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

[2024] SGHC 246

Originating Claim No 475 of 2023

Between

AP Automotive Services Pte Ltd

… *Claimant*

And

Liew Nyok Wah

… *Defendant*

And Between

Liew Nyok Wah

… *Claimant in counterclaim*

And

AP Automotive Services Pte Ltd

… *Defendant in counterclaim*

EX TEMPORE JUDGMENT

[Companies — Directors — *De facto*]
[Companies — Directors — Shadow directors]
[Companies — Directors — Duties — Breach of directors' duties]

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v
Liew Nyok Wah

[2024] SGHC 246

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25 September 2024

Hri Kumar Nair J:

Introduction

1 Three long-term friends decided to embark on an entrepreneurial journey together. They incorporated a company and each was a shareholder in almost equal proportions. At the outset of their venture, two of them focused on securing funding for their company, while the third was appointed the sole director and managed its operations. However, the company's need for capital grew and so did the burden on the shareholders. Their relationship strained and disputes arose amongst them, particularly in relation to the company's funding. Much of the dispute turned on the following questions: (a) did the shareholders agree to make financial contributions by way of capital injections?; and (b) were the contributions in fact capital injections or loans tethered by expectations of repayment?

Brief Facts

2 The claimant (the "Company") has three shareholders: the defendant ("Mr Liew"), Mr Teo Ying Ping ("Mr Teo") and Mr Ho Siow Poh ("Mr Ho"). Mr Ho held the position of Managing Director of the Company, and was its sole director on record.

3 The Company was incorporated on 5 August 2020 with a paid-up capital of $100,000.[1] Mr Teo and Mr Liew held 33% of the Company's shares each, while Mr Ho held the remaining 34%.

4 Ms Liew Shulin Mrs Alexander Chong ("Ms Liew"), Mr Liew's daughter, joined the Company shortly after its incorporation and was involved in the Company's finance and business operations. Mr Marcus Teo Xian Jun ("Mr Marcus Teo"), Mr Teo's son, joined the Company in 2021 and was subsequently appointed its Chief Financial Officer.

5 Throughout the life of the Company, Mr Teo and Mr Liew contributed funds towards the Company. At its inception, they contributed their personal funds. Later, some of the financial contributions were by way of procuring loans by third parties to themselves, with an onward transfer of funds to the Company, or to the Company directly. For the avoidance of doubt, I use the term "contributions" loosely such that it may refer to both capital injections and loans.

6 In or around May 2023, disagreements over the funding arrangements of the Company caused the shareholders to fall out. The Company eventually commenced this action against Mr Liew on 25 July 2023.

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[1] 15AB34–35, 44.

7 At around the same time, on 27 July 2023, Ms Liew's employment with the Company was terminated.

8 Mr Ho, Mr Teo and Mr Marcus Teo gave evidence on behalf of the Company, while Mr Liew and Ms Liew gave evidence in support of Mr Liew's defence and counterclaim.

The Company's claim

9 The Company's *pleaded* action against Mr Liew is essentially premised on the following:

(a) an agreement between Mr Ho, Mr Teo and Mr Liew that the latter two would fund the Company with matching, dollar-to-dollar *capital* injections (the "Agreement");[2]

(b) Mr Liew acting in breach of the Agreement by procuring third parties to provide loans to the Company instead of injecting his own funds as capital; and

(c) Mr Liew acting in breach of his fiduciary duties (as a *de facto* or shadow director) by causing the Company to repay those third-party loans, thereby prejudicing its financial ability to continue its business and causing loss.

10 Leaving aside the issue of whether Mr Liew is a *de facto* or shadow director and owes the Company fiduciary duties, the Company's pleaded claim fails on several grounds.

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[2] Statement of Claim (Amendment No. 1) dated 16 October 2023 ("SOC") at para 9(b).

The Agreement

11 As a preliminary point, the Company's pleaded case is that the agreement to fund the Company was entered between the three shareholders,[3] and *not* the Company. In the circumstances, in so far as Mr Liew may have breached an agreement to match Mr Teo's contributions, the Company has no standing to sue and Mr Liew cannot be in breach of fiduciary duties (assuming he has any) for failing to do so.

12 In any case, I find that the Company has failed to establish the Agreement.

13 First, the evidence in support of the Agreement is weak.

(a) There is nothing in writing to evidence the Agreement.

(b) Mr Ho gave unclear and inconsistent evidence. He claimed in his affidavit of evidence-in-chief ("AEIC") that Mr Teo and Mr Liew had agreed to inject $500,000 of capital each into the Company.[4] However, he admitted under cross-examination that while he had *proposed* a paid-up capital sum of $1m, Mr Teo and Mr Liew only agreed to provide an initial capital sum of $50,000 each.

(c) Mr Ho testified that he was not concerned about the nature of the funding so long as the Company was able to do its business. In this regard, Mr Ho was ambiguous in his AEIC as he referred to Mr Teo and

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3 SOC at para 9(b).

4 Affidavit of Evidence-in-Chief ("AEIC") of Ho Siow Poh dated 25 July 2024 ("AEIC Ho") at para 10.

Mr Liew being obliged to provide "funds or capital injections".[5] Mr Teo similarly agreed under cross-examination that the Company was not concerned about where the funding came from, but was only concerned that it had funding to carry on business operations.

