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

[2026] SGHC(A) 23

Appellate Division / Civil Appeal No 8 of 2026

Between

Ever Strategy Consultants Limited

… *Appellant*

And

(1) Corporación Crambo, S.A.
(2) Balboa Hospitality Services Ltd.
(3) Harder Road Inc.
(4) Guillermo Liberman (also known as Guillermo Javier Liberman Gadda)
(5) Victor Diamond (also known as Victor Diamond Rodriguez)

… *Respondents*

Appellate Division / Civil Appeal No 9 of 2026

Between

Ever Strategy Consultants Limited

… *Appellant*

And

(1) PSA International Pte. Ltd.
(2) PSA Americas Pte. Ltd.
(3) PSA Panama Pte. Ltd.

(4) PSA Pacific Pte. Ltd.
(5) Yang David Antonius
(6) Tan Chong Meng

… *Respondents*

Appellate Division / Civil Appeal No 10 of 2026

Between

Ever Strategy Consultants Limited

… *Appellant*

And

PSA Panama International Terminal, S.A.

… *Respondents*

In the matter of Originating Claim No 34 of 2024 (Registrar's Appeals Nos 191, 192 and 193 of 2025)

Between

Ever Strategy Consultants Limited

… *Claimant*

And

(1) PSA International Pte. Ltd.
(2) PSA Americas Pte. Ltd.
(3) PSA Panama Pte. Ltd.
(4) PSA Pacific Pte. Ltd.
(5) Yang David Antonius
(6) Tan Chong Meng
(7) PSA Panama International Terminal, S.A.
(8) Corporación Crambo, S.A.

(9) Balboa Hospitality Services Ltd.
(10) Harder Road Inc.
(11) Guillermo Liberman (also known as Guillermo Javier Liberman Gadda)
(12) Victor Diamond (also known as Victor Diamond Rodriguez)

… *Defendants*

JUDGMENT

[Civil Procedure — Striking out]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Ever Strategy Consultants Ltd
v
Corporación Crambo, SA and others and other appeals

[2026] SGHC(A) 23

Appellate Division of the High Court — Civil Appeal Nos 8, 9 and 10 of 2026
Woo Bih Li JAD and Debbie Ong Siew Ling JAD
27 April 2026

9 September 2026 Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 The present dispute surrounds the existence and interpretation of an alleged tripartite oral agreement ("Collateral Agreement") which provided that the claimant's ("Claimant") prior consent was required before any change could be made to the parties' respective shareholdings in a Panamanian company.

2 The Claimant alleges that the Collateral Agreement was breached when its 10% indirect shareholding in that company was diluted without its prior consent, as a result of events occurring in 2015 and 2018 ("1st Dilution" and "2nd Dilution" respectively).

3 Consequently, the Claimant commenced an action in the General Division of the High Court ("High Court") in HC/OC 34/2024 ("OC 34") against twelve defendants (collectively referred to as "Defendants") alleging,

amongst other things, breach of the Collateral Agreement, breach of trust and fiduciary duties, and conspiracy by unlawful means.

4 The present appeals arise from three applications filed by three groups of defendants, comprising the Defendants, to strike out the Claimant's Statement of Claim ("SOC") and action in respect of each group of defendants. The applications were heard and dismissed by an Assistant Registrar ("AR"). The AR also granted the Claimant leave to amend its SOC. The Defendants appealed, and a Judge of the High Court ("Judge") allowed all three appeals, set aside the AR's orders, and struck out all the claims in the SOC and the action against the Defendants. The present appeals are the Claimant's appeals against the Judge's decision.

5 For reasons explained below, we dismiss the appeals in their entirety.

Facts

6 The full facts are set out in the Judge's grounds of decision in *Ever Strategy Consultants Ltd v PSA International Pte Ltd* [2026] SGHC 76 ("GD"). We summarise the pertinent facts below.

The parties

7 There are four relevant groups of parties in these appeals.

8 The first group is Ever Strategy Consultants Limited ("ES") which is the Claimant in OC 34 and the appellant in these appeals. It is an investment holding company incorporated in the British Virgin Islands and represented at all material times by Mr George Chang ("Chang").

9 The second group is the 1st to 6th defendants in OC 34 ("PSA defendants"), which consist of four corporate entities and two individuals. The 1st to 4th defendants – PSA International Pte. Ltd. ("PSA International"), PSA Americas Pte. Ltd. ("PSA Americas"), PSA Panama Pte. Ltd. ("PSA Panama"), and PSA Pacific Pte. Ltd. ("PSA Pacific") – are all Singapore-incorporated companies within the PSA group of companies ("PSA group"), which operates ports worldwide. The 5th defendant, Mr David Antonius Yang ("Yang"), and the 6th defendant, Mr Tan Chong Meng ("Tan"), were at all material times directors of PSA Americas, PSA Panama, and PSA Pacific. Tan also served as the director and group CEO of PSA International. We use "PSA" to refer to the PSA group generally or to any one of the PSA defendants where it is immaterial which entity was involved.

10 The third group is the 7th defendant in OC 34, PSA Panama International Terminal S.A. ("PPITSA"), a joint venture company incorporated in Panama.

11 The fourth and final group is the 8th to 12th defendants in OC 34 ("Liberman defendants"), which consists of three corporate entities and two individuals. The 8th defendant, Corporación Crambo, S.A. ("CCSA"), is a Panama-incorporated company and a shareholder of the 9th defendant, Balboa Hospitality Services Ltd. ("Balboa"), a British Virgin Islands-incorporated company. The 10th defendant, Harder Road Inc. ("Harder Road"), is also incorporated in Panama. The 11th defendant, Mr Guillermo Liberman ("Liberman"), was at all material times the beneficial owner, director, and President of CCSA and Harder Road. He also served as a director of PPITSA and Balboa. The 12th defendant, Mr Victor Diamond ("Diamond"), was a director of Harder Road and Balboa.

Background to the dispute

12 As noted at [8] above, ES is controlled by Chang. In 2006, Chang had discussions with one Mr Eddie Teh ("Teh"), the then-Chief Executive Officer of PSA International, and Liberman about jointly developing a port container terminal in Panama through a joint venture company ("PPIT Project").

13 According to ES, the parties' intended contributions were as follows: Liberman would contribute the land, Chang would contribute his local know-how and liaison services, and PSA would contribute capital. The intended shareholding split was 65% for PSA, 25% for Liberman, and 10% for ES.

14 On 25 June 2007, PPITSA was incorporated in Panama as the project company, with PSA Panama as its sole shareholder. By 18 June 2009, PSA Panama and Balboa (being the vehicle through which Liberman held his interest in PPITSA) held 700 shares (70%) and 300 shares (30%) in PPITSA respectively. ES acquired its indirect interest in PPITSA through two routes.

15 On 12 April 2011, Balboa issued 166.65 shares (16.665%) to ES. As Balboa held 30% of the shares in PPITSA, ES's indirect interest in PPITSA through Balboa was 5%.

16 On 10 June 2011, ES, PSA Americas and PSA Panama entered into a written consultancy agreement ("Consultancy Agreement"). Under this agreement, PSA Panama appointed ES as its consultant to procure government approvals and provide local liaison for the PPIT Project. In consideration, PSA Panama would allot 7.14% of its issued share capital to ES, which would be held in the name of PSA Americas.

17 On 28 June 2011, PSA Panama issued 714 shares (representing 7.14% of the issued shares) to PSA Americas, which held them as nominee for ES. As PSA Panama held 70% of the shares in PPITSA, this gave ES another indirect 5% interest in the PPITSA through PSA Panama. Accordingly, ES's total indirect interest in PPITSA was 10%.

18 Phase 1 of the PPIT Project took place from 2008 to 2012. To develop Phase 2 of the PPIT Project, further shares in PPITSA were issued. On 16 December 2015, PPITSA allotted shares to PSA Pacific and Fincacorp S.A. ("Fincacorp"), a company owned and controlled by Liberman. As a result:

> (a) PSA Panama's shareholding was reduced from 70% to 27.6%, and ES's indirect shareholding through PSA Panama was reduced from 5% to 1.97%.
>
> (b) Balboa's shareholding was reduced from 30% to 11.8%, and ES's indirect shareholding through Balboa was reduced from 5% to 1.97%.

The events in [18] above are referred to as the 1st Dilution.

19 On 26 February 2016, Fincacorp transferred its shares in PPITSA to Harder Road, which is also controlled by Liberman.

20 On or about 2 April 2018, PPITSA issued further shares to Terminal Investment Limited S.A.R.L., a company incorporated in Switzerland. As a result:

(a) PSA Panama's shareholding was further reduced from 27.6% to 15.6%, and ES's indirect shareholding through PSA Panama was further reduced from 1.97% to 1.11%.

(b) Balboa's shareholding was further reduced from 11.8% to 7.1%, and ES's indirect shareholding through Balboa was further reduced from 1.97% to 1.18%.

The events in [20] above are referred to as the 2nd Dilution.

21 ES's case is that pursuant to the Collateral Agreement, which was reached orally in the second half of March 2011, *ie*, before the Consultancy Agreement dated 10 June 2011, its consent was required for any change in the shareholding structure among the three groups of shareholders in PPITSA (referred to at [13] above). As ES had not consented to either the 1st Dilution or to the 2nd Dilution, it contends that those steps were wrongful.

Procedural history

22 Subsequently, on 18 January 2024, ES filed OC 34 claiming the following against the Defendants:

(a) breach of the Collateral Agreement and inducement of that breach;

(b) breach of fiduciary duties and dishonest assistance of that breach; and

(c) conspiracy to injure it by unlawful means.

