

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

[2025] SGHC 30

Originating Claim No 276 of 2022

Between

SME Resources Pte Ltd

... Claimant

And

Koh Xiankai (Gao Xiankai)

... Defendant

And

Goh Chye Guan

... Third Party

Originating Claim No 294 of 2022

Between

Koh Xiankai (Gao Xiankai)

... Claimant

And

Goh Chye Guan

... Defendant

GROUNDS OF DECISION

[Limitation of actions — Effect of time having run]
[Equity — Fiduciary relationships — Breach of fiduciary duties]

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SME Resources Pte Ltd
v
Koh Xiankai (Goh Chye Guan, third party)
and another matter

[2025] SGHC 30

General Division of the High Court — Originating Claim No 276 of 2022 and
Originating Claim No 294 of 2022

Chua Lee Ming J

17–20, 24–27 September, 1 October, 4 October 2024

24 February 2025

Chua Lee Ming J:

Introduction

1 These proceedings concerned two related actions, HC/OC 276/2022 (“OC 276”) and HC/OC 294/2022 (“OC 294”). At the centre of the dispute was SME Resources Pte Ltd (“SME”). Mr Goh Chye Guan (“Goh”) was the managing director of SME. Mr Koh Xiankai (“Koh”) was the director of Loyal Reliance Pte Ltd (“LR”), which provided administrative support to SME.

2 OC 276 was a derivative action commenced in the name and on behalf of SME by Goh against Koh, pursuant to leave granted in HC/OA 129/2022 (“OA 129”). In OC 276, SME claimed that Koh breached his fiduciary duties by withdrawing a total sum of \$1,011,066 from its bank account and transferring

the moneys to himself and various entities owned or controlled by him (the “Disputed Withdrawals”). In turn, Koh commenced third party proceedings against Goh, claiming a full indemnity or contribution in respect of SME’s claim against Koh.

3 OC 294 was Koh’s claim against Goh for a declaration that Goh held his 50,000 shares in SME (which was 50% of SME’s shareholding at the time) on trust for Koh, and for an order requiring Goh to transfer the same to Koh. Goh counterclaimed for payment of \$500,000 as consideration for an earlier transfer of 50,000 shares in SME to Koh’s brother, Mr Kenneth Koh Xian Kun (“Kenneth”). Goh’s counterclaim was struck out before the trial of OC 294 started.

4 On 4 October 2024:

(a) I dismissed SME’s claim against Koh in OC 276. I also dismissed Koh’s third party claim against Goh.

(b) I allowed Koh’s claim against Goh in OC 294.

5 SME has appealed against my dismissal of its claim in OC 276. Goh has appealed against my decision allowing Koh’s claim against Goh in OC 294.

Facts

6 Koh was an entrepreneur who founded and incorporated LR in 2009. LR was a private limited company, which was in the business of providing consultancy and training services in, among other areas, people management

and leadership.¹ Koh also owned other business enterprises which were relevant to the Disputed Withdrawals, namely Sanctuary Capital Pte Ltd (“Sanctuary”), SG Cash Pte Ltd (“SG Cash”), and Loyal Consultancy Pte Ltd (“Loyal Consultancy”).²

7 Goh had previously worked for the Ministry of Manpower (“MOM”), where he was involved in setting up a new Workplace Safety and Health (“WSH”) framework to improve industrial safety. In 2012, he returned to the private sector and started Total Safety Solutions Pte Ltd (“TSS”) and WAH Academy (with a partner) to offer training and consultancy services related to workplace safety and risk management. Goh was the sole shareholder and director of TSS at incorporation.³

8 In 2012, the WSH Council developed a programme called CultureSAFE, which was designed to inculcate a progressive and pervasive WSH culture at work. The programme was supported by various government grants.

9 In April 2013, Goh set up SME Academy Pte Ltd (“SME Academy”) with one Mr Ong Han Wah, as equal shareholders. SME Academy was approved as a CultureSAFE Consultant Organisation (“CSCO”), which meant that it could deliver CultureSAFE programmes that were co-funded by the government. A CSCO had to employ at least two approved CultureSAFE Consultants (“CSCs”). Goh was an approved CSC.

¹ Statement of Claim in OC 276 dated 20 September 2022 (“SOC in OC 276”), at para 3.

² SOC in OC 276, at para 25.

³ Claimant’s Bundle of Documents filed 13 September 2024 (“CBOD”) 272–276.

10 Goh and Koh were introduced to each other by a mutual friend in 2014. On 29 May 2014, TSS entered into a contract with LR pursuant to which TSS developed a WSH safety training course, bizSAFE 2, for LR.

11 On 24 July 2014, Goh resigned as director of TSS and Koh was appointed as a director of TSS.⁴ Goh denied signing the minutes of Directors’ Meeting and the letter of resignation.

