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

[2024] SGHC 293

Suit No 1002 of 2021

Between

Prometheus Marine Pte Ltd (In Liquidation)

… *Plaintiff*

And

(1) Alan John Pickering
(2) Lynette Anne Pickering
(3) Promarine Yacht Sales Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Directors — Duties — Breaches]
[Evidence — Proof of evidence — Defendant elects to call no evidence — Whether applicable test for plaintiff to discharge essential elements of claim is *prima facie* case]
[Limitation of actions — Equity and limitation of actions — Directors breaching fiduciary duties — Whether limitation defence applies — Section 22 Limitation Act 1959]
[Tort — Conspiracy — Conspiracy by lawful means and unlawful means]

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v
Pickering, Alan John and others

[2024] SGHC 293

General Division of the High Court — Suit No 1002 of 2021
Audrey Lim J
19, 20, 24, 25 September; 4 November 2024

19 November 2024 Judgment reserved.

Audrey Lim J:

1 Prometheus Marine Pte Ltd ("PMPL") is a company in liquidation. It commenced Suit 1002 of 2021 (the "Suit") against Mr Alan John Pickering ("D1") and Mrs Lynette Anne Pickering ("D2") for breaches of duties to PMPL, by causing PMPL to make unjustified payments when D1 and D2 were its directors. PMPL also claims against D1, D2 and Promarine Yatch Sales Pte Ltd ("D3") (collectively, the "Defendants") for expenses which D1 and D2 had caused PMPL to incur for D3's benefit, and further claims against the Defendants for conspiracy to cause loss and injury to PMPL by various acts.

Background

2 PMPL was incorporated in 1986. It was in the business of providing consultancy and management services for marine leisure industries, services for the sale of marine leisure crafts, and craving and maintenance services. These

consultancy and management services included services relating to marina development and design, marine engineering, yacht support services and boat charter services.[1]

3 D1 was the majority shareholder of PMPL, holding 150,001 out of 150,002 shares. He was a director and the Managing Director of PMPL from 1 August 1995 to 1 November 2013. He was reappointed as director from 2 November 2016 until PMPL's liquidation on 15 September 2017.[2] The liquidators appointed in PMPL's liquidation (the "Liquidators") claim that D1 was PMPL's *de facto* director from 2 November 2013 to 1 November 2016.[3] D2 is D1's wife. She held one share in PMPL and was its director from 3 October 1994 until its liquidation.[4]

4 D3 was incorporated on 13 August 2013. Based on a business profile search conducted with the Accounting and Corporate Regulatory Authority, D3's business is described as "sales of marine leisure craft and providing craving and maintenance services". D3's shareholders are D1, D2 and Mr Simon Trevor Wood ("Wood"), holding 74%, 1% and 25% of its shares respectively. D1 and D2 were D3's directors from its incorporation, with D1 resigning on 14 March 2020 and D2 resigning on 17 October 2017. Wood has been a director of D3 since 3 October 2016.[5]

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1 Statement of Claim ("SOC") at [5]; Chee Yoh Chuang's Affidavit of Evidence-in-Chief ("Chee's AEIC") at [10] and p 21; Transcripts of Examination conducted on 10 February 2020 ("10/2/20 Transcripts") at pp 9–10.

2 Chee's AEIC at [11], and pp 67 and 73; 10/2/20 Transcripts at pp 31–32.

3 SOC at [12]; Chee's AEIC at [22].

4 Chee's AEIC at [12], and pp 67 and 79.

5 Chee's AEIC at [14], and pp 74, 75, 79 and 82–84.

5 In January 2013, Mrs Ann Rita King ("King") commenced arbitration proceedings against PMPL for damages pertaining to a vessel she had purchased from PMPL (the "Arbitration"). The Arbitration hearing took place from 31 August to 4 September 2015. On 5 April 2016, the arbitrator rendered his award (the "Award") for PMPL to pay King damages of over US$364,000 and costs.[6] On 23 June 2017, King commenced winding-up proceedings against PMPL for the unsatisfied Award. On 15 September 2017, PMPL was compulsorily wound up by order of court and the Liquidators were appointed.[7]

The Liquidators' case and claims against the Defendants

6 Chee Yoh Chuang ("Chee"), on the Liquidators' behalf, attested as follows.

7 The Liquidators started reviewing PMPL's affairs after its liquidation. From October 2017, the Liquidators corresponded with D1 and D2 requesting for information and documents belonging to PMPL and made site visits to its office. The Liquidators also applied to court to examine D1, D2 and Ms Liow Sin Moi ("Liow"), who was then PMPL's accountant, and the examinations were conducted on 10, 17 and 24 February 2020 (the "Examinations").[8]

8 Through the Examinations, the Liquidators uncovered various corporate wrongs the Defendants had committed *vis-à-vis* PMPL. These related to transactions which D1 and D2 had caused PMPL to enter into with themselves or D3 from August 2013 but were only uncovered following the

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6 SOC at [40(a)]; Defence of D1 and D2 ("Defence") at [2]; 20/9/24 Notes of Evidence ("NE") 11; 24/9/24 NE 4–5.

7 Chee's AEIC at [9] and p 63.

8 Chee's AEIC at [21], and pp 130–368.

Liquidators' investigations into PMPL's affairs, including a review of its internal records and enquiring from its directors (past and present) on its finances and affairs during the Examinations.[9]

9 On 7 December 2021, PMPL commenced the Suit against D1 and D2 for breaches of directors' duties on the ground that D1 and D2 had caused PMPL to do the following:[10]

(a) paying unjustified salaries to D1 totalling $268,000 (the "Unjustified Salaries Claim");

(b) paying for D1's personal expenses totalling $94,421 (the "Personal Expenses Claim");

(c) making preferential repayments of shareholder loans to D1 and D2 totalling $101,002 (the "Preferential Repayment Claim"); and

(d) incurring office rental expenses totalling $113,972 when PMPL had ceased to trade and allowing D3 to occupy PMPL's office rent-free (the "Rental Expenses Claim"). PMPL also claims against D3 for unjust enrichment pertaining to the use of the premises.