23 After the defences were filed, the three groups of defendants comprising the Defendants filed the following applications on 21 March 2025 to strike out the SOC of 18 January 2024 and the action against them:

(a) HC/SUM 781/2025 was filed by PPITSA (*ie*, 7th defendant);

(b) HC/SUM 782/2025 was filed by the Liberman defendants (*ie*, 8th to 12th defendants); and

(c) HC/SUM 783/2025 was filed by the PSA defendants (*ie*, 1st to 6th defendants).

24 The Defendants submitted, amongst other things, that:

(a) ES's claims, which were premised on the existence of the Collateral Agreement, were factually unsustainable as there was no evidence that it existed.

(b) ES's claim for breach of the Collateral Agreement in respect of the 1st Dilution was time-barred under s 6(1)(*a*) of the Limitation Act 1959 (2020 Rev Ed) as OC 34 was commenced more than six years after the 1st Dilution occurred.

(c) ES's claim for breach of fiduciary duties was untenable as its pleadings did not disclose the existence of any *ad hoc* fiduciary duties owed by the relevant individuals, and the evidence showed that no such duties could arise on the facts given the high threshold for establishing such a duty.

(d) ES's claim for conspiracy by unlawful means disclosed no reasonable cause of action as it had failed to plead the material facts underlying that claim.

The AR's decision

25 The applications were heard by the AR on 25 August 2025 and dismissed with costs on 4 September 2025.

26 On the issue of breach of the Collateral Agreement, the AR took the view that while there was evidence which suggested that the existence of the Collateral Agreement was not very probable, it could not be said with confidence that the claim was entirely without substance and fanciful. In particular, the AR found that an email between the parties dated 29 October 2013 ("29 October 2013 Email") which stated that ES's consent was needed before any dilution of Balboa's 30% stake in PPITSA was consistent with the existence of the Collateral Agreement. On the issue of inducement of breach of contract, the AR found that although ES had not sufficiently pleaded particulars of the acts of inducement, this was a deficiency that could be cured by amendment.

27 On the issue of breach of fiduciary duties, the AR found that while ES's case was not particularly probable given the high threshold for establishing a fiduciary relationship in a commercial setting, it could not be said as a matter of law or fact that no fiduciary relationship would be found. On the issue of dishonest assistance, the AR found that ES's failure to attribute knowledge to certain individuals was a deficiency that could similarly be cured by amendment.

28 On the issue of whether the claims premised on the 1st Dilution were time-barred, the AR noted that he would have been inclined to agree with the

Defendants that the claim based on the 1st Dilution was time-barred, on the basis that the obligation allegedly breached was an obligation to do a definite act (*ie*, to seek ES's consent before changing the shareholding structure) and therefore did not give rise to a continuing obligation. However, the AR reasoned that since the existence of the Collateral Agreement was itself a matter for trial, the nature of any obligations arising under it (whether continuing or otherwise) was likewise a question to be determined at trial.

29 Finally, on the issue of unlawful means by conspiracy, the AR rejected the Defendants' submission that ES had inadequately pleaded the combination and acts done in furtherance of the agreement to injure ES, relying on *Bank of China Ltd, Singapore Branch v BP Singapore Pte Ltd* [2021] 5 SLR 738.

30 The AR also allowed the Claimant to amend the SOC.

31 On 3 October 2025, the Defendants filed the following appeals against the decision of the AR:

(a) HC/RA 191/2025 filed by the Liberman defendants;

(b) HC/RA 192/2025 filed by the PSA defendants; and

(c) HC/RA 193/2025 filed by PPITSA.

On the same day, the Claimant filed Statement of Claim (Amendment No 1) ("ASOC").

The Judge's decision

32 On 30 January 2026, the Judge allowed all three appeals and struck out the ASOC and the action against the Defendants on three grounds:

(a) the claim premised on the Collateral Agreement was factually unsustainable;

(b) the claim based on the 1st Dilution was time-barred in any event; and

(c) the conspiracy claim failed for defective pleading.

33 The Judge explained that ES's remaining claims for breach of contract, inducement of breach of contract, breach of fiduciary duty and dishonest assistance all depended on the existence of the Collateral Agreement. Accordingly, if the Collateral Agreement did not exist, all of ES's claims would fail except for its conspiracy to injure claim to the extent it relied on unlawful means independent of the Collateral Agreement (GD at [57]).

34 On the first ground, the Judge found that ES's claim that the Collateral Agreement existed was factually unsustainable, reasoning that the contemporaneous objective documentary evidence overwhelmingly proved that it was a fiction (GD at [59]). In support of this finding, the Judge made the following points.

(a) First, the Consultancy Agreement signed by ES contained provisions permitting dilution of ES's indirect shareholding in PPITSA without its consent, which was inconsistent with the Collateral Agreement. The fact that ES had agreed to these conditions shortly after allegedly entering into the Collateral Agreement was itself proof that the Collateral Agreement could not have existed (GD at [60]–[64]).

(b) Second, in correspondence from 2014 to 2017, Chang never once mentioned the Collateral Agreement or asserted ES's right for its indirect shareholding in PPITSA not to be diluted without its consent (GD at [66]–[82]). The 29 October 2013 Email was accorded little weight in light of this correspondence and, in any event, it did not refer to the Collateral Agreement (GD at [83]).

(c) Third, even when ES became a shareholder in Balboa on 12 April 2011 *after* entering into the alleged Collateral Agreement, Balboa's Memorandum and Articles of Association ("Balboa M&AA") contained no provisions protecting ES's indirect 5% interest from dilution, and ES did not enter into any shareholders' agreement to protect itself (GD at [65]).

(d) Fourth, clause 7.2 of the Amended and Restated Shareholders' Agreement signed by PSA Panama, Balboa and PPITSA on 23 July 2008 ("Amended and Restated Shareholders' Agreement") was inconsistent with the Collateral Agreement, and it would not have made commercial sense for the parties to have agreed to it (GD at [84]–[86]).

35 The Judge referred to a criminal complaint submitted by ES on 8 August 2024 to Panamanian authorities ("Criminal Complaint"). He was of the view that while it did not refer to the Collateral Agreement or to any requirement to seek ES's consent before changing PPITSA's shareholding structure, this was equivocal, as certain allegations in the Criminal Complaint – including that Balboa and PSA Panama would continue to hold a 30% and 70% equity interest in PPITSA respectively and that ES would remain an indirect 10% shareholder at all material times – were nonetheless consistent with the Collateral Agreement (GD at [87]–[91]).

36 On the second ground, the Judge found that the claims based on the 1st Dilution were time-barred. The Judge rejected ES's argument that the Collateral Agreement imposed a continuing obligation and the 1st Dilution constituted a continuing breach, finding that this was not a reasonable interpretation of the term (GD at [95]). The Judge further held that any continuing obligation to maintain the agreed shareholding structure could only arise as an implied term, and that there was no basis to imply such a term (GD at [96]–[99]).

37 On the third ground, the Judge found that the conspiracy claim was unsustainable to the extent that it relied on unlawful acts that depended on the existence of the Collateral Agreement (GD at [100]). The Judge also found that the pleadings were defective, as ES had failed to plead how the alleged conspirators combined to pursue a common object or design. By then, ES had filed the ASOC. In the Judge's view, the ASOC covered a wide range of factual matters spanning 2006 to 2014 across multiple causes of action, making it impossible to discern from the pleadings how the alleged combination was formed (GD at [104]).

38 ES has filed the following appeals to the Appellate Division of the High Court ("Appellate Division") against the decision of the Judge:

(a) AD/CA 8/2026 ("AD 8") against the Liberman defendants;

(b) AD/CA 9/2026 ("AD 9") against the PSA defendants; and

(c) AD/CA 10/2026 ("AD 10") against PPITSA.

The parties' cases on appeal

ES's case

39 ES makes the following arguments on appeal.

40 First, ES argues that the Judge erred in finding that the existence of the Collateral Agreement is factually unsustainable. ES contends that in a striking-out application, the Defendants are required to show factual impossibility, rather than engage in a sifting of evidence and conflicting accounts as though this were a post-trial determination. However, the Judge failed to apply this standard. Instead, the Judge accorded "little weight" to documentary evidence which the AR had found to support the existence of the Collateral Agreement, and accorded greater weight to the remaining evidence by favouring the Defendants' interpretations, despite the fact that the PSA defendants did not put forward any affidavit evidence from the parties who entered into the Collateral Agreement to refute Chang's evidence. ES further argues that the subsequent correspondence does not undermine its case, as the emails show that ES consistently maintained that any dilution of its stake required its consent, even if the Collateral Agreement was not mentioned by name.

41 Second, ES submits that the Judge erred in finding that its interpretation of the Collateral Agreement, namely that the 1st Dilution constituted a continuing breach, was "not a reasonable interpretation", as this finding falls short of the threshold for striking out, which requires the claim to be legally "unsustainable" or "unarguable". Had this interpretation applied, ES's claims premised on the 1st Dilution would not be time-barred, as it would constitute a continuing breach. Alternatively, ES argues that such a term could be implied, and that the test of necessity for implication is itself a question capable of serious argument, such that the high threshold for striking out is not met.

42 Third, ES submits that the Judge erred in finding that ES had failed to adequately plead its conspiracy claim. ES contends that it had more than adequately pleaded the specific role of each co-conspirator and the manner in which they acted in concert to injure ES. In any event, ES relies on the *Red Sea* exception, such that the availability of the claims under Panamanian law suffices to avoid having the claims struck out (referring to *Ang Ming Chuang v Singapore Airlines Ltd* [2005] 1 SLR(R) 409 at [38]–[39]).

43 Fourth, ES submits that the Judge did not disturb the AR's finding that an *ad hoc* fiduciary relationship could arise on the facts, and that this finding was correct and should be upheld. ES contends that the factors for determining when a fiduciary relationship arises are fact-sensitive and cannot be resolved without a trial. ES adds that the parties were not in an arm's length commercial relationship – they were joint venturers, and ES had placed itself at the "mercy" of the other two joint venturers, who had undertaken to protect its 10% interest.