12 On 1 August 2014, 90% of the shares in TSS were transferred to Koh.⁵

13 Also on 1 August 2014, each of LR and Sanctuary employed Goh as an “Advisor” for a fee of \$2,500 per month.⁶ Although Goh entered into employment agreements with both LR and Sanctuary, the intention was to enable LR to provide bizSAFE 2 courses and extend its business into WSH, using Goh’s company TSS to carry out WSH consultancy works and WSH training courses. Koh used Sanctuary to bear half of the fee payable to Goh.

14 On 26 December 2014, SME was incorporated to provide workplace safety, health consultancy and training services with a focus on promoting and delivering CultureSAFE projects to small and medium size companies. At incorporation, Goh was the sole shareholder and director.⁷

15 In January 2015, SME opened a bank account (the “OCBC Bank Account”). Koh was appointed as the sole signatory, as it was agreed that he would manage the finance and accounts of the company.

⁴ Defendant’s Bundle of Documents filed 6 September 2024 (“DBOD”) 777–778.

⁵ DBOD 779.

⁶ DBOD 269–284.

⁷ CBOD 15–18.

16 On 3 August 2015, SME's share capital was increased from two shares to 100,000 shares. The additional 99,998 shares were issued to and registered in Goh's name.⁸

17 Between January and March 2016, Koh made the Disputed Withdrawals, amounting to \$1,011,006 by issuing cheques from SME's OCBC Bank Account to make the following payments to himself, various entities that were owned or controlled by him, and a third party:⁹

- (a) A total amount of \$101,999 was paid to Koh between January and December 2015.
- (b) A total amount of \$753,377 was paid to LR between June 2015 and March 2016.
- (c) A total amount of \$51,000 was paid to Loyal Consultancy between September and November 2015.
- (d) A total amount of \$22,000 was paid to SG Cash between October and November 2015.
- (e) An amount of \$30,000 was paid to Sanctuary on 2 November 2015.
- (f) A total amount of \$22,000 was paid to one Ms Lena Soh between April and June 2015.
- (g) A total amount of \$30,630.00 was paid to TSS between May and October 2015.

⁸ CBOD 34–35.

⁹ Exhibit D1-A.

18 On or around 13 January 2016, Goh learned that the Commercial Affairs Department of Singapore (“CAD”) was investigating certain employees of LR in relation to alleged activities to defraud the then Workforce Development Agency (“WDA”) by causing them to disburse government training grants for courses that were never performed.

19 On or around 27 January 2016, pursuant to a request by Koh, Goh appointed Kenneth as a director of SME and transferred 50% of his shareholding in SME (*ie*, 50,000 shares) to Kenneth.¹⁰ No consideration was given for this transfer. The circumstances leading to the appointment of Kenneth and the transfer of shares to him were disputed.

20 On 5 May 2016, SME and LR entered into a loan agreement under which MSE agreed to provide a loan of up to \$500,000 to LR (the “Loan Agreement”).¹¹ Koh signed the Loan Agreement on behalf of LR and Goh signed on behalf of SME. The reason for the Loan Agreement was disputed.

21 As stated in [12] above, Goh had transferred 90% of the shares in TSS to Koh on 1 August 2014. On 12 May 2016, Goh entered into a share transfer agreement with Koh for the transfer of the remaining 10% of the shares in TSS to Koh.¹²

¹⁰ CBOD 36–43.

¹¹ CBOD 341–344.

¹² Koh’s Affidavit of Evidence-in-Chief dated 3 July 2024 (“Koh’s AEIC”), at p 60 (at para 5) and p 150.

22 In May 2016, Goh resigned from LR; his resignation was backdated to 13 January 2016.¹³ Goh admitted that his resignation was in response to his discovery of CAD’s investigations.¹⁴

23 On 28 June 2016, Goh incorporated SMER Pte Ltd (“SMER”).¹⁵ Goh was its sole shareholder and director. According to Goh, he incorporated SMER to fulfil SME’s contractual obligations to deliver CS Projects to the CultureSAFE clients who had made full payment of the project fees to SME.¹⁶

24 On 5 March 2018, LR applied to be struck off the register of companies on the ground that it ceased trading on 1 January 2017.¹⁷ On 9 July 2018, LR was struck off the register.¹⁸

25 On 26 November 2018, SME’s company secretary filed an application on behalf of SME to be struck off the register on the ground that it ceased trading on 1 January 2017.¹⁹ On 4 December 2018, Goh informed the Accounting and Corporate Regulatory Authority that he objected to SME being struck off.²⁰ Consequently, SME was not struck off.

26 On 25 February 2022, Goh commenced DC/DC 435/2022 against Koh, alleging that Koh unlawfully transferred 90% of the shares in TSS to himself

¹³ DBOD 308; CBOD 655.

¹⁴ Goh’s Affidavit of Evidence-in-Chief dated 3 July 2024 (“Goh’s AEIC”), at para 40.

¹⁵ CBOD 89–91.

¹⁶ Goh’s AEIC, at para 101(1).

¹⁷ CBOD 177–178.

¹⁸ CBOD 92.

¹⁹ CBOD 846–847.

