to 30 April 2018 and for no other purposes".[356] The Plaintiffs have not explained how – in the face of the clear documentation – the funds raised by the Rights Issue could nevertheless have been "used to pay back GSS immediately or… diverted into TCP". Indeed, having heard Joe's testimony, it was plain that he had elected not to subscribe to the Rights Issue because he "did not want to put any more money into AIQ for [his] own reasons".[357] Since it was his "decision not to subscribe" to the Rights Issue,[358] he should not thereafter be heard to complain about his shareholding having been diluted.[359]

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354 Transcript of 17 August 2022 at p 88 ln 5-10.

355 Transcript of 17 August 2022 at p 87 ln 23 to p 88 ln 3.

356 6ABOD at p 371-372.

357 Transcript of 17 August 2022 at p 88 ln 11 to ln 17.

358 Transcript of 17 August 2022 at p 88 ln 8 to ln 12.

359 4th-7th Df Closing Submissions at paras 99-100.

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384 As for the Plaintiffs' complaint that GSS only subscribed for just enough shares to bring his AIQ shareholding up to 50.04%, this too was misconceived. It must be remembered that GSS was by then the only shareholder willing to risk putting more of his funds into AIQ – and this was in spite of the other shareholders' refusal to risk more of their money, and in spite of AIQ not having once turned a profit up to that stage. In such circumstances, there was simply no ground on which to fault GSS for deciding to subscribe only to a limited number of shares after evaluating the risks and benefits of continued investment.

(V) FINAL VERSION OF OFFER LETTER WAS NOT THE SAME AS THE VERSION THAT WAS APPROVED BY THE BOARD

385 Next, the Plaintiffs complained that the final version of the invitation letter in respect of the Rights Issue was not worded in exactly the same terms as the draft invitation letter approved by the board.[360] Their complaint centred on the addition of some words in one of the clauses in the letter. By way of comparison, the relevant clause in the draft approved by the board read as follows:

> To address AIQ's operational needs and purposes and for repayment of the interim bridging loan(s) to AIQ and for no other purposes.

The clause in the final version which was sent out read as follows:

> To address AIQ's operational needs and purposes and for repayment of the interim bridging loan(s) to AIQ obtained *after 29 January 2018 and covering the period between 30 January 2018 to 30 April 2018 and for no other purposes*.
>
> [emphasis added]

360 Pf Closing Submissions at para 167(j); 1ABOD at p 384-385; 11ABOD at p 731-732.

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386 According to the Plaintiffs, the additional words were meant to ensure that Joe's previous convertible loans pre-29 January 2018 could not be used to set-off against the subscription amounts payable for the Rights Issue.[361]

387 To borrow the words of Prakash J (as she then was) in *Sharikat* (at [89]), this was an argument which was "excessively technical in the circumstances of the case". First, there was never any interim bridging loan given to AIQ, as GSS and Joe could not come to an agreement to provide such a facility to AIQ.[362] In other words, in substance, there was no practical difference between the two clauses since there were no interim bridging loans in existence for the time period specified in the new clause. Second, the Plaintiffs have tried to argue that the italicised words in the new clause were added by the 4th to 7th Defendants in order to preclude Joe from subscribing to the Rights Issue by setting off his previous convertible loans against the subscription price. This was a specious argument. Even if the italicised words had not been added, Joe would still not have been able to subscribe to the Rights Issue by setting off his loans to AIQ.[363] As I explained earlier (at [373] above), it would have made no sense for the 4th to 7th Defendants to permit such a set-off because allowing such a set-off would have defeated the objective of the Rights Issue; *ie*, to raise *fresh* capital to pay overdue salaries and other pressing expenses.

(VI) THE 3RD TO 7TH DEFENDANTS KNEW THAT JOE WOULD NOT PARTICIPATE IN THE RIGHTS ISSUE

388 Next, the Plaintiffs argued that another indicator of there having been a dominant intention to dilute Joe's shareholding was the 3rd to 7th Defendants'

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361 Pf Closing Submissions at para 166(b).

362 6ABOD at p 145-148 and p 203-204.

363 Pf Closing Submissions at para 166.

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purported knowledge that Joe would not participate in the Rights Issue. According to the Plaintiffs, the Defendants had implemented a strategy (which the Plaintiffs termed the "Incapacitation Strategy" in their closing submissions) to put pressure on Joe in order to incapacitate him from participating in the Rights Issue. The Plaintiffs also argued that the Defendants knew Joe was very unlikely to participate in the Rights Issue since it would have provided funding for only a short period, after which Joe would still have been asked to fund the company together with GSS on a 1:2.42 basis.[364]

389 The 3rd to 7th Defendants took issue with the second argument, on the basis that this argument was never part of the Plaintiffs' pleaded case.[365] Such an allegation was only raised by the Plaintiffs for the first time when GSS took the witness stand on the second last day of trial. This meant that not only was the allegation never put to the 4th to 7th Defendants who had already given evidence by then, counsel for the Defendants had no opportunity to cross-examine Joe about this allegation. I did not think there could be any sensible objection to the Defendants' assertion that they would be seriously prejudiced if the Plaintiffs were permitted to carry on with this line of argument. Further and in any event, as I pointed out to counsel for the Plaintiffs in the course of the trial[366], the belated allegation that Joe knew AIQ would have needed further rights issues for further funding in the near future actually contradicted the Plaintiffs' pleaded position, which was that AIQ was *not* in urgent need of funds, and that there was no basis for the Rights Issue.[367]

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364 Pf Closing Submissions at para 167(b).

365 Transcript of 31 August 2022 at p 47 ln 7 to ln 18.

366 Transcript of 31 August 2022 at p 40 ln 20 to ln 25.

367 SOC (Amendment No.3) at para 45(5); AEIC of 1st Pf at para 118.

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390 For these reasons, I held that the Plaintiffs should not be permitted to run this argument. I next address their argument about the Incapacitation Strategy.

(VII) THE INCAPACITATION STRATEGY AND THE EMAILS RELATING TO OUSTING JOE FROM AIQ

391 In gist, the Plaintiffs claimed that as at January 2018, there was an "Incapacitation Strategy" in play, as proposed by Kian Wai in his email of 18 January 2018[368]. The aim of this strategy, according to the Plaintiffs, was to incapacitate Joe from participating in the Rights Issue by putting pressure on him through the audit issues and through the threat of potential criminal charges of breach of trust. The Plaintiffs claimed that *per* Kian Wai's 18 January 2018 email, this Incapacitation Strategy as was as follows:

> …
>
> Thus, my proposed sequence of events will be:
>
> 1) Secure the interim loan
>
> 2) Send legal notice to Joe on resolution of 2.7mil issue – (at the same time informing the other shareholders of the serious breach)
>
> 3) JLC to pressure Tito (Joe's lawyer to drop the challenge)
>
> 4) Once we have a solid position, mount a rights issue to redeem the 1 mil loan (thus technically if you loan 1mil, it will be converted into equity if no other shareholder participate) – we will work out a valuation whereby you will have slight controlling rights at first (minimum dilution to the rest).
>
> 5) With the 1st rights completed in an urgent fashion, mount another rights issue in 4 months time and fully dilute the rest of the shareholders and Joe if they do not participate or get a private placement to new shareholders citing lack of interest from 1st rights issue from other shareholders.
>
> The proceeds from the 2nd rights can then be used to repay your previous convertible loans.

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368 6ABOD at p 130-132.

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…

392 According to the Plaintiffs' closing submissions, the 3rd to 7th Defendants had all endorsed the Incapacitation Strategy with the objective of diluting Joe's AIQ shareholding and exiting him from the company.[369]

393 In his reply submissions, GSS objected to the Plaintiffs' case theory about the "Incapacitation Strategy" on the basis that this was neither pleaded nor even mentioned in Joe's AEIC.[370] In any event, according to GSS, even assuming the Defendants had conceived this "Incapacitation Strategy", it was plainly never put in play because on the undisputed evidence before the court, the very first step of this supposed strategy was never implemented, and indeed, was incapable of implementation.[371] The 3rd to 7th Defendants also reiterated that there was never a "dominant intention" to dilute Joe's shareholding using the Rights Issue.[372]

(a) Failure of the Plaintiffs in bringing up allegations of the Incapacitation Strategy in their pleadings

394 Regrettably, the Plaintiffs' entire case theory about the "Incapacitation Strategy" was only brought up for the first time during the cross-examination of the 3rd to 7th Defendants, *after* Joe had already completed his evidence. This was despite the Plaintiffs having previously engaged in two rounds of substantive amendments to their statement of claim. Once again, therefore, the

369 Pf Closing Submissions at para 170.

370 3rd Df Reply Submissions at paras 27-29; SOC (Amendment No.3) at para 45; AEIC of 1st Pf at paras 118-120.

371 3rd Df Reply Submissions at para 30.

372 3rd Df Reply Submissions at para 31; 6ABOD at p 129-130; 4-7DBOD (vol.7) at p 32-34; 4th-7th Df Reply Submissions at para 31; Transcript of 24 August 2022 at p 155 ln 16 to p 157 ln 10.

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3rd to 7th Defendants were taken by surprise by the belated shifts in the Plaintiffs' case; and once again, they were deprived of the opportunity to cross-examine Joe on something which emerged in the Plaintiffs' closing submissions as a material aspect of their case.

395 This state of affairs contravened the basic tenet of the law of pleadings, which seeks to prevent surprises at trial by obliging parties to define in their pleadings the key aspects of their case, the material facts in support thereof, and the issues in dispute between the parties (*Lu Bang Song* at [17]; *UJT v UJR* at [48]). The Plaintiffs' failure – not for the first time – to plead a material aspect of their case was seriously prejudicial to the 3rd to 7th Defendants' conduct of their defence.

396 For the reasons set out above, therefore, I held that the Plaintiffs should not be permitted to pursue their case theory on the Incapacitation Strategy.

397 I add that even if I was wrong in so holding, I would in any event have found the Plaintiffs' allegation about the Incapacitation Strategy to be baseless. In the interests of completeness, I explain my evaluation of the evidence relied on by the Plaintiffs in support of their allegation.

(b) Whether the 3rd to 7th Defendants agreed to the Incapacitation Strategy to dilute Joe's shareholding during the Rights Issue

398 To recap, the Plaintiffs' case theory as to the Incapacitation Strategy was that the 3rd to 7th Defendants devised a strategy to use the audit issues as a means of impeding Joe's ability to participate in the Rights Issue, and that they successfully put this strategy into motion. As a starting point, since the Plaintiffs were the ones who were alleging that the Defendants had developed the Incapacitation Strategy in order to incapacitate Joe from participating in the

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Rights Issue and thus ensure the dilution of his shareholding, the burden lay on the Plaintiffs to prove this allegation on a balance of probabilities (*Britestone* at [58] and *SCT Technologies* at [17]).

399 In attempting to prove their case, the Plaintiffs relied on a series of emails between the 3rd to 7th Defendants in the period between December 2017 and February 2018, with particular emphasis on Kian Wai's email of 18 January 2018[373] (where he was said to have laid out the five-step Incapacitation Strategy), as well as GSS' email on the same date apparently agreeing to the proposed five-step strategy.[374] According to the Plaintiffs, these emails showed that the 3rd to 7th Defendants intended to dilute Joe's shareholding by using the audit issues to put pressure on him and thereby hamper or incapacitate his capacity to participate in the Rights Issue.

400 Having examined the emails as well as the Defendants' testimony regarding the contents of those emails, I found that the evidence was far more ambiguous than the Plaintiffs tried to make out – and that ultimately, such evidence was simply insufficient to prove the Plaintiffs' case theory about the Defendants' use of the Incapacitation Strategy.

(i) Kian Wai's evidence

401 The relevant parts of Kian Wai's 18 January 2018 email have been reproduced earlier (at [391] above). In cross-examination, Kian Wai agreed that the suggestion to use audit issues to pressure Joe and to incapacitate Joe's "ability to participate in the rights issue" was "[his] proposal in that email".[375]

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373 6ABOD at p 130-132

374 6ABOD at p 129-130.

375 Transcript of 23 August 2022 at p 60 ln 19 to p 61 ln 5.

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However, contrary to the Plaintiffs' assertion,[376] Kian Wai did *not* admit or confirm that the five-step strategy set out in his email was endorsed or approved by Leslie, Marcus, Jeffrey and GSS.

402 First, Kian Wai testified that his use of the phrase "our position" did not refer to the "collective position of AIQ and GSS"[377]. Instead, Kian Wai clarified that the 4th to 7th Defendants' position was "to go after the audit issue and to resolve the audit issue". Essentially, the 4th to 7th Defendants wanted to resolve and close the audit issues raised by the auditor to discharge their duties as directors.[378] Kian Wai testified that the suggestion to "remove Joe out of the equation" referred to removing Joe as a director and not as a shareholder.[379] Kian Wai's evidence was that there were "outstanding audit issues that Joe has to address" and that Joe would be given "the opportunity to explain and to substantiate". Only in the event that the audit issues were not dealt with to the satisfaction of the auditor would the 4th to 7th Defendants then "decide the next course of action" (presumably to remove Joe as a director).[380]

403 Second, Kian Wai testified that in carrying out the Rights Issue, the 4th to 7th Defendants wanted to "understand Joe's position on the company", and that was why he was given the same terms as all the other shareholders.[381] From this, I understood Kian Wai to mean that the 4th to 7th Defendants wanted to see if Joe would actually demonstrate his commitment to the company by participating in the Rights Issue. This suggested that the 4th to 7th Defendants

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376 Pf Closing Submissions at para 152(d).

377 Transcript of 23 August 2022 at p 61 ln 19 to p 62 ln 7.

378 Transcript of 23 August 2022 at p 61 ln 23 to p 62 ln 7.

379 Transcript of 23 August 2022 at p 63 ln 24 to p 64 ln 6.

380 Transcript of 23 August 2022 at p 66 ln 6 to p 67 ln 11.

381 Transcript of 23 August 2022 at p 70 ln 4 to ln 19.

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were not looking to incapacitate Joe from participating in any rights issue to be held.

404 Third, and following from the previous point, Kian Wai testified that prior to the Rights Issue being launched, he had met with Joe and Marcus on 26 January 2018. At that meeting, Kian Wai had discussed "various scenarios with [Joe] on his participation in the rights issue", and at Joe's request, he had run through "a few scenario[s]" with Joe. This involved Joe asking Kian Wai "to help [Joe] calculate or compute what will happen if he subscribes to a certain number of shares and what his percentage will be after the rights issue".[382] Kian Wai's testimony was corroborated by his contemporaneous email to Joe on 26 January 2018[383] in which he summarised the discussion which he, Joe and Marcus had engaged in during their meeting. It should be noted that Joe did not respond to Kian Wai's email to retort that there had been no earlier conversation in which they had run "several scenarios", nor had he given Kian Wai any "instructions" on these scenarios – which one would have expected him to do had he been seeing this information for the first time in Kian Wai's email. This evidence demonstrated that rather than trying to prevent Joe from participating in the Rights Issue, the 4th to 7th Defendants (or at the very least Kian Wai and Marcus), were hopeful that Joe would participate in the Rights Issue – and that was why they met with Joe to discuss the Rights Issue with him and to "run" various scenarios for him.

405 Taken in totality, therefore, Kian Wai's evidence appeared to me to be of little, if any, assistance to the Plaintiffs.

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382 Transcript of 24 August 2022 at p 155 ln 10 to p 157 ln 14.

383 6ABOD at p 183-185.

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406 Further, there was no evidence to show that the 3rd to 7th Defendants took any steps to execute Kian Wai's proposed five-step strategy. According to Kian Wai's "sequence of events", steps 1 to 3 had to be completed first before step 4 (*ie* the launch of the first rights issue for GSS to obtain "slight controlling rights") could be initiated. There was no dispute that step 1 – *ie* the securing of an interim loan before the launch of the Rights Issue – was never executed. This would mean that the remaining steps of the supposed the Incapacitation Strategy could not have been executed either – contrary to the Plaintiffs' contention.

407 Apart from there having been no interim loan secured before the launch of the Rights Issue, there was also no evidence of the 3rd to 7th Defendants having used the outstanding audit issues to pile pressure on Joe in the lead-up to and during the period of the Rights Issue. Nothing was said in Joe's email of 31 January 2018,[384] or in the ensuing email exchange between him and the 4th to 7th Defendants[385] about the latter pressuring or chasing or badgering him about the audit issues and/or about their mounting a criminal case against him based on these audit issues. Although in their closing submissions, the Plaintiffs characterised Marcus' email reply of 4 February 2018[386] as another attempt by the 4th to 7th Defendants to "push" Joe on the audit issues, this characterisation of Marcus' email was both inaccurate and misleading. *It was Joe himself who brought up the audit issues in his email of 31 January 2018*, who (metaphorically) wrung his hands over the impact of these audit issues on AIQ's accounts and on the ownership/commercialisation of IP assets, and who insinuated that the 4th to 7th Defendants had tried to hide these audit issues from the shareholders when launching the Rights Issue. Given the contents of Joe's

384 6ABOD at p 238-243.

385 6ABOD at p 276-280, p 295-302.

386 6ABOD at p 276-280; Pf Closing Submissions at para 167(e).

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own email, it was reasonable – indeed, necessary – for Marcus to respond by pointing out *inter alia* that Joe had no reason to complain about the audit issues since they arose from transactions only he had personal knowledge of.

408 Significantly, despite the Plaintiffs' contention that the Defendants were really plotting to pile the pressure on him prior to the Rights Issue, no police report was made by the 4th to 7th Defendants against Joe in the lead-up to – and during the period of – the Rights Issue. The report to the Police Commercial Affairs Department ("CAD") was lodged on 30 August 2018,[387] some six months after the Rights Issue.

409 The objective evidence – including Joe's own emails – thus painted a very different picture from the one the Plaintiffs belatedly attempted to put forward in their closing submissions.

(ii) GSS' evidence

410 Turning to GSS' evidence, while he did apparently reply to Kian Wai on 18 January 2018[388] to state that he agreed to proceed with Kian Wai's proposal, he also made it clear that his agreement was conditional upon the 4th to 7th Defendants being able to "persuade Joe that it is also in his interests to keep AIQ going for a few more months whilst we [sort] out the current problems" and on Joe agreeing "to the interim funding" (*ie* step 1 in Kian Wai's five-step sequence). The condition precedent stipulated by GSS obviously did not materialise.

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387 8ABOD at p 225.

388 6ABOD at pp 129-130.

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411 Many of GSS' other emails also indicated that GSS did not intend to incapacitate Joe from participating in the Rights Issue. For example, prior to the Rights Issue being launched, GSS had suggested to Marcus that the key to a rights issue was to "give a huge discount to encourage *all minority shareholders* to exercise their rights or be severely diluted".[389] In other words, GSS was focused on flushing out those minority shareholders who had up until then shown no inclination to contribute to funding AIQ – unlike Joe and GSS himself. GSS did not mention specifically making Joe the target of dilution. If anything, he appeared to have assumed that Joe *would* participate in a rights issue; and in an email to Kian Wai on 13 February 2018, he expressed surprise when he found out that he was the only subscriber in the Rights Issue:[390]

> Hi Kian Wai,
>
> I am surprised I am the only subscriber.
>
> …

Considering that GSS was at that point replying to an email which Kian Wai had addressed only to him and Marcus, I did not think GSS' surprise was feigned.

412 GSS' emails to the 4th to 7th Defendants post-18 January 2018[391] also indicated that even before the Rights Issue was launched on 30 January 2018, GSS' concerns had shifted to the larger objective of getting Joe out of AIQ and eventually Singapore, by lodging complaints to the authorities about Joe. For instance, GSS suggested that complaints would have to be lodged "against [Joe] in the way he runs the company as Executive Chairman". This was quite

389 6ABOD at p 63.

390 6ABOD at p 365.

391 6ABOD at pp 272-273.

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different from what the Plaintiffs characterised as the Incapacitation Strategy, which involved using the audit issues to put pressure on Joe and thereby hamper his capacity to participate in the Rights Issue.

413 Although in cross-examination GSS apparently agreed that he did proceed with Kian Wai's proposed five-step strategy, this was on the basis that he had made payment for the shares taken up in the Rights Issue in lieu of providing an interim loan to AIQ. Following the launch of the Rights Issue on 30 January 2018, GSS had – at Kian Wai's request – made early payment for his share subscription on 13 February 2018.[392] Two points need to be made about this. First, this early payment by GSS on 13 February 2018 for his share subscription could not have been part of Kian Wai's proposed five-step strategy, because Kian Wai's proposed five-step strategy had called for interim loans to be secured for AIQ *before* the launch of the Rights Issue, so as (*inter alia*) to provide the 4th to 7th Defendants with funds to continue investigating the audit issues and piling legal pressure on Joe regarding those issues. Second, as I noted earlier, there was nothing sinister about this early payment by GSS for his share subscription: as Kian Wai explained, the Rights Issue was intended to raise the funds required for the urgent payment of operational expenses including overdue staff salaries.[393]

(iii) Leslie's evidence

414 As for Leslie's evidence, it was clear that he too did not endorse Kian Wai's Incapacitation Strategy. While Leslie had expressed the view that Joe would be disinclined to participate in the Rights Issue because of the potential

392 Transcript of 31 August 2022 at p 90 ln 9 to p 91 ln 1.

393 6ABOD at p 354-366; Transcript of 23 August 2022 at p 151 ln 2 to p 152 ln 9.