Liberman defendants' case

44 The Liberman defendants raise the following arguments.

45 First, they contend that the claims premised on the Collateral Agreement are factually unsustainable, having regard to: (i) the written agreements governing the relationship between the parties to the PPIT Project, namely, the Consultancy Agreement, the Amended and Restated Shareholders' Agreement, and the Balboa M&AA; (ii) the contemporaneous correspondence exchanged between the parties after the 1st Dilution, wherein ES never invoked the Collateral Agreement as the basis for its complaint that its indirect shareholding in PPITSA had been reduced, and had only demanded an opportunity to participate in the decision-making process of any changes to PPITSA's

shareholding structure, such as through the issuance of a capital call; and (iii) the Criminal Complaint, where ES did not mention the Collateral Agreement and provided an entirely different version of the alleged contractual relationships between the parties.

46 Second, they contend that the claims in respect of the 1st Dilution are time-barred, as the plain wording as pleaded imposes an obligation to do a definite act and there is no room for the implication of a continuing obligation. In this regard, ES has also not provided any particulars in its ASOC, or in the affidavit filed in support of it, to support the implication of a new positive ongoing obligation. Further, even if there is a continuing breach of the Collateral Agreement, this does not surmount the limitation period, as ES can only recover damages incurred within six years of the commencement of OC 34, and ES had not pleaded any particulars or material facts identifying fresh loss or damage suffered in the six years before OC 34 was commenced.

47 Third, they contend that the claims for breach of fiduciary duties and dishonest assistance are untenable. ES's pleadings disclose no viable basis for *ad hoc* fiduciary duties to arise, as there are no pleaded facts capable of supporting the conclusion that Liberman voluntarily undertook to subordinate his own interests to ES. Indeed, on ES's own case, the Collateral Agreement stemmed from a commercial and contractual arrangement entered into at arm's length, where each party was allocated shares in PPITSA based on their respective contributions to the PPIT Project. This is wholly inconsistent with a voluntary undertaking of responsibility.

48 Fourth, they contend that the claim for unlawful means conspiracy discloses no reasonable cause of action and should likewise be struck out. The pleadings fail to establish any intention to cause harm to ES, nor do they

adequately particularise how the defendants combined to further that unlawful purpose.

PSA defendants' case

49 The PSA defendants raise the following arguments.

50 First, they contend that the existence of the Collateral Agreement is contradicted by the overwhelming weight of evidence. Specifically, it is inconsistent with the Consultancy Agreement and the Amended and Restated Shareholders' Agreement. The Balboa M&AA also contained no provisions protecting ES's shareholding from being diluted without its consent. Additionally, the Criminal Complaint made no mention of the Collateral Agreement. Further, the contemporaneous correspondence and the parties' conduct are wholly inconsistent with the existence of the Collateral Agreement, given that ES never protested or invoked it despite the dilution allegedly constituting a breach. ES's explanations for this omission are without merit. Finally, the most essential terms of the Collateral Agreement are too uncertain to be enforceable, as ES failed to plead a reasonably certain date of formation or identify the consideration provided.

51 Second, they contend that the claim for breach of fiduciary duties is unsustainable. As pleaded by ES itself, PSA International, Liberman, and ES were parties to a joint venture conducted through PPITSA on a profit-sharing basis. The arm's length, profit-sharing nature of this arrangement is incompatible with any fiduciary duties owed to ES. The Consultancy Agreement further precludes any such obligation from arising, as it advances PSA's interests over ES's, imposes no restrictions on the dilution of ES's interest, and limits ES's rights in the shares to a purely economic interest. In so

far as the fiduciary claim is premised on the existence of the Collateral Agreement, it fails as the agreement is non-existent. But even if the Collateral Agreement existed, nothing in it requires PSA International to act in ES's best interests or subordinate its own interests to those of ES. ES was not vulnerable to PSA International in respect of its indirect interest in PPITSA, and the parties' rights and obligations are governed by the freely negotiated Consultancy Agreement.

52 Third, they contend that ES's claims premised on the 1st Dilution are time-barred. Even if the Collateral Agreement existed as pleaded, it imposes no positive obligation to maintain ES's indirect 10% shareholding in PPITSA. Thus, any failure to obtain ES's consent would be a one-off breach. The argument that there was a continuing obligation or continuing breach is unsustainable, and there is no basis to imply such a term. In fact, ES's own case is premised on two distinct breaches – the 1st and 2nd Dilutions. Further, even if a continuing obligation to maintain ES's 10% shareholding was established, this would not render the individual breaches continuing in nature. The law treats each breach as a separate, one-off event that does not renew or refresh merely because damage persists. Accordingly, the PSA defendants submit that ES has conflated continuing damage with a continuing duty or continuing breach.

53 Fourth, they contend that the conspiracy claim is bereft of the necessary particulars and should be struck out, as it fails to specify the identity and role of each defendant in the alleged conspiracy or to particularise the alleged combination.

PPITSA's case

54 PPITSA raises the following arguments.

55 First, as the claim that the Collateral Agreement existed is factually unsustainable, the claims against PPITSA for inducement of breach of contract and dishonest assistance must accordingly fall away. Alternatively, even if the Collateral Agreement existed, the pleadings disclose no reasonable cause of action against PPITSA for either inducement of breach of contract or dishonest assistance, as they fail to adequately plead the essential element of PPITSA's knowledge.

56 Second, the conspiracy claim is unsustainable as the pleadings fail to disclose a reasonable cause of action, given that they do not plead how the alleged conspirators combined to take concerted action in pursuit of a common object.

57 Finally, and in any event, all causes of action against PPITSA are legally unsustainable as they are time-barred under Panamanian law, being the law of the place where the alleged wrongs occurred.

Issues to be determined

58 Based on the foregoing, the following issues arise:

(a) whether the claim for breach of the Collateral Agreement should be struck out;

(b) whether the claim for breach of trust and fiduciary duties should be struck out;

(c) whether the claim for dishonest assistance should be struck out;

(d) whether the claim for conspiracy by unlawful means should be struck out; and

(e) whether the claims premised on the 1st Dilution are time-barred and should be struck out.

59 Before addressing each of these issues in turn, we set out the applicable legal principles for the law on striking out.

The law on striking out

60 The applications to strike out ES's claims and action were made under O 9 r 16(1) of the Rules of Court 2021 ("ROC 2021") and/or the inherent jurisdiction of the court. Order 9 r 16(1)(*a*) to (*c*) allows the court to order a pleading be struck out on any one of three grounds:

(a) it discloses no reasonable cause of action;

(b) it is an abuse of the process of the court; or

(c) it is in the interests of justice to do so.

61 Under limb (a), in determining whether a claim discloses no reasonable cause of action, only the pleadings are to be considered and no affidavit can be filed in support of the application, as it is essentially a question of law and the pleaded facts are presumed to be true in favour of the claimant (*Singapore Civil Procedure 2026* vol 1 (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2026) ("*Singapore Civil Procedure 2026*") at paras 9/16/1 and 9/16/4; see also *Drummond-Jackson v British Medical Association* [1970] 1 WLR 688 at p 696

and *Iskandar bin Rahmat v Attorney-General* [2022] 2 SLR 1018 ("*Iskandar*") at [17]).

62 Under limbs (b) and (c), however, affidavits may also be considered. Affidavits may similarly be considered when the court exercises its inherent jurisdiction to strike out a pleading (*Singapore Civil Procedure 2026* at para 9/16/4; see also *Pegasus Engineers Sdn Bhd v Sambu (M) Sdn Bhd* [1998] 4 MLJ 129 at p 131). As will become evident, ground (a) cannot succeed in the present case, as the pleadings alone will not show that ES has no reasonable cause of action. The Defendants have had to rely, and have relied, on documentary evidence exhibited in affidavits.

63 We turn now to the two grounds under O 9 rr 16(1)(*b*) and 16(1)(*c*) of the ROC 2021.

64 Order 9 r 16(1)(*b*) of the ROC 2021 allows the court to strike out a pleading which constitutes an abuse of process. The Court of Appeal in *Iskandar* explained (at [18]) that the court will prevent its machinery and the judicial process from being improperly used as a means of vexation and oppression in the process of litigation (referring to *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 ("*Gabriel Peter*") at [22]). In *Gabriel Peter* at [22], the Court of Appeal also stated that the categories of conduct rendering a claim an abuse of process are not closed and will depend on all the relevant circumstances of the case. However, one such example would be where a claim is not brought *bona fide* for the purpose of obtaining relief but for some ulterior or collateral purpose.

65 Order 9 r 16(1)(*c*) of the ROC 2021 allows the court to strike out a pleading when it is in the interests of justice to do so. In *Iskandar* at [19], the

Court of Appeal observed with apparent approval that the judge below had agreed with a submission that this provision gives effect to the court's inherent jurisdiction to prevent injustice such as where the claim is plainly or obviously unsustainable and cited *The Bunga Melati 5* [2012] 4 SLR 546 ("*Bunga Melati 5*") at [33].

66 In *Bunga Melati 5*, the Court of Appeal was considering O 18 r 19(1)(*b*) of the Rules of Court (Cap 322, 2006 Rev Ed) ("Rules of Court 2006") which allows a court to strike out a pleading if it is scandalous, frivolous or vexatious (at [32]). This ground is not repeated in O 9 r 16 of the ROC 2021. Nevertheless, the Court of Appeal in *Bunga Melati 5* equated "frivolous or vexatious" proceedings with proceedings which are "obviously or plainly unsustainable" (at [32]), which is the phrase also mentioned in *Iskandar* at [19].

67 Hence, what was said in *Bunga Melati 5* on a plainly or obviously unsustainable claim also applies to O 9 r 16(1)(*c*) of ROC 2021 and the court's inherent jurisdiction.