10 PMPL further claims the Defendants had conspired to divert its assets and corporate opportunities to D3 through a series of agreements (the "Agreements") designed to ensure that all revenue and profits rightfully generated and that should have been retained by PMPL were diverted to D3, which caused PMPL loss and damage.[11] The Agreements comprise the Name

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9 Chee's AEIC at [17]–[26].

10 Chee's AEIC at [7] and [123]; 20/9/24 NE 4.

11 SOC at [52]; 20/9/24 NE 4–5.

Use Agreement ("NU Agreement"), the Commission Agreement, an Addendum to the Commission Agreement (the "Addendum"), an Oral Commission Agreement, and the Termination of Agency and Support Services Agreement (the "Termination Agreement").[12]

11 The salient terms of the NU Agreement dated 15 August 2013, and signed by D2 (on PMPL's behalf) and D1 (on D3's behalf), are as follows:[13]

> WHEREAS:
>
> A. PMPL has been trading under the names 'Prometheus' and 'Promarine' (the "Names") …
>
> B. PMPL is currently being sued … and also has a significant arbitration claim against it. Together these matters present difficulties for PMPL to conclude contracts for the sale of larger yachts since any substantial award could render PMPL unable to fulfill a contract with a customer.
>
> C. [D3] is established … to act as a sales agent for PMPL to receive and hold customers deposits and installment payments during construction and delivery for onward payment to the manufacturer and thus ensure all payments can be made … and the customer can receive his yacht.
>
> D. PMPL is willing to grant [D3] the right to use the Names on the terms and conditions set out in this agreement.
>
> IT IS NOW AGREED AS FOLLOWS:
>
> 1. With effect from the date of incorporation of [D3], PMPL grants [D3] the non-exclusive right to use … the Names …
>
> 2. [D3] agrees to pay PMPL an annual fee of [$5,000] or 0.25% of [its] annual revenue … whichever is greater.
>
> 3. Should PMPL become insolvent … or cease trading … [D3] will have the immediately exercisable option to acquire the perpetual exclusive rights to the Names … on payment of … [$5,000] in full payment.

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12 SOC at [53].

13 Plaintiff's Bundle of Documents Vol 1 ("1PBOD") 27–28.

12 The salient terms of the Commission Agreement, dated 3 November 2013, and signed by D2 (on PMPL's behalf) and D1 (on D3's behalf), are as follows:[14]

> A. PMPL had been working with [Mr Mercier] a prospective customer ("the customer") for the purchase of a … yacht … but due to ongoing litigation and arbitration claims PMPL was not in a position to contract with the customer …
>
> B. To protect the customer from possible insolvency of PMPL, [D3] entered into a sales contract with the customer for the supply of a 'Majesty 105' on behalf of PMPL …
>
> …
>
> E. PMPL has been forced to cease trading due to slow sales and high legal fees on the court case and arbitration and is therefore no longer in a position to support this customer through the build period, delivery, commissioning and warranty should the customer enter into a contract with the manufacturer for the supply of a yacht …
>
> …
>
> IT IS NOW AGREED AS FOLLOWS:
>
> 1. With immediate effect [D3] will take over all negotiations, discussions, correspondence, visits to the factory and all other appropriate support of the customer with the aim of securing the best possible chance of the customer concluding a contract with the manufacturer.
>
> 2. In the event of a contract being completed, [D3] and PMPL will share any net commission earned during the build and delivery of the yacht on the [*sic*] 50% of the purchase price … on the basis of [D3] 60% : PMPL 40%.
>
> …

13 The Addendum dated 27 November 2013, signed by D2 (on PMPL's behalf) and D1 (on D3's behalf), states as follows:[15]

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14 1PBOD 30–33.

15 1PBOD 34.

> A. Due to the special terms of agreement for the Majesty 105 the contract has to be executed directly between the Manufacturer … and the buyer [Mr Mercier].
>
> B. [D3] will act as security agent in all financial matters relating to the contract.
>
> …
>
> IT IS NOW AGREED AS FOLLOWS:
>
> 1. In remuneration for its services as security agent, [D3] will earn 15% of the net commission on this sale.
>
> 2. Immediately upon receipt of each commission payment from Majesty [D3] will remit the balance 85% of the commission to PMPL.

14 Finally, on 31 March 2016, the Termination Agreement was executed by D1 (on PMPL's behalf) and Wood (on D3's behalf), and stated as follows:[16]

> 1. **Termination of Agreement.** The agency and support services work agreement between PMPL and [D3] signed on 03 November 2013 is terminate [*sic*] effective from the date of this termination agreement. The Parties agree that all rights and obligations arising on account of the Agreement are hereby terminated, and hereby release each other from their respective obligations under the Agreement.
>
> 2. No further claims including but not limited to unbilled invoices, if any, shall be made commencing from the date of this agreement.

Preliminary issues

15 PMPL has discontinued the Suit against D3. PMPL's case against D1 and D2 is based on the testimony of, and evidence adduced by, the Liquidators. D1 and D2 did not file any affidavits of evidence-in-chief and elected not to testify. On the first day of trial, D1 informed the court by email that he and D2 would not be attending the trial. Nevertheless, the court adjourned the hearing to give them the opportunity to attend the trial on the following day and

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16 1PBOD 42.

informed them that if they failed to do so, the trial would proceed in their absence. D1 emailed the court the following day to maintain that he and D2 would not be attending the trial. I thus proceeded to hear and determine the matter in their absence.

16 I start with some preliminary issues, before proceeding to determine whether PMPL has made out each of its claims. I will then deal with whether its claims are time-barred and whether the defence of set-off is made out, as pleaded by D1 and D2.[17]

Standard of proof

17 PMPL's counsel, Mr Veluri, submits that, as D1 and D2 did not lead evidence in their defence, PMPL only need satisfy the court of a *prima facie* case on each of the essential elements of the claim to secure a judgment in its favour, relying on *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*"). Mr Veluri further submits that significant weight should be accorded to the evidence from the Examinations (which PMPL had exhibited as evidence) in assessing whether PMPL's case is made out on a *prima facie* level.[18]

18 In *Ma Hongjin*, the defendant had made a submission of no case to answer ("no-case submission") after the close of the plaintiff's case. The Court of Appeal held (at [27] and [32]) that the plaintiff continues to bear the legal burden of proving its case on a balance of probabilities, even when a no-case submission is made by the defendant. As for the evidential burden, where it lies with the plaintiff, the plaintiff would need to satisfy the court that there is a *prima facie* case on each of the essential elements of the claim, at which point

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17 Defence at [3].

