IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 56

Suit No 867 of 2015

Between

Ng Kian Huan, Edmund

… Plaintiff

And

(1) Suying Metropolitan Studio Pte Ltd
(2) Suying Design Pte Ltd
(3) Tan Teow Feng Patty

… Defendants

And

(1) Tan Teow Feng Patty
(2) Suying Metropolitan Studio Pte Ltd

… Plaintiffs in Counterclaim

And

(1) Ng Kian Huan, Edmund
(2) Metropolitan Office Experimental Pte Ltd
(3) Chong Chin Fong

… Defendants in Counterclaim

Version No 2: 27 Oct 2020 (22:41 hrs)

JUDGMENT

[Companies] — [Oppression] — [Minority shareholders]
[Equity] — [Remedies] — [Indemnity]

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND **3**

EDMUND'S CLAIM **8**

WHAT WERE THE TERMS OF THE ORAL AGREEMENT? **9**

NO RECORDS OF THE USE OF SMSPL'S RESOURCES WERE KEPT 10

PAYMENTS BY MOX TO SMSPL 11

Payment of $100,000 in October 2012 ..... *12*

Payments in 2013 and 2014 amounting to $148,000 ..... *13*

PAYMENTS BY SDPL TO SMSPL 15

Payment of $600,000 ..... *15*

Payment of $719,652.02 ..... *18*

ODE TO ART'S TRANSFER OF $162,193.93 TO SMSPL 24

OTHER EVIDENCE 24

SDPL's unbilled fees vs MOX's unbilled fees; no due diligence *24*

Patty's email dated 8 August 2015 ..... *25*

Parties' witnesses *26*

CONCLUSION ON THE TERMS OF THE ORAL AGREEMENT 26

EDMUND'S CLAIM UNDER S 216 ..... **27**

PAYMENT OF $1,164,580 TO PATTY ON 15 JULY 2015 28

PAYMENT OF $1,642,510.99 TO SDPL 32

DENIAL / OBSTRUCTION OF ACCESS TO SMSPL'S FINANCIAL DOCUMENTS 37

CLAW-BACK OF DIRECTOR'S FEES AND DIVIDENDS 40

Version No 2: 27 Oct 2020 (22:41 hrs)

Edmund's director's fee for 2012 ..... *41*

Edmund's director's fee for 2013 ..... *44*

Payment of dividends for 2012 ..... *45*

Payment of dividends for 2013 ..... *47*

FAILURE TO PAY EDMUND'S SALARY FOR OCTOBER 2015 51

EXCLUDING EDMUND FROM DECISION-MAKING 52

ANNEX A – FEES FROM SDPL'S PRE-INCORPORATION PROJECTS 54

ANNEX B – FEES COLLECTED BY SDPL FOR POST-INCORPORATION PROJECTS 55

Items 1–16 ..... *55*

Items 17–36 ..... *56*

ANNEXES C1 AND C2 – CHINA PROJECTS 60

ANNEX D - GST WRONGFULLY INCURRED 61

$130,000 paid by Keppel Bay *62*

Annex D *62*

ANNEX E – FF&E EXPENSES PAID BY SMSPL 63

ANNEXES F1–F3 AND G – PATTY'S ACCRUAL OF MONIES TO HERSELF 63

ANNEXES H1 AND H2 – PURCHASES IN ADVANCE 65

SMSPL'S PAYMENT OF $50,048 FOR SALARIES OF SDPL'S EMPLOYEES 65

PAYMENT OF SDPL'S INCOME TAX AND GST 67

WRITING OFF $194,290.08 OWED BY SDPL 67

OTHER WRONGFUL REDUCTIONS OF SMSPL'S REVENUE 68

SMSPL'S PAYMENT OF RENT, OVERHEADS AND SALARIES AFTER APRIL 2016 69

PAYMENT TOWARDS PATTY'S BEDOK PROPERTY 69

SUMMARY OF FINDINGS OF FACT IN EDMUND'S S 216 CLAIM 70

Version No 2: 27 Oct 2020 (22:41 hrs)