(d) Mr Teo testified that if the Company made profits, it should repay his and Mr Liew's contributions first, and the balance would be divided between the shareholders according to the respective shareholdings. The Company adopted the same position in its closing submissions.[6] Such distribution of funds is consistent with Mr Teo's and Mr Liew's contributions being loans.

(e) The financial statements of the Company[7] and its filing with the Accounting and Corporate Regulatory Authority ("ACRA")[8] showed that its share capital remained at $100,000. Mr Ho could not explain why that was so, other than weakly suggesting that he was focused on running the Company. But Mr Ho also testified that businesses which dealt with the Company would look to its paid-up capital as a measure of its viability, which makes his failure to update the ACRA records suspect.

14 Second, the three shareholders agreed that the Company would pay Mr Teo and Mr Liew interest on the funds they provided.[9] This is consistent

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5 AEIC Ho at para 11.

6 Claimant's Closing Skeletal Submissions dated 23 September 2024 ("Cl Subs") at para 15.

7 11AB18.

8 15AB35, 45.

9 AEIC Ho at para 65; AEIC of Teo Yin Ping dated 23 July 2024 ("AEIC Teo") at paras 22, 24, 76; AEIC of Liew Nyok Wah dated 25 July 2024 ("AEIC Liew") at paras 63, 83.

with the injections being loans and not capital. Significantly, the undisputed evidence is that interest was only paid on the contributions after Mr Liew's and Mr Teo's initial injection of $100,000 for the Company's paid-up capital[10] – this supports Mr Liew's case that *only* the initial $100,000 was a capital injection.

15 Third, the evidence is that Mr Teo himself provided funds to the Company by way of loans:

(a) With respect to Mr Teo's contribution of $100,000 made on 7 April 2021,[11] Mr Teo had sent a WhatsApp message to Ms Liew stating that he had passed a cheque of the same sum dated 1 April 2021 to Mr Ho and that it was "for short term for 2 months repayment and interest rate is 1.5[%] per month".[12] Mr Teo accepted under cross-examination that this was a short-term loan. However, this contribution was captured in the table of "capital" contributions (the "Table") in the Company's Further and Better Particulars dated 27 September 2023[13] and in Mr Ho's AEIC,[14] the contents of which were confirmed by Mr Teo in his own AEIC.[15]

(b) Of the $2.22m in "capital" the Company claimed was provided by Mr Teo,[16] at least $300,000 was a loan taken by the Company from

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10 AEIC Liew at paras 66, 76.

11 12AB272–287.

12 AEIC of Liew Shulin Mrs Alexander Chong dated 25 July 2024 ("AEIC LSL") at p 88.

13 Further and Better Particulars of the Statement of Claim filed on 25 July 2023 dated 27 September 2023 ("FNBP") at pp 9–10.

14 AEIC Ho at para 39.

15 AEIC Teo at para 4.

16 FNBP at pp 44–45; AEIC Ho at para 39.

Junk Yard Dog Ventures Pte Ltd ("Junk Yard Dog").[17] Mr Teo conceded under cross-examination that "there was no question" about this being a loan from Junk Yard Dog to the Company. In fact, Mr Ho was not honest when he represented that the $300,000 were Mr Teo's funds in the Table. When challenged, he claimed he was mistaken and had relied on "accounts" that had been provided to him but was then unable to identify those "accounts". In fact, the Company's own accounting records had reclassified this contribution to reflect that this was a loan from Junk Yard Dog.[18] This also contradicts the evidence in Mr Teo's AEIC[19] and the Company's pleaded case[20] that this sum of $300,000 was a capital injection by Mr Teo.

16 Fourth, part of the funds Mr Teo contributed was repaid, which contradicts the Company's and his evidence that these were capital contributions:

(a) Out of the $300,000 borrowed from Junk Yard Dog, which was represented as Mr Teo's capital contribution in the Table,[21] $200,000 had been repaid.[22]

(b) Mr Teo himself was repaid a sum of $160,000 on 14 January 2021.[23] This repayment was, however, omitted from the

17 14AB80–103; 12AB273.

18 11AB19; 13AB88.

19 AEIC Teo at paras 60, 62, 77.

20 SOC at paras 9(b), 10, 12.

21 FNBP at pp 9–10; AEIC Ho at para 39.

22 13AB88.

23 11AB19.

Table. Under cross-examination, Mr Ho sought to characterise this payment as a loan to Mr Teo. Mr Teo however claimed that this sum did not belong to him and was due to others. Neither explanation was corroborated by the evidence. Mr Teo nevertheless did accept that the Company would not have paid him this sum if he did not request it. He further conceded that if his contributions were *capital* contributions, the Company could not return this sum to him.

(c) Mr Teo was repaid $15,000 on 20 December 2022.[24] He was unable to explain why the Company was paying him this sum.