18 Plaintiff's Opening Statement ("POS") at [10]–[11].

the evidential burden then shifts to the defendant to show otherwise. Because the defendant (in a no-case submission situation) has no evidence to disprove the plaintiff's position or weaken it such that the facts the plaintiff relies upon are "not proved", the court is left with the plaintiff's evidence. If that evidence, on a *prima facie* basis, satisfies all the essential elements of the cause of action, judgment will be given against the defendant. In other words, the plaintiff would have proved its case on a balance of probabilities by establishing a *prima facie* case on the facts in issue (*Ma Hongjin* at [27]–[32]).

19 The same principle in *Ma Hongjin* would apply where the defendant chooses not to call evidence in defence on the particular issue or claim. The latter is no different from a situation where a defendant (in making a no-case submission) must make an accompanying election not to call evidence if that submission fails. In either scenario, no evidence is led by the defendant which can disprove the plaintiff's position or weaken it such that the facts the plaintiff relies upon are "not proved". This was demonstrated in *Anti-Corrosion Pte Ltd v Berger Paints Singapore Pte Ltd and another appeal* [2012] 1 SLR 427 at [37]–[38], where the Court of Appeal held that once the plaintiff has discharged the evidential burden (on a particular issue) on a *prima facie* case, the tactical burden shifted to the defendant to show otherwise. As he failed to do so, the plaintiff's position would be proved on a balance of probabilities.

20 That said, even where a defendant chooses not to give evidence in his defence, this does not necessarily mean that the court must accept *without more* the plaintiff's testimony as satisfying the "*prima facie*" threshold such that the plaintiff would thus have proved the facts (on a balance of probabilities). Crucially, where the plaintiff bears the evidential burden of proving a particular fact, *he must still adduce some (not inherently incredible) evidence* of the

existence of such fact coincide (*Ma Hongjin* at [28]–[29]). This was acknowledged by Mr Veluri.[19]

Whether D1 was a de facto director of PMPL

21 The Liquidators claim that D1 was a *de facto* director of PMPL between 2 November 2013 to 1 November 2016. I agree. I find that D1 was directing the affairs of PMPL and performing the functions of a director of PMPL at the material time. He was also the main decision-maker in PMPL even when he and D2 were the formally appointed directors.

22 In the Examinations, D1 stated that throughout D2's appointment as PMPL's director (including when D1 was not a formally appointed director), D2 acted merely as a "non-executive director" and did not play any executive role in, nor make any decisions for, PMPL. D1 further stated that between 2 November 2013 and 1 November 2016 (when he was not a director on record) D2 would consult D1 on decisions pertaining to PMPL and make decisions pertaining to PMPL based on D1's instructions, and that PMPL was a "family business". For instance, D1 accepted that whilst the NU Agreement and Commission Agreement were signed by D2 (on PMPL's behalf) and D1 (on D3's behalf), the NU Agreement was effectively negotiated by and entered into on PMPL's and D3's behalf by D1, and D1 also represented both PMPL and D3 in the Commission Agreement.[20]

23 A *de jure*, *de facto* or shadow director owes the same duties to the company (*Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017]

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19 24/9/24 NE 11.

20 Chee's AEIC at [22]; 10/2/20 Transcripts at pp 31–33, 35–36, 54–55.

SGHC 73 at [33]) and would be subject to the duties ordinarily imposed on directors (*Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2010] SGHC 163 at [69]).

When PMPL ceased business and was of doubtful solvency

24 Next, the Liquidators assert D1 and D2 knew that PMPL was insolvent or of doubtful solvency from as early as 2013 as it had effectively ceased to trade since November 2013.[21] I find that the evidence supports this assertion.

25 D1's and D2's knowledge that PMPL was of doubtful solvency or in a parlous financial position from as early as 2013 is supported by the documentary evidence and D1's testimony:

(a) In August 2013, D1 and D2 caused PMPL to execute the NU Agreement with D3. The Agreement states that PMPL was being sued in court and had a significant claim against it in arbitration; and that these matters "[presented] difficulties for PMPL to conclude contracts for the sale of larger yachts since any substantial award could render PMPL unable to fulfil a contract with a customer".[22]

(b) The Commission Agreement dated 3 November 2013, executed by D2 (on PMPL's behalf) and D1 (on D3's behalf), stated that PMPL had been forced to cease trading "due to slow sales and high legal fees on the court case and arbitration and [was] therefore no longer in a position to support" Mr Mercier, a prospective customer of PMPL; and to "protect the customer from possible insolvency of PMPL", D3 had

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21 Chee's AEIC at [25] and [28].

22 10/2/20 Transcripts at pp 33–34; Chee's AEIC at [26(a)]; 1PBOD 27–29.

thus entered into a sales contract with the customer for the supply of a vessel on PMPL's behalf.[23]

(c) In D1's letter to the Liquidators dated 13 October 2017 ("D1's 13/10/17 Letter"), D1 stated that the Arbitration was "drawn out and expensive" and "ruined the financial viability of [PMPL]". D1 further stated that "due to the rising costs of the legal process and general negative effect" of the proceedings "which led to falling sales, it was not viable to continue running [PMPL]" and D3 was thus incorporated to be the marketing and sales arm and agent of PMPL. The letter further stated that PMPL began releasing employees in 2013 due to the burden of legal fees and declining business and it then operated with a skeleton staff.[24]

(d) During the Examinations, D1 also attested that PMPL was at the material time "under financial pressure" and that the marketplace knew about the Arbitration. He also stated that he had resigned as PMPL's director in November 2013 because business became "too difficult" and that it was "impossible to do business".[25]

26 That PMPL had ceased to trade in around November 2013 is supported by the Commission Agreement (see [25(b)] above) and by the following:

(a) During the Examinations, D1 admitted that PMPL had ceased to trade in November 2013 and explained that its business "went down"

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23 Chee's AEIC at [26(b)]; 10/2/20 Transcripts at p 54; 1PBOD 30–33.

