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

[2024] SGHC 304

Originating Claim No 125 of 2022

Between

Value Monetization III Ltd

… *Claimant*

And

Lim Beng Choo

… *Defendant*

Originating Claim No 126 of 2022

Between

The Enterprise Fund III Ltd

… *Claimant*

And

Lim Beng Choo

… *Defendant*

JUDGMENT

[Damages — Apportionment — Claim for contribution by judgment debtor against other jointly and severally liable judgment debtor — Section 15(1) Civil Law Act 1909 (2020 Rev Ed)]

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v
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26–27, 30 September, 21 October 2024

29 November 2024 Judgment reserved.

Goh Yihan J:

1 In these two actions, *viz*, HC/OC 125/2022 ("OC 125") and HC/OC 126/2022 ("OC 126"), the respective claimants, *ie*, Value Monetization III Ltd ("VMIII") in OC 125 and The Enterprise Fund III Ltd ("EFIII") in OC 126, claim contributions from the defendant, Ms Lim Beng Choo ("Ms Lim"). These contributions are sought in respect of the judgment sum of $12,594,646.84 (the "Judgment Sum") in HC/S 441/2016 ("Suit 441"), rendered by the High Court and partially modified by the Court of Appeal on the appeal in CA/CA 113/2020 ("CA 113"). More specifically, VMIII seeks a contribution of $3,828,123.25, whereas EFIII seeks a contribution of $880,754.06.

2 The defendant denies these claims. Her main argument is that both VMIII and EFIII are precluded from claiming contributions from her. In respect

of VMIII, this is because of the Court of Appeal's remarks in *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another* [2021] 2 SLR 424 ("*Crest Capital (CA Costs)*"). As for EFIII, Ms Lim argues that EFIII never paid any part of the Judgment Sum for which Ms Lim was found liable (*viz*, $4,538,800.00); that was entirely encompassed within the amount paid by VMIII to the creditor of the Judgment Sum.

3 Further, as against both VMIII and EFIII, the defendant argues that she should be exempted under s 16(2) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") from liability to make contribution to the claimants as she is merely a secondary wrongdoer in Suit 441. As such, the effect of ordering her to make any contribution to the claimants would result in the primary wrongdoers (which includes EFIII) being unjustly enriched. Finally, even if she were to be found liable to make any contribution, the quantum of her liability to make any such contribution should be drastically reduced, in accordance with the "just and equitable" standard pursuant to s 16(1) of the CLA, because she was merely negligent in Suit 441, as opposed to being fraudulent (as EFIII's agent was adjudged to have been).

4 After considering the parties' submissions, following a trial that lasted for three days, I allow VMIII's and EFIII's respective claims in OC 125 and OC 126. I therefore order Ms Lim to pay VMIII $3,828,123.25 and to pay EFIII $352,301.62, *ie*, the quantum sought by VMIII but a reduction from the quantum claimed by EFIII at [1] above. These are the reasons for my decision.

Background facts

5 I begin with the background facts.

Suit 441

6 These actions are premised on Suit 441. Suit 441 concerned the entering into and drawing down of the "Standby Facility", which VMIII and EFIII, among others, had extended to the creditor of the Judgment Sum, *viz*, International Healthway Corp Ltd ("IHC"). Separately, VMIII and EFIII also extended the "Geelong Facility" to IHC's subsidiary to partially finance the acquisition of properties in Australia. Crest Catalyst Equity Pte Ltd ("Crest Catalyst") was VMIII's and EFIII's manager and agent, among others, in respect of the Standby Facility. On 13 November 2018, the High Court found the Standby Facility to be voidable (and avoided by IHC) on grounds that it was "related" to a transaction by which IHC acquired its own shares in breach of s 76A of the Companies Act (Cap 50, 2006 Rev Ed) ("CA") (see *International Healthway Corp Ltd v The Enterprise Fund III Ltd and others* [2018] SGHC 246 at [85(b)]). The Court of Appeal affirmed this decision in *The Enterprise Fund III Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd)* [2019] 2 SLR 524 at [134]–[136]).

7 Relatedly, IHC also claimed in Suit 441 against eight defendants for their roles in causing IHC to enter into the Standby Facility in contravention of the CA. These defendants were:

(a) VMIII and EFIII;

(b) Ms Lim, who was an officer of IHC at all material times, having been appointed IHC's Vice-President (Investments) from January 2015 and appointed IHC's Chief Executive Officer ("CEO") and Executive Director from 7 January 2016;

(c) Crest Capital Asia Pte Ltd ("Crest Capital");

(d) Crest Catalyst;

(e) VMF3 Ltd ("VMF3");

(f) Mr Fan Kow Hin ("Mr Fan"), IHC's Group CEO from May 2015 and CEO from June 2015 to January 2016; and

(g) Mr Aathar Ah Kong Andrew ("Mr Aathar"), a substantial shareholder in IHC.

8 On 9 July 2020, the High Court held in *OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another v Crest Capital Asia Pte Ltd and others* [2020] SGHC 142 ("*Crest Capital (HC)*") that VMIII, EFIII, Crest Capital, Crest Catalyst, and VMF3 (collectively, the "Crest Entities") had, through their agent, Mr Glendon Tan Yang Hwee ("Mr Tan"), dishonestly assisted Mr Fan in breaching his fiduciary duties to IHC and engaged in an unlawful means conspiracy with Mr Fan and Mr Aathar to injure IHC. More specifically, Mr Tan was found to have allowed drawdowns on the Standby Facility by IHC despite knowing that the loan moneys would be used to purchase IHC's shares in contravention of s 76 of the CA. Since Mr Tan was held to be an agent of the Crest Entities, it followed that his knowledge and intention were attributed to the Crest Entities. The Crest Entities were therefore liable to IHC for dishonest assistance and unlawful means conspiracy (see *Crest Capital (HC)* at [148] and [335]). As such, the Crest Entities and Mr Fan were found to be jointly and severally liable to IHC for, among others, the Judgment Sum (see *Crest Capital (HC)* at [336(a)]–[336(c)(i)]). That Judgment Sum included not only the $4,538,800.00 paid by IHC towards the Standby Facility (see *Crest Capital (HC)* at [336(a)]), but also:

(a) additional damages in the amount of $4,440,780.77, due to the interest representing loss of use of those moneys by IHC, which would

have been applied towards the Geelong Facility to reduce the interest accrued thereon (see *Crest Capital (HC)* at [219(b)], [224]–[229] and [336(b)]); and

(b) $3,615,066.07, attributable to the post-maturity and default interest accrued on the Geelong Facility, due to IHC's subsidiary defaulting on the Geelong Facility, and which consequential loss IHC would not have suffered but for its payments made towards the Standby Facility (see *Crest Capital (HC)* at [219(c)(i)], [250]–[252] and [336(c)(i)]).

These three sums combined add up to the full amount of the Judgment Sum.

9 Relevantly for present purposes, Ms Lim was held to be jointly and severally liable for $4,538,800.00 of the Judgment Sum as she was found to have breached her duty of due skill, care, and diligence owed to IHC as its officer (see *Crest Capital (HC)* at [56]–[57], [124], [301]–[302] and [336(a)]). Crucially, however, Ms Lim was *not* found liable for dishonest assistance or unlawful means conspiracy towards IHC, which had implications on the measure of damages owed by the respective parties (see *Crest Capital (HC)* at [335(c)]–[335(d)]). The High Court *only* held Ms Lim liable for foreseeable losses flowing from her breach of duty, subject to a requirement of *remoteness* (see *Crest Capital (HC)* at [216]–[218]). The amount of $4,538,800.00 paid by IHC towards the Standby Facility was thus a foreseeable loss from IHC having entered into and drawn down on the Standby Facility, whereas the two other heads of losses were held to be too remote to have been foreseeable (see *Crest Capital (HC)* at [301]–[304]). Accordingly, Ms Lim was only held liable for that head of loss within the wider Judgment Sum (see *Crest Capital (HC)* at [336(a)]–[336(c)(i)]).

VMIII's and EFIII's payments to IHC

10 The Crest Entities (in CA 113), Mr Fan (in CA/CA 135/2020), and Ms Lim (in CA/CA 132/2020 ("CA 132")) appealed against the decision in *Crest Capital (HC)*. Before the appeals were determined, VMIII and EFIII made various payments to IHC to discharge their liabilities under the Judgment Sum. In particular, VMIII paid $10,622,600.79 to IHC on 3 and 24 September 2020 (the "VMIII Payment").[1] In turn, EFIII paid $2,443,991.00 to IHC on 3 and 24 September 2020 (the "EFIII Payment").[2] These sums add up to $13,066,591.79 in total and that figure represents the Judgment Sum plus interest, costs, and disbursements arising thereunder.[3]

The Court of Appeal's partial reversal of Crest Capital (HC)

11 On 30 March 2021, the Court of Appeal in *Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337 ("*Crest Capital (CA)*") overturned the liability of VMIII and VMF3 as Mr Tan's knowledge of the purpose of the Standby Facility could not be attributed to them (see *Crest Capital (CA)* at [111]–[115] and [122]). The Court found that VMIII was misled as to the true purpose of the Standby Facility, as the investment memorandum sent to VMIII was limited to permitting drawdowns for working capital and not for the purchase of IHC shares. Mr Tan had thus acted without

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1 Statement of Claim in HC/OC 125/2022 dated 10 May 2022 ("VMIII SOC") at para 17.2; Affidavit of Evidence-in-Chief of Mr Thomas Teo Liang Huat dated 28 May 2024 ("Thomas AEIC") at para 11.2.

2 Statement of Claim in HC/OC 126/2022 dated 10 May 2022 ("EFIII SOC") at para 17.2; Thomas AEIC at para 11.1; Affidavit of Evidence-in-Chief of Mr Peh Hong Yee dated 30 May 2024 ("Peh AEIC") at paras 11 and 19.

