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

[2024] SGHC 289

Originating Claim No 638 of 2023 (Registrar's Appeal Nos 125 and 126 of 2024)

Between

Kapital Fund SPC

… *Appellant*

And

(1) Lee Tze Wee Andrew
(2) Poon Mei Chng

… *Respondents*

GROUNDS OF DECISION

[Civil Procedure — Striking out]
[Tort — Conspiracy — Combination]
[Tort — Inducement of breach of contract]

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Kapital Fund SPC
v
Lee Tze Wee Andrew and another

[2024] SGHC 289

General Division of the High Court — Originating Claim No 638 of 2023
(Registrar's Appeal Nos 125 and 126 of 2024)
Hri Kumar Nair J
16 September 2024

7 November 2024

Hri Kumar Nair J:

Introduction

1 The appellant-claimant, Kapital Fund SPC ("Kapital"), filed two appeals *vide* HC/RA 125/2024 and HC/RA 126/2024 (the "RAs") against the learned Assistant Registrar's (the "learned AR") decision to strike out its Statement of Claim ("SOC").

2 I dismissed the RAs at the end of the hearing. I now set out my reasons.

Facts

3 I first set out the facts as pleaded in the draft Statement of Claim (Amendment No. 1) tendered by Kapital on 4 September 2024 (the "draft Amended SOC").

The parties and related persons

4 Kapital was a portfolio company incorporated in the Cayman Islands,[1] and was managed by Kredens Capital Management Pte Ltd ("KCM").[2] Wang Meng ("Adam") was the Chief Executive Officer and a director of KCM, and (directly and indirectly) owned approximately 82.76% of the shareholding in KCM.[3]

5 Kapital managed multiple funds including Kapital Investment Fund I SP 3 ("SP 3") and Kapital Income Fund III SP, Segregated Portfolio 5 ("SP 5").[4]

6 The respondent-defendants, Mr Lee Tze Wee Andrew ("Andrew") and Ms Poon Mei Chng ("Stephanie"), were persons acquainted with Adam.

7 Andrew was:

(a) the sole director and shareholder of Empyreal Global Ltd ("Empyreal"), incorporated in the British Virgin Islands ("BVI");[5]

(b) the sole director of Ambrosia Management Pte Ltd ("Ambrosia"), incorporated in Singapore and wholly owned by Empyreal;[6]

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1 Draft Statement of Claim (Amendment No. 1) tendered on 4 September 2024 ("SOC (Amd)") at para 1.

2 SOC (Amd) at para 4.

3 SOC (Amd) at para 4.

4 SOC (Amd) at paras 9(b), 10.

5 SOC (Amd) at para 5(a).

6 SOC (Amd) at para 5(b).

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(c) the sole director and shareholder of Hopkines Holdings Ltd ("Hopkines"), incorporated in the BVI;[7] and

(d) the sole director of Limitone Global Ltd ("Limitone"), incorporated in the BVI and wholly owned by Empyreal.[8]

8 Stephanie was:

(a) the sole director of Pine Partners Pte Ltd ("PPPL"), incorporated in Singapore;[9]

(b) the sole director and shareholder of Zeta One Management Pte Ltd ("ZOMPL"), incorporated in Singapore;[10] and

(c) a director of Zeta Global (Private) Limited ("ZGPL"), incorporated in Sri Lanka.[11]

9 ZOMPL and Ambrosia shared the same registered address in Singapore.[12]

10 Winsome Ltd ("Winsome") was once wholly owned by Limitone, and sold to ZOMPL on or around 19 October 2022. Winsome changed its name to Zeta International Limited ("ZIL") with effect from 10 January 2023.[13]

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7 SOC (Amd) at para 5(c).

8 SOC (Amd) at para 5(d).

9 SOC (Amd) at para 6(a).

10 SOC (Amd) at para 6(b).

11 SOC (Amd) at para 6(c).

12 SOC (Amd) at para 8.

13 SOC (Amd) at para 11(f).

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11 A diagram illustrating Andrew's and Stephanie's ownership and control of the above-mentioned entities can be found at Annex 1: Diagram of Ownership and Control.

12 Sun Weiyeh ("Sun") was related to the parties in this manner:

(a) Sun was the largest shareholder of Pine Capital Group Ltd ("PCG"), which in turn was the majority shareholder of Advance Capital Partners Asset Management Pte Ltd ("ACPAM"). PCG and ACPAM shared the same offices.[14]

(b) Adam joined Sun's company, One Asia Investment Pte Ltd, as an employee from 2014 to 2017.[15] Adam then worked at ACPAM between 2018 and 2019.[16]

(c) Andrew was an employee at PCG and Stephanie was an employee at ACPAM. Adam, Andrew and Stephanie hence worked under Sun at that material time.[17]

The agreements between the parties

13 From 2020, Adam, Andrew and Stephanie (through their related entities) entered various business deals with each other, which ultimately resulted in this dispute.

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14 SOC (Amd) at para 6A(b).

15 SOC (Amd) at para 6A(a).

16 SOC (Amd) at para 6A(b).

17 SOC (Amd) at para 6A(b).

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14 Under a consultancy agreement dated 1 March 2020 (the "Consultancy Agreement"), KCM (Adam's company) agreed to pay Ambrosia (Andrew's company) a monthly consultancy fee and commission fee for Ambrosia's services for business development and more.[18] Under Supplemental 5 to Appendix 1 of the Consultancy Agreement dated 2 February 2021 ("Supplemental 5"), it was agreed that KCM would, as part of the commission fees, pay Ambrosia (a) an upfront sum equivalent to 2% of the initial investment of all clients in SP3; (b) an annual sum equivalent to 1.6% of the investment of all clients in SP3; and (c) 70% of trading commission fees in respect of SP 3 (collectively, the "Additional Commissions").[19]

15 On 2 November 2022, ZOMPL (Stephanie's company) entered into a loan facility agreement with Kapital (related to Adam), via SP 5, for SP 5 to provide ZOMPL a term loan of up to US$30m in various tranches (the "Loan Agreement").[20] The interest was at the rate of 15% per annum, accrued daily and payable quarterly.[21] The failure to make payment was an event of default under the Loan Agreement.[22]

16 Parallel to this, the parties were interested in investing in the Sri Lankan tourism industry. According to Kapital (related to Adam), the proposed investment structure was as follows:

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18 SOC (Amd) at para 9(a).