24 Chee's AEIC at [26(c)], and pp 99–101; Plaintiff's Bundle of Documents Vol 2 ("2PBOD") 248–251.

25 10/2/20 Transcripts at p 67; Transcripts of Examination conducted on 17 February 2020 ("17/2/20 Transcripts") at p 22.

from 2013 but it was kept alive to fund the defence of the legal claim it was facing by revenue generated from the Commission Agreement.[26]

(b) The Liquidators' analysis of PMPL's financial position showed its average annual revenue had decreased drastically from a recorded $4.68m in 2012 to some $48,302 in 2016. I accept that this further supports that PMPL had ceased to trade in around November 2013. Pertinently, whilst PMPL's general ledger (the **"**General Ledger") recorded a revenue of $570,765 for the financial year of 2017, I accept that this was not actual revenue generated in 2017. This revenue pertained to a vessel the 'Clipper Cordova 60' which had been sold to King in 2011 and was the subject of the Arbitration (as confirmed by Liow).[27]

Claims for breaches of directors' duties

27 I turn now to PMPL's claims against D1 and D2 for breaches of directors' duties, by essentially causing PMPL to make unjustified payments or incur unjustified expenses (see [9] above). I will deal with each of them in turn.

Unjustified Salaries Claim

28 The Liquidators claim that PMPL's records show that between November 2013 to October 2016, D1 was paid salaries totalling $268,000. As he was not on record a director or employee of PMPL at the material time, there was no justifiable basis to pay him any salary. Chee further states that even if

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26 10/2/20 Transcripts at p 66; 17/2/20 Transcripts at pp 13–14.

27 Chee's AEIC at [29]–[35] and Tab 19 (Summary of Income Statements); Transcripts of Examination conducted on 24 February 2020 ("24/2/20 Transcripts") at pp 31–32, 34, 72.

D1 had been employed by PMPL, there was nevertheless no basis to remunerate D1 when PMPL had ceased to trade on 3 November 2013 and thus D1 would not have provided any services to PMPL thereafter. The payments were made although D1 and D2 knew that PMPL was insolvent or of doubtful solvency.[28]

29 D1 admits that he was remunerated by PMPL at $8,000 a month at the material time.[29] Contrary to the Liquidators' assertion however, there was an employment contract dated 1 November 2013 between PMPL (signed by D2 as director) to employ D1 as PMPL's sales manager for $8,000 a month. This was conceded by Chee in court.[30] Nevertheless, I agree with PMPL that there was no legitimate basis for D1 to have been employed and paid $8,000 per month, when D1 and D2 knew (as I have found) that PMPL was of doubtful solvency and when PMPL had (as admitted by D1) ceased to trade in November 2013.

30 The Agreements and the incorporation of D3 further support my finding. D3 was formed to take over the sale of vessels from PMPL (see [25(c)] above). D1 admitted that in the period from D3's incorporation to PMPL's liquidation, D3 had no employees and the only person responsible for D3's business was D1 (apart from Wood when he was made a director in October 2016).[31] This event is to be taken together with: (a) the execution of the NU Agreement which conferred on D3 the "exclusive right" to use the "Prometheus" and "Promarine" names for a fee; (b) the execution of the Commission Agreement (read with the Addendum) for D3 to conduct negotiations on the sale of the vessel the 'Majesty 105' on PMPL's behalf for a 15% share of the commissions earned on the sale;

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28 Chee's AEIC at [41]–[44].

29 10/2/20 Transcripts at pp 28, 29, 52.

30 1PBOD 36–41; 24/9/24 NE 5–6.

31 10/2/20 Transcripts at pp 53–54.

and (c) the subsequent Oral Commission Agreement which D1 stated applied to all other vessels subsequently sold to which D3 would similarly obtain 15% of the commissions.[32]

31 D1 (whom I have found to be a *de facto* director of PMPL) had thus breached his duties to act *bona fide* in PMPL's best interests, put himself in a position of a conflict of interest, and disregarded the interests of PMPL's creditors when PMPL's solvency was doubtful or when it was in a parlous financial position. D2 was PMPL's director and had signed the employment contract on PMPL's behalf when she knew that PMPL was of doubtful solvency and had ceased trading. She had thus likewise failed to act *bona fide* in PMPL's best interests and disregarded the interests of its creditors. When a company is insolvent or even in a parlous financial position, directors have a fiduciary duty to take into account the interests of the company's creditors when making decisions for the company. This duty requires directors to ensure that the company's assets are not dissipated or exploited for their own or the shareholders' benefit to the prejudice of creditors' interests (*Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 at [105]–[106]; *Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [48]).

32 In this regard, the Liquidators claim $268,000 based on a table comprising 32 separate payments to D1 from November 2013 to October 2016 ("Salary Table").[33] The Salary Table sets out each corresponding payment against the entries found in the General Ledger and bank statements. I am satisfied that PMPL has discharged the evidential burden that the payments were

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32 17/2/20 Transcripts at p 3.

33 SOC at Annex A; 2PBOD 397.

made to D1 at the material time and as his salary, except for a payment recorded as an entry dated 29 April 2016 in the General Ledger for a sum of $2,000 with no description of what the payment pertained to.[34] Chee admitted that there are no documents to support this was a payment of a salary to D1.[35]

Personal Expenses Claim

33 PMPL also alleges that D1 and D2 caused PMPL to continually incur expenses amounting to $94,421, when they were D1's and D2's personal expenses and not for PMPL's benefit as it had ceased to trade and was insolvent or of doubtful solvency.[36] The expenses are set out in a table in Chee's AEIC as follows (the "Personal Expenses"):

Expenses	**2014**	**2015**	**2016**
Meals and entertainment	$12,743	$10,113	$2,967
Motor vehicle	$10,550	$12,717	$3,371
Telephone	$4,621	$4,604	$2,308
Travel	-	$24,407	$6,020
Total	**$27,914**	**$51,841**	**$14,666**

34 The Liquidators adduced evidence of the Personal Expenses as recorded in the General Ledger, which amount to $94,421.89 (albeit its claim is rounded to $94,421).[37] I am satisfied that PMPL has proved that the Personal Expenses were incurred for D1's and D2's personal benefit and that there was no

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34 2PBOD 397 (s/n 31); Chee's AEIC p 663.

35 24/9/24 NE 3.

