IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 9

Court of Appeal / Civil Appeal No 16 of 2025

Between

Park Hotel Group Management Pte Ltd

… *Appellant*

And

(1) Aw Eng Hai (in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation))
(2) Kon Yin Tong (in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation))
(3) Park Hotel CQ Pte Ltd (in liquidation)

… *Respondents*

In the matter of Originating Application No 96 of 2025

Between

Park Hotel Group Management Pte Ltd

… *Applicant*

And

(1) Aw Eng Hai (in his capacity as a joint and several liquidator of

Park Hotel CQ Pte Ltd (in liquidation))

(2) Kon Yin Tong (in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation))

(3) Park Hotel CQ Pte Ltd (in liquidation)

… *Respondents*

JUDGMENT

[Insolvency Law — Winding up — Proof of debt]
[Contract — Remedies — Mitigation of damage]

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Park Hotel Group Management Pte Ltd
v
Aw Eng Hai (in his capacity as a joint and several liquidator of Park Hotel CQ Pte Ltd (in liquidation)) and others

[2026] SGCA 9

Court of Appeal — Civil Appeal No 16 of 2025
Steven Chong JCA, Ang Cheng Hock JCA and Judith Prakash SJ
28 January 2026

4 March 2026 Judgment reserved.

Ang Cheng Hock JCA (delivering the judgment of the court):

1 This is an appeal against the decision of the judge below ("the Judge") in *Park Hotel Group Management Pte Ltd v Aw Eng Hai* [2025] SGHC 97 ("GD"). The Judge partially allowed the appellant's application under r 133(2) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 to reduce the amount admitted in the proof of debt ("POD") filed on behalf of Ascendas Hospitality Real Estate Investment Trust ("AH-REIT") against the 3rd respondent, Park Hotel CQ Pte Ltd ("PHCQ"), which is undergoing liquidation. The Judge excluded certain items stated in the POD but allowed others to remain. One of the remaining items was AH-REIT's claim for damages in unpaid rent of $20,387,563.30 for the period from 28 August 2021 to 27 June 2023 under a lease where AH-REIT was the landlord and PHCQ was the tenant. The appellant appeals only against the Judge's

decision that the liquidators had properly admitted the claim for $20,387,563.30.

Facts

Background to the dispute

2 In June 2013, AH-REIT leased a property at 1 Unity Street ("the Property") to PHCQ, which operated it as a hotel called "Park Hotel Clarke Quay". Under the lease ("the Lease"), which had a tenure of ten years, PHCQ was to pay monthly "Gross Rent", furniture, fittings and equipment contributions, and relevant taxes (GD at [2]).

3 In 2020, after the onset of the COVID-19 pandemic, PHCQ defaulted on its obligations to pay the rent and other charges under the Lease. AH-REIT, through its trustee, Perpetual (Asia) Ltd, corresponded with PHCQ, demanding payment of sums due under the Lease and informing PHCQ that otherwise AH-REIT would take steps to repossess the Property (GD at [3]–[5]). The outstanding amounts remained unpaid, and so AH-REIT terminated the Lease and took possession of the Property on 28 August 2021 (GD at [6]).

4 Between the time AH-REIT repossessed the Property and the date the Lease would have otherwise expired (27 June 2023), AH-REIT dealt with the Property in the following way:

(a) From 28 August 2021 to 30 September 2022, AH-REIT operated a hotel on the Property and generated income for itself. It did not lease the Property to any tenant. During this period, AH-REIT appointed Ascott International Management Pte Ltd ("AIMPL"), a related entity, to manage the hotel on the Property (GD at [29(a)]).

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(b) From 1 October 2022 onwards, AH-REIT leased the Property to Ascott Hospitality Business Trust ("AHBT"), another related entity. AHBT paid variable rent to AH-REIT under the lease agreement. AIMPL continued to manage the hotel on the Property after it was leased to AHBT.