19 SOC (Amd) at para 9(b).

20 SOC (Amd) at para 9(b).

21 SOC (Amd) at para 10(c).

22 SOC (Amd) at para 10(d).

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(a) Sun would, through a corporate vehicle, invest via an equity injection into Lankaila Pvt Ltd ("Lankaila"), a company registered in Sri Lanka, which would then invest in hotels and resorts in Sri Lanka.[23]

(b) Andrew would, through Hopkines (Andrew's company), act as the anchor investor and provide seed money for the investment. The provision of such monies was to be done indirectly via SP 5. SP 5 would not invest directly into Lankaila but via corporate vehicles in Stephanie's name, *ie*, ZOMPL and/or ZGPL.[24]

(c) Lankaila would pay interest on the loan from ZOMPL and/or ZGPL at 20% per annum, from which ZOMPL and/or ZGPL would retain a margin of 5% per annum and pay Kapital interest on the loan at 15% per annum (as per the Loan Agreement).[25]

17 Andrew invested US$1.3m through Hopkines and US$700,000 through Winsome (Andrew's company then).[26] Hopkines invested US$1.3m into Class E shares of SP 5 in November 2022.[27]

18 From November 2022 to March 2023, ZOMPL (Stephanie's company) drew down a total of US$4.5m (the "Principal Sum") under the Loan Agreement across four tranches.[28] According to Kapital, ZOMPL then invested the money

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23 SOC (Amd) at para 11(c).

24 SOC (Amd) at para 11(c).

25 SOC (Amd) at para 11(d).

26 SOC (Amd) at para 11(e).

27 SOC (Amd) at para 18(a).

28 SOC (Amd) at para 12.

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into ZGPL (Stephanie's company) via an equity injection, which then loaned the sum onward to Lankaila.[29]

19 As of 30 June 2023, interest of US$171,250 (the "Interest Sum") had accrued under the Loan Agreement.[30] Prior to this, ZOMPL had always met its interest payment obligations.[31]

The deterioration of relationships

20 By way of a letter on 12 May 2023, KCM (Adam's company & manager of Kapital) terminated Supplemental 5 with Ambrosia (Andrew's company).[32] I shall refer to this as the "Trigger Event". According to Kapital, this was because KCM's revenue had begun to slow down.[33] As a result of the termination, Ambrosia would no longer receive the Additional Commissions. This was financially detrimental to Andrew, as an indirect 100% shareholder of Ambrosia.

21 In or around June 2023, ZOMPL (Stephanie's company) defaulted on its interest payment obligations to Kapital (related to Adam) under the Loan Agreement, and therefore committed a breach of the same.[34]

22 Between or around the time of these two incidents, a series of events occurred which Kapital claimed were retaliatory steps taken by Andrew and Stephanie and was evidence of a conspiracy between them.

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29 SOC (Amd) at para 13.

30 SOC (Amd) at para 14.

31 SOC (Amd) at para 16(a).

32 SOC (Amd) at para 15.

33 SOC (Amd) at para 15.

34 SOC (Amd) at para 16.

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Acts related to Andrew and Adam (and their companies)

23 On 6 June 2023 at 4.40pm, Hopkines (Andrew's company) – that had invested US$1.3m into SP 5 (see above at [17]) – sent an e-mail to Adam, KCM and Kapital claiming that it had learnt about "various 'letters of demand'".[35] At that time, KCM had only received one letter of demand from ZOMPL (Stephanie's company) for the sum of S$24,000.[36]

24 More than three hours after the e-mail from Hopkines, at 8.27pm and 8.28pm, Kapital and KCM received further letters of demand from (a) ZOMPL for the sum of US$49,166.67; and (b) PPPL for the sum of US$131,292.96.[37] The implication therefore was that Andrew was aware of the letters of demand before ZOMPL and PPPL – companies which Stephanie was a director of — had sent them, and that evidenced some co-ordination between Andrew and Stephanie.

25 On 13 June 2023, KCM responded to Hopkines to request for investor verification before it could respond to the latter's e-mail of 6 June 2023.[38] Thereafter, without providing the necessary verification, Hopkines sought to redeem its investment in SP 5.[39]

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35 SOC (Amd) at para 18(b).

36 SOC (Amd) at para 18(c).

37 SOC (Amd) at para 18(d).

38 SOC (Amd) at para 18(e).

39 SOC (Amd) at para 18(f).

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26 On 20 June 2023, Ambrosia (Andrew's company) filed an action *vide* HC/OC 400/2023 ("OC 400") against Adam alleging breaches of loan agreements between Ambrosia and Adam. OC 400 is presently ongoing.[40]

27 On 20 June 2023, Ambrosia (Andrew's company) filed an action *vide* DC/OC 855/2023 ("OC 855") against Kapital (related to Adam), alleging a claim of S$108,912.04 for work done and services provided to Kapital. At the time of the hearing of the RAs, OC 855 was ongoing and had been transferred to the High Court, docketed as HC/OC 391/2024.[41]

28 On 5 July 2023, Ambrosia (Andrew's company) issued a statutory demand to KCM (Adam's company) alleging a debt of US$734,828.73. KCM disputed this debt and obtained an interim injunction *vide* HC/OA 734/2023 restraining Ambrosia from commencing winding up proceedings in respect of that debt.[42]

29 On 18 July 2023, Ambrosia (Andrew's company) filed an action against Adam *vide* DC/OC 1013/2023 ("OC 1013"), alleging that it was entitled to call for the transfer of various shares because of alleged breaches of a convertible loan agreement which would have allowed Ambrosia to take control of KCM (Adam's company). At the time of the hearing of the RAs, OC 1013 was ongoing and had been transferred to the High Court, docketed as HC/OC 422/2024.[43]

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40 SOC (Amd) at para 17(a).

41 SOC (Amd) at para 17(b).

42 SOC (Amd) at para 17(e).

43 SOC (Amd) at para 17(f).

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30 On 4 August 2023, Limitone (Andrew's company) issued a statutory demand to Kapital (related to Adam). Kapital provided a substantive response on 14 August 2023 and Limitone agreed to withdraw the statutory demand on 21 August 2023.[44]

Acts related to Stephanie and Adam (and their companies)

31 On 14 July 2023, PPPL (related to Stephanie) filed an action against KCM (Adam's company) *vide* DC/OC 1022/2023 ("OC 1022"), claiming a sum of S$131,292.96 for work done and services provided to KCM between September 2022 and March 2023. This related to the letter of demand for the same amount sent by PPPL to KCM on 6 June 2023 (see above at [24]). OC 1022 was discontinued[45] on 17 August 2023.

32 On 14 July 2023, ZOMPL (Stephanie's company) filed an action against KCM (Adam's company) *vide* MC/OC 4799/2023 ("OC 4799"), claiming a sum of S$24,000 for work done and services provided to KCM between November 2022 and April 2023. This related to the letter of demand for the same amount sent by ZOMPL to KCM on 6 June 2023 (see above at [23]). OC 4799 was discontinued[46] on 1 March 2024.

Kapital's investigations

33 After the deterioration of the relationship between the parties, Kapital conducted investigations. Kapital averred that Andrew had previously indicated to Adam that, using the Principal Sum, investments would be made into the various real estate developments and investment projects in Sri Lanka.

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44 SOC (Amd) at para 17(g).

45 SOC (Amd) at para 17(c).

46 SOC (Amd) at para 17(d).

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However, neither ZOMPL, ZGPL nor Lankaila acquired shares in those projects save for one hotel.[47]

Procedural history

34 Kapital filed its SOC in HC/OC 638/2023 ("OC 638") on 20 September 2023. Andrew and Stephanie filed their defence and counterclaim in this action on 23 and 18 October 2023, respectively. Besides Kapital, Andrew and Stephanie also counterclaimed against Adam, KCM and one Chen Liqiong.