68 In *Bunga Melati 5*, the Court of Appeal said (at [39]) that a "plainly or obviously" unsustainable action is one which is either:

> (a) *legally unsustainable*: if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks"; or
>
> (b) *factually unsustainable*: if it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance, [for example, if it is] clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based".
>
> [emphasis in original]

69 The application of this test involves “an evaluation of the *merits* of the action” (*AYW v AYX* [2016] 1 SLR 1183 at [31]). Indeed, as noted at [68] above, to determine factual unsustainability, the court will look at all the documentary evidence, a point we will return to below.

70 It may be that a claim which is plainly or obviously unsustainable is also caught by O 9 r 16(1)(*b*) of the ROC 2021, which is about an abuse of the process of the court, but we need not address this in the present circumstances.

71 We turn now to ES’s specific contention that the Judge applied the wrong standard in striking out its claims and action.

72 First, ES submits that the claims should be struck out only if the Defendants establish factual impossibility, relying on *Leong Quee Ching Karen v Lim Soon Huat* [2023] 4 SLR 1133 (“*Karen Leong*”) at [26]. In that case, a judge of the High Court cited various decisions for the proposition that an applicant in a striking out application bears the burden of proving that the claim is “obviously unsustainable, the pleadings [are] unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out” (*Karen Leong* at [26]).

73 In our view, the correct test in a striking out application involving a factual dispute is whether the claim is “factually unsustainable”, and not “factually impossible”. We do not read the authorities as supporting the latter formulation. To adopt such a high threshold would mean that a claim could not be struck out even where the evidence against the claimant is overwhelming, so long as it falls short of rendering the claim factually impossible. That is not correct, and it is inconsistent with what the Court of Appeal set out in *Bunga Melati 5* at [39] (see above [68]).

74 Second, ES relies on the following proposition in *Bunga Melati 5*: "[s]ave in the plainest of cases, a court should not in a striking out application choose between conflicting accounts of crucial facts" (at [45]). As we go on to explain, we have not weighed or preferred the Defendants' account against the Claimant's, but rather, looked at the objective evidence before us to determine whether the claim was factually sustainable and should be struck out.

75 Third, ES relies on *Likpin International Ltd v Swiber Holdings Ltd* [2015] 5 SLR 962 ("*Likpin*") for the proposition that the mere fact that the parties did not refer to the Collateral Agreement in the correspondence does not mean that the agreement does not exist and that the claim is liable to be struck out. In that case, the applicable rules were the Rules of Court (Cap 322, 2014 Rev Ed) ("Rules of Court 2014"). There, the High Court said at [79]:

> 79 I observe in passing that it is highly unusual for a party to pursue a claim for breach of contract when neither the existence of the contract nor its breach was ever raised in correspondence prior to the institution of the proceedings. *This in itself would be insufficient to strike out the claim.* However, when taken together with the other difficulties plaguing the plaintiff's case, I find that this is a clear instance where striking out is appropriate. …
>
> [emphasis added]

76 We do not read that passage as standing for the proposition that the omission to raise the existence of a contract or its breach in prior correspondence can never, by itself, be a sufficient reason to strike out a claim. That would be too sweeping a proposition. Whether such an omission justifies a striking out depends on the particular facts of the case, including what the prior correspondence did or did not say and what allegations were being made at the time. While a claim may be struck out on the basis that an alleged agreement was not previously mentioned in the appropriate circumstances, we do not rely on that omission *alone* in the present case, but rather on that omission read

together with all the other evidence which contradicts the existence of the Collateral Agreement.

77 Finally, we note that it has been cautioned that in a striking out application, the court should not engage in “a minute and protracted examination of the documents and facts” (*Gabriel Peter* at [18] and *Likpin* at [50]). However, the Court of Appeal in *Gabriel Peter* went on to state that the power of striking out may be invoked where the court is “satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial” (at [18]). In order to be so satisfied, there may sometimes be a need for careful examination of the documentary evidence in determining whether the pleadings in question ought to be struck out. Such an approach was taken in both *Likpin* and in *Bunga Melati 5*.

78 In *Likpin*, the court examined the plaintiff’s own evidence and the correspondence exchanged between the parties (without regard to the factual assertion in the defendants’ affidavits) as well as the objective evidence and found the claim factually unsustainable. The court carefully analysed the relevant material at [49]–[79], finding that the only documentary evidence relied on by the plaintiff (*ie*, meeting minutes) did not support its case, and that the subsequent correspondence and the plaintiff’s own conduct were equally inconsistent with its position. After also taking into account the inconsistent and incoherent pleadings of the plaintiff, the court struck out the claim.

79 In *Bunga Melati 5*, the Court of Appeal took the same approach but reached the opposite conclusion. The court was unable to share the Judge’s certainty that the documents submitted by the respondent had “demonstrated beyond doubt” that an agency relationship between the respondent and another entity did not exist. For example, many of the invoices rendered by that entity

to the respondent were illegible and could not be independently and accurately tallied against the evidence of payments claimed to have been made by the respondent to that entity (at [51]). Having examined the affidavit evidence, the parties' correspondence and the documentary record, the court found that the claim was not so plainly factually unsustainable as to warrant striking out. In striking out the claim, the judge below had erred by engaging in the assessment of the weight of the evidence available, which is a task which strictly belongs to a trial judge who will have the benefit of all the fact-finding processes in a full trial (at [52]).

80 Indeed, this principle has been applied across several authorities. In *Trinity Construction Development Pte Ltd v Sinohydro Corp Ltd (Singapore Branch*) [2021] 3 SLR 1039 at [14], Lee Seiu Kin J held that a court can have regard to "the history of the matter and relevant correspondence exchanged between parties in addition to the pleadings" in determining whether a pleading should be struck out (referring to *Active Timber Agencies Pte Ltd v Allen & Gledhill* [1995] 3 SLR(R) 334 at [21]–[22] which in turn cited *Goh Koon Suan v Heng Gek Kiau* [1990] 2 SLR(R) 705). The judge mentioned this approach in the context of O 18 r 19(1)(*b*) of the Rules of Court 2014 which is the equivalent of the same provision in the Rules of Court 2006. In our view, the same approach still applies under O 9 r 16(1)(*c*) of the ROC 2021 and the court's inherent jurisdiction.

81 Taken together, these cases illustrate that while the court will not conduct a mini-trial in a striking out application, it is both permissible and necessary to examine the documentary evidence when determining whether a claim should be struck out because it is factually unsustainable under O 9 r 16(1)(*c*) of the ROC 2021 or under the court's inherent jurisdiction.

82 We now turn to the issues before us.

Whether the claim for breach of the Collateral Agreement should be struck out

83 In our view, ES's claim based on the Collateral Agreement is factually unsustainable and ought to be struck out under O 9 r 16(1)(*c*) of the ROC 2021 and also under the inherent jurisdiction of the court. As we discuss below, the documentary evidence, including the emails and letters exchanged between the parties over the relevant period, shows that while ES was making various allegations against the Defendants concerning the dilution of its shares, it made no mention of the Collateral Agreement or any breach thereof. Moreover, the Collateral Agreement is contrary to commercial common sense. This leads us to find that the Collateral Agreement is a fiction.

84 To recapitulate, it is ES's case that in the second half of March 2011, Chang (on behalf of ES), Teh (CEO of PSA International) and Liberman orally agreed that the prior consent of ES was required for any change in the shareholding structure of their interests in the PPIT Project. This is referred to as the Collateral Agreement.

85 It is important to understand what ES means by its allegation of the Collateral Agreement. The allegation appears deceptively simple but what ES means is that even if there was a valid reason for PPITSA to raise additional capital through an issue of shares and even if this call for capital was offered *pro rata* to all existing shareholders, ES could, through its indirect interest, object to the capital call even if it chose not to participate in the exercise to raise capital. In other words, it could hold the other shareholders to ransom if it decides to veto the entire exercise simply by refusing to give its consent. In our view, this is a remarkable allegation which is contrary to commercial common

sense, bearing in mind that ES is only a minority shareholder. More importantly, none of the other shareholders like Liberman (through Balboa) have such a right.

86 It is also important to state at the outset that while ES complained about the 1st and the 2nd Dilutions after the fact, the reason it gave was not that such incidents constituted a breach of the Collateral Agreement, but rather that there had been no formal call for capital. Yet at no point, even when ES commenced OC 34, did it assert that it would have taken up its proportionate share had a formal call been made. It follows that even if there had been no formal call for capital, it would have made no difference to ES, as it would not have taken up its "entitlement", if any. Significantly, ES maintains that it is nevertheless entitled to damages or equitable compensation in the circumstances.

87 ES has the burden of establishing the Collateral Agreement at trial. However, for the present purposes of a striking out application, it is for the Defendants to show that ES's case is not sustainable. The Defendants dispute the existence of the Collateral Agreement by relying on various pieces of documentary evidence, which we now go through in turn.

The absence of affidavit evidence from Teh

88 Before turning to the documentary evidence, we address a submission which ES repeatedly makes. ES submits that the Collateral Agreement was entered into by Chang, Teh and Liberman. According to Chang's affidavit, Teh was the CEO of PSA International before he retired in August 2011. ES argues that the absence of any affidavit evidence from Teh to deny the Collateral Agreement is significant, and that the affidavit evidence from Mr Enno Koll ("Koll"), a director of PSA Panama and other companies in the PSA group, is

insufficient as he has no personal knowledge of the relevant events. On this basis, ES submits that its claim should not be struck out as there is nothing to refute Chang's detailed account on affidavit of how the Collateral Agreement came to be.

89 While there is indeed no affidavit evidence from Teh to challenge Chang's account of the Collateral Agreement, we do not consider this to be determinative of the striking out application, especially in light of the plethora of documentary evidence before us. It is simply one factor to be weighed alongside all the other evidence.