(c) The hotel on the Property underwent refurbishment from March 2023 to September 2023. The hotel was partially closed during this period because of the refurbishment works (GD at [32]).

Winding up of PHCQ and liquidators' admission of AH-REIT's POD

5 PHCQ was wound up by the court on 19 November 2021 (GD at [7]). On 30 July 2024, AH-REIT filed a revised POD claiming the amount of $32,066,825.30 against PHCQ. On 1 August 2024, the liquidators informed AH-REIT that they had adjudicated its POD and admitted it in full (GD at [8]). Of the sum claimed under the POD, $20,387,563.30 was a claim for damages in net rent under the Lease for the period from 28 August 2021 to 27 June 2023. This sum comprised the rent payable under the Lease for the period from 28 August 2021 to 27 June 2023 ($27,180,014.81) less the "income earned" by AH-REIT and AHBT in that period ($8,179,892), with goods and services tax added (GD at [26]).

(a) For the period in which AH-REIT operated the hotel (*ie*, 28 August 2021 to 30 September 2022), the "income earned" was computed by taking the revenue that AH-REIT earned from operating the hotel and deducting from it the expenses and fees relating to operating the hotel (GD at [29(a)]).

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(b) For the period in which AHBT operated the hotel (*ie*, 1 October 2022 to 27 June 2023), the "income earned" comprised the combined gross profit of both AHBT and AH-REIT. AHBT's gross profit was computed by taking the revenue it earned from operating the hotel and deducting from it the expenses and fees relating to operating the hotel. AH-REIT's gross profit comprised the rent that AHBT paid to it. But this payment of rent was recorded as an equal expense on AHBT's part, which meant that the rental payments from AHBT to AH-REIT had no net impact on the "income earned", since AH-REIT's rental income was offset by AHBT's rental expense (GD at [29(c)]). In short, the "income earned" for this period reflected the profit earned by the hotel operator, AHBT, instead of the rent paid by AHBT to the landlord, AH-REIT.

6 The appellant, Park Hotel Group Management Pte Ltd, is a creditor of PHCQ. From March 2021 to 28 August 2021, the appellant was the manager of the hotel operated by PHCQ at the Property (*ie*, Park Hotel Clarke Quay). On 6 January 2023, the appellant filed a POD against PHCQ, claiming payment of $30,102.46, which comprised unpaid management fees and other expenses incurred in the course of providing management services to PHCQ. The liquidators admitted almost the entire amount of the appellant's claim.

7 On 2 October 2024, the appellant's lawyers wrote to the liquidators (*ie*, the 1st and 2nd respondents) asking to inspect the POD filed by AH-REIT and to be provided with the liquidators' decision on whether they had admitted or rejected the POD. On 23 October 2024, the liquidators' lawyers sent a copy of the POD, supporting documents, and the liquidators' adjudication to the appellant's lawyers (GD at [9]). The appellant then applied to the court below to expunge or reduce the POD.

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The decision below

8 The Judge dealt with several challenges to the POD, but we highlight only those that are material to the issues in this appeal.

9 The Judge declined to reduce or expunge the claimed amount of $20,387,563.30, representing the net rent due to AH-REIT under the Lease for the period from 28 August 2021 to 27 June 2023 (GD at [34]).

10 The Judge held that, if a creditor brings a *bona fide* challenge against the admission of a POD filed by another creditor, the liquidator bears the burden of satisfying the court, on a balance of probabilities, that it had adjudicated the POD properly (GD at [15]).

11 The Judge found that the liquidators did not err in allowing AH-REIT's claim for damages in net rent. She rejected the appellant's argument that AH-REIT had failed to mitigate its loss after the Lease was terminated. In assessing the mitigatory steps taken by AH-REIT, the Judge held that the question was "whether the … measures taken by the aggrieved party were reasonable, and not whether the aggrieved party took the best possible measures to reduce its loss", citing *The "Asia Star"* [2010] 2 SLR 1154 ("*Asia Star*") at [44] (GD at [30]).