35 On 13 March 2024, Andrew filed an amended defence, effectively discontinuing his counterclaim in its entirety. This left Stephanie as the sole remaining counterclaimant.

36 On 16 May 2024, Andrew and Stephanie each filed an application to strike out Kapital's claim against them in its entirety *vide* HC/SUM 1341/2024 and HC/SUM 1338/2024, respectively.

37 On 7 June 2024, Kapital filed an application to strike out Stephanie's counterclaim in its entirety *vide* HC/SUM 1561/2024. On the same day, Adam filed an application to strike out Stephanie's counterclaim against him in its entirety *vide* HC/SUM 1567/2024.

38 On 19 July 2024, the learned AR struck out both Kapital's claim (as against Andrew and Stephanie) and Stephanie's counterclaim.

39 On 30 July 2024, Kapital filed its notices of appeal against the learned AR's decision to strike out its claim *vide* the RAs.

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47 SOC (Amd) at para 19.

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40 In Kapital's written submissions dated 13 August 2024, Kapital argued that the striking out order was wrong as any defects in its SOC could be cured by way of amendments.[48] In view of this, on 28 August 2024, I directed Kapital to tender a draft amended statement of claim that included "all particulars it is able to plead to meet [Andrew's and Stephanie's] application for striking out",[49] if it intended to offer draft amendments.

41 On 4 September 2024, Kapital circulated the draft Amended SOC.

42 On 11 September 2024, Andrew and Stephanie confirmed, by way of letters to the court, that the action should be struck out and the RAs dismissed, notwithstanding the draft Amended SOC.

43 By agreement of the parties, the RAs proceeded based on Kapital's case as pleaded in the draft Amended SOC.

Kapital's pleaded case

44 Kapital's case was that the Trigger Event, *ie*, KCM's termination of Supplemental 5 "sparked off a series of retaliations by Andrew and Stephanie against Adam and his business interests, including KCM and Kapital".[50] Kapital averred that "Andrew sought to and did influence and/or persuade Stephanie (and, through her, the companies controlled by her) to agree to act in concert with him to participate in coordinated retaliatory attacks against Adam's business interests".[51] These retaliatory attacks included the following:

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48 Statement of Claim dated 20 September 2023 ("SOC") at paras 3(e), 22, 25(e), 27.

49 Correspondence from Court dated 28 August 2024 at para 3.

50 SOC (Amd) at para 15.

51 SOC (Amd) at para 15(b).

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(a) "Stephanie (who was influenced and/or persuaded by Andrew) agreed to act in concert with [Andrew] to participate in coordinated retaliatory attacks, and caused and/or directed ZOMPL to default on its payment obligations to Kapital."[52] (see above at [21])

(b) "Andrew and Stephanie (who was influenced and/or persuaded by Andrew) agreed with each other to act in concert and to participate in coordinated retaliatory attacks, and caused and/or directed entities under their control to take further steps to commence various unmeritorious litigations against Kapital, KCM and Adam."[53] (see above at [26]–[32])

(c) "Andrew also caused Hopkines to, in reliance of letters of demand issued by companies controlled by Stephanie, attempt to wrongfully redeem its funds in SP 5. Stephanie (who was influenced and/or persuaded by Andrew, and agreed to act in concert with him to participate in coordinated retaliatory attacks) caused the said companies to issue the said letters."[54] (see above at [23]–[24])

45 More relevantly, Kapital pleaded the following causes of action in the draft Amended SOC:

(a) Unlawful means conspiracy: "Andrew and Stephanie wrongfully and with intent to injure Kapital and/or to cause loss to Kapital by unlawful means conspired and/or combined together to injure and/or to cause loss to Kapital by procuring ZOMPL to breach its obligations

52 SOC (Amd) at para 16.

53 SOC (Amd) at para 17.

54 SOC (Amd) at para 18.

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owed under Clause 6.1 of the Loan Agreement and by causing ZOMPL to neglect, refuse and/or otherwise fail to make repayment of the Principal Sum and payment of the Interest Sum".[55]

(b) Lawful means conspiracy: "Andrew and Stephanie conspired and combined together wrongfully and with the sole or predominant intention of injuring Kapital and/or of causing loss to Kapital procured ZOMPL to breach its obligations owed under Clause 6.1 of the Loan Agreement and by causing ZOMPL to neglect, refuse and/or otherwise fail to make repayment of the Principal Sum and payment of the Interest Sum".[56]

(c) Inducing breach of contract: "Andrew (through influence and/or persuasion targeted at ZOMPL through Stephanie) and Stephanie (in her capacity as director of ZOMPL) induced ZOMPL to breach its obligations owed to Kapital under Clause 6.1 of the Loan Agreement and by causing ZOMPL to neglect, refuse and/or otherwise fail to make repayment of the Principal Sum and payment of the Interest Sum".[57]

46 As a result of the above three claims, which related exclusively to ZOMPL's failure to make repayment of the sums due under the Loan Agreement, "Kapital has suffered loss and damage arising out of ZOMPL's failure to make payment of the Principal Sum and Interest Sum which has fallen due".[58]

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55 SOC (Amd) at para 20.

56 SOC (Amd) at para 24.

57 SOC (Amd) at para 29.

58 SOC (Amd) at paras 22, 26, 31.

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47 Moreover, Kapital pleaded that "Stephanie did not act in good faith in the discharge of her position as director of ZOMPL and was in breach of her duties owed to ZOMPL",[59] because upon receipt of the Principal Sum from Kapital, Stephanie caused ZOMPL to invest that sum into ZGPL "via an equity injection, instead of a back-to-back loan agreement between ZOMPL and ZGPL on terms similar to the Loan Agreement". This ultimately meant that ZOMPL was not entitled to receive periodic payments from ZGPL and would be unable to meet its interest payment obligations owed to Kapital. Kapital averred that this was even though Stephanie (a) knew that ZOMPL had to make the interest payments under the Loan Agreement; and (b) knew or ought to have known that most of ZOMPL's assets were in long term equity investments and that ZOMPL would not have sufficient revenue to meet the interest payment obligations.[60]

The parties' cases in the RAs

48 Andrew submitted that "Kapital's claim in OC 638 discloses no reasonable cause of action, is an abuse of process of the Court and/or it is in the interests of justice that Kapital's claim be struck out" and accordingly, the RAs should be dismissed.[61] Andrew contended that the draft Amended SOC was "woefully inadequate, [did] not cure the earlier deficiencies … and served no real purpose apart from obfuscation".[62]

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59 SOC (Amd) at para 30.

60 SOC (Amd) at para 30(a).

61 Respondent's Written Submissions for HC/RA 125/2024 dated 13 August 2024 at para 4.

62 Respondent's Supplementary Written Submissions for HC/RA 125/2024dated 13 September 2024 ("Andrew's Supplementary Submissions") at para 2.