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"CBT issues" he was facing,[394] at that juncture the 4th to 7th Defendants had not yet conducted the Special Audit Report and did not know that Joe was indeed "guilty". The 4th to 7th Defendants' intention, therefore, was to go ahead with the Rights Issue; and from their perspective, if Joe was innocent and had nothing to fear, he would probably participate in the Rights Issue; whereas if he did not participate, it would probably indicate that something was amiss.[395] Leslie's evidence thus did not support the case theory that the 3rd to 7th Defendants had plotted to use the audit issues to mount a criminal case against Joe so as to pressure him and incapacitate him from participating in the Rights Issue. If anything, Leslie's evidence indicated that the 4th to 7th Defendants were waiting to see how Joe would respond to the Rights Issue as they believed that his response would be an indication of guilt – or lack thereof – in relation to the audit issues.[396]

(iv) Jeffrey's evidence

415 Jeffrey too denied endorsing the Incapacitation Strategy. When asked about the statement in Kian Wai's email of 18 January 2018 that "[i]n order for any rights issue to be implemented we need to first address Joe's potential CBT issue and then incapacitate his ability to participate", Jeffrey disagreed that the CBT issue was to "be used to incapacitate [Joe's] ability to participate in" the Rights Issue.[397] Jeffrey testified that the sole objective of the 4th to 7th Defendants was to get funding for AIQ, which was difficult because "no one wanted to fund the company if [they] don't have clean books" – the remark "clean books" being apparently a reference to AIQ's inability to close its

394 Transcript of 22 August 2022 at p 11 ln 10 to p 12 ln 7.

395 Transcript of 22 August 2022 at p 11 ln 16 to p 12 ln 7.

396 Transcript of 22 August 2022 at p 16 ln 6 to p 18 ln 5.

397 Transcript of 26 August 2022 at p 94 ln 11 to p 94 ln 1.

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accounts due to the auditors' unanswered queries about previous transactions. Further, according to Jeffrey, earlier "disgruntled" investors had complained that they felt "aggrieved and [cheated]".[398] Ultimately, according to Jeffrey, the 4th to 7th Defendants "just wanted to make sure the company could get funding and survive". This was why they launched the Rights Issue and hoped to encourage Joe to put money into the company.

416 Jeffrey also testified that while the 4th to 7th Defendants hoped to keep AIQ "as a going concern", there was a "part feeling" amongst them that Joe "just didn't want to carry on this endeavour to bring this to life"[399] and that he "didn't want to be part of the company".[400] Jeffrey explained that it was in this context that he understood Kian Wai's 18 January 2018 email: *ie,* that since Joe no longer seemed willing to keep the company going, they (presumably the Defendants) and Joe "should separate and not be partners anymore" [401].

417 In gist, therefore, Jeffrey's position was that at the time of launching the Rights Issue, the 4th to 7th Defendants (other than Joe) were solely focused on getting funds into AIQ to ensure its survival. Given this overriding concern, clearing the audit issues became important, because no one would want to fund AIQ if the company did not have "clean books". It was in this context that the 4th to 7th Defendants had to focus on dealing with the audit issues.

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398 Transcript of 26 August 2022 at p 95 ln 4 to ln 16.

399 Transcript of 26 August 2022 at p 95 ln 13 to p 79 ln 6.

400 Transcript of 26 August 2022 at p 97 ln 22 to p 98 ln 17.

401 Transcript of 26 August 2022 at p 97 ln 7 to p 98 ln 17.

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(v) Marcus' evidence

418 Finally Marcus denied that he and the other Directors (Leslie and Jeffrey) had endorsed the Incapacitation Strategy. Marcus' position was that "this proposal was purely Kian Wai's proposal to [GSS]". Further, according to Marcus, the "investigation process" which needed to be carried out was to address the audit issues; and it was to be "done properly through an audit" so as to "be fair to Joe".[402] When asked about Kian Wai's evidence that "the board endorsed the strategy", Marcus' evidence was that this was simply "a proposal that was put forward by Kian Wai" and that "[the 4th to 7th Defendants'] first priority [was] to make sure that [they] raise funds to settle the urgent funding prior to Chinese New Year"; as far as Marcus was concerned, the board did not endorse the strategy.[403]

419 Marcus went on to agree broadly with Kian Wai's testimony that Joe needed to be removed as a director "because of those issues that he fails to answer". On his own part, Marcus had "formed the view that [they were] dealing with a crook [*ie,* Joe] who [was] not being upfront with whatever that had happened" and who was not forthcoming with information despite having been given time to provide the information, and despite the auditors "chasing him for information".[404] This was why Marcus had formed the view that if the 4th to 7th Defendants' suspicions about Joe were shown to be justified[405], Joe needed to be removed as a director so that AIQ could move forward.

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402 Transcript of 25 August 2022 at p 167 ln 18 to p 169 ln 23.

403 Transcript of 25 August 2022 at p 171 ln 21 to p 172 ln 14.

404 Transcript of 25 August 2022 at p 172 ln 21 to p 173 ln 14.

405 Transcript of 25 August 2022 at p 173 ln 5 to ln 24.

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420 Marcus' testimony thus pointed to the same things that Kian Wai's, Leslie's, and Jeffrey's testimony did: *ie* that by January 2018, AIQ desperately needed funds; that as part of the 4th to 7th Defendants' fundraising efforts, they were concerned to settle the audit issues with Joe which had been preventing the auditors from closing AIQ's books; that the 4th to 7th Defendants also believed Joe would eventually have to be removed from the board in light of his failure to cooperate with the auditors; and that notwithstanding the anxiety about the audit issues, there was no concerted plan among the Defendants to use these issues to pressure Joe and thereby incapacitate him from participating in the Rights Issue.

(vi) Conclusion on the Incapacitation Strategy

421 Looked at in totality, therefore, nothing in the Defendants' emails and testimony supported the Plaintiffs' case theory about the Incapacitation Strategy. In particular, nothing in the emails showed that the 3rd to 7th Defendants had *agreed upon and implemented* a strategy to use the audit issues as a means of incapacitating Joe's capacity to participate in the Rights Issue. In light of the reasons set out above (at [391]–[420]), therefore, even if the Plaintiffs were to be allowed to advance their new case theory about the 3rd to 7th Defendants' "Incapacitation Strategy", they could not muster the evidence required to establish that case theory.

(VIII) WHETHER THE DOMINANT INTENTION OF THE RIGHTS ISSUE WAS TO DILUTE JOE'S AIQ SHAREHOLDING

422 To recap: in their closing submissions, the Plaintiffs pointed to various pieces of evidence in an attempt to persuade me that even if there was a commercial reason for the Rights Issue (which they disputed), the 3rd to 7th Defendants nevertheless had the dominant intention to use the Rights Issue to

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dilute Joe's shareholding. Having examined the evidence relied on by the Plaintiffs, I found no merit in this argument and dismissed it accordingly.

Wrongful Exclusion of Joe from management of AIQ and TCP

423 The next instance of oppressive conduct cited by the Plaintiffs concerned the alleged wrongful exclusion of Joe from the management of AIQ and TCP.

(1) Plaintiffs' position

424 The Plaintiffs claimed that pursuant to the terms of the Understanding and Agreement, Joe had a right to participate in the management of AIQ and TCP.[406] This was pleaded as an express term of the Understanding and Agreement but subsequently alleged in the Plaintiffs' closing submissions to be an implied term instead.[407] The Plaintiffs also complained that there were procedural irregularities in the manner in which Joe was removed from the boards of AIQ and TCP. In respect of AIQ, instead of passing an ordinary resolution to remove Joe from the board under Article 73 of AIQ's Constitution,[408] the 3rd to 7th Defendants had put forward a resolution at an EGM on 28 May 2018 for the re-election of all Directors including Joe. This was contrary to Article 70 of AIQ's Constitution which provided that Directors were not to retire by rotation.[409] In respect of TCP, the AGM held on 29 March 2019 was said to be inquorate. Article 51(2) of TCP's Constitution provided

406 SOC (Amendment No.3) at para 19(3)-(4), 19(8); Pf Closing Submissions at para 184.

407 Pf Closing Submissions at para 219(a).

408 1ABOD at p 136.

409 1ABOD at p 136.

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that two members had to be present in person to form a quorum,[410] but out of the two shareholders of TCP (AIQ and Joe), Joe had absented himself.

(2) 3rd Defendant GSS' position

425 GSS took the position that Joe had simply failed to persuade the shareholders to re-elect him at the 28 May 2018 EGM[411]. GSS submitted this was understandable because there were concerns about certain irregular transactions in 2014 and 2015 which Joe had been involved.[412]

(3) 4th to 7th Defendants' position

426 As for the 4th to 7th Defendants, they submitted that as directors, they had followed the advice of AIQ's and TCP's lawyers in the conduct of AIQ's EGM and TCP's AGM, without any bad faith or improper motive; and they could not be faulted for proceeding in accordance with the lawyers' advice, even if that advice subsequently proved incorrect.[413] Further, notwithstanding procedural irregularities, s 152(9) of the Companies Act entitled AIQ to remove a director by ordinary resolution before the expiration of his period of office, regardless of any agreement between the director and AIQ. As such, there was nothing improper about Joe's removal as a director of AIQ.[414]

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410 1ABOD at p 213.

411 7ABOD at p 31.

412 3rd Df Closing Submissions at para 163.

413 4th-7th Df Closing Submissions at para 78.

414 4th-7th Df Closing Submissions at paras 138-139.

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(4) My Decision

427 As a starting point, even if there were procedural irregularities in the manner in which Joe was removed from the AIQ and TCP boards, this did not automatically lead to the conclusion that his removal was therefore commercially unfair and oppressive of the Plaintiffs' rights as minority shareholder. As I noted earlier, not every instance of unlawful conduct is unfair, just as not every instance of lawful conduct is fair (*Lim Kok Wah* at [100] citing *Over & Over* at [85] and *Re Saul* at 19; see also *Swee Wan* at [102]). From the earlier summary of caselaw in this area (at [145]–[158] above), the authorities are clear that in order to discern whether there was commercial unfairness, the court first has to consider what the measure of fairness is. In this instance, the nub of the Plaintiffs' complaint of oppression in this instance was not simply that there were procedural irregularities in Joe's removal as a director *per se*. Rather, the nub of their complaint was that Joe should never have been removed as a director, that he had a right under the Understanding and Agreement to participate in the management of both companies, and that his removal from the boards was a violation of that right.[415]

428 In this connection, as I have found that there was no Understanding and Agreement between Joe and GSS (at [290] above), it followed that there could not have been any violation of Joe's right to participate in the management of both companies: he never had such a right to begin with.

429 Further and in any event, even leaving aside the Understanding and Agreement, neither procedural irregularity complained of was as egregious as the Plaintiffs tried to suggest. In respect of the alleged breach of Article 70 of

415 SOC (Amendment No.3) at para 19(3)-(4), 19(8); Pf Closing Submissions at para 184.

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AIQ's Constitution, it should be pointed out that Joe could just as easily have been removed by the 4th to 7th Defendants through a normal resolution (by virtue of Article 73 of AIQ's Constitution), which read as follows:[416]

> The company may by ordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead.

430 Moreover, given the circumstances in existence at the material time, there was some basis for the 4th to 7th Defendants to be concerned about Joe's prior management of AIQ. In particular, Joe's failure to give the company's auditors satisfactory answers on earlier transactions had led to the company being unable to finalise its financial statements for FY 2014 and FY 2015. I deal with the evidence in question in more detail at [449]–[456] below, but at this juncture, it suffices for me to note that the 4th to 7th Defendants were not without justification in removing Joe as a director. In this connection, regard may be had to the decision in *Swee Wan*. In that case, the plaintiff YTP had relied on his removal as director as one of the grounds for claiming oppression. Hoo J found that YTP's removal as director did in fact involve breaches of several articles of the company's constitution, including articles which stipulated a specific procedure for the retirement of directors. However, she held that these breaches were not so egregious as to render YTP's removal as director commercially unfair. In addition, she noted that two other shareholders of the company had made allegations against YTP in the context of court proceedings. In her view, whatever the merits of these allegations, there was some basis for the other directors YTL and YCW to be concerned about YTP's prior management of the company, especially in terms of the financial management. Accordingly, Hoo J did not find YTP's removal as director to be unjustified. I would apply a similar reasoning in the present case.

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416 1ABOD at p 136.

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431 In respect of the alleged breach of Article 51(2) of TCP's constitution, Joe's own position was that TCP was supposed to be a wholly owned subsidiary of AIQ – and this was also borne out by the objective documentary evidence (at [308]–[311] above). Joe himself failed to honour this agreement, in that he failed to transfer his TCP shareholding to AIQ even though he held his TCP shareholding on trust for AIQ. In the circumstances, Joe had no basis for subsequently complaining about TCP proceeding with the 29 March 2019 AGM despite his (Joe's) refusal to attend the AGM.

The Special Audit Report

432 I next address the Plaintiffs' claim of oppression vis-à-vis the Special Audit Report.

(1) The Plaintiffs' position

433 In gist, the Plaintiffs' pleaded case was that the commissioning and issuance of the Special Audit Report constituted an act of oppression by the 3rd to 7th Defendants because the "real motive" behind the Special Audit Report was to cast aspersions on Joe before AIQ's shareholders;[417] to give the 3rd to 7th Defendants "ostensible justification" for wrongfully causing AIQ to dispute repayment of Joe's outstanding loans and salary.[418] The Special Audit Report was said to be full of malicious, misleading, groundless and inaccurate" allegations.[419] In this connection, the Plaintiffs pointed to various emails

417 SOC (Amendment No.3) at para 83.

418 SOC (Amendment No.3) at para 84.

419 SOC (Amendment No.3) at para 83.

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between the 4th to 7th Defendants and GSS in support of their case. These were mainly emails which consisted of discussions about the Special Audit.[420]

434 In alleging that the commissioning and issuance of the Special Audit Report constituted an act of oppression, the Plaintiffs also sought to find fault with TRS Forensics' conduct of the Special Audit[421] The Plaintiffs complained *inter alia* about the following: (1) that the scope of the Special Audit had been subsequently increased;[422] (2) that TRS Forensics had not interviewed all relevant parties to the transactions investigated;[423] (3) that the CAD decided not to take any further action after receiving AIQ's police report;[424] and (4) that the Special Audit Report failed to give an accurate picture of the Share Transfer Deed.[425]

(2) The 3rd Defendant GSS' position

435 GSS did not make any submissions as to the issue of the Special Audit Report.

(3) The 4th to 7th Defendants' position

436 As for the 4th to 7th Defendants, they submitted that they were carrying out their duties as directors in procuring a Special Audit;[426] that they did not give

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420 6ABOD at p 674-675, 778; 7ABOD at p 26, p 498-502.

421 Pf Closing Submissions at paras 196-203.

422 AEIC of Tan Swee Wan at para 8 and p 40, 47.

423 12ABOD at p 28; Transcript of 26 August 2022 at p 137 ln 4 to ln 18; Pf Closing Submissions at para 200.

424 8ABOD at p 225.

425 Pf Closing Submissions at para 203.

426 4th-7th Df Closing Submissions at para 167.

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misleading or inaccurate information to TRS Forensics;[427] that the Plaintiffs had in the course of cross-examining TRS Forensics' Mr Tan failed to point out to him any of the alleged inaccuracies and/or gaps in the Special Audit Report;[428] and that the Plaintiffs had also omitted to put it to Mr Tan that he was incompetent or negligent or biased in the preparation of the Special Audit Report.[429] The 4th to 7th Defendants contended that Mr Tan's unchallenged evidence showed that TRS Forensics had acted independently, had not blindly followed the 4th to 7th Defendants' instructions, and had requested or obtained further documents where it deemed necessary.[430]

(4) My Decision

437 In respect of the Special Audit Report, the Plaintiffs' case appeared to be that the element of commercial unfairness arose from the 4th to 7th Defendants having breached their fiduciary duties by using the report for a wrongful purpose. According to the Plaintiffs, the 4th to 7th Defendants commissioned and issued the Special Audit Report in order to support GSS' "objective" of disabling Joe from participating in the Rights Issue, by preventing him from subscribing for the Rights Issue via a set-off of his outstanding loans and salary. GSS' agenda was also said to have included damaging Joe's business reputation and ultimately driving him out of the companies and out of Singapore[431] – all of which the 4th to 7th Defendants

427 4th-7th Df Closing Submissions at para 158.

428 4th-7th Df Closing Submissions at para 159; AEIC of Tan Swee Wan at paras 11-12, 15; 7ABOD at p 116-331, p 367-412.

429 4th-7th Df Closing Submissions at para 159; AEIC of Tan Swee Wan at paras 11-12, 15; 7ABOD at p 116-331, p 367-412.

430 4th-7th Df Closing Submissions at para 159; AEIC of Tan Swee Wan at paras 11-12, 15; 7ABOD at p 116-331, p 367-412.

431 SOC (Amendment No.3) at para 84.

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sought to help GSS achieve by procuring a Special Audit Report filled with "malicious, misleading, groundless and inaccurate" allegations against Joe.[432]

(A) BACKGROUND FACTS RELATING TO THE SPECIAL AUDIT REPORT

438 I first set out the relevant facts which formed the background to the Special Audit Report. The Special Audit report appeared to have been first mooted by Kian Wai on 9 April 2018, when he suggested that the 4th to 7th Defendants call for a special audit if Joe continued to fail to provide satisfactory replies to the auditor. GSS was supportive of this idea.[433] On 4 May 2018, Kian Wai updated the 4th to 7th Defendants and GSS that AIQ shareholders were to be informed via an EGM that there was "an impasse on how the accounts can be finalised and there are irregularities found". As such, "a special audit by another independent auditor [would] be appropriate if approved by the members".[434]

439 On 10 May 2018, Marcus sent out a notice of EGM which included *inter alia* the proposed resolution that the re-elected AIQ board be given the authority to "appoint an independent third-party to conduct a special audit to, *inter alia*, review the accounts and transactions of the Company for the financial years ending 31 December 2014 and 31 December 2015" and for the results of the special audit to be shared with the shareholders.[435] The EGM took place on 28 May 2018 where it was recorded that the resolution to carry out the Special

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432 SOC (Amendment No.3) at para 83.

433 6ABOD at p 674-675.

434 6ABOD at p 778-779.

435 1ABOD at p 413.

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Audit and to inform the shareholders of the results of the Special Audit was passed.[436]

440 The Special Audit was carried out by TRS Forensics, which according to Mr Tan, specialised in detecting financial crimes, corruption, cybersecurity breaches and control lapses.[437] Contact was first made with TRS Forensics on or around 8 May 2018 by AIQ's solicitors who reached out to TRS Forensics about potentially conducting a special audit for AIQ.[438] According to Mr Tan, this was the first time that TRS Forensics had dealt with AIQ – save that he knew Leslie prior to TRS' engagement for the Special Audit. This was because Leslie was previously the CEO of a former client of TRS Forensics, and they shared some mutual friends. Notwithstanding this, Mr Tan claimed that this relationship with Leslie did not in any way affect the manner in which TRS Forensics carried out the Special Audit. In any case, TRS Forensics' main point of contact with AIQ for the Special Audit was Kian Wai, and not Leslie.[439] AIQ's engagement of TRS Forensics was formalised by way of an engagement letter signed by Kian Wai (on behalf of AIQ) on 27 June 2018.[440]

441 After the engagement was finalised, TRS Forensics proceeded with the Special Audit. The initial scope of the Special Audit – as set out in the letter of engagement dated 27 June 2018 – was to review transactions between 2014 and 2015 so that AIQ could move forward with its audit reports and financial statements. This included in particular:[441]

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436 1ABOD at p 440-442.

437 AEIC of Tan Swee Wan at para 3.

438 AEIC of Tan Swee Wan at para 5, p 18-19; 6ABOD at p 796-797.

439 AEIC of Tan Swee Wan at para 9.

440 AEIC of Tan Swee Wan at para 6, p 37-54.

441 AEIC of Tan Swee Wan at para 7, p 40.

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(a) A review of the nature and accounting classification of the Medical Application Purchase. This application was supposedly sold by AIQ to the company called AFAR (a company in which Joe was both director and shareholder), and then repurchased by AIQ;

(b) A review of the nature and extent of enhancements (if any) made to the Medical Application that might justify its repurchase by AIQ for $3m; and

(c) A review of the authenticity of the consultancy agreement relied on by Joe as the basis for his entitlement to a monthly consultancy fee of $50,000.