²⁰ CBOD 347.

(see [12] above) without Goh’s knowledge and consent. Koh successfully struck off Goh’s claim and Goh’s appeal was dismissed.²¹

27 On 18 May 2022, Goh filed OA 129 seeking permission pursuant to s 216A of the Companies Act 1967 (2020 Rev Ed) (the “Companies Act”) to bring an action in the name and on behalf of SME against Koh and Kenneth. On 23 August 2022, I granted Goh permission to bring a derivative action under s 216A against only Koh for damages caused by his alleged breaches of fiduciary duties to SME with respect to the Disputed Withdrawals.

28 On 20 September 2022, Goh commenced OC 276 in the name and on behalf of SME against Koh.

29 On 29 September 2022, Koh commenced OC 296 against Goh.

30 On 10 February 2023, Koh was granted permission in OC 276 to issue a third party notice against Goh. On the same day, Koh issued his third party notice against Goh.

The parties’ cases

OC 276

31 In brief, SME claimed that Koh breached his fiduciary duties by making the Disputed Withdrawals, to pay himself and/or various entities owned and/or controlled by him, without Goh’s consent.

32 Koh did not dispute having made the Disputed Withdrawals. His case was that:

²¹ Koh’s AEIC, at para 14.

- (a) SME's claim was time-barred; and
- (b) in any case:
 - (i) Goh was aware of and had approved the Disputed Withdrawals;
 - (ii) the Disputed Withdrawals were for legitimate commercial purposes of SME; and
 - (iii) Koh was authorised to make the Disputed Withdrawals as the ultimate beneficial owner of SME.

33 Koh's case in his third party claim against Goh for an indemnity or contribution was based on the allegation that Goh had authorised, approved and/or endorsed the Disputed Withdrawals. Goh denied that he had any liability to indemnify or contribute.

OC 294

34 Koh claimed that:

- (a) on incorporation of SME, Goh held 100% of the shares in SME on trust for him pursuant to an agreement between them; and
- (b) Goh held the remaining 50,000 shares in SME (after having transferred 50,000 shares to Kenneth) on trust for him.

35 Goh denied any agreement to hold the shares in SME on trust for Koh and claimed that he formed SME and was the beneficial owner of the shares in SME. Goh also alleged that:

- (a) as a result of the Disputed Withdrawals, SME needed funds; and

- (b) he transferred 50,000 shares in SME to Kenneth in consideration of Koh's agreement to make a capital injection of \$500,000 into SME.

36 Goh's counterclaim against Koh was for payment of the sum of \$500,000, which Goh claimed was the consideration for him transferring 50,000 shares in SME to Kenneth. The basis for Goh's counterclaim was questionable, not least because Goh had also pleaded that in consideration of the transfer of shares to Kenneth, Koh agreed to make a *capital injection of \$500,000 into SME*. In the event, Koh applied to strike out Goh's counterclaim and on 10 February 2023, Goh's counterclaim was struck out.

OC 276 – SME's claims against Koh

SME's claims against Koh were time-barred

37 The Disputed Withdrawals took place between January 2015 and March 2016. OC 276 was filed on 20 September 2022. I agreed with Koh that SME's claims were time barred under s 6 of the Limitation Act 1959 (2020 Rev Ed) ("Limitation Act"), as they accrued more than six years prior to the commencement of these proceedings.

38 Under s 22(1) of the Limitation Act, no period of limitation applies to an action by a beneficiary under a trust in respect of trust property. However, in my view, s 22(1) did not apply to SME's claims against him. Koh was the sole signatory of the OCBC Bank Account but the OCBC Bank Account was always in the SME's name; the moneys in the account never vested in Koh. Koh could not have been a trustee of the moneys in the OCBC Bank Account: *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 at [109].

39 Koh accepted that, as sole signatory of SME's OCBC Bank Account, he owed fiduciary duties to SME to, at least, act *bona fide* in SME's interest and to act for proper purposes.²² However, SME's claims for breach of fiduciary duties were subject to a limitation period of six years.

40 Under s 29(1) of the Limitation Act, where an action is based on fraud, the right of action is concealed by fraud or the action is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered, or could with reasonable diligence have discovered, the fraud or mistake. In my view, s 29(1) did not assist SME. Even assuming that SME could show that its right of action was concealed by fraud, SME's pleaded case was that Goh confronted Koh over Koh's withdrawals from the OCBC Bank Account in February 2016.²³

41 Even if Goh was not then aware of the actual amounts withdrawn, he was already put on inquiry. For SME to rely on s 29 of the Limitation Act, the burden was on it to show that it could not, with reasonable diligence, have discovered the fraud until after 20 September 2016. In my view, SME had not discharged its burden of proof. Having been put on inquiry, Goh, and therefore SME, with reasonable diligence, could have discovered the fraud by March or April 2016 at the latest. Even if the period of limitation began to run in April 2016, OC 276 was still filed out of time.