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49 Andrew argued that the draft Amended SOC suffered from the following deficiencies:[63]

> In relation to the claims in conspiracy,
>
> (a) Kapital had failed to plead the material facts relating to an agreement between Andrew and Stephanie to cause and/or procure ZOMPL to breach the Loan Agreement;
>
> (b) none of the pleaded facts in the draft Amended SOC "bear any rational connection to the pleaded conspiracy, being ZOMPL's breach of the [Loan Agreement]";
>
> (c) the element of "unlawful means" remained unparticularised;
>
> (d) the element of "predominant intention to injure" was not made out on the pleaded case; and
>
> In relation to the claim for inducing a breach of contract,
>
> (e) Kapital failed to plead the act of inducement by Andrew.

50 At the hearing, Andrew's counsel clarified that it was not in dispute that the breach of the Loan Agreement was a civil wrong which could constitute an unlawful act in a conspiracy.[64] This dealt with Andrew's submission at [51(c)] above.

51 Stephanie submitted that the draft Amended SOC "remain inadequate, deficient and fail to meet the requisite standard of proof to stave off the striking

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63 Andrew's Supplementary Submissions at para 4.

64 Transcript of 16 September 2024 at p 44 lines 22–30.

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out".[65] Stephanie appeared to be maintaining the same legal grounds for striking out as her application *vide* HC/SUM 1338/2024, namely that Kapital's claim disclosed no reasonable cause of action, was an abuse of process of the Court and/or was in the interest of justice to be struck out.[66] She advanced the following arguments:

(a) Kapital had not pleaded material facts of how Andrew and Stephanie combined.[67]

(b) The pleading of an identical set of facts and particulars for both claims in lawful and unlawful conspiracy, without differentiating between the elements of each "highlights that [Kapital's] assertions are factually unsustainable. It simply does not suffice to rely on similar facts in proving two heads of claims."[68]

(c) Kapital had failed to plead "any material facts and/or provide particulars as to how the negotiations and due diligence phase … is relevant to the alleged procurement of the breach of the [Loan Agreement] and/or the alleged conspiracies".[69]

(d) Kapital had failed to "identify the inducement and show that ZOMPL's breach of the [Loan Agreement] transpired because of an inducement by [Andrew and Stephanie]".[70]

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65 2nd Defendant's Written Submissions for HC/RA 126/2024 dated 13 September 2024 ("Stephanie's Supplementary Submissions") at para 20.

66 2nd Defendant's Appeal Written Submissions for HC/RA 126/2024 dated 13 August 2024 at para 5.

67 Stephanie's Supplementary Submissions at paras 4–5.

68 Stephanie's Supplementary Submissions at para 7.

69 Stephanie's Supplementary Submissions at para 8.

70 Stephanie's Supplementary Submissions at para 12.

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(e) Kapital had not particularised the allegations that Stephanie breached her fiduciary duties or failed to act in good faith as ZOMPL's director in not particularising *how* Stephanie acted in bad faith and outside the scope of her authority.[71]

52 Kapital averred that the draft Amended SOC contained "a sustainable case that (a) Andrew was involved in the conspiracy and procured ZOMPL to cause loss to Kapital; and (b) Stephanie acted in breach of her duties to ZOMPL and thus [fell] outside of the protection of the *Said v Butt* rule".[72]

The law on striking out

53 The legal principles applicable to a striking out application are trite and, in any case, were not disputed by the parties. Nevertheless, it bears mentioning that "a plaintiff who is not in a position to plead, particularise and point to the necessary proof from the very outset of his suit is at risk of having his suit struck out": see *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34]. Similarly, the High Court in *OCM Opportunities Fund II, LP and Others v Burhan Uray (alias Wong Ming Kiong) and Others* [2004] SGHC 115 at [22], in the context of a claim in conspiracy, agreed that "a cause of action pleaded without support of material facts is defective and should be struck out as disclosing no reasonable cause of action, or as being frivolous and vexatious or an abuse of court".

54 In the same vein, the High Court in *SW Trustees Pte Ltd (in compulsory liquidation) and another v Teodros Ashenafi Tesemma and others (Teodros*

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71 Stephanie's Supplementary Submissions at para 19.

72 Claimant's Supplemental Written Submissions for HC/RA 125/2024 and HC/RA 126/2024 dated 13 September 2024 at para 1.

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Ashenafi Tesemma, third party) [2024] 3 SLR 1410 ("*SW Trustees*") at [35], citing precedent authorities, recognised that the facts relevant to *each* element of a cause of action should be specifically pleaded, and if not, the pleading discloses no reasonable cause of action and may be struck out.

The issues to be determined

55 There were three issues to be determined:

(a) Whether Kapital's claim in inducing a breach of contract was liable to be struck out;

(b) Whether Kapital's claims in conspiracy were liable to be struck out; and

(c) Whether Kapital had appropriately pleaded Stephanie's breach of fiduciary duties owed to ZOMPL to disentitle her from protection under the *Said v Butt* rule.

Kapital's claim for inducing the breach of the Loan Agreement

The law on the tort of inducement of breach of contract

56 To establish the tort of inducement of breach of contract, the claimant must establish the following: *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club*") at [311], citing Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at paras 15.005–15.025 and *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [17]–[18]:

(a) the alleged tortfeasor knew of the existence of the contract;

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(b) the alleged tortfeasor intended to interfere with the plaintiff's contractual rights;

(c) the alleged tortfeasor directly procured or induced a third party to breach the contract;

(d) the contract was in fact breached; and

(e) the plaintiff suffered injury as a result of the breach of contract.

57 The form of behaviour which most obviously falls within the bounds of direct inducement is a defendant *persuading* a party to a contract to break that contract: see *Clerk & Lindsell on Torts* (Andrew Tettenborn, gen ed) (Sweet & Maxwell, 24th Ed, 2023) ("*Clerk & Lindsell*") at para 23-40; see also *Lumley v Gye* (1853) 2 E&B 216.

My findings

58 Kapital's case was unsustainable. According to Kapital, ZOMPL was not able to make the interest payments under the Loan Agreement because of the way the investment was structured, specifically how the Principal Sum was deployed as an equity injection in ZGPL (see above at [47]). Kapital submitted that Stephanie – despite knowing that ZOMPL (a) had interest payment obligations under the Loan Agreement, and (b) would not have sufficient revenue to meet those obligations – should have opted for a back-to-back loan agreement between ZOMPL and ZGPL on terms similar to that of the Loan Agreement.[73]

59 However, on Kapital's own case, the investment was structured (and the Principal Sum was used) at the inception of the broader investment scheme

[73] Transcript of 16 September 2024 at p 25 lines 11–19.

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between the relevant parties, and therefore pre-dated the Trigger Event. That being the case, it was unsustainable to concurrently argue that Andrew had induced a breach of the Loan Agreement that, according to Kapital, was destined to take place on account of Stephanie's prior conduct even without that inducement.