90 We therefore turn to the documentary evidence before us.

The Consultancy Agreement and Balboa M&AA

91 The PSA defendants rely in particular on the Consultancy Agreement, which they argue is inconsistent with the Collateral Agreement, as evidence that the latter does not exist. The Consultancy Agreement was executed in June 2011, some three months *after* the Collateral Agreement was allegedly entered into in March 2011.

92 Clause 2(b)(iii) to (vii) of the Consultancy Agreement states:

> (iii) PSA Americas shall have absolute operational and management control of PSA Panama;
>
> (iv) [ES] shall have no rights (voting or otherwise) in respect of the management of and/or decision-making in respect of PSA Panama;
>
> (v) Unless expressly agreed by the Parties in writing, [ES] shall not be entitled to any further allotment of shares in PSA Panama;
>
> (vi) [ES] shall be entitled to receive dividends declared and distributed by PSA Panama corresponding to its shareholding in PSA Panama (the Sole Right) and PSA

> Americas as nominee of [ES] shall account to [ES] for such dividends;
>
> (vii) Without prejudice to the generality of sub-clauses (b)(ii) to (vi), [ES] shall, save for the Sole Right only, have no attached rights whatsoever whether express or implied in respect of the Shares allotted to [ES] pursuant to clause 2(a) (including, unless otherwise agreed between the Parties, such rights set out under Article 8 of the Memorandum and Articles of Association of PSA Panama (M&AA)), and the Parties will make and approve such changes to the M&AA to define the same or to otherwise render the M&AA consistent with this Agreement;
>
> …

93 According to the PSA defendants, the Consultancy Agreement clearly states that ES was not to participate in the voting, management and decision-making of PSA Panama, and that ES's sole right was to receive dividends distributed through PSA Panama. In particular, cl 2(v) of the Consultancy Agreement states that ES was not entitled to any further allotment of shares in PSA Panama. This suggests that it was not open to ES to veto any further allotment of shares. Taken together, the PSA defendants argue that the Consultancy Agreement is fundamentally inconsistent with, and therefore contradicts, the existence of the Collateral Agreement.

94 ES does not dispute that it signed the Consultancy Agreement. ES explains that the Consultancy Agreement was drawn up at the PSA group's request to clarify that the allocation of shares in PSA Panama to ES would not confer upon it traditional shareholder rights, such as voting rights or the right to charge its shares, and would not allow ES to take control of PSA Panama. ES further submits that even if the Consultancy Agreement is potentially inconsistent with the Collateral Agreement, this is not determinative and does not render the Collateral Agreement factually unsustainable.

95 We find ES's explanation unpersuasive. The Consultancy Agreement does not merely clarify the limits of ES's shareholder rights in the narrow sense as ES suggests. As set out above, it not only permits PSA Americas to dilute ES's shareholding in PSA Panama and/or PPITSA, but also confers no veto right on ES, which is in direct contrast to what ES claims the Collateral Agreement provides.

96 In his affidavit, Chang explained that he did not pay much attention to the Consultancy Agreement, which was signed *after* the alleged Collateral Agreement had been reached. In our view, this explanation is unsatisfactory, given that the Consultancy Agreement affected ES's interest in PPITSA and that Chang is a sophisticated commercial businessman.

97 That being said, while the Consultancy Agreement does militate against the existence of the Collateral Agreement, it may not in itself be sufficient to strike out ES's claim. It is but one of many relevant factors to be taken into account in the final determination.

98 As neither Balboa nor Liberman is a party to the Consultancy Agreement, the Liberman defendants rely instead on the absence of any veto right in favour of ES in the Balboa M&AA. In our view, that absence alone does not render ES's claim factually unsustainable.

99 We turn now to the correspondence between the parties from 2013 to 2017.

The correspondence between parties

The October 2013 email

100 ES relies on the 29 October 2013 Email (see [26] above) in support of its case that the Collateral Agreement existed. This was sent by Chang's assistant, Ms Carrie Wong ("Carrie Wong"), to Yang, who was at all material times a director of certain companies within the PSA group (see above at [9]). The email states:

> Dear Mr. Yang,
>
> As you may know, in addition to [ES] holding 5% indirect stake in PPIT, ES also holding 5% indirect stake in PPIT via [Balboa], which in turn owns 30% in PPIT.
>
> Please kindly be informed that it is required to obtain agreement from ES in case there is any dilution in Balboa's 30% stake in PPIT.

101 In his affidavit, Chang explained that Yang had mentioned to him sometime in October 2013 that the PSA group might want to acquire Balboa's shares in PPITSA. Chang was not agreeable to this because ES held 16.665% of the shares in Balboa, whereas it was only entitled to 7.14% of the shares in PSA Panama; therefore, if Balboa's proportion of its shareholding in PPITSA decreased, there would be a net decrease in ES's 10% shareholding as well.

102 ES argues that the email from Carrie Wong supports the existence of the Collateral Agreement. We do not agree. The email makes no mention of the Collateral Agreement. It merely states that ES's agreement was required in the event of any dilution in Balboa's 30% stake in PPIT. On Chang's own case, this was in the context of discussions concerning PSA's possible acquisition of Balboa's existing shares in PPITSA. Hence, it did not pertain to any future capital call.

103 For completeness, we note that Yang did not respond to this email. While ES suggests that the absence of a reply supports its case about the Collateral Agreement, we do not agree. The absence of a reply is unsurprising given the context in which the email was sent.

The May 2014 emails between Chang and Yang

104 The next development was a meeting between Chang and Yang on 21 May 2014 in Hong Kong, after which Chang sent a follow-up email to Yang dated 23 May 2014.

105 The email recorded that Yang had suggested that ES separate and take out 5% of its shareholding in PPITSA. The email also noted that the meeting had discussed Phase 2 of the PPIT Project. According to Chang, Yang had indicated that an additional investment of US$400m would be required for Phase 2. As US$200m was to be raised through equity, every 1% would require an input of US$2m. Chang considered the project cost to be high, having expected the investment to be financed primarily through borrowings.

106 Yang replied by email on 27 May 2014. He clarified that it was Chang who had requested decoupling ES's shares in PPITSA from SLI (meaning Global SLI Management Inc which was another shareholder of Balboa controlled by Liberman). PSA was agreeable to this if and when Phase 2 proceeded.

107 More importantly, Yang elaborated on what had been discussed regarding Phase 2. The estimated project cost was US$400m. SLI had agreed that Balboa's shareholding in PPITSA would be reduced from 30% to 25%. This was on the basis that although SLI would be contributing land for Phase 2, the significant equity contribution required would nonetheless result in a

dilution of its shareholding. The matter of how the 25% shareholding would be split between SLI and ES would have to be settled between them.

108 As for ES's shareholding in PPITSA held through PSA Panama, Yang's email stated that ES's stake would be reduced from 5% to 1.5% on the assumption that ES would not contribute to the additional capital required. In recognition of Chang's contributions and the value of the relationship (between PSA and Chang), Yang stated that PSA was willing to double ES's shareholding from 1.5% to 3% without any additional capital contribution from ES. However, if ES wanted to maintain its shareholding at 5%, it would have to make a capital contribution of US$4m. This was presumably because the difference between the 3% stake offered by PSA and a 5% stake, if so desired by ES, was 2%. As the US$400m required for Phase 2 would be raised equally by equity and by debt, a 2% stake would require a US$4m capital contribution.

109 Yang's email ended with the following two paragraphs:

> After you have come to an understanding with SLI, and after we agree on your beneficial interest from our side of the equation, we are agreeable to your request to consolidate your shareholdings in a single entity to make things more transparent.
>
> I hope the above clarifies, and we can move ahead quickly to an agreement with all parties.

110 Chang replied on 28 May 2014, stating that he wished to maintain the "status quo" due to the lack of information on Phase 2 provided to him. He requested for PSA Panama's latest audited financial statement for the year ending 31 December 2013 as well as the business case for Phase 2, including the business plan and financial forecasts, in order for him to make his investment decision.

111 ES relies on Chang's explanation that by "status quo" he meant that ES should retain its 5% stake in PPITSA going forward into Phase 2 without having to contribute any capital. ES further argues that this is supported by the last sentence of Yang's 27 May 2014 email, in which Yang expressed hope that PSA could "move ahead quickly to an agreement with all parties". ES contends that this sentence indicates that ES's agreement to any dilution of its shareholding in PPITSA was required. Lastly, ES submits that Yang did not execute an affidavit to dispute Chang's account about the "status quo".

112 The PSA defendants disagree with ES's explanation, arguing that Chang knew from Yang's email that ES's shares in PPITSA would be diluted if ES did not contribute capital for Phase 2.

113 In our view, although ES argues that what Chang meant by "status quo" is a matter for trial, it is clear to us that Chang did not mean that he expected ES to retain its 5% interest without any capital from ES. He might have wanted to retain the same number of shares, but he knew this would be diluted in percentage terms without any capital from ES. We reach this position for the following reasons.

114 First, Yang had already told Chang that ES's stake would be reduced from 5% to 1.5% if there was no capital contribution from ES. As a gesture of appreciation, PSA was prepared to increase the 1.5% to 3% without capital contribution from ES. If ES wanted an additional 2% in order to reach 5%, ES would have to contribute US$4m.

115 There was no question of ES retaining a 5% stake in Phase 2 without any capital contribution. Chang was well aware of this, as Yang's email was clear on this point. Chang's reply indicated that he was not, at that stage,

prepared to pay to retain a 5% interest. That was the "status quo". But he was prepared to re-consider that decision, hence his request for more information. If Chang truly meant that ES was entitled to retain 5% in Phase 2 without any capital contribution from ES, there would have been no need for him to seek more information.