3 Thomas AEIC at para 11; Peh AEIC at para 12 and pp 83–86.

VMIII's consent and outside the scope of his actual authority, such that his knowledge about the true purpose of the Standby Facility could not be attributed to VMIII (see *Crest Capital (CA)* at [113]–[115]). The Court thus held that VMIII was a victim of the plot hatched by Mr Tan, Mr Fan, and Mr Aathar to circumvent the statutory prohibition against IHC's buyback of its own shares (see *Crest Capital (CA)* at [122]).

12 Apart from that, the Court of Appeal dismissed Crest Capital's, Crest Catalyst's, and EFIII's appeals (see *Crest Capital (CA)* at [213]), as Mr Tan's said knowledge and intention were rightly attributed to them (see *Crest Capital (CA)* at [108]–[110]). As such, they were rightly found liable for dishonest assistance and unlawful means conspiracy due to the attribution of Mr Tan's dishonesty and intent to injure to them (see *Crest Capital (CA)* at [121]). The Court also dismissed Mr Fan's appeal as the evidence showed that he had breached his fiduciary duties to IHC (see *Crest Capital (CA)* at [130], [147] and [213]).

13 Relevantly for present purposes, the Court of Appeal affirmed Ms Lim's joint and several liability for $4,538,800.00 since her negligence had caused the "same indivisible damage" as the Crest Entities' (excluding VMIII and VMF3) dishonest assistance and unlawful means conspiracy, as well as Mr Fan's breach of fiduciary duties and unlawful means conspiracy (see *Crest Capital (CA)* at [176]–[184]). In this regard, the Court observed that Ms Lim was the Vice-President (Investment) of IHC who was assisting with IHC's loan reviews and cash flow management at the material time (see *Crest Capital (CA)* at [158]). Given her senior leadership role within IHC, the Court affirmed the High Court's finding that she had breached her duty to IHC for failing to alert IHC's board of directors to the impugned drawdowns despite being aware of the irregularities or improprieties in relation to them (see *Crest Capital (CA)* at

[157]–[158]). In the circumstances, her failure to make further enquiries on the drawdowns amounted to negligence (see *Crest Capital (CA)* at [158]). Hence, the Court of Appeal dismissed Ms Lim's appeal in CA 132 (see *Crest Capital (CA)* at [213]).

VMIII's application for reimbursement of the VMIII Payment

14 Having succeeded in its appeal in CA 113, VMIII applied for reimbursement of the VMIII Payment with interest from IHC (see *Crest Capital (CA Costs)* at [2]). The Court of Appeal in *Crest Capital (CA Costs)* rejected this application. The Court held that VMIII had chosen to pay the Judgment Sum on behalf of all the Crest Entities, although it had become apparent at the time of payment that VMIII's and VMF3's appeals were no longer completely aligned with those of the other Crest Entities in CA 113 (see *Crest Capital (CA Costs)* at [19]). Indeed, the Court held that the VMIII Payment was "intended to discharge the joint and several liability of *all the Crest Entities*" and not solely VMIII's liability alone [emphasis in original] (see *Crest Capital (CA Costs)* at [14]).

15 The Court thus found that VMIII bore the risk of non-payment and held that IHC need not refund the VMIII Payment. Rather, the Court stated in *Crest Capital (CA Costs)* at [20] that:

> Since VMIII should bear the risk of non-payment, the $10.3m should not be refunded to it. The proper course of action for VMIII to take, assuming that it had funded the entire payment of the $10.3m, would be to look to Crest Capital, Crest Catalyst and EFIII for their contributions to the $10.3m instead of to the respondents. Just to be clear, in our view, it would make no difference even if the entire $10.3m was indeed funded by VMIII. The undeniable fact remains that the $10.3m was intended to discharge the joint and several liability of *all the Crest Entities*.
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> [emphasis in original]

Ms Lim's third-party proceedings

16 On 12 September 2022, after VMIII and EFIII had filed OC 125 and OC 126 respectively against her on 8 July 2022, Ms Lim commenced third-party claims in these actions. By those claims, Ms Lim sought contributions from third parties including: VMIII (in OC 126); EFIII (in OC 125); the other Crest Entities; Mr Tan; Mr Lim Chu Pei, who was an investment analyst with Crest Capital at the material time ("Mr Lim"); Mr Chia Kwok Ping, who was Mr Fan's predecessor as IHC's CEO; and Mr Chan Pee Teck Peter , the managing partner at Crest Capital at the material time ("Mr Chan").

17 On 11 September 2023, the General Division of the High Court struck out Ms Lim's third-party statements of claim in *Value Monetization III Ltd v Lim Beng Choo and another matter (Crest Capital Asia Pte Ltd and others, third parties)* [2023] SGHC 303 ("*VMIII (Third Party Notices)*") on the basis that they were time-barred, upholding the learned AR's decision below to that effect (at [1] and [77]). On 9 October 2023, Ms Lim appealed against this decision only in respect of her third-party claim against Mr Chan. On 14 December 2023, the Appellate Division of the High Court struck out her appeal on the basis that it was lodged out of time (see the order of court (AD/ORC 97/2023) dated 14 December 2023 and filed on 20 December 2023 in AD/CA 109/2023).

The relevant issues

18 Against these background facts, I come to the relevant issues to be determined. To my mind, the resolution of the present actions comes down to two broad issues, namely:

(a) whether VMIII and EFIII can seek contributions from Ms Lim; and

(b) if so, what is the extent of the contributions that they can seek?

19 Needless to say, these broad issues (particularly the first) resolve themselves into other more specific sub-issues. From the parties' closing submissions, there are five relevant issues that arise for determination, namely:

(a) whether VMIII and/or EFIII have satisfied the requirements of s 15(1) of the CLA so as to seek contributions from Ms Lim;[4]

(b) whether VMIII is precluded from claiming contributions from Ms Lim by virtue of the Court of Appeal's remarks in *Crest Capital (CA Costs)*;[5]

(c) whether EFIII is precluded from claiming contributions from Ms Lim because the $2,443,991.00 which EFIII paid to IHC was not in discharge (even if partially) of the $4,538,800.00 that Ms Lim was found liable for in *Crest Capital (HC)*;[6]

(d) whether Ms Lim should be exempted from making contributions to VMIII and/or EFIII by virtue of s 16(2) of the CLA;[7] and

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4 Claimants' Closing Submissions dated 14 October 2024 ("CCS") at paras 15–32 and 74.

5 CCS at paras 5–14; Defendant's Closing Submissions dated 14 October 2024 ("DCS") at paras 9–14.

6 DCS at paras 3–8; Claimants' Reply Submissions dated 21 October 2024 ("CRS") at paras 8–10.

7 DCS at paras 15–17; CRS at paras 11–26.

(e) whether VMIII and EFIII are entitled to contributions from Ms Lim in the sums prayed for.[8]

20 I should note that, while Ms Lim had raised other issues in her Defence (Merits) and Opening Statement,[9] such as whether a sum of $3,883,950.00 was for the payment to the account of the Geelong Facility or to the account of the Standby Facility, or whether VMIII and EFIII had made their respective payments "officiously", she does not appear to have pursued them in her Closing Submissions. Given that she has limited her submissions to the few issues above, I will restrict my resolution of these actions to them even as I bear in mind that VMIII and EFIII bear the legal burden of establishing their respective claims.

The generally applicable law

21 I turn now to the generally applicable law in relation to contribution claims.

The right to seek contribution

22 The starting point is that s 15(1) of the CLA provides that a person is entitled to make a claim for contribution from "any other person" who is liable in respect of the same damage (see the Court of Appeal decision of *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 ("*Tan Juay Pah*") at [46]–[48]). For completeness, s 15(1) provides as follows:

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8 CCS at paras 61–73 and 77; DCS at paras 18–22 and 23(c); CRS at paras 27–38; Defendant's Reply Submissions dated 21 October 2024 ("DRS") at paras 5–7.

9 Defendant's Opening Statement dated 19 August 2024 at p 6; Defence (Merits) in HC/OC 125/2022 dated 29 April 2024 at para 12; Defence (Merits) in HC/OC 126/2022 dated 29 April 2024 at para 12.

> **Entitlement to contribution**
>
> **15.**—(1) Subject to subsections (2) to (5), any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

23 As the Court of Appeal put it in *Tan Juay Pah* (at [49]), "it is clear that the essence of that provision [referring to s 1(1) of the Civil Liability (Contribution) Act 1978 (c 47) (UK) (the "1978 Act")] (and correspondingly, our s 15(1)) is whether the person from whom contribution is sought and the person claiming contribution are liable in respect of 'the same damage'". In this regard, the fact that these persons' individual liabilities rest on different legal bases does not affect the determination of whether their liabilities are in respect of the "same damage" (see the Court of Appeal decision of *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [219]). Indeed, the Court of Appeal in *Ho Yew Kong* reached this conclusion for two reasons:

(a) first, the plain language of s 15(1) of the CLA and its accompanying interpretation provision, s 19(1), both support such a reading of s 15(1), *viz*, that the contribution claim must be in respect of the same *damage*, but not necessarily of the same liability (at [220]); and

(b) second, the English High Court Chancery Division decision of *K and Another v P and Others (J, third party)* [1993] Ch 140 ("*K v P*") (applied in Singapore in the High Court decisions of *Nganthavee Teriya (alias Gan Hui Poo) v Ang Yee Lim Lawrence and others* [2003] 2 SLR(R) 361 at [12]–[18] ("*Nganthavee*") and *Airtrust (Singapore) Pte Ltd v Kao Chai-Chau Linda and another suit* [2014] 2 SLR 673 at [36]–[37]) likewise supports such a reading (see *Ho Yew Kong* at [221]).