60 In this respect, the remarks of the English Court of Appeal in *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] 3 All ER 978 ("*Kawasaki*") are instructive. In *Kawasaki*, the second defendant had a container liner business. This was merged under a joint venture, which resulted in the defendants' group of companies ceasing to operate its own container liner business. This had an adverse effect on the plaintiff, which had a contractual relationship with an indirect subsidiary of the second defendant in relation to road haulage of containers within the UK – because of the restructuring, the defendants' group had no haulage jobs to offer to its subsidiary and consequently, no road haulage jobs to offer to the plaintiff. The plaintiff claimed against the second defendant for inducing a breach of contract between itself and the second defendant's indirect subsidiary, pleading that there was encouragement and/or persuasion to breach that contract. The court found that such conduct did not amount to inducement because "[the second defendant] did no more than preventing [its subsidiary] from performing the contract with [the plaintiff]": *Kawasaki* at [30]–[32]. The court noted that this was due to the joint venture, which was not unlawful in itself: *Kawasaki* at [35]. More significantly, the court also held that any encouragement or persuasion was immaterial as the subsidiary's breach of the contract with the plaintiff was an inevitable consequence of the joint venture. The court noted:

> [33] Secondly, this participation by A in B's breach *must*, in Lord Hoffmann's words [in *OBG Ltd v Allan, Douglas v Hello! Ltd (No 3), Mainstream Properties Ltd v Young* [2008] 1 AC 1], *have 'a sufficient causal connection with the breach by the contracting*

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> *party to attract accessory liability' or, in Lord Nicholls' words, so as to amount to 'causative participation'. It is because of the causative requirement that inducement requires the defendant's conduct to have operated on the will of the contracting party' in the words of Toulson LJ. If A's conduct is not capable of influencing a choice by B whether or not to breach the contract, it is not capable of amounting to inducement; it cannot operate on the mind or will of so as to qualify as causative participation as an accessory to his breach.*
>
> …
>
> [38] … In order for [the second defendant] to have done something which could constitute inducement, it must be something which was capable of influencing whether or not [the subsidiary] breached the [the contract with the plaintiff] so as to operate on its mind and will. However, nothing which it is realistically to be inferred that [the second defendant] might have done towards [the subsidiary] can have had that effect: [the subsidiary] had no choice whether to breach the [contract with the plaintiff]; it was entirely dependent in that respect on what [the second defendant] chose to do in respect of the joint venture.
>
> [emphasis added]

61 By analogy to the present case, given that the Principal Sum was invested into ZGPL by an equity injection, thereby preventing ZOMPL from making interest payments, there was nothing that Andrew could have done which was capable of influencing whether or not ZOMPL would have breached the Loan Agreement so as to operate on its (or Stephanie's) mind and will. On Kapital's case, ZOMPL's breach was an inevitable consequence of the circumstances which were in place well before the Trigger Event. It was not Kapital's case that Andrew was involved in the structuring of the investment or the use of the Principal Sum.

62 Kapital's counsel contended at the hearing that having placed ZOMPL in that position, Stephanie could have taken steps to remedy the situation. However, this was not Kapital's pleaded case in its draft Amended SOC and its

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counsel accepted this.[74] In fact, Kapital had put forward a case to this effect in its SOC, pleading that Stephanie did not take steps to cause ZOMPL to recover monies from ZGPL and failed to generate further income to ZOMPL such that it would have been able to make repayment of the Principal Sum and payment of the Interest Sum which had fallen due.[75] But this was removed in the draft Amended SOC. In any event, the (removed) pleading was itself unsustainable: Kapital had offered no basis for its proposition that Stephanie was under an obligation to either recover monies from ZGPL or generate income for ZOMPL.

63 Further, the act(s) of inducement was insufficiently pleaded. In relation to the requirement of "directly procuring or inducing" the breach in [56(c)] above, Kapital merely pleaded that "Andrew (through influence and/or persuasion targeted at ZOMPL through Stephanie) and Stephanie (in her capacity as director of ZOMPL) induced ZOMPL to breach its obligations owed to Kapital" under the Loan Agreement.[76]

64 Beyond this bald pleading that Andrew influenced and/or persuaded ZOMPL through Stephanie, there were no particulars of *how* Andrew induced the breach of the Loan Agreement. While it was open for Kapital to advance its case on the basis of an inference(s) in light of the apparent coordination of acts undertaken by Andrew and Stephanie in the broader scheme of things (see below at [86]), this could not save its claim given Kapital's pleaded case on how the investment was structured (see above at [58]–[59] and [61]). Put another way, the fact of ZOMPL's inevitable breach of the Loan Agreement was

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74 Transcript of 16 September 2024 at p 25 lines 19–26, and p 29 line 1 to p 30 line 6.

75 SOC at para 30(a)–30(b).

76 SOC (Amd) at para 29.

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dispositive and precluded Kapital from seeking to draw inferences to shore up its case.

Kapital's claims in conspiracy

65 To recapitulate, the alleged conspiracy (both via unlawful or lawful means) was performed by Andrew and Stephanie "by procuring ZOMPL to breach its obligations owed under Clause 6.1 of the Loan Agreement and … causing ZOMPL to neglect, refuse and/or otherwise fail to make repayment of the Principal Sum and payment of the Interest Sum".[77] In other words, while Kapital had pleaded several retaliatory acts (allegedly) undertaken by Andrew and Stephanie (and their companies) against Adam (and his companies), the claims in conspiracy were only in relation to ZOMPL's breach of the Loan Agreement.

The law on conspiracy

66 As set out by the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [112], a claimant must plead and prove the following to succeed in a claim for conspiracy by *unlawful* means:

(a) 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 claimant by those acts;

(c) the acts were unlawful;

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77 SOC (Amd) at paras 20, 24.

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(d) the acts were performed in furtherance of the agreement; and

(e) the claimant suffered loss as a result of the conspiracy.

67 In contrast, the elements to constitute *lawful* means conspiracy differ in that (a) there is no requirement for unlawful acts; and (b) the alleged conspirators must have had the *predominant* intention to cause damage or injury to the plaintiff: see *ACE Spring Investments Ltd v Balbeer Singh Mangat and another* [2024] SGHC 277 at [103], citing *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 6864 at [50] and *Ok Tedi Fly River Development Foundation Ltd and others v Ok Tedi Mining Ltd and others* [2023] 3 SLR 652 at [113].