42 SME also submitted that the Limitation Act did not apply because its claim was commenced with permission granted under s 216A of the Companies Act. SME relied on *Lim Seng Wah and another v Han Ming Siew and others*

²² Koh's Closing Submissions dated 3 October 2024, at para 38.

²³ SOC in OC 276, at para 27.

[2016] SGHC 177 (“*Lim Seng Wah*”) at [163] and *Deniyal bin Kamis v Mapo Engineering and others* [2023] SGHC 183 (“*Deniyal*”) at [76] as authorities for the proposition that s 6 of the Limitation Act does not apply to s 216 of the Companies Act. SME argued that similarly, s 6 of the Limitation Act did not apply to its claims which were brought under s 216A of the Companies Act.

43 I disagreed with SME’s submission. SME’s reliance on *Lim Seng Wah* and *Deniyal* was misplaced. Those cases dealt with claims under s 216 of the Companies Act. The Limitation Act does not apply to claims under s 216 because these claims are statutory in nature and do not fall within the scope of s 6 of the Limitation Act: *Lim Seng Wah* at [163].

44 In contrast, s 216A does not give rise to a statutory cause of action. Under s 216A, the court grants permission to an applicant to commence an action in the name of the company. Whether the Limitation Act applies to the claim that is commenced pursuant to such permission depends on the cause of action in the claim. In this case, SME’s claims against Koh were for breaches of fiduciary duties. Clearly, the Limitation Act was applicable.

Goh had approved payment of a total sum of \$734,144

45 Koh pleaded in his defence that the Disputed Withdrawals were accepted by Goh as the managing director of SME.²⁴ The burden was on Jeff to prove his defence as pleaded.

46 The payments that made up the Disputed Withdrawals have been summarised in [17] above. Koh’s case was as follows:²⁵

²⁴ Defence (Amendment No. 4) dated 16 August 2024 in OC 276, at para 28.

²⁵ SOC in OC 276 at para 25; Koh’s Closing Submissions, at para 50.

- (a) \$101,999 paid to Koh between January and December 2015 – Koh claimed that the payments were for his remuneration as well as reimbursements of payments of referral fees and commissions made by him.
- (b) \$753,377 paid to LR between June 2015 and March 2016 – Koh claimed that the payments were for management fees and miscellaneous expenses (including utilities, stationery, printing and office rental).
- (c) \$51,000 paid to Loyal Consultancy between September and November 2015 – Koh claimed that the payments were for referral fees.
- (d) \$22,000 paid to SG Cash between October and November 2015 – Koh claimed that the payments were not made to SG Cash but to him for referral fees.
- (e) \$30,000 paid to Sanctuary on 2 November 2015 – Koh claimed that the payments were for Goh’s salary, CPF contributions and other miscellaneous fees from 2014 to 2015; as stated in [13] above, Sanctuary had employed Goh as Advisor.
- (f) \$22,000 paid to one Ms Lena Soh (“Lena”) between April and June 2015 – Koh claimed that the payments were for training modules designed by Lena’s husband for LR.
- (g) \$30,630.00 paid to TSS between May and October 2015 – Koh claimed that the payments were for commissions and referral fees.

47 Koh relied on invoices, payment vouchers and cheques relating to the above payments.²⁶ Two of the payment vouchers bore Goh's signature; Goh admitting signing them.²⁷ These two payment vouchers were dated 16 February 2016; one was for \$18,000 being payment for "LR – GST Quarter 4" and the other was for \$22,500 being payment for "LR – Bank Installment [*sic*]". Goh had therefore approved these two payments.

48 However, apart from the two payment vouchers signed by Goh, none of the invoices, payment vouchers and cheques evidenced Goh's knowledge of or agreement to the Disputed Withdrawals. Most of the payment vouchers were not even signed and the cheques were signed by Koh himself.

49 Further, I found that LR's invoices to SME were not reliable evidence. LR's invoices for 2015 showed that LR invoiced SME the full amount of miscellaneous expenses although the computations that purported to support the invoices showed that SME was supposed to bear only between 30% and 50% of these expenses.²⁸ Koh agreed that the invoices were not accurate and blamed the discrepancies on the accounting staff.²⁹ However, there was no explanation for these errors which appeared in every invoice.

50 Koh also relied on SME's financial statements for the period from 26 December 2014 to 31 December 2015 (the "2015 FS").³⁰ Goh signed the 2015

²⁶ DBOD 500–523 and 651–762.

²⁷ DBOD 743 and 755; NE, 17 September 2024, at 188:3–9 and 195:2–5.

²⁸ DBOD 500–523.

²⁹ NE, 24 September 2024, at 85:2–6, 85:25–86:16 and 87:14–20.

³⁰ DBOD 314–330.

FS on 2 June 2016. The 2015 FS showed that SME had paid a total sum of \$693,644 comprising the following:³¹

- (a) \$47,650 for commissions;
- (b) \$501,450 for management fees;
- (c) \$79,800 for office rental;
- (d) \$34,856 for printing and stationery;
- (e) \$25,112 for referral fees; and
- (f) \$4,776 for utilities.