24 Separately, s 15(1) of the CLA allows a defendant who paid on behalf of its co-defendants in discharge of a common liability for the same damage to seek contribution from *any* of the co-defendants. This is plainly reflected by the expression "any other person" in s 15(1) in defining who such a defendant can recover contribution from. This also reflects the general rule in our adversarial system of civil procedure that it is the right of the claimant (or, in this context, the defendant looking to recover contribution) "to choose the person against whom to proceed, and to leave out any person against whom he does not desire to proceed" (see the General Division of the High Court decision in *Reignwood International Investment (Group) Co Ltd v Opus Tiger 1 Pte Ltd and other matters* [2021] SGHC 133 at [91]). However, while the defendant has the right to seek contribution from any co-defendant, his choice of co-defendant may affect the assessment of the contribution. After all, as we shall see below, s 16(1) provides that the amount of contribution shall be that as the court finds to be "just and equitable". This will require the court to compare *inter alia* the relative faults of the defendant as against his chosen co-defendant. *Ex hypothesi*, where the defendant chooses to proceed against a *more* culpable co-defendant and to leave a less culpable one out of the picture, the defendant's relative fault assessed in comparison to that of the chosen co-defendant would *ceteris paribus* likely be lesser in the case of the former as compared to if he had elected to proceed against the latter. In any event, it is immaterial to the defendant's right to contribution if, as provided for in s 15(2), the defendant has ceased to be liable for the damage, where he was so liable immediately before making the payment. It is also immaterial, as provided for in s 15(3), that the co-defendant has ceased to be liable for the damage since the time when the damage occurred.

25 Seen in this light, the purpose of contribution claims under s 15(1) of the CLA is to ensure that justice is done *between* the co-defendants *inter se* (see the

Court of Appeal decision of *Chuang Uming (Pte) Ltd v Setron Ltd and another appeal* [1999] 3 SLR(R) 771 at [51], albeit in relation to the apportionment of liability as opposed to the entitlement to contribution specifically). It follows from this purpose that the right to contribution should not depend on whether the judgment debt was paid for with the consent of the other co-defendants. This is, first of all, clear from the plain text of s 15 of the CLA, which does not impose such a requirement on a defendant who seeks to recover contribution from its co-defendants. More substantively, consent ought not to be a condition for recovering contribution because the lack of consent to a defendant making payment does not vitiate the finding of joint liability nor the fact that all co-defendants are discharged from the same liability by virtue of such payment. In the same vein, it is immaterial whether a defendant in paying the judgment debt intended for the liability of its co-defendants to be discharged. The discharge of liability happens by operation of law and is not dependent on the defendant's subjective state of mind. To put it another way, the mere fact that a co-defendant *A* did not consent to a co-defendant *B* discharging *A*'s liability to a plaintiff does not *ipso facto* mean that it is unfair *inter se* for *A* to be expected to contribute to *B*'s discharge of *A*'s share of their joint liability to the plaintiff.

The assessment of contribution

26 Whereas s 15 of the CLA concerns whether a defendant is entitled to contribution, s 16 provides for how the contribution is to be assessed. Section 16(1) provides generally as follows:

> **Assessment of contribution**
>
> **16.**—(1) Subject to subsection (3), in any proceedings for contribution under section 15, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage in question.

27 It is established that, in assessing the amount of contribution, the principles of the law of contributory negligence can be used. This is due to its conceptual similarities with the law of contribution, *viz*, the apportionment of liability to achieve a just and equitable result based on each party's relative responsibility between them for the same damage concerned. Thus, as the Court of Appeal said in *Cheng William v Allister Lim & Thrumurgan and another and another appeal* [2015] 3 SLR 201 ("*William Cheng*") (at [47]):

> In passing, we note that it is a well-established principle in contributory negligence that blameworthiness is a relevant consideration in the reduction of damages … We see no reason why blameworthiness should not be a relevant consideration under s 16 of the CLA as well when it is accepted as a relevant consideration in contributory negligence. Indeed, s 16 of the CLA and s 3 of the Contributory Negligence Act are conceptually similar in that both direct the court to *apportion* damages between parties having regard to their responsibility to reach a just and equitable result. Of course, the two are concerned with different things. In contributory negligence, damages are apportioned between claimant and defendant having regard to the fault of the claimant, whereas under s 16 of the CLA, the apportionment is between the defendant and third parties having regard to their respective responsibility for the damage in question (Douglas Payne, "Reduction of Damages for Contributory Negligence" (1955) 18 Mod LR 344 at 346; Spike Charlwood, "Contribution and professionals: an overview of the 1978 Act, alternatives to it, and its relationship with contributory negligence" (2007) 23(2) PN 82 at p 83). …
>
> [emphasis in original]

28 Applying the relevant principles used to apportion liability in contributory negligence, it may be said that the main considerations in assessing the amount of contribution pursuant to s 16(1) of the CLA are (a) the relative causative potency, and (b) the relative moral blameworthiness of the parties' breaches (see the High Court decision of *Ting Jun Heng v Yap Kok Hua and another* [2021] SGHC 44 ("*Ting Jun Heng*") at [42]; see also the UK Supreme Court's approach to contributory negligence in *Jackson v Murray and another* [2015] UKSC 5 ("*Jackson*") at [39]–[44]). In this regard, "causative potency"

refers to the extent to which each party's conduct contributed to the damage concerned, whereas the assessment of blameworthiness entails a consideration of a wide range of conduct to arrive at a just and equitable result on the particular facts (see *Ting Jun Heng* at [42] and *William Cheng* at [45]–[46]). When these two factors are considered together, conduct that is significantly causative of the damage but less blameworthy may give rise to liability equivalent to that of conduct that is significantly blameworthy but less causative (see the English Court of Appeal decision of *Downs and another v Chappell and another* [1997] 1 WLR 426 at 445). In contrast, where, as an example, a driver's conduct is found much more causatively potent *vis-à-vis* the injuries sustained by a somewhat more blameworthy pedestrian, liability may be apportioned between them 60:40, with the driver bearing slightly greater responsibility (see the English Court of Appeal decision of *Eagle (by her litigation friend) v Chambers* [2003] EWCA Civ 1107 ("*Eagle*") at [17]–[19] (*per* Hale LJ)). This should obviously not be approached as a mathematical exercise but one that is intensively dependent on the facts at hand – or what was described by Lord Reed in *Jackson* (at [28]) as a "somewhat rough and ready exercise" for which "a variety of possible answers can legitimately be given", and which "should be respected, within the limits of reasonable disagreement".

29 Having discussed the generally applicable law, I turn now to the first of the five relevant issues which I identified earlier (see at [19(a)] above).

Whether VMIII and/or EFIII have satisfied the requirements of s 15(1) of the CLA to seek contributions from Ms Lim

30 On this first issue, Ms Lim does not seriously contend that VMIII and/or EFIII have not satisfied the requirements of s 15(1) of the CLA to seek contributions from her. Despite that, VMIII and EFIII need to establish that they

have satisfied these requirements. Having regard to the evidence and their submissions, I am satisfied that they have done so.

31 On the facts, the requirement that VMIII and EFIII be liable in respect of the "same damage" that Ms Lim is liable for is satisfied. This is because, at the time of the VMIII Payment and the EFIII Payment being made to IHC, VMIII, EFIII, and Ms Lim had been held by the High Court to be jointly and severally liable for the damage caused to IHC – specifically, $4,538,800.00 of the Judgment Sum attributable to the sums paid by IHC towards the Standby Facility (see *Crest Capital (HC)* at [302] and [336(a)]). It is immaterial that VMIII was later found by the Court of Appeal not to be liable in *Crest Capital (CA)* (at [122]) because its right of contribution against Ms Lim is preserved by s 15(2) of the CLA. As the learned authors, commenting on s 1(2) of the 1978 Act (which is *in pari materia* with s 15(2) of the CLA), state in *Winfield & Jolowicz on Tort* (James Goudkamp and Donal Nolan gen eds) (Sweet & Maxwell, 20th Ed, 2020) ("*Winfield & Jolowicz*") at para 22–014: "a defendant may seek contribution notwithstanding that he has ceased to be liable to the claimant since the damage occurred, provided he was so liable immediately before the judgment or compromise in the claimant's favour". That condition is met in respect of the VMIII Payment in satisfaction of the Judgment Sum in *Crest Capital (HC)*.

32 However, it is important to be clear about the "same damage" *per* s 15(1) for which VMIII, EFIII, and Ms Lim were "liable". In particular, was that "same damage" the *whole* of the Judgment Sum or only the sum that was paid by IHC towards the Standby Facility, *viz*, $4,538,800.00 (see *Crest Capital (HC)* at [219(a)], [297(a)(i)], [302] and [336(a)]), considering that the Judgment Sum consists of three different components of which the $4,538,800.00 Ms Lim was held liable for was but one (see at [8]–[9] above)? For the reasons that follow, I

find that the "same damage" refers to the *entire* Judgment Sum, notwithstanding that Ms Lim is only liable for part of it.

33 The starting point is the test set out by the House of Lords in *Royal Brompton Hospital NHS Trust v Hammond and others (Taylor Woodrow Construction (Holdings) Ltd, Part 20 defendant)* [2002] 1 WLR 1397 ("*Royal Brompton*") (at [6]), approved by the Court of Appeal in *Tan Juay Pah* (at [49]) (see also *Ho Yew Kong* at [216]). As adapted to the present case, these are the analytical questions that need to be resolved, *viz*:

(a) What damage was suffered by IHC as a result of it being induced to enter into and draw down on the Standby Facility to purchase its own shares?

(b) Is EFIII liable to IHC (and, in VMIII's case, *was* it liable to IHC when *Crest Capital (HC)* was rendered and the VMIII Payment was made before *Crest Capital (CA)* was rendered) in respect of that damage?

(c) Is Ms Lim also liable to IHC in respect of that very "same damage" or for *some of it*?

34 To begin with, the damage suffered by IHC – which EFIII (and VMIII) were both liable for in *Crest Capital (HC)* – included three components:

(a) First, the moneys which were *directly* paid by IHC towards the Standby Facility (see *Crest Capital (HC)* at [219(a)], [220], [297(a)(i)], [302] and [336(a)]).

(b) Second, the loss of the use of those moneys, measured by the interest accrued on the Geelong Facility that would not have been

accrued had the moneys applied to the Standby Facility been applied to the Geelong Facility instead (see *Crest Capital (HC)* at [219(b)], [224]–[229], [297(a)(ii)] and [336(b)]).

(c) Third, the losses (including default interest and post-maturity interest) flowing from the default on the Geelong Facility, which default would have been avoided but for moneys having been applied to the Standby Facility instead of fully satisfying the Geelong Facility at its maturity date (see *Crest Capital (HC)* at [219(c)(i)], [250]–[252], [297(b)(i)] and [336(c)(i)]).