68 The requirement of a "combination" of two or more person to do certain acts in furtherance of the agreement must be satisfied for both types of conspiracy. What such a "combination" means or involves was one of the important issues in the RAs. In particular, the act performed pursuant to the conspiracy was the breach of the Loan Agreement – but neither Andrew nor Stephanie were parties to that contract. While it is well established that a director may participate in a conspiracy with his or her company (see below at [70]), and such a cause of action may therefore lie against ZOMPL and Stefanie with respect to the breach of the Loan Agreement, that was *not* Kapital's pleaded cause of action. Instead, the pleaded conspiracy was only as between Andrew and Stephanie to procure ZOMPL to breach the Loan Agreement. The key issue therefore was whether Andrew, who was not a director or controlling mind of ZOMPL and who was a non-party or "stranger" to the Loan Agreement, was capable of "combining" with Stephanie to procure its breach, in the absence of any pleaded facts as to what specific role he played. This gave rise to two legal questions:

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(a) Where the act done pursuant to the conspiracy is the breach of a contract, in what circumstances can a non-party or "stranger" to that contract be said to be involved in the conspiracy? (the "Combination Question")

(b) In order to establish a non-party's or "stranger's" involvement in the conspiracy, what particulars of that party's participation must be pleaded? (the "Particularisation Question")

The Combination Question

69 The learned authors of *Clerk & Lindsell* at para 23-103 state that, in relation to the element of "combination", "[t]he tort [of conspiracy] requires an agreement, combination, understanding, or concert to injure, involving two or more persons. Of the various words used to describe a conspiracy, "combination" has been preferred to "agreement" on the ground that "agreement" might be thought to require some agreement of a contractual kind, whereas all that is needed is a combination and common intention."

70 In *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 ("*PT Sandipala*") at [52], the Court of Appeal remarked that:

> … It is settled law that in unlawful means conspiracy, it is not a requirement that all conspirators commit or are able to commit the unlawful means in question, *so long as they* ***participate*** *in the overall conspiracy to cause loss*. … Conversely, although a director is incapable of legally breaching a contract to which he is not party, *he can nevertheless* ***participate or assist*** *in the acts*

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> *which, when done by the company, would amount to a breach.* [emphasis added]

In making these remarks, the Court of Appeal referred to the case of *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80, where a director, acting on behalf of the company, fraudulently overcharged the plaintiff in breach of his company's contract with the plaintiff, and the plaintiff there brought a successful claim for unlawful means conspiracy against the director and his company.

71 The question that follows is what it means to "participate" in a conspiracy and the nature of such "participation" – particularly when the relevant party is a non-director of the company (or not its controlling mind) in circumstances involving a contractual breach by the company.

72 In an attempt to answer this question, Kapital referred to *Turf Club* ([56] *supra*). In that case, two groups of parties had entered a joint venture to develop a land site and incorporated two companies (the "JV Companies") for this purpose. The site was leased from the Singapore Land Authority by a company controlled by one group of the parties ("SAA"), which in turn granted sub-tenancies to the JV Companies. While the site was being developed the two groups fell into disputes and court actions were commenced. Meanwhile, the head lease expired and was renewed. The two groups eventually reached a settlement that was recorded in a consent order by the court (the "Consent Order"). The settlement provided for a bidding exercise that would result in either group exiting the joint venture and for an external valuation of the shares of the JV Companies to be conducted. Before the issuance of the valuation reports, the head lease for the site was renewed once more, however, no subtenancies were granted to the JV Companies. The group that did not control SAA commenced an action claiming contractual breaches of the Consent Order

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including breaches of the term requiring the parties to preserve the *status quo* during the implementation of the Consent Order and the implied term that SAA would not appropriate for itself the benefit of the head lease. The claim in the alternative – among other claims – was for conspiracy to breach the Consent Order by members of the group controlling SAA.

73 Of particular relevance to the question in the present proceedings was the findings related to one "Tan Senior", who both the High Court and the Court of Appeal found liable in tort for conspiring to procure the breach of the Consent Order. "Tan Senior" was not a shareholder and director of SAA – despite once being so – at the time of the breach of the Consent Order. However, the High Court had found that "Tan Senior" had an interest and continued his involvement in SAA and the JV companies despite ceasing to be a director and that he was even consulted before and after the entering of the Consent Order in relation to the renewal of the head lease and the decision not to grant subtenancies to the JV Companies: *Turf Club* at [360]. Despite "Tan Senior's" submissions challenging this, the Court of Appeal upheld those findings and agreed with the High Court's conclusions: *Turf Club* at [367]–[372].

74 In short, despite not being a director of SAA, "Tan Senior" was still found to be involved in the affairs of SAA, particularly in relation to the acts constituting the breach of the Consent Order. In this sense, "Tan Senior" was not a "stranger" to the Consent Order or to SAA as he held a position of influence over SAA's affairs, and on the facts, did exercise that influence. This is no different – at least in substance – to a situation where a director (including a shadow director) conspires with his or her company to breach a contract that the company is a party to. *Turf Club* was therefore of limited assistance to answering the Combination Question.

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75 Turning elsewhere, the learned authors of *Clerk & Lindsell* at para 23-119 suggest the following:

> …[T]here are at least three situations where breaches of contract should not be classed as irrelevant, and should be treated as "unlawful means" for the purpose of the tort: (i) where defendants combine to break a contract (or contracts) that exist between them and the claimant … In the first of these situations, the breach of contract will be an actionable civil wrong to the claimant, so there seems little scope for conspirators to argue that they should be left at liberty to combine to use such a method of intentionally inflicting harm on the claimant. **So far as there is any basis for hesitation in cases falling within the first situation, it might be that a court should be cautious before finding that a defendant has joined a conspiracy to break a contract where: (i) that defendant was not itself a party to any contract broken; *and* (ii) that defendant would not have been held to have procured any breach of contract.** Such hesitation would be particularly appropriate if it appeared that a claim was formulated as being for an unlawful means conspiracy primarily to circumvent obstacles to a finding that the defendant had committed the tort of procuring a breach of contract. … [emphasis in italics in original; emphasis in bold added]

76 There are several English cases which suggest that a person can be liable for a conspiracy to break a contract to which he is not a party to, by combining with a common design with the party(s) committing the contractual breach: *Clerk & Lindsell* at para 23-118.

77 In *Midland Bank Trust Co Ltd and another v Green and another (No 3)* [1982] Ch 529 ("*Midland Bank*"), an option to purchase a farm was granted by a father to his son. The option was not registered. In order to deprive the son of the option, the father conveyed the farm at a gross undervalue to his wife. The son commenced proceedings alleging that the father and mother had conspired to defraud and injure him by depriving him of the benefit of the option. Much of the decision relates to the question of whether a husband and wife were capable of tortiously conspiring together in law, which the court found in the

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affirmative. In describing the tort of conspiracy, Lord Denning MR noted that it "is of use primarily when the act which causes damage would not be actionable if done by one alone … because it is then the only way in which the injured person can recover damages for the wrong done to him. But it can be used in other cases, such as the present, where the act done was a breach of contract by [the father] and is actionable accordingly: but, for some reason or other, the remedy is inadequate and the only way of getting a just result and a full remedy is by an action in conspiracy": *Midland Bank* at 539. To reiterate, the parties to the option contract were the father and the son, and not the mother. The mother was involved because the farm was conveyed to her, and the conveyance formed the basis for the breach of the option. In other words, she had directly participated in the act that constituted the breach; but for her involvement or the conveyance to her, there would not have been a breach. This case therefore suggests that a non-party (the mother) to a contract can be a participant to a conspiracy to breach the said contract provided that there is some active and meaningful participation on its part to facilitate the breach.