442 In this respect, the engagement letter with TRS Forensics made it clear that whilst the Special Audit did involve the analysis of financial information and accounting records, it did not "constitute an audit or an audit related service in accordance with generally accepted auditing standards or attestation standards". Therefore, "no such assurance or opinion on the adequacy and effectiveness of internal controls [would] be provided in [TRS Forensics'] advice/report".

443 On 11 July 2018, Kian Wai requested that TRS Forensics expand the scope of its report to include the review of:[442]

(a) Transactions and flow of funds between Logovision Inc, Cinime Asia Pacific Pte Ltd, Filmfunds Inc, Capital West Financial Partners Limited and AIQ; and

[442] AEIC of Tan Swee Wan at para 8.

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(b) Shareholdings (if any) held by Joe, whether directly or indirectly, in the companies involved in the Special Audit investigation.

444 It is crucial to note that all the issues and transactions which TRS Forensics was requested to review in the Special Audit had already been flagged by AIQ's auditors in the course of the company's attempts to settle its FY 2014 and FY 2015 financial statements. Joe had also been given numerous opportunities to respond to the auditors on these issues.[443] To give some context on the various transactions investigated in the Special Audit, I include a short summary of each transaction:

(a) Medical Application purchase: Sometime in 2014, AIQ received an aggregate sum of around $500,000 from AFAR, purportedly as "payment of enhancement of the medical app". AIQ subsequently repurchased the Medical Application from AFAR in 2015 for some $2.7m.[444] At the material time, Joe was a director for AFAR, and he also became a shareholder of AFAR in October 2015.[445]

(b) Joe's Consultancy Agreement: TRS Forensics was asked to verify the authenticity of the Consultancy Agreement produced by Joe, which purported to provide for him to be paid a total amount of about $2,250,000 by AIQ between 2 April 2014 and 31 December 2017.[446]

(c) Logovision Inc transaction ("**Logovision Transaction**"): Pursuant to an agreement between AIQ and Logovision dated 14 April

443 6ABOD at p 250-259, 675-677.

444 7ABOD at p 500.

445 12ABOD at p 15-16 at para 3.4.

446 7ABOD at p 501.

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2015, AIQ paid US$2.5m to Logovision for the purported purchase of (*inter alia*) patents. These sums were routed to the bank accounts of Carl Freer and his related entity. One of the patents "purchased" turned out, inexplicably, to be the same patent which had already been assigned by AIQ to IQNect Technology Limited in BVI on 6 April 2014. Carl Freer was also the chairman/founder of Logovision, but was still working in AIQ in 2015.[447]

(d) Transactions with Cinime and Filmfunds ("**Filmfunds Transaction**"): AIQ entered into an agreement whereby AIQ was to sell websites and technology to Cinime for US$2m, with the same underlying websites and technology being purchased from Filmfunds for US$2m. Carl Freer was a founder of Filmfunds. AIQ was to pay the consideration of US$2m to Capital West, a related entity of whom Joe and Carl Freer's son Carl Johan were concurrently directors whilst still directors of AIQ. Cinime's financial records for FY 2013 showed that it was running a loss for that year. No financial records could be found in ACRA for FY2014 to show how Cinime had acquired the funds to purchase the websites and technology from AIQ.[448]

445 The Special Audit Report was completed on 1 August 2018.[449] In gist, the main findings of the report were as follows:

(a) Medical Application purchase: Although AFAR was supposed to have paid AIQ $500,000 to enhance the source code for the Medical Application, the individual to whom AIQ outsourced the work of

447 7ABOD at p 501.

448 7ABOD at p 501.

449 12ABOD at p 10.

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enhancing the source code was paid only US$20,250, and ended up enhancing less than 16% of the source code.[450] Thereafter, AIQ repurchased the Medical Application from AFAR for around $2.7m despite the Medical Application not having been developed further than a test flight.[451] Put simply, there did not appear to be any "enhancement" of the Medical Application which could have justified its repurchase at such a high price. Moreover, although Joe claimed that the transaction had been reversed and the money refunded to AIQ, there was no evidence of any such refund having been given.[452]

(b) Joe's Consultancy Agreement: TRS Forensics found that both the consultancy agreement and the employment contract furnished by Joe appeared to have been created at a date subsequent to the date when they were supposed to have been executed. The total amount purportedly due to Joe for the period covered by these two documents came to about $2,250,000.[453]

(c) Logovision Transaction: The monies paid by AIQ pursuant to the Logovision Transaction were routed to the bank accounts of Carl Freer and his related entity. One of the patents purchased was the same patent which had previously been sold by AIQ to a third party. TRS Forensics could not ascertain how the patent ended up with Logovision to be sold back to AIQ. From the documents available, it appeared that the founder of Logovision was Carl Freer.[454]

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450 12ABOD at p 51 para 9.6.

451 12ABOD at p 51 para 9.5.

452 7ABOD at p 500.

453 12ABOD at p 52 paras 9.7-9.9.

454 12ABOD at p 52 para 9.10.

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(d) Filmfunds Transaction: There was no evidence to show how Cinime – which had been running at a loss in FY 2014 – could have raised the funds to purchase the websites and technology from AIQ. In addition, TRS Forensics found that the agreement between Cinime and AIQ for Cinime to purchase the websites and technology was dated 15 June 2015 – while the agreement between AIQ and Filmfunds for the sale of the said assets to AIQ was dated 2016. This was anomalous, since AIQ first needed to purchase the websites and technology from Filmfunds before it could sell them to Cinime. Further, pursuant to its agreement with Filmfunds, AIQ was required to pay US$2,000,000 to Capital West, a company in which Joe and Carl Johan were concurrently directors whilst still directors of AIQ. This payment was made in 2015.[455]

446 In light of the above findings, TRS Forensics concluded that "AIQ may wish to seek legal advice" on whether Joe had "fulfilled" his Director's "fiduciary duties" and whether there was any "conflict of interest" by Joe and two other named individuals since they had represented both AFAR and AIQ in business transactions".[456]

447 On 14 August 2018, the 4th to 7th Defendants released a summary of the findings to all shareholders of AIQ. Kian Wai also informed all AIQ shareholders that they would "update everyone on the next steps in due

455 12ABOD at p 52-53 at paras 9.11-9.13.

456 12ABOD at p 53 para 9.15.

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course".[457] Kian Wai subsequently lodged a police report with the CAD on 30 August 2018.[458]

(B) WHETHER THE SPECIAL AUDIT REPORT WAS OPPRESSIVE TO THE PLAINTIFFS

448 As I noted at the outset, the Plaintiffs' case was that the commercial unfairness vis-à-vis the Special Audit Report arose from the 4th to 7th Defendants having breached their fiduciary duties to AIQ by procuring a report filled with "malicious, misleading, groundless and inaccurate" allegations to support GSS' agenda against Joe (at [437] above). I first consider therefore whether the 4th to 7th Defendants had valid reasons for commissioning the Special Audit Report.

(I) WHETHER THE 4TH TO 7TH DEFENDANTS HAD VALID REASONS TO COMMISSION THE SPECIAL AUDIT REPORT

449 As I pointed out earlier, the transactions which TRS Forensics were asked to investigate were transactions in which AIQ had previously paid out considerable sums of money, or were transactions where AIQ was being asked to pay out large sums. Documentation for these transactions was woefully lacking, and the transactions were potentially tainted by conflicts of interests as they involved payments to entities owned by parties who were at that time also directors of AIQ. In the circumstances, it was clear that the 4th to 7th Defendants had valid reasons to inquire into these transactions. This was all the more so considering that these transactions had already been flagged by AIQ's auditors and were the reason why the financial statements for two consecutive years could not be finalised.[459] Joe had been given various opportunities to provide

457 7ABOD at p 498.

458 8ABOD at p 225.

459 6ABOD at p 674-677.

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satisfactory answers to AIQ's auditors in relation to these transactions, but had failed to do so.

450 Not only was it clear that the 4th to 7th Defendants had valid reasons to inquire into these transactions, it was also reasonable for them to have done so by commissioning a Special Audit Report. Given that these transactions appeared to have taken place before the 4th to 7th Defendants joined AIQ and to have involved someone who continued to sit on the AIQ board (*ie* Joe), the principled thing for the 4th to 7th Defendants to do was indeed to get an independent third party to conduct an investigation into any potential wrongdoing against AIQ.

451 It should also be remembered that there was a pressing need for the 4th to 7th Defendants to resolve the audit issues because these audit issues posed a considerable impediment to the 4th to 7th Defendants' ongoing fundraising efforts. As Jeffrey highlighted during his testimony, "no one wanted to fund the company if you don't have clean books". Earlier investors, who were allegedly "disgruntled investors", had also complained that they felt "aggrieved and [cheated]".[460] The importance of resolving the audit issues was even acknowledged by Joe himself in a letter sent by his solicitors to the 4th to 7th Defendants on 31 January 2018.[461] In laying out in the letter his objections to the Rights Issue, Joe alluded to outstanding issues with the FY 2015 audit. According to Joe, these outstanding FY 2015 audit issues impacted "the status of [AIQ's] financial accounts as well as ownership and/or commercialisation of existing intellectual property rights"; and until these issues were resolved and the FY 2015 accounts signed off, shareholders had to be kept "properly

460 Transcript of 26 August 2022 at p 95 ln 4 to ln 16.

461 6ABOD at p 238-243.

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informed of these ongoing matters". I reproduce below the relevant portion of the letter:

> **B. Outstanding issues with the FY2015 audit of the Company**
>
> 13. As you are aware, there are several outstanding legacy issues with Mr. Carl Freer for the FY2015 audit. I am working hard to resolve the same with the auditors, Mr. Loo Kian Wai ("**Mr. Loo**") and Mr. Marcus Tan ("**Mr. Tan**"). ***These outstanding issues impact the status of the Company's financial accounts as well as ownership and/or commercialisation of existing intellectual property rights*** ("**IPs**").
>
> 14. ***Until these audit matters are finalised, queries by the auditors are resolved and the accounts are signed for FY2015, I reiterate that it is important that shareholders are properly informed of these ongoing matters for their consideration of participation in the Rights Issue***.
>
> 15. Withholding such information from shareholders is evidently not in the best interests of the Company and may give the impression that the Board is seeking to dilute certain shareholders to the benefit of others.
>
> …
>
> [emphasis added]

452 It was not disputed by parties that by the time a decision was taken months later to launch a special audit, AIQ was still facing audit issues. On 6 April 2018, the auditor had emailed Kian Wai a list of queries for Joe and the 4th to 7th Defendants.[462] This list of questions was forwarded by Kian Wai to Joe (on 9 April 2018) for the latter's response.[463] Shortly thereafter, Kian Wai wrote to GSS informing him that if Joe remained unable to reply to the auditor's questions satisfactorily, they would call for an AGM to approve a special audit.[464]

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462 6ABOD at p 676-677.

463 6ABOD at p 675-676.

464 6ABOD at p 674-675.

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453 In light of the above circumstances, it was clear that the idea for the Special Audit was conceived primarily to resolve audit issues for FY 2014 and FY 2015. Critically, both the FY 2014 and the FY 2015 financial statements had not yet been finalised as of April 2018 because the outstanding audit remained unresolved. This indicated that there were indeed serious underlying problems with the accounts.

454 Since there was a pressing need for the 4th to 7th Defendants to resolve AIQ's audit issues and since there had already been prolonged delay in the finalisation of the FY 2014 and FY 2015 accounts, it was both reasonable and commercially acceptable for the 4th to 7th Defendants to decide to call for the Special Audit. I noted, moreover, that even as the 4th to 7th Defendants were discussing the possibility of a Special Audit, they were clear that a Special Audit would be launched only if Joe continued to fail to respond satisfactorily to the auditor's queries. Again, this appeared to me to be a reasonable and fair position for the 4th to 7th Defendants to have taken.

(II) WHETHER THE 4TH TO 7TH DEFENDANTS LAUNCHED THE SPECIAL AUDIT REPORT FOR AN IMPROPER PURPOSE

455 I next considered the Plaintiffs' allegations about the Special Audit having been carried out for the purpose of removing Joe from AIQ and getting him to transfer his remaining shares to GSS for free. I rejected this allegation for the following reasons.

456 As explained earlier (at [449]–[454]), the evidence showed that the 4th to 7th Defendants had decided to procure the Special Audit because Joe's failure to provide the auditors with satisfactory answers on the outstanding audit issues had led to AIQ being unable to finalise its FY 2014 and FY 2015 accounts even as at April 2018. The emails relied on by the Plaintiffs did not support their

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claim that in reality, the 4th to 7th Defendants were pursuing a different – and sinister – agenda in procuring the Special Audit Report. The emails dated 3 May 2018,[465] 4 May 2018[466] and 26 May 2018[467] involved discussions between the 4th to 7th Defendants and GSS on the process of holding the requisite AGM or EGM to ensure sufficient shareholder support for the proposed Special Audit. Nothing in any of these emails suggested that the Special Audit was to be carried out improperly, unfairly or in a manner prejudicial to Joe. While it is true that GSS expressed the hope in an email to Kian Wai dated 27 May 2018[468] that this would be "the first step that [would] take Joe to prison", the statement appeared to me to be an instance of GSS venting his spleen, as opposed to being evidence of some plan or campaign among the 3rd to 7th Defendants to trump up false charges against Joe using the Special Audit. As I pointed out earlier, there was abundant evidence that the outstanding audit issues and the consequent impasse in the finalisation of AIQ's financial statements were the reasons which drove the 4th to 7th Defendants to commission the Special Audit Report. Indeed, as noted earlier (at [451]), Joe himself had emphasised in his letter of 31 January 2018 that the outstanding audit issues were impacting the company accounts and the ownership/commercialisation of the IP rights.

457 As seen earlier (at [171]–[195]), the authorities are clear that in oppression proceedings under s 216 of the Companies Act, the court is entitled to take into account the conduct of the minority shareholder in determining whether the acts of oppression he complains of are actually commercially unfair. I add that nothing in the evidence before me suggested the

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465 6ABOD at p 778.

466 6ABOD at p 778.

467 7ABOD at p 26.

468 7ABOD at p 26.

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commissioning of the Special Audit Report was part of a "tit-for-tat" approach to shareholder relations (see *Ascend Field* at [69] and *Leong Chee Kin* at [76].). Given that the outstanding audit issues concerned transactions in which Joe had been involved and/or to which he had been privy, it was logically inevitable that the auditor conducting the Special Audit would have to consider *inter alia* whether there had been any wrongdoing on Joe's part. The fact that TRS Forensics eventually reported several instances of potential wrongdoing by Joe could not *per se* suggest that the Special Audit Report must have been commissioned for an improper purpose.

(C) THE PLAINTIFFS' CRITICISMS OF THE ACCURACY OF THE SPECIAL AUDIT REPORT

458 In their attempt to show that the Special Audit Report was filled with malicious falsehoods, the Plaintiffs argued that the following matters cast doubt on the accuracy of the report:[469]

(a) The Plaintiffs claimed that TRS Forensics had failed to interview all the people involved in the transactions under investigation;[470]

(b) The scope of the Special Audit Report was expanded after the exercise had commenced;[471]

(c) CAD took no further action on AIQ's police report;[472]

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469 Pf Closing Submissions at paras 196-203.

470 Transcript of 26 August 2022 at p 130 ln 15 to ln 18.

471 AEIC of Tan Swee Wan at para 8 and p 40, 47.

472 8ABOD at p 225.

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(d) The Special Audit Report failed to give adequate consideration to the Share Transfer Deed.[473]

459 *Per* the Plaintiffs' case theory, the defects in the Special Audit Report proved that the 4th to 7th Defendants had deliberately procured a "malicious" and "misleading" report so as to use it to support GSS' agenda against Joe.

460 The Plaintiffs' closing submissions made much of the following single line (in italics) in GSS' email dated 9 April 2018:[474]

> Hi WK,
>
> Good approach. ***The choice of the auditor to do a special audit is critical***.
>
> Check with PAC for a commendation. His previous Company?
>
> Has The Carrot Patch been transferred to AIQ?
>
> GSS
>
> [emphasis added]

The Plaintiffs failed to explain, however, how this vague one-liner by GSS suggested impropriety of some sort in the selection of the special auditor. In any event, the Plaintiffs also failed to put it to Mr Tan that he and/or his firm (TRS Forensics) had been biased or partisan in some way, nor did the Plaintiffs put it to the 3rd to 7th Defendants that they had deliberately chosen a pliant special auditor who would fall in with their wishes. As such, the Plaintiffs should not be allowed belatedly to cast aspersions on Mr Tan's integrity and/or TRS Forensics' impartiality.

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473 Pf Closing Submissions at para 203.

474 6ABOD at p 674.

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461 Further, having reviewed the evidence, I rejected the Plaintiffs' criticisms of the accuracy of the Special Audit Report for the following reasons. In the first place, insofar as the Plaintiffs claimed there were inaccuracies in the report, they should have pointed out these alleged inaccuracies to Mr Tan during their cross-examination, so as to afford him the opportunity to respond to their allegation.[475] They did not – and Mr Tan was consequently deprived of the opportunity to explain.

462 Second, while the Plaintiffs charged that Mr Tan should have interviewed other persons such as Carl Freer and the HR staff working in AIQ at the time of the transactions – it was not clear what precisely the Plaintiffs hoped to achieve with this accusation. As I noted earlier, it was not put to Mr Tan that TRS Forensics had been negligent or biased in the preparation of the report. Nor was it put to the 4th to 7th Defendants that they had somehow concealed material witnesses from TRS Forensics or denied TRS Forensics access to material witnesses. There was no evidence that AIQ even had access to these persons or knew of their whereabouts at the time of the Special Audit. In other words, the Plaintiffs could not establish any reason for their avowed disquiet over the witnesses purportedly overlooked by TRS Forensics. In contrast, Mr Tan's clear evidence on the stand was that when TRS Forensics was carrying out the investigations, interviews had been conducted with "all the so-called balance staff in AIQ", while the "rest all had left" (presumably, the staff which the Plaintiffs claimed should have been interviewed).[476] This suggested to me that at the very least, the relevant AIQ HR staff from the material time were no longer in AIQ at the time TRS Forensics conducted the Special Audit – and were not available for Mr Tan to interview.

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475 SOC (Amendment No.3) at para 83; AEIC of Tan Swee Wan at paras 11-12.

476 Transcript of 26 August 2022 at p 137 ln 11 to ln 25.

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463 Third, Mr Tan also testified that the Special Audit Report was conducted in an independent accurate manner: TRS Forensics carried out a proper investigation, did not simply rely on information provided by the 4th to 7th Defendants, and even went to the extent of forensically acquiring documents and information from AIQ's computers. Mr Tan testified that he stood by the findings in the Special Audit Report, which were "the result of detailed and careful review of documents and information" and were in no way at all "malicious, misleading, groundless and inaccurate".[477] Mr Tan's evidence was not challenged by the Plaintiffs in cross-examination.

464 Fourth, while the Plaintiffs made much of the fact that TRS Forensics' scope of work was expanded to cover the Logovision Transaction and the Filmfunds Transaction,[478] this did not assist the Plaintiffs in the slightest. There was nothing sinister about the scope of the Special Audit Report being expanded to cover the Logovision Transaction and the Filmfunds Transaction because these transactions were already among the outstanding audit issues flagged by the auditors.[479] Since the point of the Special Audit was to get to the bottom of AIQ's audit issues, the 4th to 7th Defendants must be free to get TRS Forensics to conduct an investigation into areas which had been found problematic – so long as it was done in an independent and impartial manner.

465 Fifth, the Plaintiffs' complaints about TRS Forensics' alleged failure to give proper consideration to the Share Transfer Deed had no merit either. In cross-examination, Mr Tan testified that TRS Forensics had duly considered "the agreement reached between parties based on the share transfer deed".

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477 AEIC of Tan Swee Wan at paras 10-15.

478 Pf Closing Submissions at para 196.

479 6ABOD at p 675-677.

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However, he explained that TRS Forensics still needed to check if there was evidence to support the positions agreed to in the Share Transfer Deed.[480] In my view, there was nothing untoward in the special auditor refusing to take documents at face value and looking for independent verification of their contents. Indeed, if TRS Forensic had chosen simply to take the documents presented to them at face value without inquiring further, such passivity would surely have been a ground for doubts as to their independence and professionalism. Regardless of what the Share Transfer Deed might have stated to be the status of AIQ's past transactions (in clauses 4.1, 4.3, and 4.4 of the Share Transfer Deed), TRS Forensics was entirely justified in proceeding with their own independent investigation.

466 Sixth, CAD's decision to take no further action on AIQ's police report[481] was neither here nor there. There may be many different reasons why law enforcement authorities decline to take action on a complaint. In this case, there was no evidence as to CAD's reasons for taking no further action: there was simply no basis for the Plaintiffs to claim that CAD must have found the Special Audit Report lacking in credibility.

467 In sum, for the reasons set out above (at [458]–[466]), the Plaintiffs were unable to prove their assertion in the Statement of Claim that the Special Audit Report was "malicious", "misleading", "groundless", "inaccurate", or that the 4th to 7th Defendants had procured the report for the wrongful purpose of aiding GSS' campaign to exit Joe.