35 EFIII is (and VMIII was) liable to IHC for all three heads of damage set out at [34(a)]–[34(c)] above in dishonest assistance by way of the attribution of Mr Tan's dishonesty onto the both of them (see *Crest Capital (HC)* at [299]–[300]). However, whether Ms Lim is *also liable* to IHC for the "same damage", "or some of it", for the purposes of applying the test in *Royal Brompton* at [6] and *Tan Juay Pah* at [49(c)] (see at [33(c)] above), requires further consideration. This is because, while Ms Lim is only *legally liable* to pay the sum in [34(a)] to IHC and *not* the sums in [34(b)]–[34(c)] (see *Crest Capital (HC)* at [302]–[304]), that alone does not end the inquiry. In this regard, it is trite law that "'the same damage' must not be confused with 'the same damages'" (see *Winfield & Jolowicz* at para 22–010). Hence, the fact that the measure of damages is different or may be valued differently between co-defendants does not preclude a finding that they are nevertheless liable for *the same damage*. In the English Court of Appeal decision of *Eastgate Group Ltd v Lindsey Morden Group Inc (Smith & Williamson (a firm), Part 20 defendant)* [2002] 1 WLR 642 ("*Eastgate Group*") at [16]–[20], it was held that the co-defendants were liable for the same damage, *viz*, "the loss arising from the fact that Eastgate have bought a company worth less than

Eastgate reasonably expected it to be worth", notwithstanding that the measure of damages between them was different. As explained by the learned authors of *Winfield & Jolowicz* at para 22–010: "[w]here the vendor of a business is in breach of warranty the measure of damages against him may be different from that against a valuer engaged by the buyer, but that does not preclude the application of the 1978 Act" and, by extension, of the CLA as well.

36 Hence, in *Eastgate*, the "damage" concerned was construed broadly to mean simply the loss arising from the claimant's purchasing of a company for more than it was worth, such that the vendor's breach of warranty and the negligent failure of the valuer to give proper and careful advice were construed as liability for the same damage. That was held notwithstanding that the measure of damages was different between them. Applied to the present case, the key question is whether the heads of damage set out at [34(b)]–[34(c)] can be construed as a different damage from that in [34(a)], or if they are three different components of the "same damage". This depends on how the "damage" at issue is understood – is it (a) the loss arising from the payment of the moneys towards the Standby Facility, or (b) the payments towards the Standby Facility, on the one hand, and the interest that was accrued on the Geelong Facility, on the other?

37 Considering the broad way that "damage" was construed in *Eastgate* (at [17]), I would likewise construe the "damage" here to be more broadly the loss arising from the payment of the moneys towards the Standby Facility. The present case can be distinguished from those where "damage" is found to be of a distinct kind altogether, be it in *Royal Brompton* (at [7]), where damage flowing from delays in the performance of a contract was distinct from damage caused by an architect's negligent advice and certification, and *Birse Construction Ltd v Haiste Ltd (Watson and others (third parties))*

[1996] 1 WLR 675 ("*Birse*") at 682 (*per* Roch LJ), where physical defects to a reservoir of a water authority was damage distinct from the financial loss of having to construct a second reservoir for the water authority.

38 It could perhaps be argued, on one view, that the losses arising from the interest accruing on the Geelong Facility were a distinct kind of "damage" than the losses arising from payments being made towards the Standby Facility. On closer inspection, however, the interest accrued on the Geelong Facility at [34(b)]–[34(c)] were merely components of the losses flowing from the making of payments towards the Standby Facility, including the direct payment itself at [34(a)] and the consequential economic losses at [34(b)]–[34(c)]. The result is that, notwithstanding that Ms Lim was only found liable for the damages at [34(a)] by the High Court in *Crest Capital (HC)*, for the purposes of a contribution claim under s 15(1) of the CLA, she is liable for the "same damage" as VMIII and EFIII *vis-à-vis* the *whole* Judgment Sum, that damage being the losses from payments being made to the Standby Facility. The quantum of the damages owed by each co-defendant differs only because the *measure* of the damage is different notwithstanding that the damage itself is identical (see *Birse* at 682–683 (*per* Nourse LJ) and *Eastgate* at [17]). The damages to be paid by Ms Lim were limited to that which were recoverable for not being too remote, whereas the damages to be paid by Mr Fan and the Crest Entities included all damages *caused* by Mr Fan's breach of fiduciary duty and the Crest Entities' dishonest assistance thereof, without a similar application of the remoteness rule. The fact that Ms Lim is only liable for *part* of the consequential losses caused by VMIII and EFIII (*ie*, only the moneys paid towards the Standby Facility and not the consequential losses flowing therefrom *vis-à-vis* the Geelong Facility) is covered by the words "some of it" in *Royal Borough* at [6] and *Tan Juay Pah* at [49(c)], *ie*, Ms Lim need only be liable to

IHC in respect of at least *some* of the "same damage" for which VMIII was, and EFIII is, liable to IHC.

39 The result may, at first glance, appear to be a harsh one, given that the Judgment Sum for which VMIII was liable and EFIII is liable (*ie*, $12,594,646.84) is significantly higher than the sum that Ms Lim was legally liable to pay to IHC (*ie*, $4,538,800.00). Yet, due to the above construction of the phrase "same damage" in s 15(1) of the CLA, the sum for which VMIII and EFIII are entitled to seek contribution for against Ms Lim is not strictly limited in law to the sum she is *actually* legally liable to pay but includes the whole of the Judgment Sum. That harshness falls to be mitigated at the assessment, not the entitlement, stage of the inquiry, in determining the "just and equitable" amount of contribution recoverable from Ms Lim under s 16(1) of the CLA. It suffices, for present purposes, that I am satisfied that VMIII and EFIII are entitled to seek contributions from Ms Lim in respect of the "same damage" suffered by IHC for which they are "liable", *ie*, the Judgment Sum.

Whether VMIII is precluded from claiming contribution from Ms Lim by virtue of the Court of Appeal's remarks in *Crest Capital (CA Costs)*

40 Having established that VMIII and EFIII have satisfied the requirements of s 15(1) of the CLA to seek contributions from Ms Lim, I turn to consider Ms Lim's argument that VMIII is precluded from doing so by virtue of the Court of Appeal's remarks in *Crest Capital (CA Costs)*.

The parties' arguments

41 In this regard, Ms Lim argues that VMIII is precluded from claiming contribution from her due to the Court of Appeal's remarks in [5(a)] and [20] of *Crest Capital (CA Costs)*.[10] For clarity, I set out these paragraphs in full:

> 5 After due consideration of the parties' respective submissions on the two issues, our decision, in brief, is as follows:
>
> (a) On the Consequential Order Issue, the sums paid by VMIII to the respondents should not be restored to VMIII. The sums paid by VMIII were, in our view, meant to discharge the joint and several liability of the *same indivisible* judgment debt on behalf of *all the Crest Entities*. Therefore, VMIII should look to Crest Capital, Crest Catalyst and EFIII for reimbursement of the funds that it had paid out on behalf of *all the Crest Entities*.
>
> …
>
> 20 Since VMIII should bear the risk of non-payment, the $10.3m should not be refunded to it. The proper course of action for VMIII to take, assuming that it had funded the entire payment of the $10.3m, would be to look to Crest Capital, Crest Catalyst and EFIII for their contributions to the $10.3m instead of to the respondents. Just to be clear, in our view, it would make no difference even if the entire $10.3m was indeed funded by VMIII. The undeniable fact remains that the $10.3m was intended to discharge the joint and several liability of *all the Crest Entities*.
>
> [emphasis in original]

42 Ms Lim submits that the issue of who VMIII should look to for contribution has been addressed and decided by the Court of Appeal in these paragraphs. She further submits that, since she was not mentioned in these paragraphs despite having been found jointly and severally liable for $4,538,800.00 of the Judgment Sum, that must mean that the Court of Appeal

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[10] DCS at paras 9–10.

did not regard her as a proper party to whom VMIII should look for contribution.[11]

43 In response, VMIII submits that these paragraphs in *Crest Capital (CA Costs)* cannot stand for the proposition that it can only recover contribution from the "Crest Entities". Rather, a purposive reading of the judgment shows that the Court of Appeal never intended to exclude Ms Lim from the parties against whom VMIII can seek contribution.[12] In any event, any ambiguity in *Crest Capital (CA Costs)* on this issue is resolved by a plain reading of s 15(1) of the CLA.[13]

***My decision: VMIII is not precluded from claiming contributions from Ms Lim by virtue of the Court of Appeal's remarks in* Crest Capital (CA Costs)**

44 I agree with VMIII on this issue. In my judgment, the Court of Appeal's remarks in *Crest Capital (CA Costs)* must be read in the context of the parties in that case. Since the only defendants from Suit 441 involved in CA 113 were the "Crest Entities", *viz*, VMIII, VMF3, Crest Capital, Crest Catalyst, and EFIII, the question before the court was whether the VMIII Payment was meant to discharge the liabilities of "all of the Crest Entities" (see *Crest Capital (CA Costs)* at [13]) and not whether it was meant to discharge the liabilities of *all of the co-defendants* in Suit 441, which would include Ms Lim. Ms Lim's appeal in CA 132 was *not* at issue in *Crest Capital (CA Costs)*. The application of VMIII that was determined by the Court was an application for a

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11 DCS at para 14.

12 CCS at paras 5–11.

13 CCS at para 15.

consequential order following the Court's determination of CA 113 *alone* (see *Crest Capital (CA Costs)* at [1]–[2]).

45 Considered holistically, the Court of Appeal had declined to restore the VMIII Payment to VMIII because it wanted to protect the correct findings of liability by the High Court in *Crest Capital (HC)* against Crest Capital, Crest Catalyst, and EFIII, given that it found that the VMIII Payment was intended to discharge the liabilities of *all* the Crest Entities and not only VMIII's (see *Crest Capital (CA Costs)* at [13]). However, this does not mean that VMIII was adjudged by the Court to be only entitled to seek contribution from these parties. Instead, given that the Court was clearly aware that the other defendants in Suit 441, apart from VMIII and VMF3, were still liable for the "same indivisible damage" in the Judgment Sum, it cannot be that the Court intended to exclude Ms Lim from the parties from whom VMIII can seek contribution.