WHETHER EDMUND'S S 216 CLAIMS ARE BASED ON PERSONAL WRONGS 74

The law *74*

Applying the law to the facts *77*

WHETHER EDMUND'S OPPRESSION CLAIMS SATISFY THE TEST OF FAIR DEALING 80

ORDER IN RESPECT OF EDMUND'S S 216 CLAIM 81

EDMUND'S CLAIMS AGAINST SDPL 81

CLAIM FOR REPAYMENT OF $1,642,510.99 81

CLAIMS IN RESPECT OF ANNEXES A, B, AND C 81

CLAIM FOR REPAYMENT OF $50,048 82

CLAIM FOR REPAYMENT OF $363,797.75 83

CLAIM RELATING TO $102,239.49 PAID BY SMSPL FOR THE BENEFIT OF SDPL 83

EDMUND'S CLAIMS AGAINST PATTY 84

CLAIM FOR $672,000 84

CLAIM FOR $130,000 84

CLAIMS RELATING TO LOSSES INCURRED BY SMSPL 84

Claim for $38,736.27 being GST losses incurred *84*

Claim for $1,624,992.99 ..... *84*

Consultancy fees of $270,000 set off against purchases in advance *86*

SMSPL's sales revenue of $4,754,623 set off against purchases in advance *87*

$1,593,778.38 - purchases in advance in Annexes H1 and H2 ..... *87*

$49,042.94 paid by SMSPL in respect of salaries of staff *87*

EDMUND'S CLAIMS AGAINST SMSPL 87

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL'S COUNTERCLAIMS 88

SMSPL'S COUNTERCLAIM FOR AN INDEMNITY – LOAN FROM UOB TO JAZZ 88

SMSPL'S COUNTERCLAIM FOR AN INDEMNITY – ARCHITECTURAL SERVICES 90

SMSPL'S COUNTERCLAIM FOR DIVERSION OF BUSINESS 91

22 Dunbar Walk *92*

Level 1 KK Women's & Children's Hospital *92*

Starhub at Plaza Singapura *93*

246 Telok Kurau Road *93*

Burger King *94*

13B East Coast Road *94*

Kim Chuan Façade *95*

12 Ewart Park *95*

Central Christian Church *96*

Play United at Plaza Singapura *97*

Beijing House Gallery *97*

Cambodia project *98*

KL Ode to Art Retail Shop *98*

6 Victoria Park *99*

Sentosa House *99*

7 Holland Green *99*

Starhub at Tampines Mall *100*

Hood Bar & Café *100*

Tanglin Trust School – The Point *100*

SMSPL'S COUNTERCLAIM FOR UNAUTHORISED DISCLOSURES OF CONFIDENTIAL INFORMATION 101

SMSPL'S COUNTERCLAIM FOR EXPOSING SMSPL TO CLAIMS 102

463 MacPherson Road *102*

Version No 2: 27 Oct 2020 (22:41 hrs)

The Radius Projects *104*

The Rustomjee projects *106*

Transcon (Auris project) *107*

Olympia projects *108*

Mr Sun's apartment in Xiamen, China *109*

15 Coral Island *110*

SMSPL'S COUNTERCLAIM IN RESPECT OF EDMUND'S VEHICLE ALLOWANCE 111

SMSPL'S COUNTERCLAIM FOR MONIES PAID BY YUANZHOU SHANGHAI HOTEL 111

SMSPL'S COUNTERCLAIM RELATING TO VENICE BIENNALE EXPENSES 113

SMSPL'S COUNTERCLAIM AGAINST MOX FOR REIMBURSEMENT FOR USE OF RESOURCES 115

SMSPL'S COUNTERCLAIM AGAINST JAZZ – OUTSTANDING INVOICE FOR 22 DUNBAR WALK 115

SMSPL'S COUNTERCLAIM AGAINST EDMUND AND MOX – MISCELLANEOUS EXPENSES 117

Claim for $19,938.77 ..... *118*

Claim for $6,676.42 ..... *118*

Claim for $16,892.52 ..... *119*

Claim for $4,518.95 ..... *119*

PATTY'S COUNTERCLAIM 120

CONCLUSION 121

Version No 2: 27 Oct 2020 (22:41 hrs)

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.