116 To the extent that ES relies on Yang's reference to "an agreement with all parties" as supporting the existence of the Collateral Agreement, we consider that ES has taken that reference out of context. The agreement Yang referred to was dependent on whether ES would contribute capital for Phase 2. It did not mean that ES could retain its 5% interest going forward without contributing capital. If that had been Yang's meaning, there would have been no need for him to inform Chang that a capital contribution of US$4m would be required to maintain a 5% stake.

117 In light of the clear meaning of Yang's email, affidavit evidence from Yang was unnecessary.

118 In summary, Chang made no mention of the Collateral Agreement in his 28 May 2014 email to Yang, at a time when one would have expected him to do so. Nor did he assert that ES was in any event entitled to retain its 5% stake without any capital contribution for Phase 2. Indeed, his response suggested the contrary.

The July 2014 emails between Chang and Liberman

119 We now turn to the emails between Chang and Liberman in July 2014. Chang alleged that at their meeting on 3 July 2014, it was agreed that ES's 5% indirect interest in PPITSA through Balboa would be replaced by a direct 5% interest in PPITSA. Liberman, however, denied agreeing to this.

120 ES criticises the Judge for omitting to mention the July 2014 emails in his decision. It submits that the Judge should not have referred to the 27 and 28 May 2014 emails between Chang and Yang without also referring to the July 2014 emails between Chang and Liberman, which ES says are consistent with its position.

121 We reject ES's submission. The July 2014 emails concern only the question of whether ES was to convert its indirect interest into a direct interest in PPITSA. They have nothing to do with the Collateral Agreement and are immaterial to that dispute. We mention the July 2014 emails only because ES seeks to make something out of them.

The April 2015 emails between Chang and Koll

122 Almost a year after the emails in May 2014 between Chang and Yang, Koll sent an email to Chang on 19 April 2015. The email attached a financial update on Phase 2 which PSA wished to discuss with Chang. The email also stated that the CAPEX (*ie*, capital expenses) for Phase 2 was US$410m and explained how those costs would be funded, including through loans, shareholder injections and cash generated from Phase 1 operations.

123 Chang replied on 21 April 2015, stating that he had already requested for Phase 2 CAPEX details at their meeting a few months prior. He reiterated that he still required a breakdown of the Phase 2 CAPEX, given that it was significantly higher than Phase 1. He asked for a split across land cost, equipment cost, civil construction cost, and other components. He indicated that once he received this breakdown, he would seek comments from his financial adviser and revert.

124 On 22 April 2015, Koll replied, explaining that Phase 2 involved 800m of berth, significant dredging of land (with pictures attached), and 42 hectares of land. This was compared to Phase 1 which was 330m of berth and 13 hectares of land. He also provided a budget breakdown for Phase 2 covering civil works and equipment.

125 ES argues that although Chang’s 2015 emails with Koll did not mention the Collateral Agreement, this was unsurprising because Chang understood the project discussed in those emails to be a new and separate project, distinct from the original Phase 2, which would operate under a new project company and “not necessarily PPITSA”. ES’s position is that the area described by Koll in the 2015 emails was entirely different from the area contemplated for the original Phase 2.

126 To bolster this argument, Chang referred to a proviso after cl 7.2(c) of a shareholders’ agreement (dated 24 January 2007) between PSA Panama and Balboa pertaining to their investment in a joint venture company which was eventually PPITSA. The proviso provided that if a shareholder did not wish to participate in Phase 2, the other shareholder could pursue Phase 2 through a separate entity. In short, although ES was not a party to the 2007 shareholders’ agreement, it argues that the reference to a separate entity supports Chang’s belief that PPITSA was not going to be utilised.

127 On the other hand, the Liberman and PSA defendants point out that the proviso merely gives a shareholder the option to pursue Phase 2 through a separate entity where the other shareholder declines to participate in Phase 2. It does not mandate the use of a separate entity. Accordingly, the Liberman and PSA defendants argue that the proviso does not support ES’s case.

128 Furthermore, the Liberman and PSA defendants point out that under cl 7.2(c), before the proviso, if a shareholder was not prepared to fund his proportionate share, then the other shareholder had the option to contribute that funding as a bridging loan to the non-contributing shareholder with interest. If the bridging loan was not repaid in full within one month after the date it was extended, the contributing shareholder was entitled to convert its loan with accrued interest into equity and consequently dilute the share of the non-contributing shareholder. The Liberman and PSA defendants submit that this shows that even as between the direct shareholders in PPITSA, neither could claim the right which ES was claiming, *ie*, the right to refuse consent to a capital call. All the more so, ES did not have such a right.

129 We agree that this argument reinforces the Defendants' position that there was no Collateral Agreement.

130 The real question is whether Chang genuinely believed that the 2015 emails with Koll concerned a different project from that discussed in the 2014 emails with Yang, such that ES's interest in PPITSA would not be diluted if it did not participate in the capital call mentioned in the 2015 emails. In our view, there is nothing in the 2015 emails to support such a belief: they contain no indication that the parties were discussing a different project to be undertaken through an entity other than PPITSA or that ES's interest in PPITSA would remain unaffected if it declined to participate in the capital call.

131 This conclusion is reinforced by the fact that in subsequent communications, ES never asserted that Chang had been unaware of the dilution risk because he believed a different entity would be used for a different project. Instead, as alluded to above, the complaint raised was simply that no formal capital call had been made.

132 In any event, even if Chang had genuinely believed at the time that the 2015 emails concerned a different project to be undertaken by a different entity, he subsequently came to know that Phase 2 was in fact undertaken by PPITSA and that ES's shares had been diluted. Yet at no point did he assert that ES would have wished to participate in the capital raising which resulted in the 1st or 2nd Dilution, or that ES was entitled to withhold consent to it.

The 2016 correspondence

133 We turn now to the events in 2016. Sometime before 27 September 2016, Mr Vincent Ng ("Ng") of the PSA group had sent Carrie Wong the annual report of PSA Panama for the year ended 31 December 2015.

134 On 27 September 2016, Carrie Wong sent Ng an email seeking clarification on why PSA Panama's investment in PPITSA had dropped from 70% to 27.6% (*ie*, after the 1st Dilution).

135 Ng replied on 3 October 2016. He said that this was due to significant investments required for Phase 2. The cost was US$450m and a separate vehicle had been used to procure the capital. He noted that the rationale and detailed business plan for Phase 2 had previously been provided to Chang, and that no response had been received from Chang indicating his interest in Phase 2.

136 Significantly, Ng stated that US$150m was funded by debt and the remaining US$300m would be funded by shareholders. Ng further stated that PSA would welcome ES's participation in Phase 2. In particular, Ng stated:

> …In order to obtain a 5% beneficial in Phase 2 (in line with Phase 1), the pro-rata equity contribution required from you would be USD 15 mil. Please let us know should you require additional information to facilitate your deliberations.

We note that this statement suggests that Ng was unaware of Yang's earlier offer that ES need only pay for an additional 2% to retain its 5% interest. Nothing, however, turns on Ng's unawareness of this.

137 Carrie Wong responded on 6 October 2016. She conveyed that Chang was travelling for the next two weeks and that he was not satisfied with Ng's clarification on the dilution. Chang could only recall a meeting in Hong Kong almost two years ago at which he had been verbally informed of an expansion proposal and its likely scale as mentioned in Ng's email. However, Chang could not recall any conclusive decision being reached at that meeting in Hong Kong. He did not recall any formal discussion about raising additional equity in relation to ES's interest in PSA Panama, which held a 70% stake in PPITSA. He wished to discuss the matter further with his financial and legal advisers upon his return from Hong Kong, particularly regarding Ng's statement that "a separate vehicle has been used to procure the capital for this expansion". He maintained that PPITSA, as Phase 1 of the project, should be kept distinct and separate from Phase 2, and that ES still owned a 5% indirect interest in PPITSA through PSA Panama.

138 Ng replied on 14 October 2016, referring to Koll's earlier email of 19 April 2015 to Chang regarding the CAPEX expansion and a proposed meeting, and noting that Chang had not replied to that email. We pause to note that this is not accurate. Chang did reply to Koll on 21 April 2015, and Koll responded with further information on 22 April 2015, as mentioned at [123]–[124] above. This inaccuracy is, however, immaterial.

139 In the same reply of 14 October 2016, Ng explained that the use of a separate vehicle for Phase 2 had not been detrimental to ES, as ES's equity interest would have been diluted to the same extent had the capital injection

taken place through PSA Panama. We pause to clarify that by "a separate vehicle", Ng must have meant that the additional funds were raised by investors in PPITSA other than PSA Panama, and not that a vehicle other than PPITSA had been used for Phase 2. By this point, it was undisputed that PPITSA had proceeded with Phase 2.

140 Significantly, Ng's email of 14 October 2016 also mentioned that, as a holder of restricted shares carrying only the right to receive dividends, ES was not entitled to subscribe to further shares in PSA Panama. Notwithstanding this, PSA had invited ES, via Ng's email of 3 October 2016, to contribute its *pro-rata* share of the funding for Phase 2, amounting to US$15m.

141 Carrie Wong responded on 17 October 2016, contending that the invitation on 3 October 2016 for ES to inject its *pro-rata* share for Phase 2 was out of time and irrelevant, as Phase 2 was a separate and distinct project as stated in PSA Panama's 2015 annual report. She reiterated that ES owned an indirect interest of 5% in PPITSA through PSA Panama, and that ES could not recall receiving any capital call notice from PSA Panama to subscribe for additional shares for Phase 2 in order to maintain PSA Panama's 70% shareholding in PPITSA.

142 Importantly, Carrie Wong's response in her email dated 17 October 2016 made no mention of the Collateral Agreement, even though she was the one who had sent the 29 October 2013 Email (see [100] above) on which ES relies.