46 I also agree with VMIII that this reading is consistent with the High Court's understanding of the Court of Appeal's decision in *VMIII (Third Party Notices)*. The General Division of the High Court understood (at [9]) the Court of Appeal to mean that "the proper course of action was for VMIII to look to the other co-defendants for contributions". It is noteworthy that the General Division of the High Court did not exclude Ms Lim from these "co-defendants" or restrict the term to only the Crest Entities. In my respectful view, this is the only way to read the Court of Appeal's remarks in *Crest Capital (CA Costs)*; the Court of Appeal could not have intended, by a side-wind, to preclude VMIII from seeking contribution from Ms Lim specifically, since VMIII's entitlement to do so was not in issue and irrelevant to the question of whether VMIII was entitled to restitution of the VMIII Payment from IHC.

47 In any event, Ms Lim does not explain *why*, even if she is correct in her reading of the Court of Appeal's remarks in *Crest Capital (CA Costs)*, those remarks should have the legal effect of precluding VMIII from seeking contribution from her. Taking her case at its highest, it must be that the Court's remarks created some kind of *res judicata* against VMIII in relation to the parties against whom it can seek contribution from. If this is in fact Ms Lim's legal argument (which was wholly absent from her Closing Submissions), then it must fail. This is because there is no identity of parties between that case and the present actions. Ms Lim was not involved in *Crest Capital (CA Costs)*. Therefore, the doctrine of *res judicata* cannot apply in any of its forms to bar VMIII from taking a certain course of action against Ms Lim.

48 For all these reasons, I decide that VMIII is not precluded from claiming contribution from Ms Lim by virtue of the Court of Appeal's remarks in *Crest Capital (CA Costs)* at [5(a)] and [19]–[20].

Whether EFIII is precluded from claiming contribution from Ms Lim because the EFIII Payment was not paid to IHC in respect of the $4,538,800.00 component of the Judgment Sum that Ms Lim was held liable for in *Crest Capital (HC)*

The parties' arguments

49 I turn then to Ms Lim's argument that EFIII is precluded from claiming contribution from her because EFIII, in effect, did not pay any part of the $4,538,800.00 component of the Judgment Sum that she was held liable for. In this regard, Ms Lim submits that Mr Thomas Teo Liang Huat ("Mr Teo"), the director of VMIII,[14] testified that the VMIII Payment included the whole sum of

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[14] Thomas AEIC at para 1.

$4,538,800.00. Ms Lim relies on the following exchange during her counsel's cross-examination of Mr Teo in support of her argument:[15]

> Q. Ms Lim and the Crest entities, so to speak, are jointly and severally liable for the sum S$4.538 million; correct?
>
> A. Ms Lim and the Crest entities?
>
> Q. Yes.
>
> A. That's what the court have stipulated.
>
> Q. Correct. So is this S$4.538 million part of the S$10.622 million?
>
> A. I would think so. It's a subset of it, if you look at where the judgment goes.
>
> Q. So that's an important question because it goes to the case quite critically. So I ask you again, are you sure that this S$4.538 million was in the S$10.622 million?
>
> A. I would think so. In fact, I would think that the S$4.522 million is part of that 12-point-something million that we were asked to pay.

In addition, Ms Lim argues that Mr Peh Hong Yee ("Mr Peh"), the director of EFIII,[16] testified that the EFIII Payment was not specifically allocated to satisfy the $4,538,800.00 for which Ms Lim was liable. Thus, Ms Lim argues that EFIII has not shown that its payment of $2,443,991.00 (*ie*, the EFIII Payment) was directed towards any part of her specific liability of $4,538,800.00. Ms Lim relies on the following exchange during her counsel's cross-examination of Mr Peh in support of her argument:[17]

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15 DCS at para 5; Transcript of Civil Trial in HC/OC 125/2022 and HC/OC 126/2022 dated 26 September 2024 ("Day 1 Transcript") at p 14 lines 9–25.

16 Peh AEIC at para 1.

17 Defendant's Closing Submissions in HC/OC 126/2022 dated 14 October 2024 ("DCS 126") at para 10; Transcript of Civil Trial in HC/OC 125/2022 and HC/OC 126/2022 dated 27 September 2042 ("Day 2 Transcript") at p 10 lines 12–25.

> Q. So my next question is, how much of this S$2.443 million went towards paying the sum of S$4.538 million?
>
> A. The judgment that is for -- there is no distinction, your Honour, between whether it is S$4.5 million or the rest; it is indivisible. So there was a judgment that we need to pay. We empty out that bank account to pay this judgment debt.
>
> Q. No distinction, which means you don't know whether any amount that you paid in this S$2.443 million went towards paying the S$4.5 million?
>
> A. We have to pay the entire 12 -- 12.5, so whether it is 4-point -- whether it is 4.5 or whatever, it is the obligation on the part of the Fund to pay.

50 VMIII's and EFIII's response is effectively that Ms Lim has misread the evidence.[18]

My decision: EFIII is not precluded from claiming contribution from Ms Lim on the basis that the EFIII Payment did not comprise the sum of $4,538,800.00 that Ms Lim was held liable for in Crest Capital (HC)

51 I reject Ms Lim's argument because I agree that Ms Lim has misread the evidence. Properly considered, neither Mr Teo nor Mr Peh conceded that the EFIII Payment did not go towards the payment of the $4,538,800.00 that Ms Lim was liable for. It is only necessary to refer to Mr Peh's answers, which I have reproduced at [49] above. Mr Peh clearly testified that he understood the Judgment Sum to be indivisible, so that it is impossible to discern if the EFIII Payment went towards the $4,538,800.00 or some other part of it.[19] This coheres with Mr Teo's evidence that the $4,538,800.00 was understood as a "subset" and "part of" the total Judgment Sum (*ie*, the "12-point-something

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18 CRS at paras 8–10.

19 Day 2 Transcript at p 10 lines 15–19.

million") that "[VMIII was] asked to pay".[20] This is sufficient to dispose of Ms Lim's erroneous reading of the evidence.

52 In any event, even if Mr Teo or Mr Peh had conceded that the EFIII Payment was not made towards the $4,538,800.00 that Ms Lim was liable for, whether this was so is a question of law (*viz*, whether the criteria for entitlement to contribution *per* s 15(1) of the CLA was satisfied) and not of fact. Thus, even if EFIII subjectively thought that the EFIII Payment was not made towards the $4,538,800.00, that is largely immaterial since, as a matter of law, the entire Judgment Sum owed by VMIII and EFIII at the time was indivisible. It would not be legally possible to parcel out parts of the VMIII Payment or the EFIII Payment as going towards (or not going towards) some portion of their liability.

53 Accordingly, I decide that EFIII is not precluded from claiming contribution from Ms Lim on the basis that it did not pay any part of the $4,538,800.00 that Ms Lim was liable for.

Whether Ms Lim should be exempted from making contributions to VMIII and/or EFIII by virtue of s 16(2) of the CLA

The parties' arguments

54 Citing *Ho Yew Kong* at [228], Ms Lim submits that the court has the power under s 16(2) of the CLA to "exempt a secondary wrongdoer from liability to make contribution to a primary wrongdoer when the recovery of any contribution from the secondary wrongdoer would have the effect of permitting

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[20] Day 1 Transcript at p 14 lines 17–18 and 23–25.

the primary wrongdoer to retain part of its wrongly acquired benefit, with the result that the primary wrongdoer would be unjustly enriched".[21]

55 As such, in relation to VMIII, Ms Lim argues that since any contribution recovered by VMIII from her would be on behalf of Crest Capital, Crest Catalyst, and EFIII, it would have the effect of permitting Crest Capital, Crest Catalyst, and EFIII as the primary wrongdoers to retain part of their wrongly acquired benefit, with the result that these entities would be wrongly enriched.[22] As for EFIII, Ms Lim argues that she should be exempted from making contribution to it as otherwise EFIII as the primary wrongdoer would be unjustly enriched.[23]

56 VMIII argues that it is not seeking to recover on behalf of the other Crest Entities but to defray the out-of-pocket costs it has personally sustained to make the VMIII Payment to IHC.[24] EFIII argues that it would not be unjustly enriched within the meaning of *Ho Yew Kong* at [228] if it were entitled to claim contribution from Ms Lim.[25]

My decision: Ms Lim should not be exempted from making contributions to VMIII and/or EFIII by virtue of s 16(2) of the CLA

57 As I understand it, Ms Lim's argument is based on the Court of Appeal's reasoning in *Ho Yew Kong* at [228]. For clarity, I reproduce this paragraph in full:

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21 DCS at paras 15–17.

22 DCS at para 16.

23 DCS 126 at para 13.

24 CRS at paras 12.5 and 13.

25 CRS at paras 16–17.

> In our judgment, while the court has a broad discretion to determine when to exercise its power under s 16(2) to exempt a third party defendant (who is a secondary wrongdoer) from making contribution to a third party claimant (who is a primary wrongdoer), it should generally exercise this discretion in at least two particular situations. The first is when allowing a third party claimant to recover contribution from a third party defendant would have the effect of permitting the third party claimant to retain part of its wrongly acquired benefit to the extent of any sum that it is able to recover from the third party defendant, with the result that the third party claimant would be unjustly enriched: see *Nganthavee* ([221] *supra*) at [18] and *Airtrust* at [61]; see also *K v P* ([221] *supra*) at 149H, affirmed in *Dubai Aluminium Co Ltd v Salaam* [2003] 2 AC 366 at [54] *per* Lord Nicholls of Birkenhead. The second is when allowing a third party claimant to seek contribution from a third party defendant would in effect be allowing the third party claimant to rely on its own illegality to recover damages from the third party defendant: see *Airtrust* at [61].

On a closer reading of this paragraph, I reject Ms Lim's argument for the following reasons.