(d) The Company and Mr Teo claimed that he made a capital contribution of $260,000 on 8 October 2021.[25] These funds were obtained by Mr Teo taking up a loan of $260,000 by way of a hire-purchase agreement over his car that was due for a renewal of its Certificate of Entitlement ("COE").[26] Under this loan, a total sum of $311,740 – comprising of the principal and interest – was to be repaid across 60 monthly instalments.[27] The principal sum of $260,000 was paid to the Company and approximately $60,000 was thereafter used for the COE renewal.[28] The Company agreed to assume the monthly instalments to the finance company on behalf of Mr Teo in the amount of $5,196, and began making payment on 8 October 2021 (which repayments ceased a few months later as the Company ran out of

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24 11AB20; 12AB287.

25 FNBP at pp 9–10; AEIC Ho at para 39; AEIC Teo at para 53.

26 AEIC Teo at paras 52–53.

27 14AB108.

28 11AB19.

monies).[29] In effect, Mr Teo contributed approximately $200,000, and not $260,000, to the Company. More importantly, by assuming the obligation to pay the monthly instalments on behalf of Mr Teo (which included payment of both the principal sum and interest), the Company had agreed to repay Mr Teo his contribution. Mr Ho conceded under cross-examination that this contribution can be characterised as Mr Teo *lending* $200,000 to the Company, which contradicts his AEIC where he stated that this transaction enabled Mr Teo "to inject into the [C]ompany his *capital* contribution (*$260,000*)" [emphasis added].[30] On this point, I digress to note that even though Mr Teo did not, in effect, contribute the full sum of $260,000 to the Company, he nevertheless still disagreed that his contribution was only $200,000.

17 Fifth, Mr Ho and Mr Teo did not object to Mr Liew procuring third parties to loan monies to meet his alleged obligation to make financial contributions. The Company complained that Mr Liew procured the Company to take a $500,000 loan from Mengkim Holdings Pte Ltd ("Mengkim").[31] However, Mr Ho testified that he, on behalf of the Company, entered into the loan agreement with Mengkim as it was in the Company's best interests. Further, Mr Teo was aware that the Company was entering into the loan agreement with Mengkim before it was signed, but neither he nor Mr Ho objected to the Mengkim loan on the basis that Mr Liew himself was obliged to provide the funds as his capital contribution. This suggests that there was no obligation to make capital contributions (beyond the initial paid up capital of $100,000) and the Company was only concerned with having funds to carry on

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29 11AB19.

30 AEIC Ho at para 42.

31 SOC at para 15.

its business. Indeed, as stated (see above at [15(b)]), Mr Teo himself arranged for the Company to borrow $300,000 from Junk Yard Dog.

18 Sixth, the Company's internal documents consistently recorded Mr Teo's and Mr Liew's contributions as loans. The funds provided by them were recorded in the Company's accounting records and financial statements as "Loan[s] from Director[s]".[32] The Company's explanation for this was that the records were maintained by Ms Liew and that the entries were made to favour Mr Liew.[33] I reject this for the following reasons:

(a) These entries were made even before the dispute arose between the shareholders, and there was no reason to falsely record the nature of the funding.

(b) Mr Ho and Mr Teo always had access to the Company's accounting records and were aware of their contents, but did not instruct Ms Liew to amend the same. Indeed, Mr Teo deposed that he and Mr Ho had, in *November 2020*, noticed that the contributions were labelled as "directors' loans" to the Company,[34] but they did nothing meaningful about this.

(c) Ms Liew regularly prepared a "loan sheet" which she shared within the "AP Accounting Department" WhatsApp chatgroup – which included Mr Teo and Mr Marcus Teo – (the "Group Chat"),[35] where monies received were recorded with headers such as "Date of Loan", "Expiry Date of Loan"

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32 11AB19; 12AB272–287.

33 SOC at paras 5A(c)–(d).

34 AEIC Teo at para 21.

35 AEIC LSL at paras 80, 82, 88.

and "Loan interest/month".[36] Mr Teo never raised objection to the contents of the loan sheets or the description of the funds.

(d) Even after Mr Ho took over the financial documents and accounting records in August 2023 after Ms Liew's departure from the Company[37], he took no steps to amend the accounting records.

(e) Mr Ho signed a Creditors Confirmation Request dated 9 January 2023, whereby he confirmed that the Company owed Mr Liew $1.03m as at 31 July 2022.[38]

(f) Indeed, the Company's most updated accounts tendered in court – which the Company intended to adopt at its Annual General Meeting this year – reflect the amounts owed to Mr Liew and Mr Teo as loans.[39] No reasonable explanation was given as to why they have still not been amended, although it is not disputed that Mr Liew was not involved in the management of the Company after his falling out with Mr Ho and Mr Teo in or around May 2023.

(g) In contrast, there are no internal documents which refer to the contributions as capital payments or support such a description.

19 The Company relied on Mr Liew's statements in the transcript of the recording of his meeting with Mr Ho and Mr Teo on 2 May 2023 (the

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36 12AB272–287.

37 15AB185.

38 12AB257.

39 Affidavit of Ho Siow Poh dated 13 July 2024 at p 108.

"Transcript")[40] to establish that the contributions were capital injections. This does not assist the Company:

(a) The Company first focused on an extract where Mr Liew appears to have acknowledged that there was an agreement with Mr Teo under which "[e]ach is matching 1 to 1".[41] Even if I accept that Mr Liew did agree to match Mr Teo's contributions – which he attempted to resile from under cross-examination – there is nothing in this statement on the *nature* of the contributions.