(a) The appellant did not dispute that AH-REIT was an established hospitality real estate investment trust ("REIT") with a global portfolio of hotels. Accordingly, it was not unreasonable for AH-REIT to have appointed AIMPL to manage the hotel on the Property, even if it was a related entity. It was speculative to assume that AH-REIT could have quickly found a more suitable tenant willing to pay a higher rent. A hotel was already built on the Property and the remaining duration of the

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Lease was short. Moreover, Singapore was just emerging from the COVID-19 pandemic at the material time (*ie*, the second half of 2021 to 2022). Given these circumstances, the appellant's bare assertion that AH-REIT's earned income was lower than what it could have earned from PHCQ under the Lease was insufficient to show that AH-REIT had failed to mitigate its loss (GD at [31]).

(b) The Judge accepted that the hotel underwent refurbishment from March to September 2023 while remaining partially open. She found that this phased approach to completing the refurbishment, while keeping the hotel open for business to generate income, was not unreasonable, even if the earned income was correspondingly reduced (GD at [32]).

12 Finally, the Judge noted that, while AH-REIT did not provide documents to support the basis for the earned income apart from a simple profit and loss spreadsheet ("P&L Breakdown"), she had no reason to doubt the veracity of the figures in the P&L Breakdown, which AH-REIT's representative, Ms Beh Siew Kim ("Ms Beh"), had attested was provided by AH-REIT's finance team (GD at [33]).

The parties' cases in this appeal

13 The parties did not disagree with the legal principles applied by the Judge regarding the burden of proof and mitigation of loss. Their point of contention was over the application of the principles of mitigation to the present facts.

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Appellant's case

14 The appellant's first contention was that AH-REIT's mitigation was unreasonable because it had engaged related parties to lease and manage the Property. It emphasised that AH-REIT's earned income was "several orders of magnitude less than" what AH-REIT was supposed to have received under the Lease, suggesting that AH-REIT's mitigatory efforts were inadequate. The appellant also submitted that the Judge had erred in finding that it was speculative to assume AH-REIT could have found a third-party tenant that could have paid a higher rent than that which AHBT had paid. This is because there was no attempt by AH-REIT to market the Property to third parties, nor was there any explanation for why such marketing was not done.

15 The appellant's second contention was that the reduction in AH-REIT and AHBT's earned income during the refurbishment period should not be visited on PHCQ because the refurbishment was a voluntary act rather than a course of action necessitated by PHCQ's breach of the Lease.

16 Finally, the appellant argued that the Judge had erred in relying on the figures in the P&L Breakdown. The appellant highlighted the fact that critical information was not given to the liquidators, including the components of stated line items in the spreadsheet like "staff costs", "marketing", and "Opex". Without more information, the appellant claimed that the stated expenses should not be fully attributed to the Property because AH-REIT, AIMPL, and AHBT also operated other properties and businesses.

Respondents' case

17 The respondents submitted that AH-REIT did not act unreasonably by engaging AIMPL and AHBT. It was reasonable for AH-REIT to use its related

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parties, so that the hotel could be operated as soon as possible to avoid loss from the Property remaining vacant. In this regard, the respondents pointed out that the appellant had never disputed that AH-REIT was an established hospitality REIT, and that AIMPL was in a position to manage the hotel.

18 The respondents argued that AH-REIT's decision to undertake phased renovation works was not unreasonable. First, AH-REIT was entitled to undertake renovation works under cll 3.12.1 and 3.12.2 of the Lease. Second, a phased approach towards refurbishment, while keeping the hotel open for business to generate income, could not be considered unreasonable.

19 In respect of the appellant's argument that the figures in the P&L Breakdown could not be conclusively attributed to the Property, the respondents highlighted that Ms Beh had affirmed on affidavit that the P&L Breakdown contains the "profit and loss breakdown in respect *of the Property*" [emphasis added], and this meant that the figures did not include the profit and loss breakdown for other properties or businesses.