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480 Transcript of 26 August 2022 at p 156 ln 15 to p 157 ln 1.

481 8ABOD at p 225; Pf Closing Submissions at para 202.

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(D) WHETHER THE RELEASE OF THE SPECIAL AUDIT REPORT WAS AN OPPRESSIVE ACT

468 For completeness, I add that I was also not persuaded that the act of releasing to AIQ shareholders a summary of the findings in the Special Audit Report was an oppressive act. First, the AIQ shareholders had previously at the 28 May 2018 EGM approved a resolution to appoint an independent third-party to conduct a special audit to review the company's accounts for the financial years ending 31 December 2014 and 31 December 2015 – and for the results of such a special audit to be made known to the shareholders.[482] It was only reasonable that the shareholders would be updated in due course on the results of the Special Audit *per* the approved resolution.

469 Second, as explained previously (at [451] above), the audit issues were a major source of concern not only for the 4th to 7th Defendants, but also for some AIQ shareholders. As such, it made sense for the 4th to 7th Defendants to update shareholders about the findings of the Special Audit. In his 31 January 2018 letter to AIQ's board of directors, Joe himself had taken the position that it was important to keep the AIQ shareholders "properly informed" of the outstanding audit issues with the FY 2015 accounts.[483] Informing AIQ shareholders of the results of the Special Audit (whether or not they were resolved in Joe's favour) would be in keeping with ensuring that the AIQ shareholders were "properly informed".

470 Third, having read the summary,[484] I was satisfied that it was worded in sensible and measured terms that did not seek to cast unnecessary aspersions on

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482 7ABOD at p 33.

483 6ABOD at p 238-243.

484 7ABOD at p 498-502.

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Joe. The Plaintiffs were unable to point to anything in the summary which could be said to constitute exaggeration or misrepresentation of TRS Forensics' findings.

471 For the reasons given above (at [468]–[470]), I found that the 4th to 7th Defendants' act of releasing a summary of the Special Audit findings to the AIQ shareholders did not amount to oppressive conduct.

Wrongfully procuring AIQ to deny liability for outstanding salary and loans

472 I next address the Plaintiffs' allegation that the 3rd to 7th Defendants oppressed their rights as AIQ shareholders by wrongfully procuring AIQ to deny liability for the outstanding loan repayments and salary owed by the company to Joe.

(1) The Plaintiffs' position

473 The Plaintiffs claimed that after the signing of the Share Transfer Deed, GSS and the 4th to 7th Defendants had repeatedly sought to procure AIQ to deny liability for the outstanding loan repayments and salary due to Joe. In particular, the Plaintiffs alleged the following:[485]

> (a) Before the launch of the Rights Issue, GSS and the 4th to 7th Defendants had on 27 January 2018 already started discussing how to contest Joe's loans in the event that Joe demanded full or partial repayment of his loans;[486]

485 Pf Closing Submissions at para 226.

486 6ABOD at p 190.

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(b) Joe's request on 5 March 2018 for his loans to be converted to equity on the same terms as the Rights Issue was rejected by the 4th to 7th Defendants;[487]

(c) Joe's attempts to recover his outstanding loans from AIQ were wrongly resisted by AIQ as follows:

(i) When Joe attempted to recover the $520,000 loan he provided to AIQ (advanced on 17 October 2017, 16 November 2017, and 26 December 2017), Marcus had provided untruthful information in the affidavits he filed in the relevant proceedings, to the detriment of Joe's claims;[488]

(ii) When Joe attempted to recover the loans repayable pursuant to Clause 4 of the Share Transfer Deed, AIQ objected and asserted *inter alia* that it had a set-off against such loans on the basis that Joe had breached his fiduciary duties to the company by entering into certain improper or dubious transactions.[489]

474 According to the Plaintiffs, by wrongfully procuring AIQ to resist the loan repayments and salary payments due to Joe, GSS and the 4th to 7th Defendants had caused severe prejudice to Joe in his capacity as a member of AIQ. Essentially, their actions had kept Joe from monies that were rightfully due to him and thereby forced him to expend significant time and costs to

487 6ABOD at p 472 and 510-511.

488 SOC (Amendment No.3) at para 70A; Transcript of 25 August 2022 at p 78 ln 25 to p 79 ln 8.

489 AEIC of 1st Pf at p 406-408.

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recover those monies.[490] As to the significance of the allegation at (b) above, I repeat my observation at [372] that the Plaintiff's case was essentially that the 4th to 7th Defendants should nevertheless have let him convert his existing loans to equity, so as to allow him to "equalise" his shareholding vis-à-vis GSS' increased shareholding.

(2) The 3rd Defendant GSS' position

475 GSS took the position that he had nothing to do with Joe's outstanding loan and salary claims since he had no involvement in any of the events alleged in the Statement of Claim in relation to these matters.[491] In any event, GSS denied that he had acted together with the 4th to 7th Defendants to procure AIQ to deny liability for these claims as part of his plan to disable Joe from participating in the Rights Issue.[492]

(3) The 4th to 7th Defendants' position

476 The 4th to 7th Defendants, for their part, asserted that they did not procure AIQ to wrongfully dispute liability for the outstanding loans and salary claimed by Joe. They asserted that they were not trying at any time to support any purported agenda on GSS' part. There was no intention and no attempt on their part to disable Joe from participating in the Rights Issue: Joe himself had admitted on the witness stand that he could have participated in the Rights Issue if he wanted, and it was his decision not to do so.[493]

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490 Pf Closing Submissions at para 228.

491 3rd Df Closing Submissions at paras 165 and 169.

492 3rd Df Closing Submissions at paras 166-167.

493 4th-7th Df Closing Submissions at paras 144-145; Transcript of 17 August 2022 at p 88 ln 4 to ln 12.

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477 In any event, the 4th to 7th Defendants contended that they had grounds to harbour reservations about Joe's entitlement to outstanding salary payments.[494] Joe's claims were based on a consultancy agreement purportedly dated 2 April 2014 ("**Consultancy Agreement**")[495] and the Employment Contract,[496] which were under the Special Audit found to have been created subsequent to the dates when they were stated to take effect.[497] It also appeared that there were multiple versions of the Consultancy Agreement.[498]

478 As for the outstanding loans, the 4th to 7th Defendants asserted that they also had grounds to resist making payment to Joe, in light of the discovery of his wrongdoing against the company.[499]

(4) My Decision

479 It should be noted that *per* the Plaintiffs' pleaded case, it was an implied term of the Understanding and Agreement between Joe and GSS that GSS "shall procure the [Directors] to acknowledge that the funds provided by [Joe] were loans that were repayable on demand".[500] Since I have found that there was never any Understanding and Agreement in existence, the Plaintiffs would not be able to rely on its implied terms as the basis for alleging commercial unfairness vis-à-vis the denial of Joe's outstanding loans.

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494 4th-7th Df Closing Submissions at paras 147-149.

495 1ABOD at p 146-150.

496 12ABOD at p 35.

497 12ABOD at p 33 and 36.

498 12ABOD at p 33-36.

499 6ABOD at p 190; 4th-7th Df Closing Submissions at para 150.

500 Pf FNBP (14 August 2021 at p 5 S/N 2(b)(ii).

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480 As for Joe's personal rights against AIQ as a creditor claiming repayment of his loans, even assuming his rights as a creditor were breached, such breach could not form the basis of an oppression claim. As outlined earlier (at [122]–[127], the *qua member* rule requires that the conduct complained of under s 216 Companies Act must affect the member in his capacity *as a member* (*Suying Design* at [123]).

481 Leaving aside the Understanding and Agreement, the Plaintiffs also alleged that the 4th to 7th Defendants' actions in causing AIQ to resist payment of Joe's outstanding loans and salary formed part of a ploy to disable Joe from participating in the Rights Issue, and ultimately to drive him away from the companies and from Singapore.[501] It is these allegations that I address next.

(A) JOE'S REQUEST TO CONVERT OUTSTANDING LOANS TO EQUITY WAS NOT AN ATTEMPT TO PARTICIPATE IN THE RIGHTS ISSUE

482 The Plaintiffs did not – and could not – dispute that Joe had no legal basis for demanding to convert his loans into equity in AIQ (*per* his email request of 5 March 2018).[502] For ease of analysis, the material portion of Joe's 5 March 2018 request is reproduced below:[503]

> …
>
> The Company would note that to date, my loans to the Company are significant and for the purposes of this letter, I am prepared to accept S$7.2million as the total amount of all my loans to the Company to date.
>
> In light of my loans of S$7.2million to the Company ("**my Loans**"), ***I propose*** that my Loans be made convertible to shares in the Company at 28 cents a share.

501 SOC (Amendment No.3) at para 84.

502 6ABOD at p 472-473.

503 6ABOD at p 472-473.

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> ***I propose*** that the terms of the convertibility of my Loans be treated similarly to and/or fairly with the terms of the convertible loan given to Mr Goo [sic] Soo Siah by the Company, including the term for interest to be at 8% per anum.
>
> ***My proposal*** is in good faith, which will amongst other things, remove debts of the Company, and allow the Company to tidy up any existing and/or "legacy" issues, including the transfer of TCP.
>
> …
>
> [emphasis added in bold italics]

483 From Joe's email, it was clear that he was not purporting to exercise a legal right to convert his loans to equity, and it was also clear that he was not proposing to participate in the Rights Issue. Rather, he was suggesting that the 4th to 7th Defendants allow his request to convert his outstanding loans into equity.

484 Since Joe's proposal on 5 March 2018 to convert his outstanding loans to equity was not the same thing as his subscribing for shares in the Rights Issue, it was inaccurate and misleading for the Plaintiffs to say (as in their pleaded case) that GSS and the 4th to 7th Defendants procured AIQ to deny his outstanding loans and salaries *in order to prevent him from participating in the Rights Issue*.[504] As I have earlier pointed out, a rights issue is carried out for the purpose of bringing *fresh capital* into the company. What Joe was proposing would not have brought any fresh capital into the company. Joe himself accepted in cross-examination that allowing shareholders to participate in the Rights Issue by setting off existing debts would have defeated the purpose of the Rights Issue, which was to raise fresh funds.[505] Joe also accepted in cross-examination that the 4th to 7th Defendants "were not wrong in refusing" his

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504 SOC (Amendment No.3) at paras 60 and 69.

505 Transcript of 17 August 2022 at p 64 ln 24 to p 65 ln 14.

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proposal.[506] In this connection, it must also be reiterated that on the evidence adduced, GSS did *not* ask to set off his outstanding loans against the subscription price of the shares he took up in the Rights Issue; nor did the 4th to 7th Defendants permit him to do so (see [371] above).

485 In any event, what the Plaintiffs have assiduously avoided pointing out is that the Rights Issue had already long been concluded on 23 February 2018, more than a week before Joe made his proposal.[507] Since the Rights Issue was already over and since Joe had elected not to participate in it, any proposal made by Joe thereafter could hardly be said a proposal for him *to participate in the Rights Issue*. It followed that any rejection of his proposal to convert his loans to shares could not sensibly be described as *denying him an opportunity to participate in the Rights Issue*.

(B) THE 4TH TO 7TH DEFENDANTS HAD REASON TO DISPUTE JOE'S ENTITLEMENT TO THE OUTSTANDING SALARY

486 I next considered whether the 4th to 7th Defendants had valid reasons for resisting payment of Joe's outstanding loans and salary. The absence – or presence – of a reason for resisting payment was relevant because the Plaintiffs' case was that the 4th to 7th Defendants had no basis for causing AIQ to refuse payment and that they did so only because they were contriving to support GSS' "agenda" of disabling Joe's participation in the Rights Issue and exiting him from the company.

487 In respect of Joe's claim for outstanding salary payment, I found that the 4th to 7th Defendants were able to demonstrate that they had valid reasons for

506 Transcript of 17 August 2022 at p 65 ln 11 to 14.

507 6ABOD at p 370.

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disputing this claim and that they were not disputing the claim in order to support GSS' purported "agenda" against Joe. My reasons were as follows.

488 The Plaintiffs relied on the following evidence in particular to support their contention that the denial of Joe's salary claim was commercially unfair:

(a) Salary owing to Joe for the year 2016 amounting to the sum of $600,000 had been confirmed in an email dated 25 September 2017;[508]

(b) For the salary owing to Joe from 15 May 2015 to 31 May 2018 (excluding salary for the year 2016), amounting to the sum of $1,175,000, Joe had agreed to these salary payments being deferred and treated as shareholder loans from him, as part of his financing contribution to AIQ;[509]

(c) There was documentary evidence showing the 4th to 7th Defendants' acknowledgement that such salary was due to Joe; *eg*, the IR8A forms prepared for IRAS which were signed on behalf of AIQ by Kian Wai, as well as IRAS Notices of Assessment issued to Joe (which resulted in him having to pay taxes).[510]

489 I did not find any merit in the Plaintiffs' submissions. First, the Plaintiffs failed to address the valid concerns which the 4th to 7th Defendants raised in relation to the authenticity and validity of the Consultancy Agreement and the Employment Contract. To elaborate: Joe allegedly entered into the Consultancy Agreement with AIQ on 2 April 2014[511] for a term of four years and

508 Pf Reply Submissions at para 134(a); 4ABOD at p 717-718.

509 Pf Reply Submissions at para 134(b); SOC (Amendment No.3) at para 63.

510 Pf Reply Submissions at para 136; AEIC of 1st Pf at p 920-921; 2ABIA at p 71.

511 2ABOD at p 463-467.

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subsequently the Employment Contract on 15 May 2015.[512] The Employment Contract was supposed to have replaced the Consultancy Agreement.[513] Both these agreements provided for Joe to be paid $50,000 a month. The Plaintiffs' claim for $2.135m in outstanding salary[514] appeared to span the period covering both agreements, up to the point of Joe's removal from the AIQ board. Both agreements were problematic: as TRS Forensics observed in the Special Audit Report,[515] the Consultancy Agreement appeared to have been created after the fact and then backdated; whereas the Employment Contract was also created more than two years after the date when it purportedly took effect (*ie* created on 16 December 2017 when it was stated to be effective 15 May 2015). Indeed, Joe himself conceded during cross-examination the Employment Contract was only signed in December 2017.[516]

490 Second, I rejected the Plaintiffs' argument that prior acknowledgements of Joe's salary should be taken as evidence tending to corroborate the authenticity of the Consultancy Agreement and the Employment Contract. As an example of a prior acknowledgement relied on by the Plaintiff, I reproduce below Kian Wai's email of 25 September 2017:[517]

> Hi all,
>
> I understand that Joe requested that the company provide a confirmation for the loan that he has given to the company so far. I have drafted the attached confirmation letter to be signed by all directors. The amounts shown are not audited yet but I had verified all the bank transfers amounts via the bank statements.

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512 SOC (Amendment No.3) at para 60; 12 ABOD at p 35.

513 12ABOD at p 36-37.

514 SOC (Amendment No.3) at para 60.

515 12ABOD at p 33-37.

516 Transcript of 16 August 2022 at p 134 ln 4 to ln 9.

517 4ABOD at p 717-718.

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> Thank you.
>
> Regards,
>
> Kian Wai

The attached confirmation letter and detailed transactions therein showed, *inter alia*, that 12 instances of "Consultancy due to Joe" in the amount of $50,000 each were acknowledged as owing to Joe.[518]

491 Tellingly, although Kian Wai stated in his email that he "had verified all the bank transfers amounts via the bank statements", he also expressly noted that "[t]he amounts shown [were] not audited yet". Clearly, therefore, what Kian Wai meant in his "confirmation" for Joe's 2016 salary was simply that bank transfers totalling $600,000 had been made to Joe in payment of his alleged salary, but no audit had as yet been carried out to verify that the payments were legitimate.

492 At the end of the day, whether the salary payments were legitimate depended on there being in place a valid employment contract providing for the salary amount claimed. Given that the Consultancy Agreement and Employment Contract were found to have been created after the dates when they purportedly took effect, there was basis for the 4th to 7th Defendants to dispute payment of the amounts claimed by Joe under these contracts. I therefore rejected the Plaintiffs' argument that the 4th to 7th Defendants had no grounds for disputing his salary claims and that they had done so merely to support GSS' agenda against Joe.

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518 4ABOD at p 718.

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(C) WHETHER THE 4TH TO 7TH DEFENDANTS HAD REASON TO RESIST JOE'S CLAIMS FOR REPAYMENT OF OUTSTANDING LOANS

493 As to whether the 4th to 7th Defendants had reason to cause AIQ to resist Joe's claim for repayment of outstanding loans, the Plaintiffs argued that the following matters showed them to have wrongfully resisted payment in order to support GSS' agenda of preventing Joe's participation in the Rights Issue and exiting him from the companies:

(a) Joe had successfully obtained summary judgment for a sum of $520,000 as recovery of his loans from AIQ;[519]

(b) Clause 4.1 of the Share Transfer Deed made it clear that the sum of $3,979,694.19 under the JMM Loan advanced by Joe to AIQ was to be fully payable without any deduction to Joe. There was also to be no deduction of the JMM Loan on account of any acts or omissions, whether negligent or otherwise, for the acts of Carl Freer or his son Carl Johan;[520]

(c) The 4th to 7th Defendants could not rely on their lawyers' advice to justify withholding payment of the outstanding loan amounts as it was not clear what the basis of the full extent of the advice was.[521]

494 For context, it should be noted that according to the Plaintiffs' case, claims for repayment of the outstanding loans had been made by or on behalf of Joe on the following occasions:

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519 Pf Reply Submissions at para 137; SDB at p 346-347.

520 Pf Reply Submissions at para 139; 11ABOD at p 638.

521 Pf Reply Submissions at para 138.

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(a) When Joe wanted to convert his loans into shares in AIQ;[522]

(b) When Joe wanted to claim for the $520,000 in loans provided by Joe to AIQ after the Share Transfer Deed;[523] and

(c) When Joe wanted to claim the JMM Loan through the commencement of arbitration proceedings.[524]

495 The relevant material time periods for the above claims would therefore be:

(a) 5 March 2018 when Joe sent the email proposing that he be allowed to convert his loans into shares in AIQ;[525]

(b) 27 August 2018 when the notice of arbitration was first sent by Joe's solicitors to AIQ to claim *inter alia* the outstanding loans owed by AIQ to Joe;[526] and

(c) 25 September 2018 when Joe first filed the Statement of Claim to begin the present suit[527] (with the application for summary judgment being heard on 23 December 2019).[528]

496 In respect of (a), I have explained earlier why Joe's request to convert his loans into equity post-Rights Issue made no sense and why the 4th to 7th

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522 Pf Closing Submissions at para 226(a)-(c).

523 Pf Closing Submissions at para 226(d)(i).

524 Pf Closing Submissions at para 226(d)(ii).

525 6ABOD at p 472.

526 AEIC of 1st Pf at p 400.

527 SOC at p 106.

528 SDB at p 346.

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Defendants were justified in rejecting his request. I therefore address (b) and (c).

497 I have set out the above time frames as they were relevant to my consideration of the 4th to 7th Defendants' reason(s) – if any – for resisting repayment of Joe's loans. It should be noted that it has never been the 4th to 7th Defendants' case that there were no outstanding loans owed by AIQ to Joe. Instead, their position was that since there were grounds to believe that Joe had breached his fiduciary duties to AIQ and caused AIQ to enter into transactions which were to its financial detriment, there were valid reasons to resist immediately paying off Joe's loan claims.[529]

498 To evaluate whether the 4th to 7th Defendants had genuine grounds to resist payment, it would be apt to consider the information they actually possessed at the material time. Since 27 August 2018 was the date on which Joe's solicitors filed the notice of arbitration against AIQ for *inter alia* the outstanding loans, I considered the information available to the 4th to 7th Defendants as at that date. This did not mean that the 4th to 7th Defendants were required to *prove* on a balance of probabilities that Joe had no right to be repaid as at that date. Rather, what I had to determine was whether the evidence bore out the Plaintiffs' assertion that in disputing the loan claims, the 4th to 7th Defendants were acting with the wrongful purpose of assisting GSS' agenda against Joe – or whether they had genuine reasons for disputing these loan claims.

499 It will be recalled that the resolution granting the board authority to appoint an independent third-party "to conduct a special audit to, *inter alia*,

529 4th-7th Df Closing Submissions at para 150.

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review the accounts and transactions of the Company for the financial years ending 31 December 2014 and 31 December 2015" was approved at the 28 May 2018 EGM.[530] A summary of the Special Audit findings was sent by the AIQ board to all shareholders on 14 August 2018.[531] This meant that by the time Joe commenced legal action against AIQ for the outstanding loans, the 4th to 7th Defendants would have had the benefit of the Special Audit findings to aid their decision-making.