78 In addition, "[a] person may be a party to a combination to use unlawful means, even though he himself cannot commit the unlawful acts in question, for example a person who joins parties to a contract in making threats that they will break that contract, thereby constituting a conspiracy to intimidate": *Clerk & Lindsell* at para 23-107, citing *Kuwait Oil Tanker Co SAK v Al-Bader* [2000] All ER (Comm) 271 ("*Kuwait Oil Tanker*"). In that case at [130], the English Court of Appeal appeared to have accepted the conceivable possibility where "A and B may conspire to injure C by a breach of contract by B such that B would be liable for the breach of contract but A would be liable in tort for inducing the breach of contract".

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79 It is apparent that the notion of a "combination" requires some form of action or participation from each member of that combination, in pursuit of the aims of the combination. Fundamentally, because this element of "combination" serves to extend liability of a person for the breach of a contract which he is not party to, a *de minimis* or trifling involvement would be insufficient to draw a person into the conspiracy. Instead, as the authorities indicate, there must be some meaningful, causative participation on the part of each member of the conspiracy, which may include persuading or inducing a breach of contract *per Kuwait Oil Tanker*.

The Particularisation Question

80 Specifically in relation to how the element of 'combination' should be pleaded, the court in *SW Trustees* ([54] *supra*) noted at [37]:

> In particular, to establish the requisite combination in the first element, the plaintiffs must plead the material facts of how the co-conspirators came together to take some form of concerted action in pursuit of a common object or design (see Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 15.054). Thus, it is not enough for the plaintiffs to only plead a "combination" without any particulars. Indeed, the importance of this principle was illustrated in the English Court of Appeal decision of *Elite Property Holdings Ltd and another v Barclays Bank Plc* [2019] EWCA Civ 204. In that case, the court dismissed the claimant's appeal in an application to amend their pleadings because the proposed amendments merely stated a "combination" between the alleged conspirators without any particulars of what the conspirators combined to do (at [72]–[73]).

81 Reading this alongside the conclusion to the Combination Question, it is necessary for a claimant to plead particulars of how the alleged conspirators combined, which entails pleading the role of each conspirator and his or her participation, *ie*, what he or she did (or omitted to do) as part of the conspiracy. In the present context, Kapital must plead particulars of Andrew's and

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Stephanie's participation in the alleged conspiracy to cause and/or procure ZOMPL to breach the Loan Agreement. Crucially, Andrew's specific contribution towards the object of the alleged conspiracy must be pleaded.

My findings

82 Applying the legal principles, Kapital must plead with the requisite particularity, that there was a combination between Andrew and Stephanie specifically in relation to procuring the default of the Loan Agreement by ZOMPL.

83 However, save for pleading a "combination", Kapital failed to plead how Andrew participated in the conspiracy – there were no particulars of what acts were or could have been undertaken by Andrew or how the breach was procured by Andrew. Unlike Stephanie, Andrew was not an agent or employee of ZOMPL, let alone a director or officer, and was not in any legal, fiduciary or other position to procure ZOMPL to do, or omit to do, anything. Plainly, Andrew neither had nor could have had a *direct* role in procuring the breach of the Loan Agreement. In any event, Kapital's amendments did not explain Andrew's involvement in relation to the breach of the Loan Agreement specifically.

84 At the hearing, Kapital's counsel clarified that Andrew's role was effectively confined to persuading and influencing Stephanie to take or not to take certain acts and cause ZOMPL to breach the Loan Agreement.[78] While this may be conceptually sufficient to make out Andrew's participation in the alleged conspiracy (see above at [78]–[79]), the pleading in this respect was

[78] Transcript of 16 September 2024 at p 13 lines 17–20 and p 24 lines 22–26.

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unsatisfactory precisely because the act(s) of inducement remained unparticularised (see above at [63]–[64]).

85 In fact, Kapital's counsel conceded at the hearing that Kapital "[had] not pleaded anything in terms of combination for the [Loan Agreement]".[79] Instead, its counsel stated that he "[could] go no further than to say that in terms of the combination in respect of the [procuring of ZOMPL's default of the Loan Agreement], [Kapital] would invite the Court to look at the combination of [the other retaliatory acts] to find that there is a combination" for the act forming the conspiracy.[80] Plainly, Kapital was relying on inferences.

86 Indeed, in an analogous context where the plaintiff was similarly relying on inferences to establish the element of a "combination", the High Court in *Syed Ahmad Jamal Alsagoff (administrator of the estates of Shaikah Fitom bte Ghalib bin Omar Al-Bakri and others) and others v Harun bin Syed Hussain Aljunied and others and other suits* [2017] 3 SLR 386 at [60]–[61] accepted that there may be little *direct* evidence of a "combination" and inferences may need to be drawn:

> 60 … It is true that in proving a conspiracy, there is no need to show an express agreement. Conspiracies by their nature may be secretive, and arise in the course of dealings between those involved under circumstances where there may be little direct evidence of a concrete or tangible agreement being reached by all of them at the same time. Circumstantial evidence may be all that there is. The presence of an agreement or combination may thus be derived or deduced from the actions of the various members. …
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> 61 Furthermore, *inferences of the existence of a combination or agreement would not be lightly drawn*, and the presence of such a combination or agreement has to be established on the balance of probabilities. *It is not sufficient to merely prove the*

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79 Transcript of 16 September 2024 at p 4 lines 26–27.

80 Transcript of 16 September 2024 at p 10 lines 14–17.

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> *presence of an agreement; there must also be evidence that the alleged conspirators had taken concerted action pursuant to that agreement*: *EFT Holdings* at [113].
>
> [emphasis added]

87 To the extent that Kapital sought to refer to the other retaliatory acts to demonstrate a combination, that had two challenges. First, that would be more relevant to proving a *general* conspiracy against Adam by injuring him and/or his business interests, which was not Kapital's pleaded case. While Kapital's counsel agreed that this was Kapital's *intended* case, he agreed that Kapital's pleaded case was different and was confined to ZOMPL's breach of the Loan Agreement.[81] Second, Kapital had not shown the relevance of this *general* combination in so far as the combination to specifically procure ZOMPL's breach was concerned.

88 More importantly, like its case for inducing a breach of contract, Kapital's case was not sustainable. An essential element of a conspiracy is loss *because of the conspiracy* (see above at [66(e)]). For the reasons explained above, it was questionable how Andrew and Stephanie could conspire to procure a breach of the Loan Agreement if ZOMPL could not make quarterly payments in any event (see above at [58]–[59] and [61]), thereby eliminating any causative influence on their part on ZOMPL's breach. To repeat, the investment was structured at its inception and well pre-dated the Trigger Event. Here, Kapital's loss was directly connected to the breach of the Loan Agreement. There can be no loss caused by a conspiracy to procure a breach that was inevitable. To this end, Kapital was effectively precluded from attempting to infer a combination between Andrew and Stephanie to procure an inevitable breach.