Issues to be determined

20 The issues before this court are as follows:

(a) Did AH-REIT take reasonable steps to mitigate its loss by appointing AIMPL as manager of the hotel and subsequently leasing the Property to AHBT?

(b) Did the Judge err in relying on the figures in the P&L Breakdown when determining the amount of income earned by AH-REIT and AHBT during the relevant period?

(c) Can AH-REIT claim the full amount of its loss suffered during

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the period of 1 March 2023 to 27 June 2023, when the hotel on the Property was partially closed for refurbishment during this time?

Did AH-REIT take reasonable steps to mitigate its loss by appointing AIMPL as manager of the hotel and subsequently leasing the Property to AHBT?

21 In our view, the Judge did not err in finding that AH-REIT took reasonable steps to mitigate its loss by appointing AIMPL to manage the Property and by subsequently leasing the Property to AHBT.

22 The evidence before the court supported the Judge's assessment that AH-REIT and its related parties, AIMPL and AHBT, had expertise in operating hotels and so could have managed the Property with more than sufficient competence. The appellant did not dispute that AH-REIT was an "established hospitality REIT with a portfolio of hotels globally". AH-REIT, AIMPL, and AHBT were entities operating under or alongside The Ascott Ltd's lodging trust, Ascott Residence Trust. The Ascott Ltd is an international lodging owner-operator with serviced apartment, co-living, and hotel businesses in over 220 cities.

23 The Judge was also entitled to consider that the Lease was terminated at a time when Singapore was emerging from the COVID-19 pandemic. In this context, it was entirely speculative to assume that AH-REIT could have quickly found a more suitable tenant for the Property that would have been willing to pay a higher rent and thus generate more income for AH-REIT than that which it managed to earn during the remaining period of the Lease. We also observed that the advantage of appointing AIMPL as the hotel manager was that the hotel was able to generate revenue immediately, or at least very soon, after AH-REIT

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entered into possession of the Property. If AH-REIT had tried to secure an unrelated new tenant, time would have had to be taken to advertise the availability of the Property and a tender to be called. Even after the lease with the new tenant is executed, there would likely have been a period of fitting-out in accordance with the new tenant's requirements. If all that had taken place, it would inevitably have resulted in a period where the hotel would remain closed, which would have aggravated the loss suffered by AH-REIT.

24 Moreover, it was significant that, in computing the amount of earned income to deduct from the debt, AH-REIT did not merely attribute to the accounts the variable rent paid by AHBT to AH-REIT; instead, it attributed to its computation all the gross profit earned by AH-REIT and later, AHBT, from operating a hotel on the Property (see [5(b)] above). Nothing in the evidence suggests that PHCQ would have earned more if it had continued operating a hotel at the Property in the period from 28 August 2021 to 27 June 2023. As the appellant is the party asserting that AH-REIT could have earned more if it had leased the Property to an unrelated tenant, it bears the evidential burden of adducing evidence for this assertion. The legal burden of proving that AH-REIT had mitigated its loss rests on the liquidators, since they bear the legal burden of proving the validity of the debt they admitted (see GD at [15]). The liquidators referred to evidence of AIMPL and AHBT's expertise in operating hotels, which supported their case that AH-REIT had acted reasonably when it appointed AIMPL as manager and leased the Property to AHBT. In our view, the evidential burden then shifted to the appellant to counter this evidence (see *Tan Siew Hui v Lim Lai Soon* [2023] SGHC(A) 32 at [49]–[50]; *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30]–[31]). But the appellant failed to discharge this evidential burden as it produced

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no evidence to show that the hotel could have earned more from 28 August 2021 to 27 June 2023, or that an unrelated tenant would have paid more in rent than the income generated by AH-REIT and AHBT during this remaining period of the Lease.