500 To reiterate, the Special Audit Report raised concerns about several instances of potential misconduct by Joe in the earlier period of his tenure as director (prior to the 4th to 7th Defendants joining AIQ) which possibly caused substantial losses to AIQ. In particular:[532]

(a) In respect of the Medical Application purchase, the Special Audit Report highlighted that a sum of $2,711,871 had possibly been wrongfully misappropriated from AIQ via the payment to AFAR – a company in which Joe was a director at the time and in which he acquired shares shortly after. The only explanation was Joe's representation that the reversal of the Medical Application purchase had been accounted for based on a reduction of the loans owed by AIQ to him by the same amount – but there appeared to be no documentary record of this;

(b) In the Logovision Transaction, AIQ had paid out a sum of around US$2,500,000 to a company in which Carl Freer (a co-founder of AIQ

530 AEIC of 3rd Df at para 107, p 548-550.

531 AEIC of 1st Pf at para 149 and p 644-648.

532 AEIC of 1st Pf at p 646-648.

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alongside Joe) was chairman, in circumstances suggesting that the payment was unjustified or at the very least questionable;

(c) In the Filmfunds Transaction, AIQ's payment of US$2,000,000 to Capital West appeared to be tainted with impropriety involving Joe as Joe was a director of Capital West.

501 As a result of the concerns flagged in the Special Audit Report, the 4th to 7th Defendants had assured all AIQ shareholders that they were "very concerned about these findings and the possible losses that AIQ has suffered"; and that the company would be "working very closely with the special auditors and its legal advisors, to explore its options" on how best to protect AIQ's and the shareholders' interests "in respect of the transactions outlined above".[533]

502 Considering that the above information would have been available to the 4th to 7th Defendants at the time they contested Joe's claim for repayment of his outstanding loans, I accepted the 4th to 7th Defendants' submission that they did in fact have valid reasons to resist paying off Joe's loan claims at the point in time when he made those claims. As directors of AIQ, it would only have been reasonable for the 4th to 7th Defendants to consider *inter alia* the possibility of the company seeking to claw back at least some part of its losses from Joe. After all, the transactions which had (according to the Special Audit Report) resulted in potentially large losses to AIQ had been entered into during the period when Joe was a director of AIQ and AFAR.[534] In the circumstances, it appeared to me entirely in keeping with the proper discharge of the 4th to 7th Defendants' duties as directors that they should have caused AIQ to resist

533 AEIC of 1st Pf at p 648.

534 12ABOD at p 14-16.

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paying off Joe's loan claims immediately at the point in time when the claims were made.

Procuring AIQ to enter into the Assignment Agreement and engineering the winding up of AIQ and TCP

503 Finally, I address the Plaintiffs' allegation that the 3rd to 7th Defendants oppressed their rights as shareholders of AIQ and TCP by procuring AIQ to enter into the Assignment Agreement and by engineering the winding-up of both companies.

(1) Plaintiffs' position

504 First, the Plaintiffs contended that the 3rd to 7th Defendants deliberately engineered the winding-up of AIQ and TCP by:[535]

(a) Stopping all fundraising and business activity in AIQ;

(b) Ceasing efforts to develop and commercialise the VRT; and

(c) Making no effort to oppose the winding-up proceedings filed by GSS.

505 Second, the Plaintiffs contended that the 3rd to 7th Defendants deliberately had AIQ and TCP wound up so as to:

(a) Cause prejudice to Joe by ensuring that Joe would have no realistic prospect of recovering his investment in AIQ;[536]

535 SOC (Amendment No.3) at para 85C.

536 SOC (Amendment No.3) at para 85C(3).

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(b) Cause prejudice to Joe by impeding his recovery of the summary judgment sum of $520,000 and the outstanding salary and loan repayments due to him; and[537]

(c) Cause by way of the Assignment Agreement for the Secured Patents to be handed over in full to GSS for no valuable consideration, thereby allowing the 3rd to 7th Defendants to commercialise the Secured Patents themselves without Joe's involvement.[538]

(2) 3rd Defendant GSS' position

506 GSS, for his part, asserted that AIQ and TCP were wound up because they were insolvent and unable to pay their respective debts of US$1,124,864 and $572,127.18 (*per* the statutory demands served by GSS on AIQ and TCP on 16 December 2019).[539] The winding-up of these two companies was not part of some concerted plan by the 3rd to 7th Defendants to misappropriate AIQ's intellectual property ("IP") rights.[540] The Deed of Patent Charge had already given GSS first legal charge over the Secured Patents as security for his convertible loan until full repayment of the loan to GSS.[541] The Assignment Agreement dated 23 October 2019 did not confer on him any additional rights in respect of the Secured Patents over and above those already granted to him by the Deed of Patent Charge.[542]

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537 SOC (Amendment No.3) at para 85C(4)-(5).

538 Pf Closing Submissions at paras 205-208;

539 3rd Df Closing Submissions at para 176; AEIC of 3rd Df at p 56-57 and p 572-578.

540 3rd Df Closing Submissions at para 177.

541 AEIC of 3rd Df at para 130 and p 580-594.

542 3rd Df Closing Submissions at para 183; 12ABOD at p 98-107.

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507 In any event, even assuming for the sake of argument that injury had been caused by the Assignment Agreement, the injury would have been suffered by AIQ and not by the Plaintiffs.[543] The proper plaintiff rule would therefore apply so as to preclude the Plaintiffs from bringing proceedings under s 216 to claim relief for such injury.

(3) 4th to 7th Defendants' position

508 As for the 4th to 7th Defendants, they submitted that they had not stopped trying to raise funds for AIQ. They had also tried their best to stave off GSS' demands for repayment by seeking from him more time for repayment.[544] Their efforts were ultimately unsuccessful; and they did not oppose the subsequent winding-up application because they had been advised by the company's lawyers that there was no basis to oppose.[545] As for the VRT, they had also put in considerable efforts to try to develop and commercialise it, but were unsuccessful for reasons other than a lack of effort on their part.[546]

509 As for the Assignment Agreement, the 4th to 7th Defendants explained that this was entered into in order to give effect to the Deed of Patent Charge when – following AIQ's failure to repay the loan under the Convertible Loan Agreement – GSS decided to enforce his security over the Secured Patents. No wrongdoing was involved as GSS was merely exercising his rights under the

543 3rd Df Closing Submissions at para 185.

544 4th-7th Df Closing Submissions at paras 171-177; 9ABOD at p 747-748, p 755-756, p 757, p 761-762, p758-762; 10ABOD at p 173-174.

545 4th-7th Df Closing Submissions at para 178.

546 4th-7th Df Closing Submissions at paras 179-180; 6ABOD at p 67-71; Transcript of 18 August 2022 at p 39 ln 11 to ln 19.

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Deed of Patent Charge.[547] Moreover, AIQ's lawyers had advised on and drafted the Assignment Agreement.[548]

510 In any event, Joe himself did not contest the winding-up application in court. Instead, he had sought to nominate his own choice of liquidators; and it was in fact his nominees who were appointed as the liquidators of AIQ.[549] Upon their appointment, the liquidators would have reviewed *inter alia* the transactions entered into by AIQ around the time of the winding-up order – and in particular the Assignment Agreement. If there had been anything untoward about the Assignment Agreement, the liquidators would no doubt have taken action. No such action had been undertaken by the liquidators, nor had they even made any allegation of wrongdoing by the 3rd to 7th Defendants since their appointment.[550]

(4) My Decision

511 The Plaintiffs did not plead in their Statement of Claim the reason(s) why the winding-up of the two companies and the Assignment Agreement were said to constitute oppression of Joe's personal rights as a shareholder. Although the Plaintiffs pleaded in the Statement of Claim that the winding-up of the companies was a "breach by [GSS] of the Understanding and Agreement",[551] they failed to plead any specific term in the Understanding and Agreement which obliged GSS to refrain from applying to wind up either company and/or

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547 4th-7th Df Closing Submissions at paras 181-182; 11ABOD at p 608-614, p 689-694, p 700-715; 12ABOD at p 98-107.

548 4th-7th Df Closing Submissions at para 183; Transcript of 25 August 2022 at p 5 ln 20 to p 6 ln 6, p 110 ln 7 to ln 16.

549 AEIC of 1st Pf at para 162.

550 4th-7th Df Closing Submissions at para 184.

551 SOC (Amendment No.3) at para 86(1).

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to ensure that neither company would be wound up. In any event, I have earlier found that there was never an Understanding and Agreement. In the absence of any legal obligation requiring him to refrain from seeking repayment of debts legitimately owed to him by AIQ, GSS remained entitled to call in those debts. As for the 4th to 7th Defendants, having examined the evidence, I was satisfied that their conduct in not opposing the winding-up proceedings could not be said to have been commercially unfair to the Plaintiffs. I explain.

(A) THE WINDING-UP OF AIQ AND TCP WAS NOT COMMERCIALLY UNFAIR

512 In evaluating whether the winding-up of AIQ and TIC was commercially unfair to the Plaintiffs, I first asked whether there was any reason to doubt that these two companies were wound up on legitimate grounds. If AIQ and TCP were wound up because they were unable to pay their debts and the board had no viable means of raising funds to pay those debts, then I could not see how the winding-up could be said in any way to be commercially unfair.

513 In the present case, I was satisfied that there was no reason to doubt that AIQ and TCP were wound up on legitimate grounds. First, GSS had issued statutory demands through his lawyers to AIQ and TCP on 16 December 2019.[552] Both statutory demands were not complied with, following which AIQ and TCP were wound up on 5 June 2020.[553] In cross-examination, Marcus testified that upon receipt of the statutory demands on 16 December 2019, he had consulted the companies' lawyers. He then acted in accordance with the lawyers' advice on what AIQ could "and should do in response to the [statutory demand] by GSS".[554]

552 AEIC of 3rd Df at p 56-57 and p 572-578.

553 AEIC of 3rd Df at p 57.

554 Transcript of 26 August 2022 at p 74 ln 17 to p 75 ln 8.

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514 Second, the evidence before me did not reveal any element of "unfairness" to Joe insofar as the conduct of the winding-up was concerned. The Plaintiffs did not dispute that these debts which were the subject of the statutory demands were legitimate debts owed to GSS by AIQ and TCP. Instead, the Plaintiffs tried to argue that the 4th to 7th Defendants should have used the Secured Patents to reduce or discharge the debt amount claimed in GSS' statutory demands. I found no merit in this argument, since the evidence showed that the Secured Patents had failed to generate any monetary returns or value from the time of their international filing on 7 September 2017[555] up to the service of GSS' statutory demand on 16 December 2019. Further, the evidence showed that this lack of monetary returns was not due to any lack of effort on the part of the 4th to 7th Defendants (as explained below at [525]—[531]).

515 The Plaintiffs also tried to insinuate that the 4th to 7th Defendants were somehow unfair to him because they challenged his outstanding loan and salary claims but did not challenge GSS' statutory demands. This argument was entirely misconceived. I have already found (at [486]–[502] above) that the 4th to 7th Defendants were acting in the proper discharge of their duties as directors when they caused AIQ to resist payment of Joe's salary and loan claims. Conversely, the evidence did not reveal any plausible grounds on which the 4th to 7th Defendants could or should have disputed the debts claimed in GSS' statutory demands – nor did the Plaintiffs identify any such grounds which demonstrated any basis on which the 4th to 7th Defendants should have disputed those debts. Tellingly, Joe himself never took any steps to contest the winding-up applications; and it was eventually his nominated liquidator who was appointed by the court.

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555 11ABOD at p 713.

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(B) WHETHER THE WINDING-UP AND THE ASSIGNMENT AGREEMENT COULD BE SAID TO HAVE INJURED THE PLAINTIFFS' RIGHTS AS SHAREHOLDERS OF AIQ

516 More fundamentally, in order for the winding-up of the two companies and the Assignment Agreement to found an oppression claim under s 216, they had to be shown to have given rise to personal wrongs against either Plaintiff (or both) in their capacity as shareholders – as opposed to being corporate wrongs against the companies. The appropriate remedy in respect of the latter scenario would be a derivative action under s 216A of the Companies Act (*Sakae Holdings* at [88]).

517 In the present case, the Plaintiffs failed to demonstrate how Joe suffered any *personal wrong* as a member of the two companies as a result of the winding-up of the two companies and the Assignment Agreement.

518 In their closing submissions, the Plaintiffs argued that "there can be no greater prejudice or oppression to a minority shareholder than" causing AIQ and TCP to be wound up and for misappropriating the Secured Patents through the Assignment Agreement.[556] According to the Plaintiffs:

> (a) The 4th to 7th Defendants owed a duty to act in the best interests of AIQ, and its shareholders and creditors, and could not act in a manner that stripped AIQ of its only substantial asset and simply "rolling over" when the winding-up application was filed;[557]

556 Pf Closing Submissions at para 276.

557 Pf Closing Submissions at para 276(a).

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(b) The 4th to 7th Defendants had completely disregarded Joe's financial interest in his shares, the recovery of his loans and overall investment in AIQ;[558] and

(c) The winding-up of AIQ required the participation of GSS and every Director.[559]

519 As I noted at the outset (at [511] above), the Plaintiffs pleaded in their amended statement of claim that the winding-up of AIQ and TCP constituted a breach of the Understanding and Agreement – but failed to plead any express or implied term which precluded GSS from applying to wind up the companies. This point was also not explained in the Plaintiffs' closing submissions. In any event, I have found that the alleged Understanding and Agreement did not exist.

520 Instead, the Plaintiffs' closing submissions showed that their claim of oppression in this instance was premised on some notion of commercial unfairness stemming from the 4th to 7th Defendants' duty as directors to act in the best interests of AIQ and TCP as well as its shareholders and creditors; in other words, that they were entitled, as shareholders of AIQ and TCP, to expect that (a) the Secured Patents would not be misappropriated, and (b) the two companies would not be "wrongfully" wound up.

521 As to (a), such an expectation would clearly be incapable of providing a sufficient basis for finding commercial unfairness even if it were breached. I would draw a parallel between the Plaintiffs' position in this case and the position of the plaintiff/respondent Mr Ng in *Suying Design.* In *Suying Design*, Mr Ng had complained *inter alia* that Ms Tan (the majority shareholder and

558 Pf Closing Submissions at para 276(b).

559 Pf Closing Submissions at para 276(c).

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director) had made wrongful payments to herself, and that her conduct as such amounted to a breach of his legitimate expectation as a shareholder that the company's funds would not be siphoned away. The CA held on appeal that Mr Ng had no basis for any expectations as to how the company would be managed "apart from the basic expectations a shareholder may legitimately hold" (at [112]). The CA continued (at [113]–[114]):

> 113 …..(T)hese baseline expectations do not provide a sufficient basis on which to find that Mr Ng has suffered a distinct personal injury which would amount to commercial unfairness. To find otherwise would … suggest that *any* misappropriation of moneys by a director would constitute a distinct injury to a shareholder. This would be too broad a construction of the framework the Court of Appeal set out in *Sakae Holdings* and make impermissible inroads into the proper plaintiff rule. This simply cannot be the case. Further, the breach of this expectation would be remedied by the recovery of the misappropriated moneys by the company in a corporate action. The Companies Act provides s 216A for this purpose.
>
> 114 As such … while Mr Ng may have been entitled to expect that [the company's] funds would not be siphoned away, the breach of this expectation did not in itself constitute a distinct injury under s 216 of the Companies Act. In any event, *even if* there was a distinct injury, it does not necessarily follow that it would be commercially unfair to Mr Ng if the breaches are not remedied. The claim in respect of the Gratuity Payment [*ie*, the alleged wrongful payments made by Ms Tan to herself] therefore should not have been brought under s 216. This is not to say that there was no wrongdoing, but rather, that any such wrong was one done to the company, and should therefore have been pursued under a different cause of action – such as a derivative action under s 216A…
>
> [emphasis in original]

522 In the same vein, in the present case, the Plaintiffs' expectation that the Secured Patents would not be misappropriated could not be said to be more than a shareholder's basic expectation, which – even assuming they were able to prove misappropriation – was insufficient basis "on which to find that [the

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Plaintiffs had] suffered a distinct personal injury which would amount to commercial unfairness".

523 As to (b), it was not disputed that TCP was always meant to be wholly owned by AIQ, notwithstanding that Joe himself held on to the TCP shares in his name. It was also not disputed that insofar as TCP shares were held in any individual's name, that individual was understood to be holding the shares on trust for AIQ (as at [308] above). Bearing this in mind, it will be seen that the winding up of AIQ and TCP affected all shareholders of AIQ equally, in the sense that each shareholder stood to lose their investment in AIQ. Since *all* AIQ shareholders were affected by the alleged wrong done to AIQ, there was no distinct personal injury suffered by Joe on which he could base a claim under s 216.

524 Further and in any event, the Plaintiffs' claim at (b) would be barred by the reflective loss principle. As I alluded to earlier (at [159]–[167]), the reflective loss principle states that where the minority shareholder's loss is merely a reflection of the loss suffered by the company which would be made good if the company were able to and did enforce its rights, the proper party to recover that loss is the company, and not the shareholder (*Suying Design* at [30]). Therefore, in the context of the winding-up of AIQ and TCP, Joe had no basis for complaining about his financial interests having been prejudiced by the winding-up of AIQ and TCP. His financial interests as shareholder were *subject entirely to the company's fortunes*. As a shareholder of AIQ, Joe bore the risk of the vicissitudes of corporate life, just like any other shareholder; and these risks included the risk that the business could fail. Even assuming for the sake of argument that the Plaintiffs were justified in complaining that the 3rd to 7th Defendants had deliberately brought about the two companies' financial woes and engineered their wrongful winding-up, this was a matter to be taken

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up by the liquidators against the 3rd to 7th Defendants. It would be an abuse of process for the Plaintiffs to be allowed to bring an oppression claim under s 216 for what would essentially be corporate wrongs (*Suying Design* at [31] citing *Ng Kek Wee* at [65]).

(C) THE 4TH TO 7TH DEFENDANTS MADE SIGNIFICANT EFFORTS TO DRIVE AIQ'S BUSINESS AND TO RAISE FUNDS FOR AIQ

525 As a corollary to their allegations about the oppressive effect of the winding-up of the two companies, the Plaintiffs alleged that the 4th to 7th Defendants made little to no effort to drive AIQ's business and/or to raise funds for AIQ, thereby leading AIQ into financial ruin and eventual liquidation. Again, of course, the legal burden of proving this allegation fell on the Plaintiffs, who also bore the initial evidential burden. I found that the Plaintiffs were unable even to marshal enough evidence to meet their evidential burden of proof.

526 In gist, the Plaintiffs relied on a number of emails which – according to them – showed GSS and Kian Wai discussing the option of liquidating AIQ and starting a new company with the patents in GSS' hands.[560] However, while it was true that GSS and Kian Wai did discuss *inter alia* the option of liquidating AIQ and starting a new company to utilise the Secured Patents, these discussions were not the primary focus of the emails. In fact, these emails constituted persuasive evidence that even as at July 2019, the 4th to 7th Defendants were still putting in effort to advance AIQ's business interests. For example, the email of 3 July 2019 which the Plaintiffs cited actually showed Kian Wai asking GSS to withdraw the letter of demand dated 19 June 2019 that GSS had served on AIQ, so as to allow the AIQ board time to pursue

560 Pf Closing Submissions at paras 252-269.

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opportunities "that will generate positive cash flow for the company". GSS subsequently acceded to Kian Wai's request and withdrew the 19 June 2019 letter of demand.[561] The material parts of the email are reproduced below:

> Dear Mr Goh
>
> Reference to your letter to the Company dated 19 June 2019 demanding the full repayment of USD1,124,864 arising from the amounts owing to you via the Convertible Loan Agreement between AIQ Pte Ltd and you dated 19 July 2016.
>
> The board would like to update you the following latest developments:
>
> 1) The Company is in advanced discussion with a Singaporean mega media company could [sic] result in a major commercial deal within the next few weeks.
>
> 2) We are also in serious discussion with various other parties which could result in additional funding that may fund the company's operations if the company secures (1).
>
> We seek your understanding and hope that you can withdraw the letter of demand so as to allow us to pursue the above opportunities that will generate positive cash flow for the company which will then enable the company to pay its financial obligations including the loans disbursed by you to the company.
>
> This way, we think will be the best interest of the stakeholders of the company.
>
> We sincerely hope that you can consider our humble request and we look forward to your positive reply.
>
> …

527 Not only did the 3 July 2019 email speak to the efforts which the 4th to 7th Defendants were making at that stage to keep AIQ's business going, it gave the lie to the Plaintiffs' allegation that the 4th to 7th Defendants connived with GSS to run the business into the ground and to wind up the company so that he could get his hands on the Secured Patents. If there had in fact been such

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561 9ABOD at p 756-758.