(b) The Company also relied on the fact that Mr Teo and Mr Liew were discussing a buy-out of each other for a sum of $500,000–700,000.[42] Again, this does not demonstrate the nature of their contributions and only speaks towards the value they ascribed to the Company.

(c) Importantly, it was telling that throughout the discussion, there was no allegation that Mr Liew had wrongfully procured the Company to repay him his contributions or the loans to third parties, even though the context of the discussion was the Company's financial problems.

(d) For completeness, the Company appears to rely on Mr Liew's reference to his contributions as "capital". However, the discussions were in Mandarin and Mr Liew maintained that the particular word he used could also mean "a principal sum" and thus was a reference to the principal sums he loaned to the Company.[43] The Company did not call

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40 AEIC Ho at paras 63–64; AEIC Teo at paras 74–75.

41 2AB199.

42 2AB200.

43 AEIC Liew at para 89.

the maker of the Transcript to address this contention; neither did it cross-examine Mr Liew on this aspect of the Transcript. I therefore disregard this argument.

20 In sum, the Company has not discharged its burden of proving that the contributions by Mr Teo and Mr Liew were capital injections instead of loans. Instead, I find that the evidence supports the finding that Mr Liew's contributions were in fact loans.

21 In addition, Mr Ho and Mr Teo's evidence that Mr Liew and Mr Teo were *legally* obliged to provide dollar-to-dollar *funding* is not supported by the evidence:

(a) I find that Mr Ho was dishonest, or at least reckless, in his evidence. The Table (found in his AEIC) was presented in a manner to give the impression that Mr Teo's and Mr Liew's financial contributions closely matched. But the Table was riddled with errors. As it turned out, Mr Teo and Mr Liew (whether by themselves or through third parties they procured) contributed net sums of $2,124,407 and $1.8m respectively (excluding their initial capital injections of $50,000 on the incorporation of the Company),[44] instead of sums of $2.22m and $2.1m as expressed in the Table, as of 8 October 2021. The Table failed to (i) account for a withdrawal of the sum of $160,000 to Mr Teo on 14 January 2021; and (ii) accurately reflect Mr Teo's contribution through the hire-purchase loan taken on his car. The Table also wrongly included an additional contribution of $300,000 by Mr Liew on

[44] 11AB19.

2 August 2021 which was not supported by the Company's records[45] or Mr Liew's evidence.[46]

(b) Notwithstanding the difference in contributions, whether on the Company's erroneous computation or otherwise, neither Mr Teo nor Mr Ho ever made any request to, much less demand, Mr Liew to match Mr Teo's contributions.

The Matching Dollar Agreement

22 Notwithstanding the pleaded case on the Agreement, the Company fundamentally changed its case in its closing submissions. It abandoned its case that Mr Liew was obliged to make *capital* contributions, arguing instead that there was an agreement for Mr Teo and Mr Liew to fund the Company on a dollar-to-dollar basis (the "Matching Dollar Agreement"),[47] and that the Company was a party to this agreement.[48] It asserted that the agreement was simply to fund the Company[49] *regardless* of the source of the funds (be it by way of Mr Teo's and Mr Liew's personal funding, funds from loans taken by Mr Teo and Mr Liew being channelled to the Company, or Mr Teo and Mr Liew procuring third party loans that the Company would obtain in its own name). This is significant because on the Company's pleaded case, the shareholders could not withdraw their contributions but in the case of the Matching Dollar Agreement, the shareholders could do so. In making this new case, the Company now accepts that none of the shareholders "truly thought about, much less

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45 11AB19.

46 AEIC Liew at para 66.

47 Cl Subs at para 3(c).

48 Cl Subs at para 4.

49 Cl Subs at para 15.

agreed, on whether Mr Liew's and Mr Teo's funding to support [the Company] were to be debt or equity".[50] This admission undermines its pleaded case on the Agreement.

23 Preliminarily, I note that the Company defined the Matching Dollar Agreement by reference to what Mr Teo and Mr Liew *in fact* did prior to August or October 2021, instead of what the shareholders *agreed to do*. This puts the cart before the horse.

24 This new case was not pleaded, and I therefore reject the same. In any event, I find that the Company's case for the Matching Dollar Agreement also fails for the following reasons:

(a) The Matching Dollar Agreement is not borne out by the evidence as the parties did not conduct themselves in a manner to reach matching contributions. The contributions by Mr Teo and Mr Liew appear to have been made in a voluntary, *ad hoc* manner. For example, as of 8 January 2021, Mr Liew was responsible for funding a total sum of $1.3m while Mr Teo was responsible for $960,000 only. Notwithstanding this, Mr Teo *withdrew* $160,000 from the Company on the same day, reducing his contributions even further.[51]

(b) There is no contemporaneous evidence of the shareholders or the Company attempting to enforce the Matching Dollar Agreement against Mr Teo or Mr Liew when either of them were behind on their contributions.

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50 Cl Subs at para 14.

51 11AB19.

(c) In 2022, when the Company was paying out its third-party loans and the shareholders' loans, it did not rationalise the repayments against the Matching Dollar Agreement. To the same end, neither Mr Teo nor Mr Liew were asked to secure replacement funding for the third-party loans that were repaid.