58 First, unlike the situation discussed in *Ho Yew Kong* at [228], the effect of Ms Lim making a contribution to VMIII and EFIII would not be to permit them to retain any wrongfully acquired benefit. VMIII and EFIII were not being disgorged of profits acquired from their wrongful acts. They were ordered to compensate IHC for the losses IHC suffered as a result of its entry into the Standby Facility and Mr Fan's breach of duty in that connection. The situation is very different from that in *Nganthavee* (at [18]) where the claimants in contribution had made profits from the conspiracy that were "ill-gotten gains" that it could not fairly be permitted to keep. Indeed, Ferris J in *K v P* (at 149–150) drew a clear distinction between a case where the claimant in contribution seeks to "retain part of the proceeds of their conspiracy or fraud" through "a claim to recover the benefits actually obtained by conspiracy or fraud", and a scenario where the contribution claim is over the compensation of the plaintiff

for losses suffered which the claimant and defendant in contribution are both responsible for.

59 Hence, it follows that there is no question here of EFIII or the other Crest Entities becoming "unjustly enriched" by being able to retain part of their wrongly acquired benefits. This is because VMIII and EFIII made payment to satisfy the Judgment Sum, which was compensation for losses that IHC suffered and not related to any benefit derived by VMIII or EFIII from the Standby Facility or Mr Fan's breach of duty to IHC. Any contribution they obtain from Ms Lim can never exceed the Judgment Sum. Hence, neither VMIII nor EFIII will retain a surplus sum so as to be unjustly enriched or to keep a portion of the fruits of their wrongdoing.

60 For these reasons, I reject Ms Lim's argument that she should be exempted from making contributions to VMIII and/or EFIII by virtue of s 16(2) of the CLA because EFIII or the other Crest Entities (allegedly claimed on their behalf by VMIII) would somehow be "unjustly enriched". I therefore find that VMIII and EFIII can seek contributions from Ms Lim. The remaining question is how much they can each obtain from Ms Lim.

Whether VMIII and EFIII can obtain the extent of the contributions that they seek from Ms Lim

The parties' arguments

61 Although I have concluded that VMIII and EFIII can seek contributions from Ms Lim, they each still bear the legal burden of establishing that they are

entitled to the amounts they seek from Ms Lim (*ie*, $3,828,123.25 and $880,754.06, respectively).[26]

62 In this regard, VMIII argues that, as between it and Ms Lim, it is innocent while Ms Lim is liable. As such, the scale of apportionment should be dipped fully towards Ms Lim, and VMIII should be allowed to recover the full extent of Ms Lim's liability.[27] While Ms Lim may feel she should not be made to bear the full $4,538,800.00, it is up to her to seek contribution from her co-defendants. That Ms Lim has failed to do so in time should have no bearing on VMIII's right to seek contribution from her.[28] As for the "just and equitable" amount, Mr Teo had explained that VMIII's pleaded sum of $3,828,123.25 is derived from the proportion of the Judgment Sum that Ms Lim is liable for, *viz*, 36.04% (being $4,538,800.00 out of $12,594,646.84). Thus, 36.04% of the VMIII Payment of $10,622,600.79 is the pleaded sum of $3,828,123.25.[29]

63 As for EFIII, EFIII recognises that the apportionment of liability to an intentional tortfeasor (as EFIII was found to be in *Crest Capital (HC)*) should be more than to a negligent tortfeasor.[30] However, where both parties have an equal import in causing harm to another, as in Suit 441, then the element of relative blameworthiness should not be overstated compared to that of causative potency. In this regard, the High Court had found Ms Lim to have failed to exercise due skill and care in escalating the irregularities in the Standby Facility to IHC's board of directors. Taking into account her relatively lower

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26 Thomas AEIC at para 21; Peh AEIC at para 21.

27 CCS at para 63.

28 CCS at para 66.

29 CCS at para 67; VMIII SOC at para 17.3 and prayer (1).

30 CCS at para 70.

blameworthiness, the High Court had already found Ms Lim liable for only $4,538,800.00.[31] Thus, as Mr Peh explained in court, EFIII's claim of $880,754.06 is for 36.04% (being the proportion of Ms Lim's liability *vis-à-vis* the whole of the Judgment Sum) of the EFIII Payment ($2,443,991.00).[32]

64 In response, Ms Lim argues that because she was found to be merely negligent in Suit 441 as opposed to being fraudulent, it would be just and equitable to apportion to her no more than 5% contribution of the respective sums claimed by VMIII and EFIII.[33] As to how she derived the figure of 5%, Ms Lim relies on the High Court decision of *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 ("*Su Ah Tee*"), in which the court apportioned 5% of the liability there to a property agent for negligent misrepresentation.[34]

65 However, beyond Ms Lim's more specific arguments concerning the amount of contribution she should be liable for, I observe that she admits in her Closing Submissions that she was found to be negligent in Suit 441. This is different from the stance that she had taken in her pleadings, as well as during the trial, where she sought to challenge the finding in Suit 441 that she was negligent. In any case, had Ms Lim sought to do so, I would have found that she is precluded from challenging that finding in Suit 441 because it is *res judicata*. The undeniable fact is that Ms Lim has been found liable in Suit 441, as affirmed by the Court of Appeal, and she is therefore jointly and severally liable for the sum of $4,538,800.00 out of the total Judgment Sum of $12,594,646.84.

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31 CCS at paras 71–72.

32 Day 2 Transcript at p 6 lines 2–6; EFIII SOC at para 17.3 and prayer (1).

33 DCS at paras 20 and 22; DCS 126 at paras 17–18.

34 DCS at para 21.

She cannot revisit the findings as to her breach of her duty of due skill, care, and diligence to IHC *vis-à-vis* the Standby Facility (see *Crest Capital (CA)* at [149]–[165]) – in particular, by arguing that she had justifiably relied on the alleged representations of Mr Lim regarding the drawdowns from the Standby Facility and the evidence (under *subpoena*) of Ms Tan Siew Yee at trial on the same.[35] Instead, I assess such factors as the causative potency and relative blameworthiness of Ms Lim based on the *res judicata* findings in *Crest Capital (HC)* and *Crest Capital (CA)*.

My decision: VMIII is entitled to receive the extent of the contributions sought while EFIII is entitled to a lesser extent of the contributions that they seek from Ms Lim

66 To recapitulate, VMIII and EFIII seek contributions from Ms Lim in the amounts of $3,828,123.25 and $880,754.06, respectively. For the reasons that follow, I am satisfied that a "just and equitable" result *per* s 16(1) of the CLA is for VMIII to receive the extent of the contributions it seeks and for EFIII to receive a lesser extent of the contributions sought from Ms Lim.

The distinction between the Judgment Sum and the sum total of the VMIII Payment and the EFIII Payment (ie, the Combined Sum)

67 To begin with, a distinction needs to be drawn between the Judgment Sum and the sum total of the VMIII Payment and the EFIII Payment. In this regard, as stated at [62]–[63] above, the contributions sought by VMIII and EFIII were calculated by taking the percentage of Ms Lim's liability, as a proportion of the Judgment Sum, multiplied by the VMIII Payment and

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[35] Defence (Merits) in HC/OC 125/2022 dated 29 April 2024 at para 11; Defence (Merits) in HC/OC 126/2022 dated 29 April 2024 at para 11; Day 2 Transcript at p 25 line 1 to p 29 line 10.

the EFIII Payment, respectively. The difficulty is that there is a difference between the quantum of the Judgment Sum, on the one hand, and the sum of the VMIII Payment and the EFIII Payment, on the other hand. The Judgment Sum, when the three heads of damage in *Crest Capital (HC)* at [34] above are added together, is $12,594,646.84 (see at [1] and [8] above). In contrast, the VMIII Payment and the EFIII Payment comes up to $13,066,591.79 between them (see at [10] above), which I shall refer to as the "Combined Sum". The reason for that difference is that the Combined Sum included *inter alia* interest, costs, and disbursements.[36]

68 For completeness, Ms Lim has argued that this is a miscalculation as the two contributions sought by VMIII and EFIII, added together, exceed the sum of her liability of $4,538,800.00.[37] I do not agree that this is a "miscalculation". Rather, it stems from the difference between the Judgment Sum and the Combined Sum. However, and importantly, I note that the claimants' evidence is silent on the breakdown of the Combined Sum as between the Judgment Sum, interest, and costs, *etc*. It is simply stated in Mr Teo's affidavit that the VMIII Payment was "the amount of S$10,631,100.79; less S$8,500.00 being legal costs payable to IHC for interlocutory applications in Suit 441".[38] Also, the receipts appended to the affidavits of Mr Teo and Mr Peh reference the total amounts transferred to IHC's solicitors, which are stated to be partial payments of the "Suit 441 Judgment Debt" and "outstanding costs orders",[39]

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36 Thomas AEIC at para 11.

37 DRS at para 5.

38 Thomas AEIC at para 11.2.

39 Thomas AEIC at pp 83–87; Peh AEIC at pp 83–86.

without a breakdown of the sums for the different categories that comprised those payments.

69 Therefore, although there is evidence in the record as to Ms Lim's liability in respect of the sum of $4,538,800.00 within the Judgment Sum, there is technically no direct evidence as to Ms Lim's liability for the remainder of the Combined Sum, including costs. While the Court of Appeal noted in *Crest Capital (CA Costs)* at [26] that the Crest Entities were ordered to pay IHC costs for the trial in the High Court "to the tune of about $350,000", which was "fully paid by VMIII in September 2020, together with the $10.3m payment", it is silent as to Ms Lim's liability for that costs order. This is to be expected, given that *Crest Capital (CA Costs)* concerned CA 113 to which Ms Lim was not a party. Those costs orders are not set out in *Crest Capital (HC)*, which only provides (at [341]) that the "[p]arties are to provide their costs submissions, and apply for other consequential orders (if any), within two weeks of this judgment". Hence, while the claimants have given evidence as to Ms Lim's liability within the Judgment Sum and *their* liability to IHC in September 2020 (as inferred from the quantum of the Combined Sum paid to IHC's solicitors), they have not given evidence of *Ms Lim's* liability to IHC as to the remainder of the Combined Sum, including costs.