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connivance on the part of the 4th to 7th Defendants, they would scarcely have bothered to ask GSS to withdraw his 19 June 2019 letter of demand, nor would they have bothered to continue their efforts to keep AIQ afloat. Indeed, there were numerous emails to show the amount of effort which the 4th to 7th Defendants were still putting into trying to develop AIQ's business and to raise funds, even as at July 2019.[562] For example, in an email he sent GSS on 17 July 2019, Marcus updated GSS on the team's efforts at business development:[563]

> GSS
>
> We are currently engaged in advance discussion with all the departments with SPH and is in progress right now as I am responding to you.
>
> They have indicated on our last meeting where Leslie was also involved that they are keen to buy or invest in us but in order to move to this, they want to run several Proof of Concepts (POC) to solidify the potential purchase.
>
> …
>
> We are also proceeding with trials with a Taiwanese TV station targeting end this month too
>
> As for Russia, due to the summer holidays, we been told that activities been pushed back again and I am following through intensively
>
> …

528 On 24 July 2019, Marcus sent another update to GSS about the team's progress and urged GSS to continue funding AIQ and TCP:[564]

> Uncle
>
> Latest Updates on AIQ:
>
> We met SPH's Chief Investment Officer (Julian) and he had indicated their interest in buying AIQ but would to concurrently [sic] have their sales department led by their Chief Marketing

562 9 ABOD at p 758-762; 10 ABOD at p 173-174.

563 9ABOD at p 761-762.

564 9ABOD at p 758-759.

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> Officer (Ignatius) be running paid Proof of concepts (POC) using our technology with their advertisers to confirm that this technology will help them in their Offline2Oline strategy in reviving their declining advertising business.
>
> …
>
> Julian had informed us that decision is still largely determined by the success of these POC so he will need Ignatius' team to prove that our technology is what they will use before putting up an offer to us. We have separately submitted a proposal to SPH sales team for a monthly fee of $30,000 to $50,000 for unlimited POCs for a period of 6 months and is awaiting confirmation to have this signed
>
> This entire POC process will take 3-6 months but we did inform him that we only have limited runway of 1-2 months if not the company will be out of funds to continue operations too. He acknowledge that he will move as fast as possible on his evaluation.
>
> KW had also indicated that his wife will not allow him to continue without pay beyond a third consecutive month and had indicated that he will work till mid-August and would have to leave to look for a new role then.
>
> On TCP front, the monthly burn is about 15k as we already have all the private offices fully filled and 60% of our hot-desks taken. This cost are [sic] largely operational as we have no marketing spend.
>
> Uncle, I am appearing [sic] to you to reconsider funding 100k monthly for the next 6 months to see through this extensive POC and final purchase by SPH if not we will just have to wind up both AIQ and TCP.
>
> Let us know of your final decision and we will act accordingly.
>
> …

529 The Plaintiffs claimed that since GSS incorporated his own company Scanto Technology Pte Ltd ("Scanto") on 21 August 2019,[565] GSS must have conspired with the 4th to 7th Defendants to strip AIQ of the Secured Patents and to transfer these to Scanto instead, with the view to commercialising the Secured Patents without Joe's involvement. On the Plaintiffs' case, it must

565 Pf Reply Submissions at para 147; Transcript of 31 August 2022 at p 170 ln 1 to 13..

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follow that in order to misappropriate the Secured Patents for GSS'/Scanto's benefit, GSS and the 4th to 7th Defendants would have facilitated the winding-up of AIQ.

530 I found the above argument to be devoid of merit. The contemporaneous evidence (see [354] above) showed that even before Scanto was incorporated, AIQ was already in dire financial straits (including for example being unable to pay staff salaries *in January 2018*); and that instead of hastily throwing in the towel and winding up the companies, the 4th to 7th Defendants had all along been working diligently to develop the business as best they could (see [526]–[528] above). In fact, there was also evidence to show that at certain points in time when AIQ's funds were running low, the 4th to 7th Defendants had deferred payment of their own salaries or fees.[566]

531 In similar vein, if GSS had indeed been bent on getting AIQ wound up so that he could get hold of the Secured Patents on the cheap, there was no reason for him to continue funding the company well after relations between him and Joe soured and they failed to arrive at a mutually-agreed funding ratio.

532 As a final observation, the commercial context of AIQ (and TCP) was in my view a relevant factor to be considered as well. It was not disputed that since its incorporation and up to the point when it was wound up, AIQ was consistently unprofitable. It suffered substantial losses through the years, requiring constant injections of funds.[567] AIQ's losses were $6,967,588 in

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566 6ABOD at p 495-496, 520, 524, 592-594; AEIC of 4th Df at para 16, p 48-50; AEIC of 5th Df at paras 21-22, p 154; AEIC of 6th Df at paras 15-16, p 85-89; AEIC of 7th Df at para 19.

567 AEIC of 3rd Df at para 10.

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2014,[568] $6,522,504 in 2015,[569] $4,436,927 in 2016,[570] $2,596,818 in 2017,[571] $3,161,050.12 in 2018[572] and $2,185,182.84 in 2019[573] – which amounted to total losses of $25,870,069 over six years. It must be remembered too that AIQ was a "start-up" that had to rely on investors to fund its business operations.[574] Given that AIQ as a start-up had not turned a profit since incorporation and appeared instead to have accumulated substantial losses, it was clear that there was never any guarantee that AIQ would be successful. Even prior to the 4th to 7th Defendants joining the company, AIQ had already been chalking up substantial losses in the years between 2014 and 2017 when Joe was in charge of the company. In short, this was not a situation where a successful company was run aground by rogue directors. Rather, AIQ was simply a company that had never found the proper traction for its business to take off. Notably, the Plaintiffs' expert valuer Mr Andrew Ross ("**Mr Ross**") accepted in cross-examination that if he had not been "instructed [that] the actions of the [3rd to 7th Defendants had] compromised the ability of AIQ to achieve commercialisation of its IP", and if he had not worked on the basis of such an assumption, he would have agreed that "there may be other reasons why AIQ may have succeeded or failed". These reasons could include *inter alia* "the technology or the market… not [being] there or not quite ready".[575]

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568 AEIC of 3rd Df at p 85.

569 AEIC of 3rd Df at p 123.

570 AEIC of 3rd Df at p 152.

571 AEIC of 3rd Df at p 182.

572 AEIC of 3rd Df at p 206.

573 AEIC of 3rd Df at p 208.

574 AEIC of 1st Pf at para 10.

575 Transcript of 18 August 2022 at p 39 ln 3 to 19.

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533 In light of the above reasons, I rejected the Plaintiffs' allegation of oppression in respect of the winding-up of the two companies.

(D) WHETHER THE ASSIGNMENT AGREEMENT WAS COMMERCIALLY UNFAIR

534 As for the Assignment Agreement, the Plaintiffs argued that the agreement was a way for the 3rd to 7th Defendants to misappropriate the Secured Patents and to commercialise the patents for their own benefit, without Joe's involvement. The main thrust of the Plaintiffs' arguments appeared to be that the Assignment Agreement was improper because it gave GSS more rights than he was entitled to under the Deed of Patent Charge. According to the Plaintiffs, these "additional" rights related to the assignment of goodwill to GSS and the provision of an indemnity to GSS.[576]

535 Again, I found the Plaintiffs' arguments to be devoid of merit. First, it was plain that the Assignment Agreement[577] was the means by which GSS enforced the security he had been granted by the Deed of Patent Charge when he entered into the Convertible Loan Agreement with AIQ.[578] The Plaintiffs did not dispute that GSS had the right to enforce his security over the Secured Patents, pursuant to the Deed of Patent Charge. Any allegations about the inadequacy of the consideration of $10 in the Assignment Agreement thus had no merit.

536 Second, while the Plaintiffs sought to insinuate in closing submissions that the inclusion of clauses on goodwill and an indemnity in the Assignment

576 Pf Closing Submissions at para 269.

577 12ABOD at p 98-107.

578 3rd Df Closing Submissions at para 178-183.

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Agreement showed the 4th to 7th Defendants giving undue favour to GSS,[579] these allegations were never pleaded: All that the Plaintiffs pleaded about the Assignment Agreement was that the 4th to 7th Defendants had caused AIQ's IP assets to be disposed of to GSS for little or no consideration so that the development or commercialisation of the VRT could continue without Joe's involvement.[580] Moreover, the complaint about the provision of the indemnity was not even raised in the Plaintiffs' cross-examination of the 3rd to 7th Defendants; and neither Kian Wai nor Marcus was cross-examined about the goodwill clause,[581] despite Leslie making it clear in cross-examination[582] that they were better placed to answer such questions. In yet another instance of déjà vu, I was left without the benefit of any evidence from the persons against whom the Plaintiffs chose to level serious allegations in their closing submissions. In the circumstances, I had to agree with the 3rd to 7th Defendants that the Plaintiffs should not be allowed to take the point in their closing submissions.

537 Third, even if the Plaintiffs were to be allowed to pursue in closing submissions their complaints about the goodwill and indemnity clauses, their arguments were specious. The Assignment Agreement could not be looked at in isolation and had to be read together with the Deed of Patent Charge – since it was executed to give effect to GSS' right under the Deed of Patent Charge to enforce his security when AIQ failed to repay the loan under the Convertible

579 Pf Closing Submissions at para 269(c).

580 SOC (Amendment No.3) at para 85C(2).

581 Transcript of 31 August 2022 at p 157 ln 18-19.

582 3rd Df Reply Submissions at para 40; Transcript of 19 August 2022 at p 19 ln 14 to p 21 ln 15.

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Loan Agreement.[583] Clause 7.1 of the Deed of Patent Charge provided under the heading "Power of Sale" that:[584]

> 7.1 Upon the occurrence of an Event of Default, the Lender or their nominee(s) may, without further notice or authority, sell, dispose of or realise all or any part of the Patents towards the discharge of the costs thereby incurred and of the Secured Indebtedness in such manner as it in its absolute discretion thinks fit.

538 Given that AIQ was unable to pay GSS' demand for repayment, the applicable event of default in the Deed of Patent Charge was that stated under Clause 6.1(a):[585]

> 6.1 Each of the following events shall be an Event of Default:-
>
> (a) the failure of the Chargor to pay any principal, interest or any other sum payable under this Deed and/or the Convertible Loan Agreement on the day on which the same shall be due and payable, or in the case of any sum expressed to be payable on demand, forthwith upon any such demand for the payment thereof being made;

539 Based on these provisions, and given AIQ's failure to repay GSS, GSS was plainly entitled to "realise all or any part of the [Secured Patents]" towards payment of his loan and his costs "in such manner as [GSS] in [his] absolute discretion thinks fit". Clause 3.1 of the Assignment Agreement under the heading "Consideration" was clearly drawn up to allow for GSS' realisation of the Secured Patents pursuant to the Deed of Patent Charge:[586]

> 3.1 In consideration of the sum of 10 U.S Dollar (US$10) now paid by the Assignee to the Assignor (the receipt whereof the Assignor hereby acknowledges) the Assignor hereby assigns unto the Assignee the said Inventions

583 4th-7th Df Closing Submissions at para 182.

584 11ABOD at p 707.

585 11ABOD at p 705.

586 12ABOD at p 103.

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> together with the goodwill of the business relating to the goods in respect of which the said Inventions is TO HOLD the same unto the Assignee absolutely.

540 In the circumstances, I was satisfied that contrary to the Plaintiffs' contention, the Assignment Agreement was *not* drawn up in order to give GSS more rights than he was entitled to under the Deed of Patent Charge.

541 In respect of the assignment of goodwill, I found it entirely reasonable for the goodwill associated with the Secured Patents to be assigned alongside the Secured Patents, since this would enable the Secured Patents to be properly realised or sold *in satisfaction of the debt owing to GSS*. The Plaintiffs had no coherent explanation in any event as to how a strict separation of "the goodwill of the business relating to the goods in respect of which the said [Secured Patents]" and the Secured Patents themselves made any sense.

542 In respect of the inclusion of an indemnity, I noted that AIQ was already obliged under the Deed of Patent Charge to allow GSS to enforce his security over the Secured Patents. If AIQ were to breach this obligation by failing to allow GSS to do so, AIQ would be liable in breach of contract to GSS. This, in substance, was simply what the Assignment Agreement indemnity clause provided for, as may be seen from Clause 5.1 of the Assignment Agreement:[587]

> 5.1 Assignor shall indemnify Assignee against all losses, damages, costs and payments, including reasonable settlements and legal fees, suffered or incurred by Assignee arising from or which is directly or indirectly related to any breach of non-observance of [sic] any term of this Agreement by Assignor.

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587 12ABOD at p 104.

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543 Fourth, the Assignment Agreement was drafted by AIQ's solicitors, and two other sets of lawyers were consulted on it.[588] In other words, independent legal advice was obtained. This was not something cobbled together by the 4th to 7th Defendants on the fly. This evidence would tend to support the 4th to 7th Defendants' submission that in preparing the Assignment Agreement, they were acting in the proper discharge of their duties as directors, as opposed to conniving with GSS to misappropriate AIQ's only substantial asset.

Oppression claim: Summing up

544 For the reasons set out at [196]–[543], I dismissed the Plaintiffs' minority oppression claim in entirety.

Whether there was a conspiracy between the 3rd to 7th Defendants against the Plaintiffs

545 Apart from their minority oppression claim, the Plaintiffs also brought a claim against the Defendants for the tort of conspiracy. The Plaintiffs pleaded both (a) conspiracy by unlawful means[589] and (b) conspiracy by lawful means:[590] *Wu Yang Construction Group Ltd v Zhejiang Jinyi Group Co, Ltd and others* [2006] 4 SLR(R) 451 ("*Wu Yang Construction*") at [81] citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 ("*Quah Kay Tee*"). The Plaintiffs' conspiracy claims substantially followed the narrative that they put forward in their oppression claim.

546 I first outline the applicable legal principles.

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588 Transcript of 25 August 2022 at p 5 ln 20 to p 6 ln 6 and at p 110 ln 7 to 16.

589 SOC (Amendment No 3) at para 86A.

590 SOC (Amendment No 3) at para 86B.

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The applicable legal principles

547 To establish a claim for conspiracy by unlawful means, the Plaintiffs must establish the following elements (*Yuanta Asset Management International Ltd and another v Telemedia Pacific Group Ltd and another and another appeal* [2018] 2 SLR 21 at [142] citing *EFT Holdings Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]; *New Ping Ping Pauline v Eng's Noodles House Pte Ltd and others* [2021] 4 SLR 1317 at [57]; see also Gary Chan, *The Law of Torts in Singapore* (Academy Publishing, 2016) ("*The Law of Torts in Singapore*") at [15.062] – [15.076]):

(a) that there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) that the acts were unlawful;

(d) that the acts were performed in furtherance of an agreement; and

(e) the plaintiffs suffered loss as a result of the conspiracy.

548 In respect of the element of intention to cause damage or injury to the plaintiff, the CA has made it clear that "it is not sufficient for the claimant to show that it was reasonably foreseeable that the claimant would or might suffer damage as a result of the defendant's act" (at [99] of *EFT Holdings*). Instead, *injury to the claimant must have been intended as a means to an end or as an end in itself*. As the CA in *EFT Holdings* explained (at [101]):

> ***A claimant in an action for unlawful means conspiracy would have to show that the unlawful means and the conspiracy were targeted or directed at the claimant. It is***

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> ***not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself.*** As Lord Hoffmann said in *OBG* (at [42] and [62]):
>
> > … It is necessary to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. …
> >
> > …
> >
> > In the *Lumley v Gye* tort, there must be an intention to procure a breach of contract. In the unlawful means tort, there must be an intention to cause loss. The ends which must have been intended are different. … But the concept of intention is in both cases the same. In both cases it is necessary to distinguish between ends, means and consequences. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions.
>
> Lesser states of mind, such as an appreciation that a course of conduct would inevitably harm the claimant, would not amount to an intention to injure, although it may be a factor supporting an inference of intention on the factual circumstances of the case. In *Lonrho plc v Fayed* [1990] 2 QB 479 at 488–489 Woolf LJ observed that the requisite intent (for the tort of causing loss by unlawful means) would be satisfied if the defendant fully appreciated that a course of conduct that he was embarking upon would have a particular consequence to a claimant but nonetheless decided to pursue that course of conduct; or if the defendant deliberately embarked upon a course of conduct while appreciating the probable consequences to the claimant. In our judgment, this is inconsistent with the requirement that intention must be shown. It is simply insufficient in seeking to meet the element of *intention* to show merely that there was knowledge to found an awareness of the likelihood of particular consequences.
>
> [emphasis in original in italics; emphasis added in bold italics]

549 As for a conspiracy by lawful means, this is established when two or more persons combine together with the aim of injuring the plaintiff, resulting

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in damage (*per* the CA in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [37] (citing *Quah Kay Tee*)). The key requirement which a plaintiff needs to show is that there was a "predominant purpose" by the conspirators to cause injury or damage to the plaintiff. The tort of conspiracy by lawful means has this distinctive mental element because it is precisely this predominant purpose to injure which renders the conduct of the defendants, which would otherwise have been lawful, unlawful or illegitimate: *The Law of Torts in Singapore* at [15.057] citing *Wu Yang Construction* at [77]. It bears noting, however, that a predominant purpose is not the same as intention. This is illustrated by the following example (*per* the CA in *Quah Kay Tee* (at [49]):

> Second, there was the "predominant purpose" requirement. To use an analogy, if a thief breaks a window to enter a room, the *predominant purpose*, which is also synonymous with the *motive* or *object*, is to steal. His predominant purpose, however, is not to break the window, although he must have *intended* to break it so as to achieve his main purpose. Thus, a predominant purpose is not the same as intention: see also *Mckernan v Fraser* (1931) 46 CLR 343 at 399–400.
>
> [emphasis in original]

550 As to what could constitute a predominant purpose to cause injury, this was discussed by the court in *SH Cogent Logistics Pte Ltd and another v Singapore Agro Agricultural Pte Ltd and others* [2014] 4 SLR 1208 ("*SH Cogent*"). The plaintiffs in that case were part of a group of companies that held the master tenancy of a state-owned plot of land at the former Bukit Timah Turf Club (the "Site"). The landlord was the Government of Singapore which acted through the Singapore Land Authority ("SLA"). The plaintiffs claimed that the defendants (the previous master tenant of the Site and two of its directors) had conspired to injure the plaintiffs leading up to the handover of the Site from the defendants to the plaintiffs. The court had to determine, *inter alia*, whether there was a predominant purpose on the part of the defendants to cause damage to the

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plaintiffs. The court noted at ([56]) that in most cases of conspiracy, it was difficult to prove that the "conspirators intended to cause damage to a claimant because the acts committed pursuant to the conspiracy" would usually also benefit the conspirators. This, however, was not a difficulty on the facts. Insofar as the proof of conspiracy and the requisite mental element was concerned, that was typically to be inferred from the objective facts (*SH Cogent* at [67]). In *SH Cogent*, the following facts led the court to conclude that there was a predominant purpose to injure:

(a) First, the transcripts of a meeting held on 1 December 2011 showed that the defendants threatened to injure the plaintiffs unless the plaintiffs were willing to provide the defendants with adequate compensation (*SH Cogent* at [66], [69] and [85]).

(b) Second, the defendants persistently pressured the subtenants and licensees to vacate the Site by 31 January 2012. This was done despite SLA's express request that the defendants facilitate a smooth transition in the handover to the plaintiffs (*SH Cogent* at [66], [105] and [106]).

(c) Third, the court found that the defendants did not genuinely believe that they were legally obliged to carry out reinstatement work arising from the lapse of a written permission dated 19 August 2010 which was issued by the Urban Redevelopment Authority (*SH Cogent* at [66], [116], [151] and [152]).

Plaintiffs' position

551 The Plaintiffs pointed to the following unlawful acts which they claimed the 3rd to 7th Defendants had conspired to commit.[591] In the alternative, the

591 Pf Closing Submissions at para 305.

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Plaintiffs claimed that the same acts would still constitute a conspiracy for the predominant purpose of harming Joe – and that they were performed with the sole and predominant intention of injuring the Plaintiffs.[592] These acts were:

(a) Deliberately excluding Joe from the day-to-day management of AIQ and TCP, and the commercial direction of their respective businesses. This was said to be a breach of the Understanding and Agreement between Joe and GSS and/or minority oppression under s 216.

(b) Acting in breach of the Understanding and Agreement by reneging on the 2:1 funding ratio and/or the 2:1 Funding Agreement.

(c) Carrying out the Rights Issue at an undervalue, not for any legitimate fund-raising purpose, but for the predominant purpose of diluting Joe's shareholding in the company. This was said to be a breach of the Understanding and Agreement as Joe was denied his right to convert his loans to equity under the Rights Issue. This was also said to be a breach of the term that GSS would not, whether by himself or through the 4th to 7th Defendants, perform any act which would result in the substantial dilution of Joe's shares in AIQ. There was also a breach of the fiduciary duties owed to AIQ, and this act constituted minority oppression under s 216.

(d) Denying Joe's right to inspect the books and records of AIQ and TCP despite Joe being a director of AIQ and TCP. This was said to be a breach of the Understanding and Agreement, as well as a breach of Joe's rights under s 199(3) of the Companies Act to inspect the company

592 Pf Closing Submissions at paras 367-368.

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documents. It was also said to be an act of minority oppression under s 216.

(e) Wrongfully removing Joe as a director of AIQ and TCP in order to prevent him from investigation into the circumstances surrounding AIQ's purported need to raise further funding for its working capital and to conduct the Rights Issue. This was said to constitute a breach of the Understanding and Agreement, a breach of fiduciary and/or directors' duties owed to AIQ, and a breach of Article 70 of AIQ's Constitution and Article 51(2) of TCP's Constitution.