(d) In so far as the Company relies on Mr Liew's statements in the Transcript, this was not put to Mr Liew under cross-examination. There is also some ambiguity as to what Mr Liew meant in that context. In any event, there is overwhelming evidence that trumps this isolated and unreliable piece of evidence.

25 At its highest, I find that there was an *expectation* or *understanding* amongst the shareholders that Mr Teo and Mr Liew were to fund the Company to the best of their ability. But this certainly does not rise to the level of a *legal obligation*. As the Company itself recognises, "the dynamics between Mr Ho, Mr Liew and Mr Teo created the mess that is before this Honourable Court" and to that end, the shareholders did not have a clear plan on how they were going to fund the Company.[52] At best, there was a good faith understanding that Mr Teo and Mr Liew would help the Company secure funding.

26 As an extension of the Matching Dollar Agreement, the Company sought to imply an additional term that Mr Liew and Mr Teo were only entitled to withdraw their funding once the Company turned a profit or alternatively so long as the Company remained sufficiently funded. The Company relied on the case of *Wee Kah Lee v Silverdale Investment Pte Ltd* [2000] 2 SLR(R) 838 ("*Wee Kah Lee*") in arguing that this implication is necessary.

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52 Cl Subs at para 14.

27 This aspect of the Company's case runs into several challenges as well and is not made out:

(a) The implication of this term to the agreement between the shareholders (and the Company) was not pleaded.

(b) The implied term effectively makes a distinction between funds loaned to the Company by a third party (but procured by Mr Liew or Mr Teo) and contributions by Mr Liew or Mr Teo themselves (whether by way of their personal funds or personal loans obtained by them). For the former, the Company had no complaint about making the repayments to the third parties but for the latter, the Company argued that its shareholders would be restricted from making such withdrawals. However, this does not reconcile with the fact that the Company was agnostic as to its source of funding; on this premise, there is no reason for the Company to discriminate between funds from the shareholders themselves and funds from third parties. If the Company accepts that the third parties were entitled to be repaid their loans, so too would the shareholders. In so far as the Company argues that repayments to third parties must be accompanied by a corresponding obligation on the respective shareholder to secure replacement funding, there is no evidence of requests for such being made at the time of the repayments.

(c) The evidence shows that the parties did not consider this implied term to be part of their arrangement. The Company had made repayments to the shareholders even in circumstances when it required funding and had accrued losses, including (i) the withdrawal of the sum of $160,000 to Mr Teo on 14 January 2021; (ii) the withdrawal of two sums of $15,000 to Mr Teo and Mr Liew on 27 December 2022; and (iii) the ongoing withdrawal of Mr Teo's contribution through the hire-

> purchase loan taken on his car in the form of the monthly instalments being made by the Company. Further, Mr Ho, as the Managing Director, allowed the Company to make repayments on *Mr Liew's* loans from funds obtained from Tan Bee Hong and Ban Leong. On the part of Mr Teo, he had made a short-term loan of $100,000 on 7 April 2021 *which he expected to be repaid within two months* (see above at [15(a)]).

28 *Wee Kah Lee* can easily be distinguished. In that case, the plaintiff was a shareholder in the defendant-company, which was the developer of a residential property. The plaintiff had advanced loans to the defendant for the expenses related to the development project. The plaintiff later asked the defendant for the repayment of his loans, which the company refused on the basis that it was premature because the sale of the properties on the development had yet to be completed and the monies could not be paid out to the shareholders. The issue before the court there was whether there should be an implied term in respect of when the loans were repayable. The court found that it was necessary to imply a term that the plaintiff's loan was to be repaid only after the development project was completed and the project accounts had been finalised.

29 Unlike the present case, the term sought to be implied in *Wee Kah Lee* was expressly pleaded by the defendant. The factual context in *Wee Kah Lee* is starkly different: the court there recognised that the loans were for a specific purpose – the property development which had a fixed time frame – and the withdrawal of the funds was linked to that specific purpose. In this case, there is no specific purpose for the loans beyond the general purpose to fund the Company's operations. There is also no support for the proposition that an analogous time frame in the present case is the point in time when the Company turned a profit.

The alleged breach of fiduciary duties by Mr Liew

30 As I have found that the funds provided by Mr Liew were loans (see above at [20]) and that there was no restriction on the withdrawal of those funds (see above at [27]), the premise of the Company's claim must fail. Mr Liew was entitled to the repayment of his loans and there cannot be a breach of fiduciary duties in these circumstances.

31 In any event, the Company's case that Mr Liew had procured or caused the Company to make the repayments to himself or third parties is difficult to understand. Mr Ho, the Company's Managing Director, was aware of and had *approved* these repayments. In other words, Mr Ho procured the Company to bring this action against Mr Liew for something which he had authorised. Mr Ho's only apparent excuse (which was not put to Mr Liew) was that he gave in to Mr Liew's demands because Mr Liew would otherwise raise a storm.[53] The Company's counsel conceded, in his oral opening statement, that it was not the Company's case that such "pressure" amounted to duress, undue influence or any other basis which resulted in Mr Ho's will being suborned. In any event, I reject the Company's explanation:

(a) Mr Ho gave the same reason for agreeing to the Mengkim loan,[54] but admitted under cross-examination that he agreed to the loan because the Company needed funds and it was in the Company's interests to take up the loan. In any case, Mr Ho's allegation that Mr Liew forced him to sign the Mengkim loan was not put to Mr Liew.