143 Mr Vaën Vercruysse ("Vercruysse"), Regional Legal Counsel of EuroMed & Americas of PSA, replied to Carrie Wong on 24 October 2016. He reiterated that ES owned restricted shares in PSA Panama with the sole right

being to receive dividends. Notwithstanding this, PSA had invited ES to make a further investment in order to maintain its 5% interest in PPITSA through PSA Panama.

144 On 31 October 2016, Carrie Wong responded with a letter attached to her email. A copy of that letter is not before this court.

The 2017 correspondence

145 Turning to the 2017 correspondence, we begin with a letter dated 24 February 2017 from Chang to the Group Chairman of PSA International. In his letter, Chang stated that when PSA's management had approached him approximately three years earlier about plans for a new and larger terminal, he had been told that if he did not participate, ES's beneficial interest would be diluted – a prospect he strongly disagreed with and objected to. He stated that he had been kept in the dark on further developments, save for what he had heard from the local media. To his horror, he had discovered at some point in 2016 that ES's interest in PPITSA had been substantially diluted. He had sought clarification but had not received any response since Carrie Wong's last email dated 31 October 2016.

146 Chang expressed that he had always placed considerable trust and faith in the way Singapore companies treat their minority shareholders, and that PSA's management had dampened his trust in this regard. Chang complained about the "insidious" way in which the dilution had been carried out. He expected, at a minimum, that there would be a formal process through which he could indicate whether he wished to participate in the new investment – "[l]ike a capital call through the special purpose corporate structure". He also maintained that he did not see the new terminal as having anything to do with

PPITSA. Chang ended the letter by saying that the matter was important to him personally, both in terms of the creditability and trust.

147 Importantly, not once in the letter did Chang allude to the Collateral Agreement or any breach of it.

148 The group Chairman of PSA International did not reply to Chang's letter. Instead, on 25 February 2017, Vercruysse sent an email to Carrie Wong, apparently in response to the letter she had attached to her email of 31 October 2016 (see above at [144]). Vercruysse stated that Phase 2 could not be regarded as separate from Phase 1, and both phases would be managed and operated as a single integrated facility. He also confirmed that PPITSA had secured all the necessary approvals for Phase 2.

149 Carrie Wong responded on 1 March 2017. Setting aside the question of whether Phase 2 was distinct from Phase 1, she stressed that ES had never received any capital call from PSA Panama. She stated that it was "bewildering" to ES and its accountant as to how PSA Panama's stake in PPITSA could be diluted without a capital call from PPITSA to PSA Panama. ES was concerned about the lack of transparency which demonstrated a total disregard for ES as a 10% minority shareholder in PPITSA. Once again, however, there was no mention of the Collateral Agreement.

150 Vercruysse replied on 3 March 2017, referring to the Consultancy Agreement and reiterating that ES held restricted shares and was not entitled to any further allotment of shares in PSA Panama unless expressly agreed by the parties. He also stated that ES's interest in PPITSA through PSA Panama never exceeded 5% and this was contrary to the 10% mentioned in Carrie Wong's email.

151 On 9 March 2017, Carrie Wong responded by forwarding a letter of the same date. In that letter, she maintained that ES holds a 10% interest in PPITSA, *ie*, 5% through PSA Panama and 5% through Balboa. She did not agree that ES only owned restricted shares. She repeated that if PPITSA needed additional capital, it should make a formal capital call to its two shareholders, *ie*, PSA Panama and Balboa. Again, this letter did not mention the Collateral Agreement.

152 Vercruysse replied on 22 March 2017. He reiterated that the Consultancy Agreement contains the entire agreement between PSA and ES, and expressly states that ES merely owns restricted shares in PSA Panama. He further noted that PSA had met Chang in 2015 to inform him about Phase 2 and had invited his participation, and that the relevant details had been provided on 19 April 2015. He stated that ES had not requested additional information – which, as we have noted above at [138], is not accurate. He further noted that on 3 October 2016, Chang had again been invited to inject capital to maintain ES's 5% interest in PPITSA, but that PSA had never received any indication from ES that it was willing to contribute capital for Phase 2.

153 Taken together, the correspondence between the parties shows that not only did ES fail to mention the Collateral Agreement at all material times, but its grievance was based on an entirely different reason, namely, the absence of a capital call. If ES truly possessed an absolute right to prevent dilution without its consent – which would, in any event, be contrary to commercial sense – its complaint would not merely be that it had not been afforded an opportunity to contribute further capital to avoid that very dilution. In the circumstances, we are of the view that the correspondence between the parties reveals that the Collateral Agreement is a fiction.

The Criminal Complaint

154 On 8 August 2024, ES filed the Criminal Complaint in Panama against several parties including most, if not all, the 12 defendants in OC 34. The Criminal Complaint set out the history of the parties' dealings that led to the dilution of ES's interest in PPITSA. It also stated:

> As has been demonstrated, this is not a breach of contract; rather, it involves a fraudulent network structure designed to deceive and mislead [ES] into believing it was receiving compensation when, in fact, it was not.

155 The Liberman and PSA defendants submit that this part of the Criminal Complaint demonstrates that ES is not complaining about a breach of contract, namely, the Collateral Agreement, but about fraud against ES. Further, the Criminal Complaint does not refer to the Collateral Agreement or the fact that ES's consent is required for any change in the shareholding structure of PPITSA.

156 However, the Judge was of the view that the Criminal Complaint was equivocal as regards the Collateral Agreement (see above at [35]).

157 We need not decide if the Judge had erred in his assessment that the Criminal Complaint did not necessarily suggest that the Collateral Agreement did not exist. In our view, notwithstanding the fact that Teh did not file any affidavit to deny the Collateral Agreement (as discussed above at [88]–[89]), the other documentary evidence we have referred to overwhelmingly demonstrates that the Collateral Agreement is a fabrication by Chang, and one that is contrary to commercial common sense. This does not mean that we have undertaken a minute or protracted examination of the evidence, or weighed competing oral evidence to determine which party's account should be preferred. That is precisely the kind of exercise a court should avoid in a

striking-out application. Rather, we have confined ourselves to a careful examination of the objective evidence and considered whether it is consistent with ES's account.

158 Given our finding that the Collateral Agreement is a fiction, there cannot be a breach of an agreement. Neither can any of the Defendants be liable for inducing such a breach.

159 Before turning to the remaining claims, we note that ES accepts that if this court finds that the Collateral Agreement does not exist, its claims for breach of contract, inducement of breach of contract, breach of fiduciary duty, dishonest assistance, and conspiracy by unlawful means (to the extent that it is predicated on the Collateral Agreement) would similarly fail. Thus, whilst it is strictly unnecessary for us to address some of these claims, we do so briefly for completeness. We strike out the remaining claims as being factually and/or legally unsustainable under O 9 r 16(1)(*c*) of the ROC 2021 and also under the inherent jurisdiction of the court.

Whether the claim for breach of trust and fiduciary duties should be struck out

160 Although a heading in the ASOC mentions "Breach of trust and fiduciary duties" which suggests that ES is bringing a claim for breach of trust against the parties, there is no substantive allegation in the ASOC about a trust as such. Instead, what the ASOC mentions is that the relationship between ES, PSA International and Liberman was based on mutual trust, understanding and confidence, particularly in relation to ES's 10% interest in PPITSA. Accordingly, the ASOC alleges that ES had a legitimate expectation that PSA International and Liberman would not utilise their positions to adversely affect

ES's 10% interest and that these parties owed fiduciary obligations to ES which they breached.

161 We note that a fiduciary obligation may arise: (a) where one party has undertaken to act for or on behalf of another in a particular matter, giving rise to a relationship of trust and confidence; (b) where one party has assumed responsibility in respect of the conduct of another's affairs; or (c) where the relationship between the parties gives rise to a legitimate expectation that one party will not utilise his or her position in a manner adverse to the interests of the other (*Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 ("*Turf Club*") at [42]; see also *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654 at [192]–[194] and *How Weng Fan v Sengkang Town Council* [2023] 1 SLR 707 at [170]–[175]). We further acknowledge that *ad hoc* fiduciary duties may arise even outside the settled categories of fiduciary relationships, provided the circumstances justify their imposition (*Turf Club* at [43]). As the Court of Appeal observed in *Turf Club* at [43], parties in a joint venture may or may not share a fiduciary relationship but much will depend on the particular circumstances of their relationship. That said, the Court of Appeal cautioned that courts should be slow to impose fiduciary obligations on parties to a purely commercial relationship, as it is generally inappropriate to expect a commercial party to subordinate its own interests to those of another (*Turf Club* at [45]).

162 We agree with the Liberman and PSA defendants that this was a commercial venture entered into by the parties at arm's length and on equal footing. Each party was allocated shares in PPITSA commensurate with the extent of their respective contributions to the PPIT Project, reflecting the profit-sharing arrangements that had been negotiated and agreed upon between them. In such commercial circumstances, it is difficult to see how either the Liberman

defendants or the PSA defendants could be said to have voluntarily undertaken to act in the best interests of ES.

163 In any case, this point is moot given that ES relies on the Collateral Agreement as the basis for the fiduciary duties alleged. Given our finding that no such agreement exists, this claim must necessarily fail (see also GD at [57]). It is our view that the allegation of a fiduciary obligation is an attempt to create a cause of action when none arises.

Whether the claim for dishonest assistance should be struck out

164 Likewise, in so far as ES claims that some of the Defendants had assisted PSA International and Liberman in breaching their fiduciary obligations, this claim must also fail since there was no fiduciary obligation to begin with.

Whether the claim for conspiracy to injure by unlawful means should be struck out

165 The ASOC also pleads that the Defendants engaged in a conspiracy to injure ES by unlawful means. To recapitulate, the Judge was of the view that this claim failed because the ASOC was defective. For all the allegations made in the ASOC, ES failed to plead how the alleged conspirators had combined to act wrongfully against ES (see GD at [104]; see above at [37]).