51 Koh's case was that the Disputed Withdrawals that were paid to himself, LR, Loyal Consultancy, SG Cash/himself and TSS were payments for commissions, referral fees, management fees and miscellaneous expenses (including utilities, stationery, printing and office rental) (see [46] above). This was consistent with the fact that Koh and his companies provided administrative support, sales staff and office premise to SME. The 2015 FS supported Koh's case. Goh did not offer any explanation for the expenses recorded in the 2015 FS.

52 As Goh signed the 2015 FS, in my view, the 2015 FS proved that Goh accepted or agreed to the payments to Koh, LR, Loyal Consultancy, SG Cash/Koh and TSS for commission, management fees, office rental, printing and stationery, referral fees and utilities, to the extent of the amounts stated in the 2015 FS (totalling \$693,644). In this connection, I also found that it did not

³¹ DBOD 330.

make a difference whether the payments alleged to have been made to SG Cash were in fact made to Koh as he claimed (see [46(d)] above). What mattered was that Goh had approved the payments to the extent reflected in the 2015 FS.

53 As for the payments to Sanctuary, Koh's pleaded defence was that the payments to Sanctuary were to pay Mr Goh's salary (see [46(e)] above). As stated in [13] above, Goh was employed as Advisor by LR and Sanctuary. However, Goh's salaries (payable by LR and Sanctuary) had already been charged to SME by LR as part of management fees.³² I therefore rejected Koh's case that the payments to Sanctuary were for payment of Goh's salary.

54 As for the payments to Lena (see [46(f)] above), Koh conceded that not all of the work done was for SME, and that he decided to charge the full amount to SME instead of apportioning the cost.³³ Koh did not offer any basis upon which the cost could be apportioned. In the circumstances, I rejected Koh's case with respect to the payments to Lena. In any event, there was no evidence that Goh had approved the payments to Lena.

55 Therefore, the total amount proved to have been approved by Mr Goh was \$734,144, comprising the sums of \$18,000 and \$22,500 (see [47] above) and \$693,644 (see [52] above). I found that Koh failed to prove that Goh had approved the withdrawals of the balance amount of \$276,862.

56 With respect to the balance amount of \$276,862, I rejected Koh's claim that the Loan Agreement (see [20] above) compromised SME's claim against him. There was nothing in the Loan Agreement about any compromise of any claims by SME against Koh. The Loan Agreement provided for loans up to a

³² DBOD 500–523.

³³ NE, 24 September 2024, at 194:16–196:5.

maximum of \$500,000 to be given by SME to LR. Its terms were simply inconsistent with the alleged compromise.

Whether the Disputed Withdrawals were for legitimate commercial purposes

57 To the extent that Goh had been found to have approved the payments to Koh, LR, Loyal Consultancy, SG Cash/Koh and TSS (totalling \$734,144), the question as to whether these payments were for legitimate commercial purposes of SME did not arise.

58 As for the balance sum of \$276,862, my findings above meant that Koh had not proved the purposes of the payments to: (a) himself, LR, Loyal Consultancy, SG Cash/himself and TSS for the amounts exceeding what was reflected in the 2015 FS, (b) Sanctuary; and (c) Lena. The question as to whether these payments were for the commercial purposes of SME therefore also did not arise.

Koh's authority as ultimate beneficial owner of SME

59 Koh argued that the Disputed Withdrawals were not wrongful because, as the true beneficial shareholder of SME, he had authorised the Disputed Withdrawals. Koh relied on *Re Duomatic Ltd* [1969] 2 Ch 365 (“*Duomatic*”) and *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 (“*Raffles Town Club*”).

60 In *Duomatic*, the liquidator challenged payment of salaries to directors on the ground that the salaries had not been approved by the shareholders in a general meeting. The directors were also the shareholders of the company. The court upheld the payment of the salaries to the directors. The court held that where all the shareholders with the right to attend and vote at a general meeting

had assented to some matter which a general meeting of the company could carry into effect, the assent was as binding as a resolution in general meeting.

61 In *Raffles Town Club*, the High Court found (among other things) that certain expenses that were incurred by the company's former directors were not for the benefit of the company or not reasonably incidental to the business of the company. Nevertheless, the High Court held that the former directors, acting in their capacity as shareholders of the company had authorised and ratified the expenses. The Court of Appeal affirmed the High Court's decision (at [30]). Koh described *Raffles Town Club* decision as an application of the principle in *Duomatic*.

62 As will be seen later in these grounds, I found that Koh was the beneficial owner of the shares in SME. However, I disagreed with Koh that SME's claims against him failed for this reason. In my view, the facts in this case were more similar to those in *Ernest Ferdinand Perez De La Sala v Compania De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("*Perez De La Sala*").