25 A further argument raised by the appellant at the hearing of this appeal was that the management fees paid to AIMPL were exorbitant. But there was no evidence for this assertion. Ms Tan Shin Hui, who filed the sole affidavit on behalf of the appellant, did not make such a claim in her affidavit. Moreover, the appellant was in a position to produce evidence showing that the management fees AH-REIT paid to AIMPL were exorbitant if it was in fact the case because the appellant was the manager of Park Hotel Clarke Quay from March 2021 to 28 August 2021. But it produced no such evidence. There was thus no basis for any comparison between the management fees paid to AIMPL and any management fees that PHCQ might have paid to the previous managers of the Property, or even what a manager would usually charge for managing a hotel of the same size as that operated by AH-REIT and AHBT during the period from 28 August 2021 to 27 June 2023.

26 Accordingly, our view is that the evidence did not show that AH-REIT had acted unreasonably in mitigating its loss by engaging AIMPL and AHBT to take over and manage the Property for the remainder of the period of the Lease. We thus affirm the Judge's decision that AH-REIT did not fail to mitigate its loss by appointing AIMPL to manage the Property and by leasing the Property to AHBT.

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Did the Judge err in relying on the figures in the P&L Breakdown when determining the amount of income earned by AH-REIT and AHBT during the relevant period?

27 We do not agree with the appellant's contention that the Judge had erred in accepting the figures showing the amount of earned income in the P&L Breakdown.

28 The Judge rightly rejected the appellant's argument that the figures cited in the P&L Breakdown could be attributable to properties or businesses other than the Property. Ms Beh's affidavit had expressly stated that the figures in the P&L Breakdown were in respect of the Property and not any other income stream. The appellant has not pointed to anything in the evidence that might suggest that what Ms Beh had stated on affidavit was inaccurate or untrue.

29 At the hearing of this appeal, the appellant also argued that the figures stated in the P&L Breakdown *may* have been inaccurate because the appellant did not have sight of the underlying documents for those figures. We are unpersuaded by this argument. PHCQ, the appellant's related company, had operated a hotel on the Property from 2013 to 2021, and the appellant had managed the hotel from March 2021 to 28 August 2021. The appellant must have had access to information about the costs involved and the revenue earned by PHCQ when the latter operated its hotel at the Property. It was thus well-placed to point out any specific line item in the P&L Breakdown which might have been out of the ordinary either in terms of quantum or its existence. But the appellant provided no specific objection at all save to make an unsubstantiated allegation that all the figures in the P&L Breakdown could not be verified and hence should be rejected. Such an approach completely ignores the evidential burden on the appellant to prove what they assert. Here, since it was the appellant's contention that the P&L Breakdown was not reliable, it had

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to provide some factual basis to substantiate its assertion but it completely failed to do so.

Can AH-REIT claim the full amount of its loss suffered during the period of 1 March 2023 to 27 June 2023, when the hotel on the Property was partially closed for refurbishment during this time?

30 We find that AH-REIT is not entitled to the full amount of damages in net rent it claims from PHCQ for the period when the Property was partially closed for refurbishment.

31 Under the well-established principles of mitigation, a party "cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action …" (*Asia Star* at [24]). In this case, the reduction of income resulting from AH-REIT's decision to partially close the hotel for refurbishment was an avoidable loss for which AH-REIT cannot claim. This is because the decision to partially close the hotel was not a reasonable one for AH-REIT to have taken in mitigation of the loss that it suffered arising from the termination of the Lease.

32 The respondents accept that, after AH-REIT repossessed the Property in August 2021, AH-REIT and later, AHBT, were able to operate a hotel on the Property without the need for any refurbishment which would have entailed a closure, partial or otherwise, of the hotel. The P&L Breakdown shows that, before March 2023, when the refurbishment works commenced, the hotel operated by AH-REIT and AHBT at the Property, which was called "Riverside Hotel Robertson Quay", was generating profits even though the tourism industry in Singapore had been badly affected by the COVID-19 pandemic. Against this backdrop, AH-REIT decided in March 2023 to partially close the Property for refurbishment. For the most part, this refurbishment exercise did

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not comprise necessary repairs or reinstatement works even though the respondents claim that such works were also carried out. Rather, they were chiefly undertaken as part of a *rebranding* exercise so that the hotel could be re-launched under a new name, The Robertson House by The Crest Collection (GD at [45]). In fact, the hotel was indeed later re-launched in October 2023 under this new brand after the refurbishment works were completed (GD at [27]).