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53 AEIC Ho at para 25.

54 AEIC Ho at para 25.

(b) Mr Ho's evidence is internally inconsistent. He claims that "[f]rom August 2021, [Mr Liew's] attitude towards [him] completely changed" and that Mr Liew would "scold and scream and shout at [him] in full force".[55] But the Mengkim loan was taken on 8 January 2021, much earlier than this alleged change of attitude.

(c) I note the Company's pleaded case that the repayments were made because *Mr Ho and Mr Teo* were put under pressure by Mr Liew.[56] Not only is there no evidence of such "pressure", but it is also not even Mr Teo's evidence that he was ever intimidated by Mr Liew. Indeed, their recorded discussion on 2 May 2023[57] clearly shows that Mr Teo was not intimidated by Mr Liew at all.

32 To the extent that the Company now seeks to rely on the assertion that Mr Ho had allowed the repayments *because* he had acted at Mr Liew's directions or instructions and that he was accustomed to so doing, this was not pleaded and, in any event, there is no evidence of this.

33 In its closing submissions, the Company narrowed its case to the repayment of the loans from Tan Bee Hong and Ban Leong, which it alleges was procured by Mr Liew.[58] According to the Company, Mr Liew had breached his fiduciary duties to the Company because he had breached the Matching Dollar Agreement,[59] which was facilitated by directing or instructing Ms Liew

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55 AEIC Ho at para 40.

56 Defence to Counterclaim (Amendment No. 1) dated 14 November 2023 at para 5(b)(xvi).

57 15AB134–150.

58 Cl Subs at para 36.

59 Cl Subs at para 37.

to classify those loans as loans to external parties so that "it would be easier to justify" their repayment.[60] Again, these premises do not hold true:

(a) As I have found, there was no Matching Dollar Agreement (see above at [24]).

(b) The loans from Tan Bee Hong and Ban Leong remained classified as a transaction under "Loan from Director" and was not reclassified as an external loan, unlike the loans from Mengkim or Junk Yard Dog.[61] In so far as these were loans that were labelled in a separate section from Mr Liew in the Company's records,[62] this is a red herring. In addition, this act of reclassification, which is crucial to the case for a breach of duties, is not pleaded.

(c) In any event, the categorisation of these loans is irrelevant because Mr Ho was always aware that these funds originated from Mr Liew and that the Company did not enter into a loan agreement with these third parties.

34 For completeness, I now turn to assess the heads of damages claimed by the Company, which only underscore how misconceived this entire action was.

The alleged losses

Loss due to the interest rate difference

35 The Company claimed for "losses due to the difference in the interest rate for the [third-party loans taken up by Mr Liew] as compared to the interest

60 Cl Subs at paras 38–39.

61 11AB19.

62 12AB272–286.

rate given to shareholders".[63] In its closing submissions, the Company expressly abandoned this claim.[64] I would not have found in favour of the Company in any event.

36 This claim is premised on (a) Mr Liew (or the other shareholders) being entitled to receive only interest of 8% per annum on the funds he contributed to the Company; and (b) Mr Liew causing the Company to pay the third-party loans which had an interest rate of between 10%–18% per annum.

37 However, these are false premises because:

(a) As Mr Ho testified, Mr Liew could decide the rate of interest for the funds he contributed. It was therefore not limited to 8% per annum.

(b) Mr Teo himself received interest at rates above 8% per annum and up to 18% per annum.[65]

(c) Mr Ho allowed the interest payments in respect of the loans from Tan Bee Hong and Ban Leong.

(d) With respect to the Mengkim loan, Mr Ho agreed to an interest rate of 10% per annum and took up the loan because it was in the Company's interest (see above at [17]).

38 In the circumstances, this head of damages has no basis whatsoever.

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63 SOC at para 27.

64 Cl Subs at para 10.

65 12AB272.

Loss due to the fire sale of the Company's assets

39 The Company claimed that Mr Liew "directed and/or pressured [Mr Ho] and/or the Company to liquidate the Company's 100 cars … via a Fire Sale" to pay back the third-party loans associated with Mr Liew.[66] The claim is patently unsustainable and borders on dishonesty:

(a) According to the Company, the sale of the Company's car fleet commenced on 16 November 2020.[67] This was evidenced by a list of cars sold exhibited to Mr Marcus Teo's AEIC.[68] But this date was well before any of the third-party loans associated with Mr Liew were taken, much less when they were due. When pressed on why he prepared the list of cars exhibited to his AEIC, Mr Marcus Teo struggled to provide a coherent answer and eventually claimed that he did not know. I find that he was not being honest.

(b) Mr Ho admitted under cross-examination that not all of the cars in the said list were part of the fire sale. Mr Marcus Teo also conceded under cross-examination, with reference to the same list, that Mr Liew may not be responsible for the sale of the whole fleet of 100 cars. I also note that the list itself did not have particulars of *100* cars.