63 In *Perez De La Sala*, the appellant had managed a group of companies (the "Companies") which held substantial assets. The appellant used his status as sole signatory to the Companies' bank accounts to transfer to himself moneys in the Companies' bank accounts; he also procured the transfer to himself of certain shares and bonds held by the Companies. The Companies sued the appellant seeking, among other things, a declaration that the assets that the appellant had transferred to himself belonged to the Companies and an order that those assets be returned. The appellant argued that he was the sole and beneficial owner of the Companies and their assets, alternatively, he was the

beneficial owner of the Companies and thus was entitled to dispose of their assets as he pleased.

64 The Court of Appeal held that the appellant's defences based on sole beneficial ownership of the shares and/or assets of the Companies failed. The Court of Appeal reasoned as follows (at [119] and [149]):

119 ... A beneficial interest in a company's *shares* does not imply a beneficial interest in the company's assets. On a simple application of the doctrine of separate legal personality, shareholders *qua* shareholders had no proprietary interest in the company's assets ... Instead, the benefits which shareholders derive from their shares ordinarily come in the form of dividends (if paid out), an entitlement to distribution of the company's assets in the event of winding up, and the ability to sell their shares to others. ...

...

149 We now turn to [the appellant's] alternative defence. In the first place, it may not be the case that sole beneficial ownership of the Companies' shares if proven would, without more, defeat the Companies' claims. Legally, the doctrine of separate corporate personality means there is no contradiction in a company suing its sole beneficial owner for removing its assets. *Practical* considerations are what make this scenario rare if not non-existent: ordinarily the beneficial owner of a company would be in a position to prevent such an apparently absurd situation from arising ...

[emphasis in original]

65 In my view, *Perez De La Sala* was directly applicable to the present case. I therefore rejected Koh's defence that as the sole beneficial owner of SME, he had authorised the Disputed Withdrawals.

Conclusion with respect to SME's claims against Koh in OC 276

66 SME's claim failed because it was time-barred. But for the fact that SME's claim was time-barred, Koh would have been liable to SME for the sum of \$276,862 that had not been proved to have been approved by Goh.

67 As for Koh's defence that the Disputed Withdrawals were for the commercial purposes of SME, in the circumstances of this case, the question did not arise. Finally, Koh's defence that, as the beneficial owner of the shares in SME, he had authorised the Disputed Withdrawals, failed.

OC 276 – Koh's third party claim against Goh

68 In his third party claim, Koh had sought an indemnity or contribution by Goh in respect of SME's claim against Koh. Before me, Koh confirmed that his claim against Goh was for contribution only.

69 I found that there was no basis for the contribution claim. The contribution claim was premised on the allegation that Goh authorised, approved and/or endorsed the Disputed Withdrawals. However, Goh's approval was also Koh's defence to the claim by SME. To the extent that Koh could prove that Goh had approved the Disputed Withdrawals, Koh would not have been liable to SME in the first place, and no third party claim would have arisen. On the other hand, to the extent that Koh could *not* prove that Goh did approve the Disputed Withdrawals, Koh's third party claim would fail anyway.

OC 294 – Koh's claim against Goh

Goh held his shares in SME on trust for Koh

70 I found that the evidence proved on the balance of probabilities that Goh held his shares in SME on trust for Koh.

71 First, it was not disputed that Koh paid for the incorporation of SME, and that Goh did not pay for his shares in SME. Koh and his companies provided administrative support, sales staff, and office premises for SME. There were no

credible reasons as to why Koh would have given the shares in SME to Goh for free.

72 Second, the circumstances under which Goh joined Koh and incorporated SME supported Koh's claim. Goh's own companies were not doing well. I accepted Koh's evidence that Goh was content to draw a stable salary of \$5,000 per month from LR and Sanctuary in return for managing SME for Koh.

73 Goh claimed that he was earning \$10,000 to \$20,000 a month from SME Academy before joining Koh.³⁴ However, this was proved to be untrue. Goh's tax returns showed that his total income in 2011, when he was employed by MOM, was \$169,095 but after he left MOM, his income was \$10,869 for 2012, \$35,345 for 2013, and \$48,861 for 2014.³⁵ In fact, Goh's income for 2014 included a sum of \$20,000 being his salaries from LR and SC. As for TSS, Mdm Chew Lee Sam ("Chew"), SME's company secretary, testified that Goh told her that he had told Koh that he was tired of having to operate TSS which was not making money.³⁶ Chew also testified that TSS' financial statements for the year ended 30 April 2013 showed that TSS was loss-making.³⁷ Clearly, contrary to Goh's claims, his companies were not doing well at the relevant time.

74 Third, Koh was the sole signatory of the OCBC Bank Account and he managed SME's finances and accounts (see [15] above). This supported his claim that he was the ultimate beneficial owner of SME. In addition, Goh did

³⁴ NE, 18 September 2024, at 111:19–112:6.

³⁵ Exhibit C4.

³⁶ Chew's Affidavit of Evidence-in-Chief dated 3 July 2024 ("Chew's AEIC"), at para 17.