70 Notwithstanding the claimants' failure to provide evidence as to Ms Lim's liability to IHC as to the remainder of the Combined Sum, I note the view of the learned author in Glanville L Williams, *Joint Torts and Contributory Negligence* (Steven & Sons Limited, 1951) at p 488, as follows:

> Section 6(1)(c) and 6(2) of the Tortfeasors Act, which give a right of contribution among concurrent tortfeasors, are perfectly general in their wording, and enable the court to order contribution towards costs payable to the injured party. Normally contribution will be ordered in the same proportions

> as the wrongdoers are held liable between themselves in respect of the plaintiff's damages.
>
> Where the plaintiff has sued only one wrongdoer, D1, and obtains a judgment for damages and costs, D1 may under the Tortfeasors Act be given a final judgment against D2 for the latter's contribution to the costs payable to P. Thus in *Jerred v. Dent & Son Ltd.* (1948), where the defendant was given judgment against the third party for nine-tenths of the damages paid, he was also given judgment for nine-tenths of the plaintiff's costs which the defendant had to pay, and all the defendant's costs of the third-party proceedings. It is submitted that he should also be given contribution towards his own costs of defending the plaintiff's action where they were reasonably incurred.

71 Although the wording of the Law Reform (Married Women and Tortfeasors) Act 1935 (c 30) (which is the "Tortfeasors Act" as referred to in the excerpt above and predecessor to the 1978 Act) is not entirely *ad idem* with the CLA, the language used in the abovementioned ss 6(1)(c) and 6(2) is sufficiently similar to that of ss 15(1) and 16(1) of the CLA such that the reasoning of the former provisions being "perfectly general in their wording" to embrace the approach approved of in the excerpt above is apposite *vis-à-vis* the latter provisions of the CLA as well. For completeness, I set out the wording of these provisions below:

> **Proceedings against, and contribution between, joint and several tort-feasors.**
>
> (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—
>
> …
>
> (c) any tort-feasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

> (2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

72 This is significant as VMIII and EFIII bear the legal burden of proving their contribution claims and the court cannot resolve evidential gaps in their favour. The approach at [70] above, however, means that even if the court were to assume in Ms Lim's favour that the costs and disbursements paid by VMIII and EFIII were *not* owed by her to IHC (see at [68]–[69] above), it remains open to the court to find that a just and equitable outcome, following the "perfectly general in their wording" approach of ss 15(1) and 16(1) of the CLA, is to order that the costs and disbursements owed by VMIII and EFIII to IHC be shared with Ms Lim in the same proportions as their liabilities for the "same damage" they are liable for. This would be consistent with the approach of *Jerred v Roddam Dent & Son Ltd* [1948] 2 All ER 104, as explained by the learned author at [70] above. Thus, VMIII's and EFIII's failure to provide evidence as to Ms Lim's liability for the difference between the Judgment Sum and the Combined Sum is not necessarily fatal to their proportionate claim for the balance sum.

The analytical framework to determine the proportion of the parties' liability for the Combined Sum

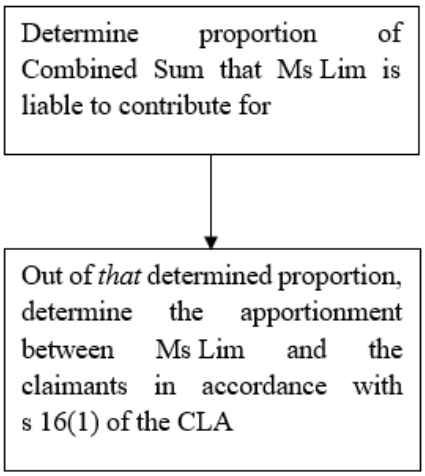
73 Turning to the proportion in which the parties' liability for the Combined Sum should be shared, I agree with the claimants that Ms Lim's proportion of liability for the Judgment Sum is a useful proxy for determining the share of the Combined Sum for which she may fairly be held liable to contribute. I return to the point that the phrase "same damage" in s 15(1) is not the same as "same

damages". Hence, the full Judgment Sum represents the damages reflecting the "same damage" for which VMIII and EFIII were held liable to IHC for, *viz*, the losses flowing from IHC entering into and drawing down on the Standby Facility, notwithstanding that Ms Lim is only liable for a *proportion* of that larger sum. Hence, while the claimants are entitled to seek contribution from Ms Lim in respect of the *whole* Judgment Sum based on the wording of s 15(1), any harshness of that result stands to be mitigated at the apportionment stage (see at [39] above).

74 Accordingly, it is necessary to first determine the proportion of the Combined Sum which Ms Lim may justly be ordered to contribute to VMIII and EFIII *in the event* that it is fair to hold her 100% liable to VMIII and EFIII for the head of damage represented by $4,538,800.00, *viz*, the sums paid out by IHC towards the Standby Facility (see at [34(a)] above). That is because, even if Ms Lim were found to be 100% liable for the damage at issue as compared to VMIII and EFIII, it would still not be "just and equitable", in that scenario, to hold her 100% liable for the *whole* of the Combined Sum, the bulk of which consists of heads of losses she was found *not legally liable* for, namely, the losses associated with the loss of use of the sums paid by IHC (as measured in the interest accrued on the Geelong Facility) and losses flowing from IHC's subsidiary's default on the Geelong Facility (see at [8] and [34(b)]–[34(c)] above).

75 Therefore, the proper approach must be to *first* determine the proportion of the Combined Sum that can fairly be said to represent the head of damage that Ms Lim was liable to pay (*viz*, $4,538,800.00) relative to the *whole* of the Judgment Sum, *as applied* to the Combined Sum. That would represent the share of the Combined Sum that broadly reflects the head of damage Ms Lim was actually liable to pay. Once that sum is ascertained, the *second* step is to

apportion *that proportion*, which reflects the proportion of loss that Ms Lim was actually legally liable to pay to IHC. This apportionment between Ms Lim and the claimants is done based on such factors as causative potency and relative blameworthiness (see at [28] above). Hence, in the example of Ms Lim being sued by a co-defendant of *equal* culpability to her own, she would be made to bear 50% of *that proportionate sum* instead. This approach may be represented graphically as follows:



In my view, this approach can be applied more generally in other cases for contribution made pursuant to s 15(1) of the CLA.

The just and equitable apportionment in the present case

(1) The approach above avoids an obvious unfairness

76 This approach avoids the inherent unfairness in the result that is sought by the claimants here, namely, that VMIII and EFIII seek the *same* apportionment of the Combined Sum between themselves and Ms Lim, *viz*, 36.04% borne by Ms Lim and the remaining 63.96% borne by themselves. That obviously cannot be a "just and equitable" apportionment. VMIII is an *entirely*

innocent party. With the finding in *Crest Capital (CA)* that Mr Tan's dishonesty was *not* attributable to VMIII, VMIII was not only *not a party* to Mr Fan's breach of duty to IHC but was a *victim* of the plot hatched between Mr Fan, Mr Tan, and Mr Aathar (see *Crest Capital (CA)* at [122]). In contrast, the dishonesty of Mr Tan remains attributable to EFIII, meaning that EFIII was a party to Mr Fan's scheme to induce IHC to enter into and draw on the Standby Facility in breach of Mr Fan's core fiduciary duties to IHC. Under these circumstances, it cannot be the case that a "just and equitable" apportionment of liability is one that is *exactly the same* between an innocent party and Ms Lim, on the one hand, and a dishonest party and Ms Lim, on the other.

77 This defect, in my view, can be cured by recognising that the approach sought by the claimants is, in principle, an attempt by them to account for the fact that Ms Lim was only legally liable to pay a particular proportion of the Judgment Sum. On their approach, Ms Lim can only fairly be held responsible for the *one* head of damage in the Judgment Sum she was obligated to pay to IHC to the exclusion of the two heads of damage she was not obligated to pay. In order to approximately capture the former to the exclusion of the latter, in relation to the Combined Sum, VMIII and EFIII have taken a percentage of Ms Lim's legal liability for damages *vis-à-vis* the Judgment Sum and used that percentage as a proxy for the share of the Combined Sum that is broadly attributable to only the one head of loss that Ms Lim was obligated to compensate IHC for. Bearing in mind that the determination of a "just and equitable" apportionment in s 16(1) is, as was stated in *Jackson*, a "somewhat rough and ready exercise" (see [28] above), I agree that this is an overall fair approach to ascertaining the share of the Combined Sum that is notionally attributable to the one head of damage Ms Lim was found liable to pay to IHC.

(2) The proportion of the Combined Sum that Ms Lim is liable to contribute to

78 Taking the sum owed by Ms Lim to IHC divided by the Judgment Sum, multiplied by the VMIII Payment and EFIII Payment, comes to $3,828,123.2**6** (rounded-up as the next two digits are "57", although VMIII pleads for the sum that is rounded-down, *ie*, $3,828,123.25) and $880,754.06, respectively. These are the figures that stand to be apportioned between Ms Lim and the claimants based on such factors as causative potency and relative blameworthiness. This apportionment is important because if the full sum were awarded to VMIII and EFIII, that would *in effect* be a finding that the fair outcome *inter se* is for Ms Lim to *wholly bear* 100% of the proportion of the Combined Sum attributable to the one head of loss in the Judgment Sum caused by the *concurrent* wrongdoings of her, the Crest Entities (by way of attribution from Mr Tan), Mr Fan, and Mr Aathar (see *Crest Capital (HC)* at [335]–[336(a)] and [339]).

(3) The "just and equitable" apportionment that Ms Lim is liable to contribute for

79 With these principles in mind, I decide that VMIII is entitled to a 100% contribution as it is an innocent party whereas Ms Lim is a wrongdoing party. VMIII's causative potency and relative blameworthiness is therefore *zero* and the "just and equitable" outcome is for Ms Lim to fully indemnify VMIII for the proportionate figure calculated at [78] above. Hence, VMIII is entitled to $3,828,123.25 from Ms Lim.