36 Chee's AEIC at [50]–[61].

37 Exhibit A (disclosed in Plaintiff's letter to court dated 24 September 2024) at p 11; SOC at [34(a)].

legitimate basis or commercial benefit for PMPL to incur them. There was no evidence that these expenses were incurred for PMPL's benefit. By D1's own account, PMPL had ceased to trade since November 2013. There was thus no reason for D1 to have incurred these expenses when he also knew PMPL was of doubtful solvency. Indeed, D1's evidence in the Examinations show that some of the expenses charged to PMPL were incurred by D1 for D3's benefit.[38] In this regard, D1 would have breached the no-conflict rule as he was also a director of D3 at the material time.

35 Hence, I find that D1 had breached his duties to PMPL in relation to the Personal Expenses Claim, by putting himself in a position of conflicting interests and by disregarding the interests of PMPL's creditors when PMPL's solvency was doubtful and it was in a parlous financial position. D2, being PMPL's director and D1's wife, would have known the expenses were incurred for D1 and approved of them. I reiterate my findings at [31] above.

Preferential Repayment Claim

36 Next, PMPL claims that D1 and D2 had wrongfully caused PMPL to pay them the net amount of $101,002 between 2012 to 2017, as repayment of shareholders' loans, despite knowing that PMPL was insolvent or of doubtful solvency at the material time. Thus, D1 and D2 had breached their directors' duties by causing PMPL to make preferential repayments to them in priority and to the detriment of its creditors as a whole, and they had failed to act *bona fide* in PMPL's best interests.[39]

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38 Chee's AEIC at [60]; 17/2/20 Transcripts at p 31.

39 SOC at [39]–[42]; Chee's AEIC at [62].

37 The Liquidators' evidence is as follows. PMPL's financial statements and General Ledger showed $789,618.61 in shareholders' loans were owed by PMPL to D1 and D2 (as PMPL's shareholders) as at 31 December 2012. By the end of 2013, D1 and/or D2 had caused PMPL to repay them a substantial sum of $454,874.97 and, upon accounting for further loans made to PMPL by D1 and D2 as well as amounts repaid to D1 or D2, an outstanding $688,617.46 was owed to D1 and D2 in 2017, when PMPL was placed in liquidation. Thus, D1 and D2 had caused PMPL to make repayments to them, in the net of $101,001.15 between 2012 to 2017, in priority for their personal benefit and to the detriment of PMPL's creditors as a whole, and when they knew PMPL was insolvent or of doubtful solvency.[40]

38 Again, I find PMPL has discharged the legal and evidential burden in relation to this claim for the sum of $101,001.15. Chee presented a table of the amounts of shareholders' loans owing to D1 and D2 at the end of each year from 2012 to PMPL's liquidation in 2017, supported by entries in the General Ledger. He also explained the aggregate figure for each year was reflected in PMPL's balance sheet for that year, a summary of which was exhibited in the Liquidators' letter of 3 October 2017 to D1 and D2.[41] Notably, D1's 13/10/17 Letter did not dispute the contents of the Liquidators' 3 October 2017 letter in this regard and, during the Examinations, D1 could not explain why PMPL was making loan repayments to him and D2 when he was aware of the Arbitration and the potential liability of PMPL to a third party.[42]

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40 Chee's AEIC at [62]–[67] and p 88; Exhibit A (Tabs A and B); Exhibit B (disclosed in Plaintiff's letter to court dated 24 September 2024).

41 Exhibit A (Tabs A and B); Chee's AEIC at p 88 (3 October 2017 letter at paragraph 3); 25/9/24 NE 9.

42 2PBOD 237–241 and 249; 17/2/20 Transcripts at p 36; 24/9/24 NE 15.

39 I have found that D1 and D2 knew PMPL was of doubtful solvency even in 2013 and that it had ceased to trade by around November 2013. Yet, as Chee pointed out, PMPL made a large repayment to D1 and/or D2 of $454,874.97. Seen in light of the events occurring in the same year when the Arbitration was commenced, followed by D3's incorporation and the execution of the Commission Agreement for D3 to market and sell a vessel on PMPL's behalf at a time when PMPL was kept alive primarily because of the Arbitration, D1's and D2's procurement of payments to themselves evinces a clear disregard of PMPL's interests.

Rental Expenses Claim

40 PMPL had leased premises at Raffles Marina (the "Premises") and incurred rental expenses until the termination of the lease in 2016. For 2014, 2015 and 2016, the rental expenses amounted to $36,727.70, $47,713.27 and $29,529.91 respectively, totalling $113,970.88.[43] During the Examinations, D1 clarified that the Premises were utilised and occupied by D3 rent-free at the material time, and PMPL did not obtain any corresponding benefit given that it did not conduct any trading activities. The Liquidators thus claim that D1 and D2 (being PMPL's directors) had failed to act in PMPL's best interests when they allowed PMPL to incur the rental expenses for D3's sole benefit. D1 and D2 had also placed themselves in a position of conflict of interest as they were shareholders of both PMPL and D3, and D1 was a director of D3.[44]

41 Again, I am satisfied that PMPL has discharged the legal and evidential burden pertaining to this claim. D1 and Liow confirmed in the Examinations

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43 Exhibit A at p 12 (Tab D); Chee's AEIC at pp 600, 652 and 683.

44 Chee's AEIC at [68]–[74], [78].

that D3 had occupied the Premises rent-free at the material time.[45] Further, in D1's 13/10/17 Letter, D1 informed the Liquidators that D3 had operated from the same Premises and that "no rental contribution was requested or received". I accept the Liquidators' assertion that there was no good reason for PMPL to continually incur rental on the Premises, or for D3 to occupy the Premises for no consideration, when PMPL had ceased to trade during the relevant period and when D1 and D2 knew PMPL was insolvent or of doubtful solvency.[46]

Claims for conspiracy

42 Next, PMPL claims against the Defendants for conspiracy by lawful and unlawful means to cause damage or injury to it.

43 In a claim for conspiracy by unlawful means: (a) there must be a combination of two or more persons and an agreement between them to do certain acts; (b) the persons must have intended to cause damage or injury to the plaintiff by those acts; (c) the acts must have been unlawful and performed in furtherance of the agreement; and (d) the plaintiff must have suffered damage as a result of the conspiracy (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 at [204]; *Yuanta Asset Management International Ltd and another v Telemedia Pacific Group Ltd and another and another appea*l [2018] 2 SLR 21 at [142]). In a conspiracy by lawful means, no unlawful act needs to be committed but there is the additional requirement of proving a predominant purpose by the conspirators to cause injury or damage to the claimant and the act is carried out and the purpose achieved (*Ochroid*

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45 17/2/20 Transcripts at p 30; 24/2/20 Transcripts at p 22.