³⁷ Chew's AEIC, at para 18 and p 31.

not immediately remove, or try to remove, Koh as the sole signatory even after allegedly discovering the Disputed Withdrawals in early 2016. This was inconsistent with Goh's claim that he was the beneficial owner of the shares that he then held in SME.

75 Fourth, I found that Goh *did* sign a share transfer form for the shares in SME in blank (*ie*, with the date and identity of the transferee left blank) at the time of SME's incorporation.³⁸ This supported Koh's claim that Goh held his shares in SME on trust for him. Goh denied signing the share transfer form. I rejected his denial for the following reasons:

(a) The joint handwriting expert's opinion was that it was probable that the signature on the transfer form was Goh's. Goh did not adduce any evidence from his own handwriting expert.

(b) I accepted the evidence of SME's company secretary, Chew, that Koh had asked her to prepare the share transfer form as a practical form of security in case he had to take the company back from Goh, and that Goh confirmed to her that he had signed the transfer form.³⁹ There was no reason for me to doubt her evidence.

(c) Koh's lawyers had sent a copy of the transfer form to Goh's lawyers in December 2016. Goh did not reply to deny having signed the share transfer form.

(d) Although Goh filed five police reports between September and November 2020 in connection with the present dispute, he did not

³⁸ DBOD 775.

³⁹ Chew's AEIC, at paras 26–27.

complain that his signature on the share transfer form was forged.⁴⁰ Goh could not provide any credible explanation as to why he did not do so.

76 Fifth, Goh testified that the profits in SME were to be shared equally between him and Koh.⁴¹ This contradicted his claim that his shares in SME belonged to him beneficially. Goh could not explain why Koh would have a 50% share of the profits of SME without having any interest in the shares in SME.

77 Sixth, Goh transferred 50,000 shares in SME to Koh's brother, Kenneth, in January 2016 without payment. Kenneth confirmed that he held the shares in SME on trust for Koh.⁴²

78 The transfer of shares to Kenneth without payment was consistent with Koh's claim that Goh held the shares on trust for him. Goh gave inconsistent reasons for the transfer.

(a) In his then lawyer's letter dated 29 July 2016 to Koh's lawyers, Goh referred to the CAD investigations and alleged that he transferred 50,000 shares in SME to Kenneth because he honestly believed there was hope for SME if he could take control of the company's finances with Kenneth's assistance.⁴³

(b) In his defence and counterclaim, Goh gave a different reason and pleaded that the purpose of the transfer of the 50,000 shares to Kenneth

⁴⁰ CBOD 445–456.

⁴¹ Goh's AEIC, at para 44; NE, 18 September 2024, at 105:17–19.

⁴² Kenneth's Affidavit of Evidence-in-Chief dated 3 July 2024, at paras 21–22.

⁴³ CBOD 287–294 (at 288, subpara (h)).

was for the *injection of additional capital* of \$500,000 into SME, and that Koh agreed to inject this sum in return for the transfer of 50,000 shares to Kenneth.⁴⁴

(c) In his AEIC, Goh claimed that the transfer to Kenneth was his plan for Koh to return \$500,000 to SME as a form of capital injection and referred to a capital injection plan that he had proposed.⁴⁵

(d) In his oral testimony, Goh said that he gave instructions for SME’s “share capital to be increased to 500,000 in exchange for 50,000 shares to Kenneth”.⁴⁶

(e) Goh subsequently testified that his capital injection plan involved him selling 50,000 shares to Koh for \$500,000 and that this was actually executed, referring to the transfer to Kenneth.⁴⁷

79 I rejected Goh’s reasons for the transfer of the 50,000 shares to Kenneth. His reasons were inconsistent and unreliable.

80 In addition, Goh’s claim that his transfer of 50,000 shares in SME to Kenneth was part of a capital injection plan (see [78(c)] above) was not supported by his proposed capital injection plan.⁴⁸ Goh’s proposed capital injection plan was a plan to increase SME’s paid-up capital to \$1m comprising

⁴⁴ Defence and Counterclaim dated 4 November 2022 in OC 294 (“D&CC in OC 294”), at para 24.

⁴⁵ Goh’s AEIC, at para 112; CBOD 642–652.

⁴⁶ NE, 17 September 2024, at 77:3–5.

⁴⁷ NE, 18 September 2024, at 139:17–140:1.

⁴⁸ CBOD 642–652.

1m shares, with Koh/Kenneth taking up to a maximum of 500,000 shares.⁴⁹ There was no reference to Goh transferring 50% of shares *that were already registered in his name* to Kenneth. Goh's claim also did not make sense. A capital injection into SME would involve SME issuing shares in return for funds being injected into SME. It was illogical that Koh would inject additional capital of \$500,000 into SME in return for the transfer of *existing* shares (registered in Goh's name) to Kenneth, instead of for new shares.