33 Given these facts, our view is that the fall in net income resulting from the partial closure was an avoidable loss because AH-REIT did not need to refurbish the hotel for it to be operated profitably. The refurbishment was a purely voluntary exercise that did not mitigate the loss arising from PHCQ's breach of the Lease. It instead caused AH-REIT to suffer a greater loss that could have been avoided for the period of the Lease from March 2023 until its original expiry date of 27 June 2023. PHCQ should therefore not be liable for the reduction of income that resulted from AH-REIT's decision to partially close the hotel.

34 We do not agree with the respondents' contention that cll 3.12.1 and 3.12.2 of the Lease entitled AH-REIT to carry out refurbishment works. Those clauses provided for the tenant's obligation to reinstate the Property to its original condition upon determination of the Lease. They did not entitle the landlord to carry out works that were not to reinstate the Property to its original condition but which were meant to redesign it as part of a rebranding exercise. In so far as there were any repair works for damage that had been caused by PHCQ during the subsistence of the Lease, there was insufficient evidence to show what portion of the works carried out between March 2023 and 27 June 2023 were for such repairs and whether it was such repairs that necessitated the partial closure of the hotel. We also noted that AH-REIT terminated the Lease and entered into possession of the Property in August 2021 and there was no

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evidence of the need for any repair works to be carried out at that time before it was able to operate the Riverside Hotel Robertson Quay.

35 Accordingly, with respect to AH-REIT's claim for damages for net rent for the period from 1 March 2023 to 27 June 2023, we find that AH-REIT cannot claim for the loss it could have avoided if it had not partially closed the hotel for refurbishment. This amount of avoidable loss is not readily quantifiable from the figures in the P&L Breakdown as they only state the profit and loss for the whole period of 1 January 2023 to 27 June 2023, without isolating the period in which refurbishment was undertaken (*ie*, March 2023 onwards). We are thus not able to compute the amount of properly claimable damages in the form of net rent for this period of 1 March 2023 to 27 June 2023 on the notional basis that the hotel had been fully open for business during this time.

36 Instead, we have decided that it would be appropriate to expunge the claimed amount for damages in net rent for the period of 1 January 2023 to 27 June 2023, which is a figure of $6,202,644.35 that appears in the POD. AH-REIT is at liberty to file a fresh POD for its damages in the form of the net rent for the period of 1 January 2023 to 27 June 2023, which accounts for the net income that could have been earned by AHBT if the hotel had not been partially closed from 1 March 2023 to 27 June 2023.

37 To allow the respondents to properly assess this revised claim for damages in net rent, the POD must be supported by documents that would assist in quantifying the reduction of net income resulting from the partial closure of the Property for the refurbishment period. These documents should include (but need not be limited to) the *monthly* profit and loss statements for the operation of the hotel for each month from January 2023 to June 2023, up to 27 June 2023. The purpose of providing these documents is to allow for the computation of

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the notional net income that could have been earned by AHBT during the period of 1 March 2023 to 27 June 2023 if the Property had not been partially closed for refurbishment.

Conclusion

38 For the reasons given in this judgment, we allow the appeal in part on the terms as set out above at [36] and [37].

39 Given that the appellant has succeeded in only one of its grounds of appeal, we think it is appropriate for us to order that the appellant and the respondents are to bear their own costs of the appeal.

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Judith Prakash
Senior Judge

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Nanthini d/o Vijayakumar and Terence Yeo (TSMP Law Corporation) for the appellant;
Ong Boon Hwee William, Lee Bik Wei and Kay Tan Jia Xian (Allen & Gledhill LLP) for the respondents.

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