(c) The Company's pleaded case – which was different from its evidence – was that the Company was forced to sell its fleet of 100 cars "in order to pay off the loan in the name of Mengkim which was due in January 2022".[69] However, the evidence showed that the repayment date

66 SOC at para 28.

67 FNBP at p 24 and Annex A.

68 AEIC Marcus Teo at pp 1228–1229.

69 SOC at para 22.

of the Mengkim loan was extended first to 8 April 2022[70] and subsequently 8 July 2022[71] and was eventually repaid in instalments, with the final repayment on 28 April 2023.[72]

(d) The sale of the fleet was arranged and authorised by Mr Ho.[73] It was unclear from the evidence how Mr Liew "forced" the Company to do this. Indeed, Mr Teo stated that he initially opposed the sale, but that the Company proceeded with the sale because of pressure from Mr Liew on Mr Ho and himself.[74] Again, no evidence was adduced as to how this "pressure" was exerted, and this assertion was not put to Mr Liew.

(e) Mr Teo deposed and testified that he only found out about the third-party loans associated with Mr Liew in December 2021.[75] However, he also testified that the shareholders had discussed the sale of the fleet as early as in June 2021.

(f) The evidence is clear that the sale of the fleet was proposed by Mr Marcus Teo at the latest in August or September 2021 as part of his re-structuring plan to improve the Company's finances.[76] The Company accepted this,[77] and similarly, Mr Teo and Mr Marcus Teo accepted this under cross-examination. In this regard, the evidence in Mr Marcus

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70 14AB144.

71 14AB145.

72 17AB3–4.

73 3AB184.

74 AEIC Teo at para 63.

75 AEIC Teo at para 59.

76 AEIC Ho at para 30(b); 15AB276.

77 SOC at para 20(b).

Teo's AEIC on the timing of the proposal to sell the Company's fleet[78] is wrong. The Company had already sold more than 20 cars in 2021. When pressed on this, Mr Marcus Teo testified that he had reproposed his plan in January 2022. I find that he was making up that evidence.

(g) Mr Ho stated that the Company raised just over $1m from the sale of the fleet after paying off loans taken to purchase the cars, and claimed that the sale proceeds were used to pay the Mengkim loan and the other third-party loans associated with Mr Liew. But no documents or other evidence was adduced to show that the funds were used in this manner. In fact, in terms of timing, it is clear that other loans were repaid *before* the Mengkim loan:[79] (i) Lee Sze Peng, Mr Ho's friend, was repaid $200,000 between 21 November 2021 and 21 January 2022; (ii) WQ Leasing Pte Ltd was repaid $200,000 between 19 November 2021 and May 2022; and (iii) Junk Yard Dog, Mr Teo's brother's company, was repaid $200,000 in two parts between 1 June 2022 and 12 July 2022. With respect to the last repayment to Junk Yard Dog, the WhatsApp messages between Mr Marcus Teo and Ms Liew on 31 May 2022 show that the repayment to Junk Yard Dog was structured in two parts to accommodate pending car sales,[80] demonstrating that the proceeds of sale were used for this repayment. All these payments were authorised by Mr Ho.

(h) Under cross-examination, Mr Ho agreed that the loan from Tan Bee Hong did not feature in the consideration to sell the Company's

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78 AEIC Marcus Teo at paras 36–37.

79 13AB87–88.

80 4AB115.

fleet. The attempt to blame Mr Liew for this repayment was thus also false.

40 The evidence is therefore clear that the sale of the fleet was carried out as part of the restructuring of the Company to reduce its liabilities, and several loans were paid off as a result. The Company's assertion that the sale was effected to pay off the Mengkim loan and the other third-party loans associated with Mr Liew is not supported by the evidence and was contrived to found a cause of action against Mr Liew.

Loss due to the loss of use of $1,231,500

41 This alleged loss arises from the Company's loss of use of the $900,000 repaid to the third parties plus the $331,500 in interest payments. According to the Company, the alleged damages of $1,696,292.33 claimed is the difference between the net profit after tax for the financial year ending 31 July 2021 and that of the following year.[81] In its closing submissions, the Company confined its claim to the loss of use of $400,000 owing to the repayment of the loans from Tan Bee Hong and Ban Leong.[82]

42 There is simply no legal or evidential basis for calculating damages in such a manner. The claim is hopelessly flawed and entirely frivolous.

43 The claim for interest payments of $331,500 is also completely ill-conceived. It ignores any interest that the Company accepts would be payable to Mr Liew had the loans originated from him directly.[83] It also includes a sum

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81 SOC at para 29.

82 Cl Subs at paras 36, 43.

83 SOC at para 27.

of $112,000 in interest paid to Bizmen Corporation Ltd, [84] which the Company has not pleaded as an overpayment.

44 Further, any loss of use would be from 1 May 2022 onwards (corresponding to the first repayment made by the Company in respect of the Ban Leong loan). In fact, of the $400,000 comprising the loans from Tan Bee Hong and Ban Leong, repayments amounting to only $220,000 were made in the financial year ending 31 July 2022. Yet, the Company is effectively claiming for the loss of use of the *entire* sum for 31 July 2021 to 31 July 2022. This makes no sense.

45 The Company accepted that its loss does not amount to the pleaded sum of damages in respect of this claim and thus prays for damages to be assessed.[85] I had previously disallowed the Company's application for bifurcation in relation to this head of damages. There being no evidence of the damages suffered, there is no basis for an award pursuant to this claim.