81 Further, in his then lawyer's letter to Koh dated 29 June 2016, Goh demanded payment of \$500,000 to himself.⁵⁰ Although the letter alleged that Koh agreed to sign a loan agreement, there was no explanation as to why Koh was liable to pay \$500,000 to Goh. The loan agreement that was referred to was likely the Loan Agreement dated 5 May 2016 and signed between LR and SME (see [20] above). Nothing in the Loan Agreement imposed an obligation on Koh to pay \$500,000 to Goh. No other loan agreement was adduced in evidence.

82 The reason for the Loan Agreement was in dispute. Goh claimed that he confronted Koh after he discovered the Disputed Withdrawals and Koh told him that he (Koh) would return \$500,000 to SME if Goh signed the Loan Agreement.⁵¹ On the other hand, Koh claimed that:⁵²

- (a) After the CAD investigations (see [18] above) Goh became concerned about the inter-company payments between SME and LR. Goh wanted to present the accounts of LR and SME as clearly separate.

⁴⁹ CBOD 645.

⁵⁰ CBOD 279–280.

⁵¹ Goh's AEIC, at paras 52 and 58–60.

⁵² Koh's AEIC, at paras 55–63.

(b) Goh caused SME’s financial statements for the year ended 31 December 2015 to be prepared and told Koh that there should be accounts receivables of about \$662,130 due from LR to SME.

(c) As Koh and Goh could not agree on the financial statements, in order to show that SME had accounts receivables from LR, Koh suggested drawing up a loan agreement between LR and SME with the amount owed by LR to SME capped at \$500,000 on a “payable when able basis”.

83 In my view, the terms of the Loan Agreement were more consistent with Koh’s evidence than Goh’s. In any event, the reason for the Loan Agreement was not material to my decision.

OC 294 – Goh’s counterclaim

84 As stated in [36] above, Goh’s counterclaim was struck out prior to the trial.

Goh was not a credible witness

85 In my view, Goh was not a credible witness.

(a) As stated in [16] above, on 3 August 2015, SME’s share capital was increased from two shares to 100,000 shares; the additional 99,998 shares were issued to and registered in Goh’s name. In his defence and counterclaim in OC 294, Goh pleaded that he was not aware of the issue of 99,998 shares.⁵³ This was false. In his oral testimony, Goh admitted

⁵³ D&CC in OC 294, at para 22(b).

that he was aware of the increase in the share capital in August 2014, and that this had been carried out on his instructions.⁵⁴

(b) He denied having approved *all* the Undisputed Withdrawals despite have signed (i) the payment vouchers for two of the withdrawals, and (ii) the 2015 FS which clearly evidenced some, at least, of the withdrawals (see [47] and [50] above).

(c) He had lied about his income from SME Academy (see [73] above).

(d) He gave inconsistent reasons for the transfer of 50,000 shares in SME to Kenneth (see [78] above). Further, some of his reasons were simply illogical.

Conclusion

86 For the reasons above, I dismissed SME's claim in OC 276 and gave judgment in favour of Koh in OC 294. I declared that Goh holds the 50,000 shares in SME that are registered in his name on trust for Koh and ordered Goh to transfer these shares free from any encumbrances to Koh.

87 I made the following costs orders:

(a) Goh was to pay the costs of OA 129 (which had been reserved) to SME, fixed at \$12,000 plus disbursements to be fixed by me if not agreed.

(b) Goh was to pay the costs of OC 276 and OC 294 to Koh, fixed at \$205,000 plus disbursements to be fixed by me if not agreed.

⁵⁴ NE, 17 September 2024, at 79:13–23.

(c) Goh was to pay the costs of the matters in HC/SUM 2509/2023 that were heard by me, to Koh, fixed at \$8,000 plus disbursements to be fixed by me if not agreed. HC/SUM 2509/2023 was SME's single application pending trial in OC 276. The matters that were heard by me were SME's application to appoint a handwriting expert, to order Lena to give evidence and produce documents at the trial, and for OC 294 to be stayed pending the determination of OC 276. I granted the application to appoint a handwriting expert and to order Lena to give evidence and produce documents at the trial. I refused the application to stay OC 294 and ordered instead that OC 294 was to be heard together with OC 276.

(d) Koh was to pay the costs of the third party action in OC 276 to Goh, fixed at \$30,000 plus disbursements to be fixed by me if not agreed.

88 For completeness, SME and Goh applied to stay enforcement of my decisions in both OC 276 and OC 294 pending the outcome of their appeals. On 8 November 2024, SME withdrew its application, correctly so, since no order had been made against SME. As for Goh's application, he argued that if the order for the shares to be transferred to Koh was not stayed, Koh may strike off SME pending Goh's appeal. I dismissed Goh's application for a stay as Koh provided an undertaking not to strike off SME until the final disposal of Goh's appeal in respect of OC 294.

Chua Lee Ming
Judge of the High Court

Allan Chan (Tactica Law) and Rajwin Singh Sandhu for the claimant
in OC 276;

Quek Mong Hua, Jacqueline Chua Yi Ying and Michelle Low Yu
Xuan (Lee & Lee) for the defendant in OC 276 and claimant in
OC 294;

The defendant in OC 294 and third party in OC 176 in person.