(f) Procuring AIQ to falsely deny payment of outstanding loans and salary in an effort to disable Joe from utilising some or part of the same to participate in the Rights Issue, whether by set of or direct payment. This was said to constitute a breach of the Understanding and Agreement, a breach of Joe's employment contract, a breach of Joe's loan agreement with AIQ, a breach of the Share Transfer Deed and minority oppression under s 216.

(g) Wrongfully diverting Joe's shareholder loans to AIQ for TCP's use without his consent, as well as diverting AIQ's staff and other resources for the business and benefit of TCP including the diversion of approximately $500,000 of AIQ's funds to TCP for TCP's renovation costs. This was said to be a breach of the Understanding and Agreement, a breach of fiduciary and/or directors' duties as well as a breach of s 163 of the Companies Act.

(h) Procuring the publication of the Special Audit Report containing false allegations of breaches of fiduciary duties against Joe with the intent of casting aspersions on him before AIQ's shareholders and

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providing ostensible justification for GSS' and the 4th to 7th Defendants' actions in causing AIQ to wrongly deny liability for Joe's outstanding loans and salary, as part of their attempt to disable Joe from utilising some or part of the outstanding loans and salary (which were repayable on demand) to participate in the Rights Issue, whether by set off or direct payment. This was said to be a breach of the Understanding and Agreement, a breach of the Share Transfer Deed and Joe's employment contract. It was also said to be a breach of Joe's loan agreement with AIQ and an act of minority oppression under s 216 of the Companies Act.

(i) Conspiring to have AIQ and TCP wound up in order to frustrate Joe's recovery of his outstanding loans and salary, as well as the legal costs incurred by Joe in pursuing the same. This was said to be a breach of the Understanding and Agreement, a breach of the Share Transfer Deed, a breach of Joe's employment contract, a breach of Joe's loan agreement with AIQ and minority oppression under s 216.

(j) Entering into the Assignment Agreement / Misappropriation of the Secured Patents, in order to continue development on the same in Scanto without Joe's involvement. This was said to be a breach of the Understanding and Agreement, a breach of fiduciary and/or directors' duties and a breach of s 160 of the Companies Act.

(k) Deliberately engineering the winding up of AIQ and TCP so that GSS and the 4th to 7th Defendants would be able to continue developing and capitalizing on the VRT without Joe's involvement and as a means to conceal their wrongdoings. This was said to be a breach of the Understanding and Agreement and was a breach of fiduciary and/or directors' duties to AIQ and TCP.

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3rd to 7th Defendants' position

552 In defending the conspiracy claim, the 3rd to 7th Defendants put forward substantially the same narrative as that relied on for purposes of the oppression claim, similar to their defence against the oppression claim.

My Decision

553 It will be seen from [551] that the Plaintiffs' claims for both unlawful means and lawful means conspiracy centred on the same allegations of the same 11 acts. These allegations were also substantially similar to the Plaintiffs' allegations of the acts amounting to oppressive conduct in their s 216 claim. In addressing the 11 allegations, where relevant, I will refer to the findings I made in the context of the s 216 claim; and where necessary, I will repeat an abridged version of those findings.

554 I next address each of the allegations in turn.

(1) Deliberately excluding Joe from day-to-day management of AIQ and TCP

555 According to the Plaintiffs' pleaded case, the (alleged) deliberate exclusion of Joe from the "day-to-day management of AIQ and TCP" constituted unlawful conduct for the purposes of the claim of unlawful means conspiracy because it breached the Understanding and Agreement between Joe and GSS and/or constituted oppressive conduct under s 216 Companies Act.

556 Given that I have found that the Understanding and Agreement did not exist (at [203]–[274]), it followed that this part of the unlawful means conspiracy claim fell away. As for the contention that Joe's exclusion from the management of the two companies constituted oppressive conduct, I have also

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found in the context of the oppression claim, in any event, that Joe's removal from the boards of these two companies was not oppressive (see [427]–[431]).

557 I should highlight that one of the Plaintiffs' arguments was that in the context of their conspiracy claim, their reference to Joe's exclusion from day-to-day management of AIQ and TCP encompassed more than Joe's removal from their boards of directors.[593] According to the Plaintiffs, the deliberate exclusion of Joe from day-to-day management involved a separate series of acts. The problem for the Plaintiffs, however, was that they were unable to explain exactly what acts made up this separate series of acts – apart from reiterating the complaint about Joe's requests for documents from and information on the two companies having been stonewalled.

558 To be clear, the Plaintiffs did not claim that Joe was denied access to *all* documents and information. Joe's accountant, Wong Yuen Ling Lucius ("**Lucius**")[594] testified that Kian Wai *did* engage him "on requests that [Lucius] made on behalf of [Joe] for documents and information".[595] Lucius claimed that there was "a selective refusal" to provide some information.[596] In their closing submissions, the Plaintiffs included a table in which they claimed to have listed and summarised all the various queries posed by Joe to Kian Wai and which were never provided by the latter.[597] These queries were said to have been posed

593 Pf Closing Submissions at para 333.

594 AEIC of Wong Yuen Ling Lucius at paras 2 and 12.

595 Transcript of 18 August 2022 at p 9 ln 6 to 21.

596 Transcript of 18 August 2022 at p 10 ln 7.

597 Pf Closing Submissions at para 113.

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via four requests for documents or information made by Joe on 14 November 2017, 15 January 2018, 18 April 2018, and 10 May 2018 respectively.[598]

559 Regrettably, in yet another apparent instance of last-minute surprises sprung on the defence, this "summary" was brought up only for the first time in the Plaintiffs' closing submissions. While Kian Wai was cross-examined about some of the items listed in the "summary",[599] the Plaintiffs also included in the "summary" additional instances of allegedly unsuccessful requests by Joe which Kian Wai was not given an opportunity in cross-examination to explain.

560 Leaving aside the regrettable procedural breaches by the Plaintiffs, even taking their case at its highest, all that this "summary" purported to show was that *some* of Joe's queries appeared not to have been answered. This would not by any stretch of imagination amount to Joe being "excluded from the day-to-day management of AIQ and TCP". I should add that on the evidence before me, a good number of the requests made by Joe appeared to require AIQ to carry out extra work in order to produce the documents or information requested – including, for example, Joe's request for the "cash-flow projections for AIQ in respect of the VRT", as well as accompanying details and descriptions of funds transferred from AIQ to TCP such as "date, amount, method of transfer", and "who had authorised and made these transfers". From the evidence in the agreed bundles submitted at trial, it did not appear that these were documents which were already readily available within AIQ. In any event, since the Plaintiffs had waited until closing submissions to put in their "summary", they were the ones who had deprived Kian Wai (and the other Directors) of the opportunity to

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598 Pf Closing Submissions at para 112; 5ABOD at p 300, p 611; 6ABOD at p 77, p 695; 10ABOD at p 532.

599 Transcript of 24 August 2022 at p 101 ln 17 to p 105 ln 9; p 116 ln 18 to p 117 ln 21; p 117 ln 10 to p 120 ln 25; p 121 ln 1 to p 124 ln 3.

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clarify whether all the documents listed in the "summary" were documents which already existed at the time of Joe's requests. In *Mukherjee Amitava v DyStar Global Holdings (Singapore) Pte Ltd and others* [2018] 2 SLR 1054 ("*DyStar Global*"), the Court of Appeal agreed (at [37]) that the right to inspection under s 199(3) of the Companies Act would extend only to accounting and other records "that are, at the material time, kept by the company and are therefore *in existence*" [emphasis in original] and that the provision "does not contemplate or call for the *generation and creation of new documents*" [emphasis in original]. In the circumstances, insofar as the Plaintiffs submitted that the nature of the unlawfulness was founded on a breach of s 199(3) of the Companies Act,[600] I declined to infer that these were documents which were already "kept by the company and therefore in existence" at the time of Joe's requests.

561 Further and in any event, the evidence showed that far from exhibiting any pattern of "stonewalling" as characterised by the Plaintiffs, Kian Wai was generally diligent in responding to Joe's many requests for documents and information. For example, following Joe's request on 11 December 2017 for the records of *all* the "expenses for human resources" of AIQ and TCP for the preceding 12 months, Kian Wai worked with AIQ's office manager to retrieve the records and sent these to Joe by the end of the same day.[601] As another example, when asked on 16 December 2017 for financial documents relating to AIQ and the auditors' work, Kian Wai responded on the same day with AIQ's bank statements;[602] and on 30 December 2017, he also sent Lucius information

600 Pf Closing Submissions at S/N 4 of para 305 and at para 339.

601 5ABOD at p 485-492.

602 3ABOD at p 347-348.

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about the 2014 and 2015 balance sheets as well as the relevant auditors' work for the 2014 closing.[603]

562 To recap, therefore, the only real instance of "exclusion from day-to-day management" that the Plaintiffs were able to cite related to the alleged "stonewalling" of Joe's requests for documents and information – but the objective evidence before me failed to disclose any such "stonewalling". This failure was fatal to both the unlawful means and lawful means conspiracy claims.

563 Additionally, the Plaintiffs were unable to adduce any evidence of the *3rd to 7th* Defendants having *combined* to "stonewall" Joe's requests and/or or exclude Joe from "day-to-day management" of the two companies. The evidence which the Plaintiffs cited in support of their allegation of exclusion from "day-to-day management" really only comprised emails *purporting* to show *Kian Wai*'s "stonewalling" of Joe's requests. There was no objective evidence of a *combination* among the *3rd to 7th* Defendants. For the purposes of the lawful means conspiracy claim, there was also no objective evidence of Kian Wai having acted with the *predominant purpose* of injuring Joe by (allegedly) "stonewalling" his requests – and certainly no objective evidence of such *predominant purpose* on the part of the *3rd to 7th Defendants*.

(2) Acting in breach of the Understanding and Agreement by reneging on the 2:1 Funding Agreement

564 The next act which the Plaintiffs alleged was performed in furtherance of an agreement between the 3rd to 7th Defendants was the alleged breach of the 2:1 Funding Agreement, which – it will be recalled – was said to be an

603 5ABOD at p 605-610.

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express term of the Understanding and Agreement between Joe and GSS. As I have found that there was no Understanding and Agreement, there could not be any such express term. It followed that there could not be any breach of such an express term so as to found an unlawful means conspiracy claim.

565 As for the claim in lawful means conspiracy, while it is true that GSS refused to continue funding AIQ together with Joe on a 2:1 ratio, the Plaintiffs were unable to adduce any evidence to prove that there was a *combination* of the *3rd to 7th* Defendants to reject a 2:1 funding ratio. Indeed, the evidence showed that it was clearly GSS' own decision. While the Plaintiffs sought to rely on a number of emails as purported evidence of a *combination* of the *3rd to 7th* Defendants,[604] what the Plaintiffs failed to point out was that these emails only told part of the story. The 4th to 7th Defendants did not dispute that they had at one point tried unsuccessfully to persuade Joe to agree to the funding ratio of 1:2.42 proposed by GSS. However, this simply formed part of their various efforts to keep the funding flowing for AIQ. When it became clear that Joe and GSS would not accept each other's proposed funding ratio, the 4th to 7th Defendants tried to find a compromise by urging both men to consider funding AIQ in the interim on a 1:1 ratio (*ie* in equal proportions). Thus for example, on 18 November 2017, Kian Wai had proposed that both Joe and GSS fund AIQ on a "50:50" basis.[605] On 17 December 2017, Kian Wai continued to push for and encourage GSS to agree to a one-off interim funding measure on a "50:50" basis despite GSS having stated the day before that he was insisting on his 1:2.42 funding ratio.[606] On 5 January 2018, Kian Wai continued to push for an interim 50:50 ratio between Joe and GSS in order for AIQ to meet its funding

604 Pf Closing Submissions at para 312.

605 5ABOD at p 343-344.

606 5ABOD at p 592-594.

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requirements.[607] This was evidence which plainly militated against the Plaintiffs' submission that the 4th to 7th Defendants were in "combination" with GSS on the issue of the funding ratio.

(3) Carrying out the Rights Issue at an undervalue, not for any legitimate fund-raising purpose, but for the predominant purpose of diluting Joe's shareholding in AIQ

566 The next act which the Plaintiffs claimed was performed in furtherance of the 3rd to 7th Defendants' agreement was the alleged conduct of an "undervalued" Rights Issue "without any legitimate fund-raising purpose" on 30 January 2018.[608]

567 In this connection, I have found that there were genuine commercial reasons for the launch of the Rights Issue and for the manner in which it was priced (see [353]–[422] above). Having regard to the findings set out earlier, it followed that the Rights Issue of 30 January 2018 was not an unlawful act which could form the basis of a claim in unlawful means conspiracy. The findings I arrived at on the genuine commercial reasons for the Rights Issue – and on the 4th to 7th Defendants' concerns at the material time – would also militate against the inference of any "predominant purpose" to cause injury or harm to Joe.

(4) Denying Joe's right to inspect the books and records of AIQ and TCP despite Joe being a director of AIQ and TCP

568 The next act which the Plaintiffs claimed was performed in furtherance of the 3rd to 7th Defendants' agreement was the alleged denial of Joe's right to

607 5ABOD at p 751.

608 Pf Closing Submissions at S/N 3 of para 305.

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inspect AIQ's and TCP's books and records despite Joe's position as a director of both companies.

569 For the reasons set out earlier at [557]–[562], I was satisfied that there was no wrongful denial by the 4th to 7th Defendants of Joe's right as a director under s 199 Companies Act to inspect AIQ's and TCP's books and records.

570 In arguing that there was wrongful denial of Joe's right under s 199, the Plaintiffs sought to make much of the 4th to 7th Defendants' conduct in resisting Joe's Inspection Application. The Plaintiffs claimed that this was done for the purpose of buying the 3rd to 7th Defendants time to convene an EGM to get Joe removed as a director of AIQ – and by stripping Joe of his directorship, thereby to compel him to abandon his Inspection Application.[609] However, this argument was unsupported by the objective evidence. The Inspection Application was filed by Joe on 22 May 2018.[610] Based on the documentary evidence available, the 4th to 7th Defendants had on 10 May 2018 already informed the shareholders of AIQ that an EGM was to be held on 28 May 2018, with all the directors being put up for re-election (including Joe).[611] In other words, even before the Inspection Application was filed, the 4th to 7th Defendants had already made known to shareholders the plans for an EGM on 28 May 2018 to re-elect directors; and nothing in the evidence before me indicated that they found themselves needing to "buy time" for this EGM when Joe subsequently filed the Inspection Application on 22 May 2018.

609 Pf Closing Submissions at paras 341-342.

610 AEIC of 6th Df at para 81; AEIC of 1st Pf at para 146..

611 6ABOD at p 802-804.

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571 Additionally, as I observed earlier (at [557]–[562]), the evidence showed that Kian Wai had in fact been accommodating of Joe's many requests for documents and information.[612] In the circumstances, I accepted that the 4th to 7th Defendants had valid reasons for resisting the Inspection Application[613] – at least until the court decided either to issue an order for inspection or to refuse such an order. In this connection, the observations of the court in *Baker, Samuel Cranage v SPH Interactive Pte Ltd* [2022] SGHC 238 ("*Baker*") were helpful (albeit not to the Plaintiffs' case). In *Baker*, the court found that there was nothing unlawful in the defendant directors' approach to the question of the plaintiffs' access to information: the directors had simply resisted the request for information, and followed through after an order was made. The court held (at [73]):

> An application under CA s 199 is readily allowed by the court and so it proved in Mr Baker's case. It is another matter altogether however to treat the company's resistance to such an application as an act of oppression. It has not been established that the application was resisted in bad faith, as opposed to, for example, legitimate concern about the scope of the documents sought. Moreover, I accept the defendants' contention that any prejudice to the plaintiffs was eliminated upon SSTG's compliance with the order obtained by Mr Baker. I note further that the application under CA s 199 was both commenced and concluded while these minority oppression proceedings were afoot. I am not able to find that resistance to this application establishes or fortifies the plaintiffs' case.

572 In similar vein, in the present case, there was no evidence of bad faith on the 4th to 7th Defendants' part.

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612 AEIC of 6th Df at paras 79-81.

613 4th-7th Df Closing Submissions at paras 117-118.

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573 To recap therefore, for the purposes of the unlawful conspiracy, the Plaintiffs were unable to prove that there was wrongful denial of Joe's right under s 199 Companies Act and/or that his right under s 199 was denied.

574 Further and in any event, in respect of both the unlawful and lawful means conspiracy claims, for the reasons set out at [563], the Plaintiffs were unable to prove that there was a *combination* of the *3rd to 7th* Defendants to deny Joe's right under s 199 and/or that they acted to resist his exercise of such right with the predominant purpose of injuring him.

(5) Wrongfully removing Joe as a director of AIQ and TCP in order to prevent him from conducting an investigation into why a Rights Issue was needed to raise further funds for AIQ

575 The next act which the Plaintiffs claimed was performed in furtherance of an agreement between the 3rd to 7th Defendants was the alleged wrongful removal of Joe as a director of AIQ and TCP.

(A) UNLAWFUL MEANS CONSPIRACY

(I) WHETHER THE REMOVAL OF JOE AS A DIRECTOR OF AIQ AND TCP WAS UNLAWFUL CONDUCT

576 In respect of the claim in unlawful means conspiracy, the element of unlawfulness relied on by the Plaintiffs related to the procedural irregularities allegedly committed by the 4th to 7th Defendants in removing Joe from the boards of AIQ and TCP. These were addressed in some detail in the context of the Plaintiffs' oppression claim (see [424]–[431]) above. In gist, the 4th to 7th Defendants were said to have breached Article 70 of AIQ's Constitution and Article 51(2) of TCP's Constitution.

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577 Since the 4th to 7th Defendants have not pleaded reliance on s 392 Companies Act, I will not address s 392 Companies Act.

578 As to whether a breach of AIQ's and TCP's Constitutions may amount to an "unlawful act" for the purposes of a claim in unlawful means conspiracy, it is trite that a breach of contract may satisfy the requirement of an unlawful act (*Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng and others* [2023] SGHC 34 at [126] citing *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 ("*PT Sandipala*") at [52]; *The Monarch Beverage Company (Europe) Ltd v Kickapoo (Malaysia) Sdn Bhd and Another* [2009] SGHC 55 at [73]–[74] and [107]). A company's constitution is a statutory contract between the members of the company (see s 39(1) Companies Act; *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2020] 2 SLR 200 at [40]–[41]). In principle, therefore, a breach of a company's constitution may amount to an "unlawful act" for the purposes of a claim in unlawful means conspiracy.

579 In the present case, however, even if I were to accept that there were breaches of AIQ's Constitution and TCP's Constitution by the 4th to 7th Defendants in the manner of Joe's removal as director and that these breaches could amount to an "unlawful act" for the purposes of their claim in unlawful means conspiracy, the Plaintiffs were unable to prove the element of a *combination* between the 3rd to 7th Defendants.

(II) WHETHER THERE WAS COMBINATION AND AGREEMENT BETWEEN THE 3RD AND 7TH DEFENDANTS TO REMOVE JOE AS A DIRECTOR OF BOTH AIQ AND TCP

580 In this connection, the Plaintiffs cited a number of email discussions between GSS and 4th to 7th Defendants as evidence that they had combined and agreed to remove Joe as a director. In particular, emphasis was placed on the

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email exchanges of 26 May 2018 and 27 May 2018. On examining the relevant emails, however, it was clear to me that the Plaintiffs had misconstrued their contents and/or overstated their significance.

581 Thus, for example, in respect of Kian Wai's email of 26 May 2018[614] to GSS and the other Directors, this email was expressly stated to be a "*short summary" of a meeting with AIQ's lawyer* on the previous day. From the bullet point which stated "So far, every proxy form is supportive of our resolution", it was clear that Kian Wai and AIQ's lawyers had seen the proxy voting forms which had come in prior to the EGM. It will be recalled that the notice of EGM[615] called for shareholders to pass (a) a resolution which would authorise the AIQ board to complete the acquisition of TCP; (b) resolutions for the re-election of each of the existing AIQ directors (including Joe); and (c) a resolution to authorise the board thus re-elected to appoint an independent third party to conduct a special audit to *inter alia* review the accounts and transactions for FY 2014 and FY 2015, to oversee such special audit, and eventually to inform shareholders of the special audit results. The statement that "[s]o far every proxy form is supportive of our resolution" was explained by the very next bullet point which stated, "[w]e do not have any objection vote on our proposed resolution, except for the re-election of Joe". This latter bullet point thus revealed that the proxy voting forms received by AIQ "so far" (*ie* as at 26 May 2018) indicated support for all the resolutions which were to be put forward at the EGM on 28 May 2018 – except for the resolution calling for Joe's re-election: in other words, there had been proxy voting forms which indicated objections to Joe's re-election. The next bullet point then stated that Joe's proxy Lucius had voted in favour of "every resolution" (*ie* including the resolution for Joe's re-election),

614 7ABOD at p 26-27.