46 Chee's AEIC at [71], [73] and [84]; 2PBOD 250.

Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another [2018] 1 SLR 363 at [240]).

44 PMPL claims the Defendants conspired to cause damage or injury to it by diverting its business and corporate opportunities away to D3 and to ensure that revenues and profits which should have been rightfully generated and retained by PMPL would be diverted and retained by D3 and out of the reach of PMPL's creditors.[47] PMPL pleads (and Mr Veluri confirms before me) that there are four instances of conspiracy.[48] They pertain to:

(a) the NU Agreement read with the Termination Agreement;

(b) the Commission Agreement read with the Addendum and the Termination Agreement;

(c) the Oral Commission Agreement read with the Termination Agreement; and

(d) a conspiracy in general to divert PMPL's corporate opportunities to D3.

Conspiracy pertaining to the NU Agreement

45 The NU Agreement was executed between PMPL and D3 on about 15 August 2013; and was pursuant to a directors' resolution of PMPL (dated 7 August 2013) signed by D1 and D2 to approve the formation of D3 and allow PMPL to enter into the NU Agreement.[49] The agreement essentially confers on

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47 SOC at [52]; Chee's AEIC at [6].

48 SOC at [53] and [85]; POS at [43]; 20/9/24 NE 4–5; 25/9/24 NE 12–13; Plaintiff's Closing Submissions ("PCS") at [10(e)].

49 10/2/20 Transcripts at pp 33–35; 1PBOD 28–29.

D3 the right to use the names "Prometheus" and "Promarine", from the time of D3's incorporation, in return for an annual fee of $5,000 or 0.25% of D3's annual sales revenue.

46 Chee attests as follows. Pursuant to the NU Agreement, PMPL would receive payments annually from D3 from 13 August 2013 (the date of D3's incorporation) to 15 September 2017 (the date of PMPL's liquidation). Based on PMPL's records, D3 made only two payments of $5,000 each on 26 November 2013 and 23 May 2015 (for 2013 and 2014). PMPL did not make payments from: (a) 13 August 2015 to 12 August 2016 (of at least $5,000); (b) 13 August 2016 to 12 August 2017 (of at least $5,000); and (c) 13 August 2017 to 15 September 2017 (of at least $458.34). The Defendants conspired to deprive PMPL of its entitlement under the NU Agreement of at least $10,458.34 when D1 caused PMPL to enter into the Termination Agreement with D3, the effect of which was to extinguish any rights and obligations between PMPL and D3 such that no further claims could be made from the date of the Termination Agreement.[50]

47 I find PMPL has failed to show (even on a *prima facie* case) a conspiracy pertaining to the NU Agreement. PMPL argues that by causing it to enter into the Termination Agreement, D1 and D2 had intended to injure PMPL because its entitlement to moneys owed by D3 under the NU Agreement were contractually extinguished by the Termination Agreement.[51] But the Termination Agreement expressly states that it terminates the "*agency and support services work agreement* between PMPL and [D3] *signed on 03*

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50 SOC at [72]–[74]; Chee's AEIC at [100]–[103], and pp 525 and 639; 20/9/24 NE 5; 24/9/24 NE 15–17.

51 20/9/24 NE 4–5; 25/9/24 NE 13; PCS at [10(e)].

November 2013" [emphasis added]. The NU Agreement was signed much earlier on 15 August 2013. Chee attested that the "agency and support services work agreement" referred to the Commission Agreement (read with the Addendum) and to the Oral Commission Agreement. Chee also stated that, in the Examinations, D1 also understood the Termination Agreement to refer to the 'Majesty 105' (which is the vessel mentioned in the Commission Agreement and Addendum).[52] Hence, clearly the "agency and support services work agreement … signed on 03 November 2013" mentioned in the Termination Agreement does not apply to the NU Agreement.

48 I am cognisant that D1 admitted in the Examinations that D3 continued to use the name "Promarine" to sell vessels and did not pay any commission or revenue earned from the sale of the vessels to D1, after the execution of the Termination Agreement.[53] However, D3's failure to pay any such commission or revenue to D1 would form a separate instance of a conspiracy (see [49]–[52] below). Given the evidence of both the Liquidators and D1, as well as a plain reading of the Termination Agreement, the Termination Agreement did not affect the NU Agreement. Hence, the claim for conspiracy to injure PMPL by the Defendants' act of causing PMPL to execute the Termination Agreement to extinguish the obligations under the NU Agreement, is not made out.

Conspiracy pertaining to the Commission Agreement

49 The Commission Agreement and Addendum, read together, provided that on the sale of 'Majesty 105' and receipt by D3 of any commission pertaining to that vessel, D3 would be entitled to keep 15% of the commission

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52 20/9/24 NE 26–28.

53 17/2/20 Transcripts at pp 14, 16.

and remit the balance 85% to PMPL. It is undisputed that the commission for the vessel was paid in five tranches, of which PMPL had received 85% of the first, second, third and fifth tranches, but not the fourth tranche (amounting to $59,262.63 (the "Unpaid Sum")) which was reflected in the General Ledger as credited into D3's account on 21 January 2015. This was confirmed by Liow, who had prepared a Transaction Report that showed the Unpaid Sum remained a receivable from D3; and supported by the General Ledger that recorded four of the five tranches having been credited to PMPL.[54]

50 Chee thus asserts that despite the Unpaid Sum remaining payable by D3, D1 had caused PMPL to enter into the Termination Agreement to terminate the agency relationship between PMPL and D3 and contractually extinguish PMPL's entitlements under, amongst others, the sale of 'Majesty 105'. The Defendants had thus conspired to cause loss to PMPL by intentionally causing it to enter into the Termination Agreement which extinguished PMPL's claim against D3 for, and deprived PMPL of, the Unpaid Sum, particularly at the time when the Arbitration Award would be rendered.[55]

51 I am satisfied that PMPL has discharged the legal and evidential burden for its claim in conspiracy pertaining to the Commission Agreement, by lawful means and unlawful means, through the combined acts of the Defendants. The Termination Agreement was entered into shortly before the Award was rendered. It is undisputed that the effect was to terminate the Commission Agreement dated 3 November 2013 between PMPL and D3. D1 confirmed at the Examinations that with the termination of the agency and support services

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54 Chee's AEIC at [107], and pp 484, 575 and 623; 24/2/20 Transcripts at pp 48–52; 24/9/24 NE 17–24, 30.