80 However, the same cannot be said in relation to EFIII. It is significant that EFIII was found to be more blameworthy than Ms Lim in Suit 441. Mr Tan – and, by extension, EFIII – were found to have dishonestly assisted Mr Fan's

breach of his core fiduciary duties. In contrast, Ms Lim's wrongdoing was one of negligence and carelessness, not dishonesty. As EFIII stands in the shoes of Mr Tan for the purposes of assessing their relative responsibility for the losses flowing from the Standby Facility (see the House of Lords decision of *Dubai Aluminium Co Ltd v Salaam and others* [2003] 2 AC 366 at [47] and [61], *per* Lord Nicholls of Birkenhead, and [156]–[157], *per* Lord Millett), it follows that EFIII should bear a greater share of the head of damage Ms Lim was jointly liable for as Mr Tan was clearly the more blameworthy party between them, as his role in Mr Fan's scheme and the drawdowns on the Standby Facility by IHC was dishonest in the circumstances (see *Crest Capital (HC)* at [161]–[165]). However, while the causative potency and relative blameworthiness of Ms Lim's defaults may be lower, they are not negligible either when compared to Mr Tan's (see, *eg*, *Eagle* at [16]–[19]). As was held by the Court of Appeal in *Crest Capital (CA)* at [157]–[158]:

> 157 In the circumstances, from these two pieces of evidence, the following facts were objectively clear to Ms Lim. First, she was aware that IHC had secured the Standby Facility for general working capital purposes. Second, she was aware that drawdowns under the Standby Facility must have taken place, *ie*, IHC had incurred a liability under the Standby Facility. Third, she would have been aware from the reasons set out at [153] above [*eg*, that internal investigations by auditors and lawyers concluded there were no drawdowns under the Standby Facility, there were no drawdown requests or direct transfers of funds from the Crest Entities to IHC's bank accounts, *etc*] that the drawdowns were concealed from her and IHC. Fourth, she therefore did not know what the drawdowns were in fact used for despite the Standby Facility having been obtained for IHC's general working capital. It was the confluence of such circumstances that should have caused Ms Lim to realise that there were some irregularities or improprieties in relation to the drawdowns. The fact that she knew that the drawdowns had been concealed from her and IHC should, in our view, have *heightened* her concern and caused her to alert the board. We therefore agree with the Judge that Ms Lim should have known that *drawdowns were made*, albeit for an unknown purpose and, significantly, without proper documentation. It was in

> such circumstances that her failure or omission to act constituted a breach of her duty to IHC.
>
> 158 It is also material to bear in mind Ms Lim's role in IHC at the material time. At the time the alleged negligent omission occurred (*ie*, between May and July 2015 before the execution of the documentation of the Disputed Facilities), Ms Lim was the Vice-President (Investment) of IHC (Judgment at [10]). As explained by Ms Lim in her AEIC, at the material time she was assisting Dr Jong with loan views and *cash flow management* at IHC. More significantly, she accepted under cross-examination that if there were drawdowns, she would have known of money being deposited in IHC's account. She also admitted that if the Crest Entities alleged that there were drawdowns, she would have immediately alerted the board since *there were not supposed to be any drawdowns*. In this context, the irregularities in relation to the drawdowns should have aroused her suspicions even more. She was aware of the fact that drawdowns had taken place, yet *no money ever found its way to IHC's coffers*. And yet, she failed to make any query in relation to these irregularities. To that end, we agree that the Judge's finding of negligence on the part of Ms Lim was eminently justified.
>
> [emphasis in original]

81 It is clear from the Court of Appeal's findings above that Ms Lim's negligence was not minor but gross and severe under the circumstances. While it does not rise to the level of Mr Tan's dishonest assistance of Mr Fan's breach of duty (see *Crest Capital (HC)* at [169]), it cannot be downplayed either. Under the circumstances, for the reasons that I will shortly develop, I consider a fair division between Ms Lim and EFIII to be in the ratio of 40:60, respectively.

82 While every case must turn on its own facts, I note the apportionment of liability in *Su Ah Tee* (at [233]) cited by Ms Lim (in respect of the apportionment of 5% to Ng Sing, the property agent) and upheld on appeal in *William Cheng* at [50]–[52] (in respect of the property agent's relative liability). The apportionment that was ordered on appeal by the Court was 65% to Cheng (the seller of a shophouse who perpetrated a fraudulent misrepresentation against the plaintiff businessman in that sale), 5% to the plaintiff's negligent property agent

Ng Sing, and 30% to the plaintiff's negligent conveyancing solicitor (Lim and his firm ALT). Applied to the present case, I consider the extent of the negligence displayed by Ms Lim, as found by the Court of Appeal and described at [80] above, roughly comparable to that of the solicitor in *William Cheng*, where the Court took note of the fact that he was "a solicitor of close to 16 years' standing" who "fell well below the mark in discharging his duties", having failed to keep his client "apprised" of a "highly important piece of information" in the form of the property's remaining leasehold (at [51]). As such, I would take the proportion of liability attributed to Lim and his firm (30%) as a better benchmark of the relative culpability of Ms Lim than the proportion attributed to the property agent Ng Sing (5%) cited by Ms Lim in her submissions. In light of Ms Lim's position in IHC, the extent of the irregularities she failed to take notice of (see at [80] above), and the fact that her making the proper inquiries in the circumstances and alerting the board to the irregularities would have obviated IHC's entry into the Standby Facility (see *Crest Capital (HC)* at [135]), I find that a 40:60 apportionment of the proportionate sum at [78] between Ms Lim and EFIII is a "just and equitable" result *inter se* (see at [25] above). I thus order that Ms Lim pay to EFIII contribution in the amount of 40% of $880,754.06, which comes to $352,301.62.

83 While this suffices to deal with the present claims, I observe that VMIII and EFIII argue that because Ms Lim had not put forward an alternative figure to them in terms of the contribution amounts, Ms Lim is precluded by the rule in *Browne v Dunn* (1893) 6 R 67 from submitting an alternative calculation of the quantum in her Closing Submissions. I disagree with this submission because the question of the appropriate quantum is a question of the court's discretion, as opposed to a question of fact (see the Court of Appeal decision of *Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery)*

and another [2012] 3 SLR 1038 at [54] and *William Cheng* at [48]). It is not a question of a witness's evidence to which the confrontation rule in *Browne v Dunn* applies.

84 Further, I address, for completeness, the claimants' argument that "[i]n determining that the Defendant is only liable for the sum of S$4,538,800, the [High Court] *already discounted her liability* to take into account her lower culpability in Suit 441. Therefore, the Defendant should not be allowed to brazenly bargain for lower liability in the present Suits" [emphasis added].[40] The suggestion, in other words, is that any subsequent division of the sum of $880,754.06 would represent *double-counting*, given that the lesser culpability of Ms Lim *vis-à-vis* the Crest Entities and other defendants to Suit 441 was already factored into the award of damages in *Crest Capital (HC)*.

85 In my view, the above argument rests on the incorrect conflation of the respective measures of damages and the principles for the apportionment of liability for damage *per* s 16(1) of the CLA. The former is not based on a "just and equitable" division as to the fair quantum of damages that should be borne *inter se* to achieve a just outcome between co-defendants. Whether one co-defendant is or is not liable for a head of damage is based on clear rules of law and doctrines governing the damages that a plaintiff is entitled to claim from a defendant. In other words, the High Court did not award more damages against the Crest Entities and lesser damages against Ms Lim in *Crest Capital (HC)* because her relative culpability was adjudged to be lower in accordance with a "just and equitable" division in accordance with s 16(1). Instead, the High Court had decided the respective bases of liability of the Crest Entities and Ms Lim,

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[40] CCS at para 72.

and then applied the relevant principles to determine the damages due from each party. The ratio of the resulting damages awarded therefore does not reflect the relative culpability or comparative blameworthiness of the parties.

86 To explain this further, the fact is that VMIII was, and EFIII is, liable to make equitable compensation to IHC for the dishonest assistance of Mr Fan's breach of his core fiduciary duties (see *Crest Capital (HC)* at [217]); on the other hand, Ms Lim was liable in negligence for her breach of a duty of skill, care, and diligence to IHC. Once this finding was reached, in assessing the quantum of damages, Mr Fan's liability (and, by extension, his accessories') were not subject to a remoteness limitation, whereas Ms Lim's liability *was* (see *Crest Capital (HC)* at [216]). Therefore, the difference in the quantum of damages awarded against the Crest Entities and Ms Lim in *Crest Capital (HC)* had nothing to do directly with their relative culpability or comparative blameworthiness in the sense postulated in s 16(1) or the application of the principles of contributory negligence. It is therefore incorrect for the claimants to suggest that the ratio of the resulting damages awarded was a fair approximation of Ms Lim's relative culpability as compared to VMIII's and EFIII's as assessed in *Crest Capital (HC)*.[41]

87 It follows that the approach at [78] and [81]–[82] above does not amount to double-counting because different matters are being counted. One is an estimation of the proportion of the Combined Sum attributable to the head of damage suffered by IHC that Ms Lim was legally liable to compensate IHC for (which damage was concurrently caused by the wrongs of Ms Lim *and* her co-defendants) to the exclusion of the heads of damage she was not legally

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[41] CCS at para 72.

required to pay for *at all*. The second is an apportionment of liability for *that* head of damage *inter se* as between wrongdoers whose breaches *both* caused that damage based on a comparison of their relative faults, considering such factors as their causative potencies and relative blameworthiness.

Conclusion

88 For all the reasons above, I allow VMIII's claim in whole and EFIII's claim in part for contributions against Ms Lim. Hence, I order Ms Lim to pay $3,828,123.25 to VMIII, and $352,301.62 to EFIII.

89 Unless the parties are able to agree on costs, each party is to tender written submissions on costs, limited to 10 pages each, within seven days of this decision.

90 In closing, I thank the parties for their assistance, as well as their willingness to tender their closing and reply submissions pursuant to shorter timelines than is usually the case.

Goh Yihan
Judge of the High Court

Koh Choon Guan Daniel (Eldan Law LLP) (instructed), Yeoh Kar Hoe, Ng Wei Jin and Zhong Tianyu (David Lim & Partners LLP) for the claimants;
Goh Kok Leong (Ang & Partners) for the defendant.