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81 Transcript of 16 September 2024 at p 11 lines 8–18.

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89 In addition, Kapital took an inconsistent position in the present proceedings compared to its position in parallel proceedings in Sri Lanka to wind up Lankaila (the "Sri Lanka Proceedings"). In its Statement of Objections filed opposing the winding-up, it stated that "during the period commencing from *December 2022* until [4 April 2024], three key persons carried out a conspiracy scheme to defraud both the majority shareholder of Lankaila … and [Kapital]" [emphasis added].[82] The said three key persons were identified as Sun, Andrew and Stephanie.[83] In contrast, in the draft Amended SOC, it alleges that the conspiracy was precipitated by the Trigger Event in *May 2023* (see above at [44]). When confronted with this at the hearing, Kapital's counsel could only respond that the acts relied on in support of its case in conspiracy in the Sri Lanka proceedings post-dated the Trigger Event.[84] But this does not explain why Kapital had asserted a conspiracy that well pre-dated the Trigger Event.

Kapital had failed to appropriately plead Stephanie's breach of fiduciary duties owed to disentitle her from any protection under the *Said v Butt* rule

The Said v Butt rule

90 An employee acting *bona fide* and within the scope of his authority is not liable for procuring a breach of contract made between his employer and a third party: see *Said v Butt* [1920] 3 KB 497 ("*Said v Butt*") at 506, see also *Clerk & Lindsell on Torts* at para 23-44. The Court of Appeal in *PT Sandipala* ([70] *supra*) held at [62] that "the *Said v Butt* principle should be interpreted to exempt directors from personal liability for the contractual breaches of their

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82 Affidavit of Lee Tze Wee Andrew dated 16 May 2024 ("Aff Andrew") at p 261.

83 Aff Andrew at pp 262, 264, 265.

84 Transcript of 16 September 2024 at p 59 lines 26–31.

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company (whether through the tort of inducement of breach of contract or unlawful means conspiracy) if their acts, in their capacity as directors, are not in themselves in breach of any fiduciary or other personal legal duties owed to the company". The onus lies on the claimant to prove that the defendant-directors' acts were in breach of their personal duties to the company: *PT Sandipala* at [65].

91 As to the reach of this principle, the Court of Appeal in *PT Sandipala* has clarified:

> 51 Directors may be held personally liable for the consequences of the company's breach of contract under three potential causes of action. The first is *the tort of procurement of breach of contract*, where the director induces or procures his company to breach its contract with a third party. The second is *unlawful means conspiracy* as between the directors, where directors conspire to procure their company to breach its contract. The underlying unlawful means would be the tort of inducement of breach of contract, which is the same as that of the first cause of action. … The third is *unlawful means conspiracy* as between a director and his company, where the director conspires with the company to cause the company to breach the contract. …
>
> …
>
> 53 However, in relation to all the above causes of action, the courts have accepted that a director is immune from personal liability if he falls within the application of the principle in *Said v Butt* …
>
> 54 … Although *Said v Butt* concerned the tort of inducement of breach of contract, which was the applicable tort in that case, *its application has been extended to other torts involving a company's breach of contract, such as unlawful means conspiracy where the unlawful means pertains to the contractual breach* …
>
> [emphasis added]

92 Similarly, the Court of Appeal in *Turf Club* ([56] *supra*) at [314(a)] summarised that "under the *Said v Butt* principle, directors will ordinarily be immune from personal liability *for authorising, procuring or participating in*

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the contractual breaches of their company (whether through the tort of inducement of breach of contract or unlawful means conspiracy) unless their acts, in their capacity as directors, are in breach of any fiduciary or other personal legal duties owed to the company" [emphasis added].

93 In short, Stephanie, as a director of ZOMPL, would be shielded from liability by the *Said v Butt* principle in respect of Kapital's causes of action in conspiracy or in inducement of contract, unless Kapital demonstrated that her acts, performed in her capacity as director of ZOMPL, were in breach of any duties owed to ZOMPL. As the Court in *PT Sandipala* at [72] succinctly held, "unless the plaintiff can prove that the defendant-directors breached their personal legal duties to the company in directing or participating in the breach of contract, the defendant-directors would be entitled to immunity under the *Said v Butt* principle".

My findings

94 Kapital pleaded that Stephanie breached her fiduciary duties owed to ZOMPL in structuring ZOMPL's investment in ZGPL as an equity injection instead of a back-to-back loan agreement between ZOMPL and ZGPL (see above at [47]). However, Kapital did not offer a basis for suggesting that Stephanie was under an obligation to ensure the investment was by way of a loan, nor did it substantiate how the equity injection in ZGPL (as opposed to a loan) was a breach of Stephanie's fiduciary duties. As Kapital's counsel conceded at the hearing, the Loan Agreement did not dictate how the Principal Sum was to be specifically utilised, only noting generally that the purpose of the loan was for "financing the real estate development and investment projects

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as represented to [SP 3]".[85] It was thus doubtful whether the act complained of could amount to a breach of fiduciary duties which disqualified Stephanie from the protection under the *Said v Butt* rule.

95 More importantly, even if this was a breach, it had no relation to the pleaded causes of action in conspiracy. Following *PT Sandipala* at [72], Kapital must prove that Stephanie "breached [her] legal duties to [ZOMPL] *in directing or participating in the breach of contract* [by ZOMPL]". Accordingly, the breach of fiduciary duties must be established in relation to the alleged conspiracy involving Stephanie's procurement of ZOMPL's breach of contract – which Kapital pleaded was in and around June 2023 and certainly after the termination of Supplemental 5 in May 2023. However, the alleged breach of duties that Kapital pointed to, surrounding the equity injection, did not concern the pleaded causes of action. It was not Kapital's case that the equity injection was an act done pursuant to the alleged conspiracy, and in any case, the equity injection long pre-dated the Trigger Event (see above at [59]). In any event, Kapital failed to plead the specific steps that Stephanie should have taken to ensure that ZOMPL could meet its interest payment obligations.

96 The protection under the *Said v Butt* rule therefore applied to Stephanie in relation to the allegation that she had procured ZOMPL to breach the Loan Agreement by failing to make the quarterly interest payment to Kapital or had conspired with Andrew to do so. This was a separate ground to dismiss the pleaded claims against Stephanie.

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[85] Aff Andrew at p 229.

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Conclusion

97 Having established that Kapital had failed to sufficiently plead its claims in conspiracy and in inducing a breach of contract, and more importantly, that the claims were unsustainable on Kapital's own case, I dismissed the appeals.

Hri Kumar Nair
Judge of the High Court

Loh Weijie Leonard and Chow Ee Ning (Selvam LLC) for the appellant;
Chong Xue Er Cheryl, Low Zhe Ning, Lim Wei Ying and Aaron Lee Teck Chye (Allen & Gledhill LLP) for the respondent in HC/RA 125/2024;
Viveganandam Devaraj (Lions Chambers LLC) for the respondent in HC/RA 126/2024.

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Annex 1: Diagram of Ownership and Control