55 Chee's AEIC at [108]–[110].

agreement, D3 would not have to pay any portion of commission earned (from the sale of vessels under the "Promarine" name) to PMPL. D1 explained that the genesis for the Termination Agreement was because PMPL had ceased to trade.[56] Even so, I find that there was no commercial justification for PMPL to agree to the terms in the Termination Agreement to release D3 from its prior payment obligations under the Commission Agreement.

52 I thus accept Chee's assertion that D1's act of signing the Termination Agreement (for PMPL) was designed to ensure that any revenue or profit which should have been retained by PMPL would be diverted to D3 (of which D1 had a 74% shareholding and was its director at the material time) and out of reach of PMPL's creditors.[57] D2 was the other director of PMPL and would have been aware and approved of the Termination Agreement. As D2 stated in the Examinations, she would discuss matters in PMPL with D1, but would go along with D1's decisions.[58] Hence, both D1 and D2 would have breached their directors' duties to act in the best interests of PMPL and, in D1's case, breached the no-conflict and no-profit rules. I thus accept that PMPL had suffered loss of the Unpaid Sum because of the Termination Agreement which extinguished D3's liability to PMPL for that sum.

Conspiracy pertaining to the Oral Commission Agreement

53 PMPL next claims and asserts that at the Examinations, D1 had stated that there was an Oral Commission Agreement which contained essentially the same terms as the Commission Agreement read with the Addendum, to provide for the same commission splitting arrangement between PMPL and D3 in

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56 17/2/20 Transcripts at pp 13 and 16.

57 Chee's AEIC at [6].

58 17/2/20 Transcripts at p 54.

respect of D3's sale of other vessels in its capacity as PMPL's agent. Chee claims that despite the Oral Commission Agreement, PMPL's internal records did not show any commissions having been paid by D3 to PMPL from the time the Oral Commission Agreement was entered into. At the same time, from around end 2013 to 2017, PMPL's revenue had continued to decrease.[59] Chee therefore claims that the Defendants conspired to deprive PMPL of the commissions that it was entitled to under the Oral Commission Agreement when the Termination Agreement sought to contractually extinguish PMPL's entitlements to such commissions.[60]

54 I find that PMPL's claim for conspiracy pertaining to the Oral Commission Agreement, whether by lawful or unlawful means, has not been made out. Even if the Termination Agreement applied to the Oral Commission Agreement, Chee has made a bare assertion that PMPL had been wrongfully deprived of commissions from the sale of other vessels. He has not attested to what or how many vessels were sold by D3 pursuant to the Oral Commission Agreement, much less supported the assertion with some evidence. There is also no evidence of what loss, injury or damage PMPL had suffered from this purported conspiracy. Further, Chee has not explained how D2 is implicated given the agreement was oral in nature and there is no evidence as to whether D2 was aware of such an agreement at the material time. Hence, PMPL has not crossed the threshold of a *prima facie* case. That PMPL's revenue had been decreasing from 2013 to 2017 is thus irrelevant.

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59 Chee's AEIC at [113]–[116]; 17/2/20 Transcripts at p 3.

60 SOC at [81(f)]; Chee's AEIC at [119]; 24/9/24 NE 32–33.

Conspiracy to divert PMPL's corporate opportunities to D3

55 Finally, PMPL claims the Defendants had conspired to divert PMPL's other corporate opportunities to D3. Again, this claim fails for the simple reason that it is a bare assertion unsupported by any elaboration of what other corporate opportunities have been diverted from PMPL to D3, much less what PMPL's loss or damage was resulting from the diversion. Pertinently, PMPL merely pleads that it was "possible" that D1 or D2 had unlawfully diverted PMPL's corporate opportunities, and that PMPL believes the drastic decrease in revenue from 2014 was "potentially" attributable to D1's and D2's acts of diversion.[61] Chee did not elaborate on this claim in his affidavit.

Limitation period and time bar

56 D1 and D2 pleads that all PMPL's claims are time-barred. PMPL in turn pleads reliance on ss 22(1)(*a*), 22(1)(*b*), 24A(3)(*b*) and 29(1) of the Limitation Act 1959 (2020 Rev Ed) (the "LA"). In its closing submissions, PMPL relies only on s 22(1) of the LA for its claims for breaches of directors' duties, and on ss 22(1) and 29(1)(*b*) of the LA for the conspiracy claims, in the event that any of its claims were time-barred.[62]

Whether conspiracy claim pertaining to the Commission Agreement is time-barred

57 For the conspiracy claim pertaining to the Commission Agreement (read with the Addendum), I agree with PMPL that the cause of action only accrued when the Termination Agreement was executed, *ie*, around 31 March 2016, as

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61 SOC at [85]–[86].

62 PCS at [27]–[33].

this was when all the elements of the conspiracy were completed.[63] As the Suit was commenced on 7 December 2021, this claim is therefore not time-barred.

Whether claims for breaches of directors' duties are time-barred

58 As for the claims for breaches of directors' duties, the cause of action would accrue from the time of the wrongdoing (*eg*, by receiving payments or causing payments to be made), and to which a limitation period of six years applies. As the Suit was commenced on 7 December 2021, claims relating to D1 and D2's acts of wrongdoing on or after 7 December 2015 are not time-barred (*H P Construction & Engineering Pte Ltd v Mega Team Engineering Pte Ltd* [2024] 1 SLR 220 at [23] affirming *Suresh s/o Suppiah v Jiang Guoliang* [2016] 4 SLR 645).