46 In any event, there can be no actionable loss as the Company *agreed* to repay the sum of $900,000 (as pleaded) or $400,000 (as submitted). In any event, this claim must fail as the repayments to the third-party loan providers were not made in breach of Mr Liew's fiduciary duties (assuming such duties exist).

Loss due to the payment of retainer fees

47 The Company claimed $76,498, which is equivalent to the sum of monthly retainer fees for, *inter alia*, the rental of the Company's office space

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84 SOC at para 23.

85 Cl Subs at para 43.

paid to Jackspeed Automobile (S) Pte Ltd ("Jackspeed") for the period of March 2021 to May 2023, which the Company alleges was "wrongfully charged".[86] In its closing submissions, the Company expressly abandoned this claim.[87] I would not have found in favour of the Company in any case.

48 The Company pleaded that Mr Liew had "failed to prevent Jackspeed from continuing to charge the Retainer Fee" and "failed to stop the Company from paying the Retainer Fee payments even after March 2021".[88] However, this is not a breach of Mr Liew's fiduciary duties to the Company (assuming such duties exist). It is unclear how or why Mr Liew was under a duty to the Company to (a) prevent *Jackspeed* from charging the Company or (b) stop the Company from paying the fee.

49 In any event, the claim has no evidentiary basis:

(a) The impression the Company sought to convey was that there was no basis for it to continue paying the fee as it had entirely moved out of the Tampines premises in early 2021 and that Mr Liew was responsible for the Company making that payment. However, the evidence is that all three shareholders agreed for the Company to retain some space in the Tampines premises after the Company had moved its workshop operations to the Loyang premises in early 2021, namely an office unit on the second storey and a room on the first storey.[89] The Company's accounting and other records continued to be stored at the Tampines premises, along with items of furniture and a computer, and

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86 SOC at paras 24A, 30.

87 Cl Subs at para 10.

88 SOC at para 30.

89 AEIC Liew at para 113.

the Tampines premises remained the Company's registered office until 24 August 2023.[90]

(b) Mr Teo stated that the three shareholders discussed moving the Company's operations to Loyang, but Mr Liew insisted on keeping financial operations in Tampines.[91] There was no reference to any "pressure" being asserted by Mr Liew in that discussion.

(c) The evidence also shows that Mr Teo was aware that the Company was paying Jackspeed the fee *even after* March 2021, when the Company had started to occupy the Loyang premises.[92] Mr Teo testified that the three shareholders agreed that there would be a reduction in the retainer fee. Mr Ho similarly confirmed under cross-examination that the Company agreed to continue paying a fee to Jackspeed after it had moved to the Loyang premises and that there was a reduction in the retainer fee.

(d) When questioned why he had caused the Company to sue Mr Liew for the fee despite agreeing to pay Jackspeed the same, Mr Ho testified that he had wanted to stop payment, but Mr Liew did not agree, and that he and Mr Teo agreed that the Company would continue to pay Jackspeed because they "did not want a fight". While the Company may regret agreeing to pay Jackspeed the (reduced) fee, this does not provide a basis to bring this claim.

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90 15AB44.

91 AEIC Teo at para 38.

92 AEIC Teo at para 38.

Loss due to the loan to Chris Eng

50 In its claim, the Company sought damages in the amount of $300,000 for a loan made by the Company to one Chris Eng that has apparently not been repaid. In its opening statement, the Company expressly abandoned this claim.[93] Evidence was not led at trial in relation to this issue and I make no finding on the same.

Mr Liew's role in the Company

51 Finally, I turn to the allegation that Mr Liew was a *de facto* or shadow director of the Company.

52 The Company's position is highly selective to say the least: while it asserts that Mr Liew is a *de facto* or shadow director, it maintains that Mr Teo is only a "sleeping shareholder"[94] despite the latter's active participation in the affairs of the Company.

53 Nevertheless, given my findings above, it is not necessary for me to make a finding on Mr Liew's status as a *de facto* or shadow director of the Company at this juncture.

Mr Liew's Counterclaim

54 Given my findings, particularly that Mr Liew's contributions were loans (see above at [20]) and that there is no Matching Dollar Agreement on the terms put forward by the Company (see above at [24]), the Company has no defence to Mr Liew's claim for the repayment of his loans.

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93 Claimant's Opening Statement dated 28 August 2024 at para 12; Cl Subs at para 10.

94 SOC at para 5.

55 The Company does not dispute Mr Liew's pleaded sum of $719,000. I therefore award Mr Liew judgment in this sum.

Costs

56 As the Company has failed in its claim, I award costs in favour of Mr Liew in the amount of $150,000, inclusive of disbursements.

57 I shall hear the parties on HC/SUM 2272/2024 on the question of whether Mr Teo should be liable to pay the Company's costs.

58 Given my findings, I also invite the parties and Mr Ho to submit on whether he should be made personally liable for costs.

Hri Kumar Nair
Judge of the High Court

Yeo Lai Hock Nichol, Qua Bi Qi and Andrew Ong (Nine Yard Chambers LLC) for the claimant and defendant-in-counterclaim;
Ow Yong Wei En James (Ouyang Wei'En) and Madeline Chan Yuen Hun (Fortress Law Corporation) for the defendant and claimant-in-counterclaim.