166 We are of the view that the conspiracy claim fails for various reasons.

167 To the extent that the conspiracy claim is based on the breach of the Collateral Agreement, it must fail since we find that the Collateral Agreement did not exist.

168 Likewise, to the extent that the conspiracy claim is based on the breach of fiduciary obligations and dishonest assistance of such breaches, it also fails since we find there was no fiduciary obligation owed by PSA International or Liberman to ES.

169 We now come to the third group of allegations under the conspiracy claim. Here the ASOC alleges that Yang and Tan owed fiduciary duties to PSA Panama as its directors. These individuals had caused PSA Panama to grant security to certain financiers over PSA Panama's only asset to secure the debts of PPITSA which disproportionately benefitted PSA Pacific at the expense of PSA Panama. The only asset of PSA Panama was its shares in PPITSA.

170 A similar allegation is made against Liberman and Diamond as directors of Balboa. These individuals had allegedly caused, procured or approved Balboa's conduct in entering into certain security arrangements in which Balboa pledged its shares in PPITSA to a financier of Phase 2. This disproportionately benefited Harder Road at the expense of Balboa.

171 However, other than stating the steps taken by PSA Panama and Balboa to grant security over assets to certain financiers, there is no mention of the alleged agreement between the conspirators or who they were. The ASOC is deficient in this regard.

172 Moreover, to succeed in a claim for conspiracy by unlawful means, a claimant must show that (*EFT Holdings, Inc v Marinteknic Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [112]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the claimant by those acts;

(c) the acts were unlawful;

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

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

173 It is not clear from the ASOC how the arrangement disproportionately benefitted Harder Road at the expense of Balboa. Neither is it clear as to how the arrangement by PSA Panama disproportionately benefitted PSA Pacific.

174 These security arrangements and disproportionate benefits are also not mentioned in Chang's affidavit to resist the application for striking out. Furthermore, the ASOC at paragraph 40 pleads that as a result of the conspiracy, ES has suffered loss and damage as pleaded in paragraph 32 of the ASOC. However, paragraph 32 of the ASOC mentions the loss and damage arising from the 1st Dilution and 2nd Dilution only. It does not mention loss and damage arising from the security arrangements.

175 Finally, ES pleaded conspiracy to injure by unlawful means through breaches of Panamanian law. The land earmarked for Phase 2 was land over which Liberman held only a concession right through another entity. Under Panamanian law, concession lands, being exclusive state property, cannot be used or negotiated as a private party's own asset, and Liberman's contribution of that concession land as sole payment for additional shares in PPITSA was therefore unlawful, contravening Articles 21 to 24 and 26 of the Panama Corporations Law and Article 1122 of the Civil Code of Panama. The Defendants either knew of this unlawfulness, deliberately avoided inquiry into

it or were recklessly indifferent to it, but still accepted Liberman to use the concession land as symbolic and sole contribution for the additional PPITSA shares allotted to and subscribed by Harder Road. Further, Yang and Liberman, as directors of PPITSA, failed to comply with their obligations under Articles 21 to 24 and 26 of the Panama Corporations Law in authorising the issuance of PPITSA's share capital. However, as ES did not rely on this allegation in its written submissions, it is unnecessary for us to consider it further.

176 Accordingly, we are of the view that the conspiracy claim should be struck out as well.

Whether the claims premised on the 1st Dilution are time-barred and should be struck out

177 Lastly, the Judge was of the view that the claim for loss arising from the 1st Dilution was time-barred under Singapore law because the 1st Dilution had occurred more than six years before OC 34 was filed (GD at [93]–[95]). We address this issue, although it is academic in light of our findings above. In so far as some of the defendants also rely on a time bar or limitation defence under the law of Panama, it is unnecessary to address this defence further.

178 To overcome the time bar, ES filed the ASOC, pleading that the Collateral Agreement imposes a continuing obligation to maintain ES's 10% interest in PPITSA and not to alter it without ES's prior consent, and that the 1st Dilution constitutes a continuing breach of that obligation, such that time continues to run and the claim is not time-barred.

179 We do not think this amendment assists ES. If ES were correct, time would never begin to run against it, which cannot be right. In this regard, we agree with the Court of Appeal's endorsement in *IPP Financial Advisers Pte*

Ltd v Saimee bin Jumaat [2020] 2 SLR 272 ("*IPP Financial Advisers*") at [54] of the majority of the Privy Council in *Maharaj v Johnson* [2015] UKPC 28 at [35]: if such an "artifice" of a continuing duty were relied upon, the duty might endure for very many years, contrary to the public policy against the ventilation of ancient claims.

180 The cases relied upon by ES are distinguishable. In each case, the *nature* of the obligation was such that the defendant's continuing conduct or omission itself constituted a continuing or fresh breach. However, these cases do not establish that a breach is continuing merely because the consequences of an earlier breach continue to subsist.

(a) In *Nalli Kuppuswami Chetti and Nalli Ramanathan v Nalli Pte Ltd* [2022] SGHC 109, the High Court held that the defendant's continued use of "Nalli" in ways which breached the deeds of settlement constituted continuing breaches. Thus, even if the offending conduct had commenced more than six years prior to the suit, the plaintiffs could still claim in respect of its continuation *within* the six-year limitation period (at [82], [84]–[85]). Significantly, the High Court distinguished *IPP Financial Advisers*, where the breach occurred when the negligent misrepresentations were made and only the resulting damage continued thereafter (at [85]). The High Court's findings on the limitation defence were not challenged on appeal: see *Nalli Pte Ltd v Nalli Kuppuswami Chetti and Nalli Ramanathan* [2024] SGHC(A) 18 at [39].

(b) In *Lim Check Meng v Orchard Credit Pte Ltd* [1997] 2 SLR(R) 709, the respondent was subject to an implied term obliging it to afford the appellant quiet enjoyment of a hired vehicle. The vehicle was seized and remained out of the appellant's possession for over two years. The

High Court held that the breach was not complete upon the initial seizure. Rather, there was a fresh breach of the implied term on each day that the vehicle was not returned to the appellant's possession and enjoyment (at [19]).

(c) In *Singapore Airlines Ltd v CSDS Aircraft Sales & Leasing Inc* [2021] 5 SLR 26, the defendant was required under an aircraft purchase agreement to pay the balance purchase price by a stipulated date, but failed to do so. Although the plaintiff initially commenced proceedings seeking specific performance and payment of the balance purchase price, it subsequently terminated the agreement on the basis of the defendant's continuing non-payment. The Singapore International Commercial Court held that while the contract remained in force, "[e]very day which passed presented a fresh opportunity to pay", and the continuing failure to do so constituted a continuing breach. The continuing failure to pay amounted to repudiatory conduct which the plaintiff was entitled to act upon (at [97]). This case did not concern the accrual of a cause of action for limitation purposes.

181 We agree with the PSA defendants that these cases are distinguishable. The obligation alleged by ES is, at its highest, an obligation to seek ES's consent before altering the shareholding structure. If such an obligation existed, it was breached when the dilution occurred in December 2015 without ES's consent. Thereafter, there was no outstanding obligation to obtain prior consent that remained capable of performance, and hence no fresh breach with each passing day. The fact that the resulting dilution continued reflects, at most, the continuing consequences of the alleged breach, rather than a continuing breach of the obligation itself. In this regard, it appears that ES has conflated a

continuing obligation/breach with continuing damage (see *IPP Financial Advisers* at [49]).

182 Furthermore, ES has not pleaded any fresh loss or damage suffered within the six years preceding the commencement of OC 34. The only loss pleaded is the reduction of ES's effective shareholding in PPITSA, which crystallised upon the 1st Dilution in December 2015 and falls outside the relevant limitation period.

Conclusion

183 In the circumstances, we dismiss the appeals by ES in their entirety.

184 As to costs, the costs orders made by the Judge below are undisturbed. As regards the costs of these appeals, the Defendants have succeeded and costs should follow the event. Having regard to the guidelines set out in Appendix G to the Supreme Court Practice Directions 2021, the complexity of the matter, and the fact that the appeals were determined on paper without an oral hearing, we fix costs as follows:

(a) ES shall pay the Liberman defendants costs of AD 8 fixed at $30,000 all-in;

(b) ES shall pay the PSA defendants costs of AD 9 fixed at $30,000 all-in; and

(c) ES shall pay PPITSA costs of AD 10 fixed at $20,000 all-in.

185 As regards the costs of OC 34 (*ie*, the action itself), we fix costs as follows:

(a) ES shall pay the PSA defendants costs of $18,000 all-in;

(b) ES shall pay PPITSA costs of $16,000 all-in; and

(c) ES shall pay the Liberman defendants costs of $18,000 all-in.

186 The usual consequential orders apply.

Woo Bih Li Judge of the Appellate Division	Debbie Ong Siew Ling Judge of the Appellate Division

Jordan Tan, Victor Leong and Lim Jun Heng (Audent Chambers LLC) (instructed);
Nicholas Poon Guokun and Michael Chan Karfai (Breakpoint LLC) (instructing) for ES (the appellant in all the appeals);
Danny Ong Tun Wei SC, Teo Jason and Lee Jin Loong (Setia Law LLC) for the Liberman defendants (the respondents in AD/CA 8/2026);
Lee Eng Beng SC, Vellayappan Balasubramaniyam and Shawn Tien Si Yuan (Rajah & Tann Singapore LLP) for the PSA defendants (the respondents in AD/CA 9/2026);
Jason Chan Tai-Hui SC, Melissa Mak Sushan, Ong Ken Wei and Stanley Woo Wei Siang (Allen & Gledhill LLP) for PPITSA (the respondent in AD/CA 10/2026).
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