59 However, several of the wrongful acts pertaining to the Unjustified Salaries Claim, Personal Expenses Claim, Preferential Repayment Claim and Rental Expenses Claim were committed before the six-year limitation period mentioned above, and the claims for those acts would be ordinarily time-barred. Thus, the issue is whether these claims fall within the ambit of the exceptions under s 22(1) of the LA. In this regard, I accept PMPL's submission that s 22(1) of the LA applies such that the claims are not time-barred.

60 Section 22(1) of the LA states that no limitation period shall apply to an action by a beneficiary under a trust, being an action: (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or (b) to recover from the trustee trust property or the proceeds thereof in the trustee's possession, or previously received by the trustee and converted to his use.

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63 PCS at [33]–[34].

61 In the present case, D1 and D2 are "Class 1" constructive trustees. A director is regarded as a trustee over the company's property. If he disposes of company property in breach of his fiduciary duties, he is treated as having acted in breach of trust. A director who deals with company property in breach of trust (such as obtaining the property for himself) will be considered a Class 1 constructive trustee, and will be subject to the time bar in s 22(2) of the LA unless s 22(1)(*a*) or s 22(1)(*b*) applies to exclude the time bar (*Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*") at [44], [46], [49] and [52]).

62 In this regard, I accept PMPL's submissions that s 22(1)(*a*) of the LA applies to exclude the time bar. PMPL has pleaded fraud and dishonesty by D1 and D2 in their conduct as directors.[64] In relation to fraud, the Court of Appeal in *Panweld*, adopting the approach in *Gwembe Valley Development Co Ltd v Koshy (No 3)* [2004] 1 BCLC 131, essentially stated as follows. A breach of trust is fraudulent if it is dishonest. "Dishonesty" connotes at the minimum an intention on the trustee's part to pursue a particular course of action, either knowing, or being recklessly indifferent to whether, it is contrary to the company's interest. Further, it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest (*Panweld* at [52]–[53]).

63 Here, I have found that D1 and/or D2 had not acted *bona fide* in PMPL's interests, or had preferred their own interests at the expense of the interests of PMPL's creditors when PMPL was of doubtful solvency or in a parlous financial position. I have found that the payment of salaries to D1 and causing

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64 Plaintiff's Reply (dated 24 June 2022) at [5].

PMPL to continually incur D1's and D2's personal expenses were unjustified and did not benefit PMPL when it had ceased to trade and was insolvent. I have also found that D1 and D2 had wrongfully caused PMPL to repay part of their shareholders' loans despite knowing PMPL was insolvent or of doubtful solvency. I have further found that D1 and D2 had allowed D3 to use the Premises rent-free without any corresponding benefit to PMPL, whilst PMPL's monies were used to discharge the rent on the Premises. D3's use of the Premises rent-free would have also indirectly benefitted D1 who was D3's majority shareholder. It cannot be said that D1 and D2 have acted honestly in causing payments to be made to themselves or causing PMPL to incur expenses for their personal benefit especially at the time when PMPL was insolvent or in a parlous financial position. They knew their acts would have been contrary to PMPL's interests, or at the very least they would have been recklessly indifferent to whether their acts were contrary to PMPL's interests. Hence, I find D1's and D2's conduct to be fraudulent under s 22(1)(*a*) of the LA and that PMPL can rely on this section to exclude the time-bar.

Set off

64 Finally, I deal briefly with D1 and D2's pleaded defence that any damages or compensation awarded to PMPL should be set off against the amount of $688,617 owed by PMPL to them as shareholders' loans, although they have also pleaded that they do not intend to pursue a counterclaim against PMPL.[65] I am cognisant that the General Ledger records various loans had been extended to PMPL by D1 or D2. However, I am not satisfied, on balance, that D1 and D2's defence of set-off succeeds.

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65 Defence at [4].

65 Aside from the fact that D1 and D2 have not attested in support of their defence, it is unclear whether all the recorded transactions in PMPL's books were indeed shareholders' loans. In a company winding-up, the creditor bears the burden of proving the debt on a balance of probabilities. The liquidator is not bound by the audited accounts and is entitled to go behind them to determine the veracity of the debt claimed (see *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 at [13] pertaining to the assessment of a proof of debt). In the present case, no audited accounts of PMPL were even produced. Even assuming all the loans recorded in PMPL were legitimate debts, the evidence suggests that some of the debts might not be provable in liquidation given a substantial amount of the purported loans are recorded as owing even as far back as *eg*, 2012, 2013 and 2014, and are potentially time-barred.

66 Also, the requirement of mutuality of debts or dealings may not be fulfilled where the company's claims are based on the misfeasance or wrongdoing of the creditor who is claiming the set-off: see *Parakou Investment Holdings Pte Ltd and another v Parakou Shipping Pte Ltd (in liquidation) and other appeals* [2018] 1 SLR 271 at [67]; *Liquidator of Leong Seng Hin Piling Pte Ltd v Chan Ah Lek and others* [2007] 2 SLR(R) 77 at [40]; *Feima International (Hongkong) Ltd (in liquidation) v Kyen Resources Pte Ltd (in liquidation) and others* [2022] SGHC 304 at [69]; *Smith (Administrator of Cosslett (Contractors) Ltd) v Bridgend County Borough Council* [2002] 1 AC 336 at [35], citing *Manson v Smith (liquidator of Thomas Christy Ltd)* [1997] 2 BCLC 161 at p 164. In the present case, there is nothing to suggest that the debts allegedly owed by PMPL to D1 and D2 fulfil the requirement of mutuality as D1 and D2 have not attested to the matter or participated in the proceedings.

Conclusion

67 In conclusion, I find D1 and D2 jointly and severally liable to PMPL as follows:

(a) for the Unjustified Salaries Claim, a sum of $266,000 (see [32] above);

(b) for the Personal Expenses Claim, a sum of $94,421 (see [34]–[35] above);

(c) for the Preferential Repayment Claim, a sum of $101,001.15 (see [38] above);

(d) for the Rental Expenses Claim, a sum of $113,970.88 (see [40]–[41] above); and

(e) for the conspiracy claim pertaining to the Commission Agreement, a sum of $59,262.63 (see [49] and [52] above).

68 I will hear the parties on costs.

Audrey Lim J
Judge of the High Court

Hari Veluri and Alston Yeong (Providence Law Asia LLC) for the plaintiff;
First and second defendants absent and unrepresented.