615 1ABOD at p 409-410.

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except for the resolution to complete the acquisition of TCP which Lucius abstained from voting on.

582 In short, it would appear that Kian Wai's email of 26 May 2018 – far from being a "battle plan" put forward to GSS and the other Directors for their agreement – was simply an update to the others of what AIQ's lawyers had advised was likely to happen at the 28 May 2018 EGM, given the proxy votes received by that stage.

583 This would explain the first line in GSS' email reply on 27 May 2018.[616] The vague – even perfunctory – line "[t]hank you and [g]ood luck" was hardly indicative of agreement to and/or endorsement of a plan to remove Joe from the AIQ board. If GSS had indeed combined and agreed with the 4th to 7th Defendants to remove Joe from the AIQ board at the EGM, this would necessarily have entailed GSS using his majority voting power at the EGM to vote against Joe's re-election – in which case GSS would surely have acknowledged the virtually certain outcome of the proposed vote. As for the second line ("[h]opefully this is the first step that will take Joe to prison"), this appeared to be a reference to the draft resolution authorising the re-elected board to appoint an independent special auditor.

584 I add that I did not think there was anything sinister in Kian Wai updating GSS on the information received from AIQ's lawyers. By mid-2018, GSS was effectively the sole funder of AIQ; and it would not have been unreasonable for Kian Wai to wish to keep him informed of what the company's lawyers had said about the upcoming EGM. The critical question here was whether – quite apart from informing GSS of what the lawyers had said – Kian

616 7ABOD at p 26.

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Wai and the other directors were seen to have combined with GSS to effect Joe's removal from the board; and as I have explained, the Plaintiffs were unable to prove this.

585 In respect of Joe's removal from the TCP board, there was no evidence at all to support an inference that the 3rd to 7th Defendants had combined and agreed to remove Joe from the board. The Plaintiffs essentially submitted that an *inference* should be drawn of such a combination because removing Joe from the TCP board must have required *concerted* action on the part of GSS and 4th to 7th Defendants.[617] No evidence was proffered in support of this submission; and I declined to draw the inference argued for. The fact that the 4th to 7th Defendants had concluded it was in TCP's interest to remove Joe from its board and the fact that AIQ eventually voted against Joe's re-election were not enough in my view to justify the conclusion that the 3rd to 7th Defendants had combined to remove Joe from the TCP board.

586 The above findings at [580]–[585] applied to both the unlawful means and lawful means conspiracy claims.

(III) WHETHER GSS AND 4TH TO 7TH DEFENDANTS HAD THE INTENTION TO CAUSE DAMAGE OR INJURY TO JOE

587 Finally, even if I were to assume for the sake of argument that the Plaintiffs were able to prove the element of combination between the 3rd to 7th Defendants, I found that they were unable to prove that the 3rd to 7th Defendants acted with the intention to cause damage or injury to Joe. It will be recalled that the test for such intention requires proof that that "*injury to the claimant must have been intended as a means to an end or as an end in itself*"

617 Pf Closing Submissions at para 243.

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(*EFT Holdings* at [101]) (at [548] above). This meant that it was not enough for the Plaintiffs simply to show that harm would be a likely or probable or even inevitable consequence of Joe's removal as a director. Instead, the Plaintiffs had to show that the 3rd to 7th Defendants had *intended to cause harm to Joe as an end itself or as to a means to an end*.

588 In respect of AIQ, the Plaintiffs' case was that the 3rd to 7th Defendants were aiming to remove Joe from the AIQ board in order to block his access to the company's financial records and put an end to his inquiring into the company's affairs.[618] The Plaintiffs also contended that the 3rd to 7th Defendants intended to remove Joe as a director in order to frustrate his attempts at obtaining the relevant information and documents through his Inspection Application.[619]

589 I found that the evidence did not support such a conclusion. First, as I pointed out earlier, far from the Defendants having tried to block Joe's access to the company's financial records and/or to cut off any attempt to seek information, the evidence showed that Kian Wai had all along been trying his best to accommodate Joe's numerous requests for documents and information. Second, by 3 May 2018,[620] Kian Wai had already mentioned in an email the idea of Joe exiting the board in the event all directors were put up for election. By 10 May 2018, all AIQ shareholders had been notified of the EGM to be held on 28 May 2018, where (*inter alia*) the re-election of all directors was to be put to the vote. In contrast, on the Plaintiffs' own evidence, Joe's Inspection

618 SOC (Amendment No.3) at paras 54A-54C.

619 Pf Closing Submissions at para 248.

620 6ABOD at p 779.

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Application was only filed on 23 May 2018.[621] In short, therefore, the evidence did not support an inference that the 3rd to the 7th Defendants decided to remove Joe from the AIQ board in order to prevent him from getting access to the company's financial records and/or asking for information.

590 On the contrary, the evidence pointed to 4th to 7th Defendants having honestly believed that it was in AIQ's interest to remove Joe from the board. It will be recalled that up till the point of Joe's removal as a director of AIQ, AIQ had been struggling with audit issues and had been unable to finalise its FY 2014 and FY 2015 financial statements.[622] I have recounted in detail earlier (at [449]–[456]) how this sorry state of affairs came about because of the auditors' queries about certain suspicious transactions which AIQ had entered into in the earlier period when Joe was a directors but the 4th to 7th Defendants had yet to join the company. It will be recalled too that some of these suspicious transactions involved substantial payments having been made by AIQ to entities in which Joe had an interest. I have also recounted earlier (at [449]–[456]) Joe's repeated failure to provide satisfactory responses to the auditors' queries and the 4th to 7th Defendants' concern about the adverse effect which the audit issues had on AIQ's efforts to raise funds. In relation to TCP, the difficulties which AIQ faced in raising funds due to the lack of "clean" books would obviously also impact TCP, which depended at least in part on loans from AIQ to fund its operations (as at [299]–[307] above). More generally, the concerns over the potentially improper past transactions and Joe's role therein had led the 4th to 7th Defendants to view Joe with considerable circumspection. These circumstances showed that the 4th to 7th Defendants had grounds for harbouring reservations about the manner in which Joe had conducted himself as director –

621 Pf Closing Submissions at para 248.

622 5ABOD at p 421-438; AEIC of 6th Df at paras 26-30.

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and in believing that it was in the companies' best interests to exit him from the boards.

591 Finally, the evidence showed that the 4th to 7th Defendants had sought and acted upon the advice of the companies' lawyers before proceeding with the AIQ EGM and the TCP AGM. For example, in the lead-up to the 28 May 2018 EGM, Kian Wai updated the other Directors on 3 May 2018[623] and 26 May 2018 about advice from AIQ's lawyers.[624] The fact that the 4th to 7th Defendants had sought and acted upon lawyers' advice suggested to me that they were concerned to ensure that they were acting lawfully. This formed yet another piece of evidence that militated against their having harboured any wrongful intent to injure or damage Joe.

592 In light of the above reasons, I rejected the Plaintiffs' contention that the 3rd to 7th Defendants had acted with the intention to injure or harm Joe vis-à-vis his removal as a director of AIQ and TCP. For the same reasons, I also rejected their contention that the 3rd to 7th Defendants had acted with the "predominant purpose" of injuring Joe.

(6) Procuring AIQ to falsely deny Joe's claims for outstanding loans and salary in an effort to disable Joe from utilising some or part of the same to participate in the Rights Issue

593 Next, the Plaintiffs claimed that in furtherance of an agreement between them, the 3rd to 7th Defendants procured AIQ to falsely deny Joe's claims for outstanding loans and salary. As with their oppression claim, the Plaintiffs

623 6ABOD at p 778-779.

624 7ABOD at p 26-27.

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claimed that this was done by the 3rd to 7th Defendants in order to prevent Joe from using the monies to participate in the Rights Issue.

594 I have explained earlier why the 4th to 7th Defendants were justified in refusing Joe's proposal to participate in the Rights Issue by converting his loans into shares (see [370]–[373] above). I have also explained earlier why I found that the 4th to 7th Defendants had valid reasons to resist Joe's claims for payment of outstanding loans and salary at the points in time when he demanded payment – notwithstanding (*inter alia)* the existence of the Share Transfer Deed. In light of these earlier findings, even if it could be said that there had been a breach of AIQ's loan agreement with Joe and/or the employment agreement and/or the Share Transfer Deed, this appeared to me to be a case in which the principle in *Said v Butt* [1920] 3 KB 497 ("*Said v Butt* principle") should apply to confer 4th to 7th Defendants with immunity from personal liability. As the CA explained in *PT Sandipala* (at [53]–[65]), the *Said v Butt* principle provides that when a director acts *bona fide* within the scope of his authority, he is ordinarily immune from tortious liability for procuring his company's breach of contract. Thus, for example, where a company's former managing director sued the other directors for unlawfully conspiring to induce the company to terminate his employment contract with the company, the *Said v Butt* principle would be capable of application if the directors could show that they had acted *bona fide* within the scope of their office (*Chong Hon Kuan Ivan v Levy Maurice and others* [2004] 4 SLR(R) 801 at [43]–[44]). In the present case, it followed from my earlier findings at [486]–[502] that the 4th to 7th Defendants were acting *bona fide* within the scope of their office when they caused AIQ to resist paying off Joe's salary and loan claims at the points in time when he demanded payment. Accordingly, by virtue of the *Said v Butt* principle, they should be entitled to immunity from liability in respect of the Plaintiffs' claims in unlawful and lawful means conspiracy.

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595 Further and in the alternative, the Plaintiffs were unable to point to any objective evidence to show that there was a *combination* of the *3rd to the 7th* Defendants to cause AIQ to wrongfully deny Joe's salary and loan claims. GSS consistently maintained that these were management matters for the 4th to 7th Defendants to handle; and although the Plaintiffs claimed that GSS was in truth the "shadow director" pulling the 4th to 7th Defendants' strings, I have explained (at [283]–[289]) why I found this allegation about GSS' role to be baseless. On the evidence adduced, in short, there was nothing to show that GSS took part in the 4th to 7th Defendants' decisions to cause AIQ to resist payment of Joe's salary and loan claims.

596 Further and in any event, even assuming the Plaintiffs were able to prove a combination of the 3rd to the 7th Defendants, I was satisfied – in light of my findings that the 4th to 7th Defendants had genuine reasons to resist payment – that the Plaintiffs were unable to prove that the Defendants acted with an intention to cause injury to Joe; much less, that they acted for the predominant purpose of causing injury to Joe.

(7) Wrongfully diverting Joe's shareholder loans to AIQ as well as other resources to TCP without Joe's consent

597 Next, the Plaintiffs alleged that the 3rd to 7th Defendants conspired to divert AIQ's funds and other resources to TCP. The Plaintiffs claimed that Joe did not realise that his shareholder loans to AIQ were being diverted to TCP along with other resources such as AIQ staff; and that he never gave his consent to this diversion of resources.

598 I have found earlier that Joe was involved from the outset in the discussions about the setting-up of TCP; that he approved the proposal to set up TCP as a wholly-owned subsidiary of AIQ; and that he understood that upon

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TCP's incorporation, resources from AIQ would have to be channelled to TCP, as there was no other source of funding for TCP at that stage (see [299]–[307]). I have also found that there was ample documentary evidence to show that Joe was regularly updated about TCP's funding needs and was well aware that the monies he lent AIQ were being used – at least in part – to fund TCP's expenses. In the circumstances, it was entirely unmeritorious – indeed, disingenuous – of Joe to claim that AIQ funds and other resources were diverted to TCP without his knowledge and consent. The movement of funds and other resources from AIQ to TCP could not therefore form the basis for a claim by the Plaintiffs in conspiracy (whether by unlawful or lawful means).

(8) Procuring the publication of the SAR containing false allegations of breaches of fiduciary duties against Joe

599 Next, in respect of the Plaintiffs' allegation about the commissioning of the "untrue" and "malicious" Special Audit Report, I have earlier set out in some detail my findings that the 4th to 7th Defendants had genuine reasons to commission a Special Audit Report and subsequently to issue a summary of the findings in this report to all AIQ shareholders (see at [448]–[457], [468]–[471]). I have also explained (at [458]–[467]) why I found that the Plaintiffs were unable to substantiate their allegations about the Special Audit Report being filled with malicious untruths. In light of my earlier findings, I was satisfied that the Plaintiffs could not prove any "unlawful" element in the commissioning of the Special Audit and/or in the issuance of a summary of the findings to AIQ shareholders.

600 In this connection, I noted that the Plaintiffs sought to rely on two emails[625] dated 2 February 2018 and 27 May 2018 respectively, in which GSS

625 Pf Closing Submissions at para 370.

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had expressed the hope that the 4th to 7th Defendants would "not do things in half measure" (email of 2 February 2018), that they "go all the way to drive [Joe] out of AIQ and Singapore",[626] and that the Special Audit would be "the first step that will take Joe to prison" (email of 27 May 2018).[627]

601 Having read the two emails, I did not find them to be of any real assistance to the Plaintiffs' case. GSS' email of 2 February 2018[628] was sent only to Kian Wai. The remark "Let us not do things in half measure. Let's go all the way to drive [Joe] out of AIQ and Singapore" was made by GSS in relation to his suggestion to Kian Wai that complaints against Joe should be lodged with ACRA and the Ministry of Manpower ("**MOM**") in view of Joe's fear of "unwelcome government attention". Despite GSS' request that Kian Wai "share" his email with "the others" (presumably the other Directors), Kian Wai's reply was simply that he had "noted" it and shared it with AIQ's lawyers ("**JLC**"). There was no evidence that Kian Wai – or any of the other Directors – agreed with and endorsed GSS' remarks and suggestions. On the basis of such evidence, it was simply not possible to find that there was a "combination" of the 3rd to 7th Defendants and/or that the 3rd to 7th Defendants acted with the intention to cause injury to Joe. *A fortiori,* there was no evidence on which to find that they acted with the "predominant purpose" of causing injury to Joe.

602 In respect of the second email dated 27 May 2018, while it was true that GSS had alluded to his hope that the Special Audit would be "the first step that will take Joe to prison", as I explained earlier (at [456]), this appeared to me to be an instance of GSS venting his spleen in private; and there was no evidence

626 6ABOD at p 272-273.

627 7ABOD at p 26.

628 6ABOD at p 272-273.

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to show that the 4th to 7th Defendants endorsed his comment or that they worked together thereafter to cause injury to Joe. Indeed, it would appear that Joe was given multiple opportunities to resolve the audit issues with the auditors – and that the Special Audit was launched only after Joe's repeated failure to provide satisfactory answers to the auditors (at [449]–[454] above).

(9) Whether the Plaintiffs' claims about winding-up and the Assignment Agreement are properly based on personal wrongs

(A) CONSPIRING TO HAVE AIQ AND TCP WOUND UP IN ORDER TO FRUSTRATE JOE'S RECOVERY OF HIS OUTSTANDING LOANS AND SALARY, AS WELL AS THE LEGAL COSTS INCURRED BY JOE IN PURSUING THE SAME

603 Next, the Plaintiffs alleged that the 3rd to 7th Defendants unlawfully conspired to wind up AIQ and TCP in order to frustrate Joe's efforts to recover his outstanding loans and salary. As a starting point, I have earlier found that there was no wrongdoing associated with the winding-up of both companies: on the evidence adduced, they were wound up on legitimate grounds: both companies were unable to pay their debts and could not raise further fresh funding (at [512]–[515] above). Accordingly, there was no element of unlawfulness to support a claim of unlawful means conspiracy.

604 I have also found (at [525]–[531]) that despite AIQ's dire financial straits, the 4th to 7th Defendants had put in considerable work to keep the business going and to ask GSS for further funding; further, that their lack of success in developing and commercialising the VRT was in no way due to a lack of effort. I have highlighted too (at [532]) AIQ's consistent loss-making record – even during the three-year period from 2014 to 2017, when Joe was a director and prior to the 4th to 7th Defendants joining the board. Having regard to these findings, I found that the Plaintiffs could not prove that the 3rd to 7th Defendants had combined and agreed to engineer the winding-up of AIQ and

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TCP, nor could the Plaintiffs prove that the 3rd to 7th Defendants had the intention (much less, "predominant purpose") to cause injury to Joe by winding up the companies.

(B) ASSIGNMENT AGREEMENT / MISAPPROPRIATION OF THE SECURED PATENTS IN ORDER TO CONTINUE DEVELOPMENT ON THE SAME IN SCANTO WITHOUT JOE'S INVOLVEMENT

605 The Plaintiffs also alleged that the 3rd to 7th Defendants unlawfully conspired to misappropriate the Secured Patents from AIQ for GSS' benefit, by causing AIQ to enter into the Assignment Agreement with GSS. I have earlier found that there was no wrongful conduct on the part of the 3rd to 7th Defendants in relation to the Assignment Agreement (see [534]–[543]). Given my findings, there was no element of unlawfulness to support a claim of unlawful means conspiracy.

606 The Plaintiffs also failed to satisfy me that the 3rd to 7th Defendants had the intention to cause injury to Joe by bringing about the Assignment Agreement; much less, that they acted with the predominant purpose of causing Joe injury or harm[629]. In this connection, the two emails cited by the Plaintiffs were taken out of context and did not in fact provide any real support for the Plaintiffs' case. The first email was the email from GSS dated 2 February 2018[630]; and while GSS did in this email suggest to Kian Wai that complaints should be made to ACRA and MOM about Joe's record as a director, it was clear that Kian Wai's only response was to acknowledge that he would share GSS' comments with AIQ's lawyers: there was no evidence that Kian Wai – or the 4th to 7th Defendants as a whole – agreed with and endorsed GSS'

629 Pf Closing Submissions at paras 366-372.

630 6ABOD at p 272-273.

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suggestion about using Joe's fear of "unwelcome government attention" to "drive him out of AIQ and Singapore". Nor was there any evidence that GSS' suggestion that complaints be made to ACRA and MOM was ever taken up. More fundamentally, there was no discussion in this email of GSS' purported desire and/or plans to make use of AIQ's financial woes to obtain the Secured Patents on the cheap. As for the second email, this was the oft-cited email of 27 May 2018[631] in which GSS, upon hearing of the impending launch of a Special Audit, expressed the hope that it would be the "first step" that would "take Joe to prison". I have noted earlier that this remark appeared to be an instance of GSS venting his spleen in private. More importantly, again, there was no discussion in this email of GSS' purported desire and/or plans to make use of AIQ's financial woes to obtain the Secured Patents on the cheap. In the circumstances, I did not find that either email offered any support to the Plaintiffs' claims of conspiracy vis-à-vis the Assignment Agreement.

607 Finally, I rejected the Plaintiffs' contention that the 4th to 7th Defendants had "simply rolled over without any resistance", when GSS had brought his winding up application against AIQ, when GSS would have been required to account to AIQ for the balance of any proceeds from the Secured Patents.[632] Having regard to the findings set out at [513]–[515], and having regard in particular to the fact that the Secured Patents had failed to generate any monetary value or returns in all the time since their registration, there was simply no basis for the Plaintiffs to insinuate that the Secured Patents could have been used to reduce or discharge the sums owing under GSS' Convertible Loan Agreement.

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631 7ABOD at p 26.

632 Pf Closing Submissions at para 371.

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(C) DELIBERATELY ENGINEERING THE WINDING UP OF AIQ AND TCP SO THAT GSS AND THE 4TH TO 7TH DEFENDANTS WOULD BE ABLE TO CONTINUE DEVELOPING AND CAPITALIZING ON THE VRT WITHOUT JOE'S INVOLVEMENT AND AS A MEANS TO CONCEAL THEIR WRONGDOINGS

608 This allegation was in essence a combination of both the allegations at (A) and (B). For the reasons set out at [603]–[607], I found that the Plaintiffs were unable to prove their claims in both unlawful means and lawful means conspiracy.

Conspiracy claim: Summing up

609 For the reasons set out at [553]–[608], I dismissed the Plaintiffs' claims of unlawful means and lawful means conspiracy in entirety.

Conclusion

610 In conclusion, given that the Plaintiffs' claims in oppression and in conspiracy were dismissed in entirety and given that costs should follow the event, the 3rd to 7th Defendants were awarded their costs of the proceedings on the standard basis. For the reasons orally pronounced at the hearing on costs on 18 August 2023, I ordered the Plaintiffs to pay GSS costs of $360,000 (excluding disbursements) and to pay the 4th to 7th Defendants costs of $460,000 (excluding disbursements).

Mavis Chionh Sze Chyi
Judge of the High Court

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Yeap Poh Leong Andre SC, Yam Wern-Jhien, Lim Tiong Garn Jason and Lee Jin Loong (Rajah & Tann Singapore LLP) for the first and second plaintiffs;
Tan Tee Jim SC, Gan Theng Chong, Lee Junting Basil, Low Yu Xuan and Lim Ray Zheng Valen (Lee & Lee) for the third defendant;
Siraj Omar SC, Premalatha Silwaraju and Audie Wong Cheng Siew (Drew & Napier LLC) for the fourth to seventh defendants.

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