Ng Kian Huan Edmund
v
Suying Metropolitan Studio Pte Ltd and others

[2019] SGHC 56

High Court — Suit No 867 of 2015
Chua Lee Ming J
20-23, 27-28 March, 3-6, 10-13, 17-20, 24-25 April 2018

5 March 2019 Judgment reserved.

Chua Lee Ming J:

Introduction

1 In 2012, the plaintiff, Mr Ng Kian Huan, Edmund ("Edmund"), the 3rd defendant, Ms Tan Teow Feng Patty ("Patty"), and two others agreed to join forces and formed a new company, Suying Metropolitan Studio Pte Ltd ("SMSPL"). Edmund and Patty were the major shareholders. Edmund was then running an architectural firm, Metropolitan Office Experimental ("MOX"), while Patty ran an interior design company, Suying Design Pte Ltd ("SDPL"). Patty was planning to retire by 2012 or 2013 and the plan was for Edmund to continue to run the business. Unfortunately, the joint enterprise did not last long. The disputes that arose became intense and personal and resulted in the present proceedings in which both Edmund and Patty have made numerous allegations against each other.

2 On 24 August 2015, Edmund commenced this action against SMSPL (the 1st defendant), SDPL (the 2nd defendant) and Patty. Edmund's main claim was that of minority oppression against Patty, pursuant to s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act"). As against SMSPL, Edmund sought certain orders in relation to, among other things, the director's fees and dividends that he had received as well as those that were outstanding. Edmund also sought orders requiring SDPL and Patty to, among other things, pay certain sums of money back to SMSPL.

3 SMSPL counterclaimed against Edmund for, among other things, repayment of director's fees and dividends received by Edmund, breach of director's duties, and breach of duties of good faith and fidelity. SMSPL's counterclaim also included conspiracy claims against Edmund and MOX (the 2nd defendant in the counterclaim), and against Edmund and Ms Chong Chin Fong ("Jazz") (the 3rd defendant in the counterclaim). Jazz is Edmund's wife and was, until the disputes started, a close friend of Patty.

4 Initially, Patty's counterclaim was for an order to authorise proceedings in SMSPL's name or on behalf of it, against Edmund. After Patty filed her defence and counterclaim, SMSPL amended its defence to include its counterclaim against Edmund. Patty's counterclaim is therefore moot save that Patty counterclaims for the costs of having had to raise her counterclaim.[1]

5 After the witnesses had given their evidence, parties exchanged written closing submissions on 11 May 2018 and reply closing submission on 25 May 2018. On 4 July 2018, SDPL filed a response to three points in Edmund's reply submissions and Edmund filed his response on 13 July 2018.

Version No 2: 27 Oct 2020 (22:41 hrs)

Background

6 Jazz first introduced Edmund to Patty on 10 November 2011. A second meeting followed sometime in December 2011. A third meeting was held later, also in December 2011, in the presence of Mr Lim Chai Boon ("Chai Boon"), an architect and partner in another architectural company, Swan & Maclaren Pte Ltd ("Swan & Maclaren"). A fourth meeting was held in early January 2012 between Edmund, Patty, Chai Boon, and Ms Anita Chui ("Anita"), who owned an interior design firm, Chiu Design Associates Pte Ltd ("Chiu Design"). Anita and Chai Boon were long-time friends of Patty, and were invited to invest in SMSPL.[2]

7 These four meetings culminated in an oral agreement among Edmund, Patty, Anita and Chai Boon ("the Oral Agreement"). SMSPL was subsequently incorporated on 20 February 2012 ("the Incorporation Date"). Patty held 40% of SMSPL's shares. Edmund held 35%, Anita held 20% and Chai Boon held 5%.[3] Chai Boon did not pay for his shares and eventually decided to withdraw from SMSPL. On 7 July 2014, Chai Boon's shares (which had been paid for by Patty by then) were transferred to one Mr Shawn Lim ("Shawn") who was then a director and an employee of SMSPL. Shawn resigned as an employee on 4 August 2014 and ceased to be a director of SMSPL on 13 August 2014. His 5% shareholding was transferred to Patty on 21 August 2014 and on 24 March 2015, Patty transferred 5% of her shareholding in SMSPL to Ms Martinez Gejane Siman ("Ane"), a former employee of SDPL.[4]

8 It was common ground that the Oral Agreement was for a merger of MOX and SDPL to form SMSPL, and that all new businesses would be undertaken by SMSPL. Following the incorporation of SMSPL, all the employees of MOX and SDPL were transferred to SMSPL. Foreign staff

Version No 2: 27 Oct 2020 (22:41 hrs)

nominally continued to be employed by MOX and SDPL as their employment passes were not transferrable. Chiu Design had ceased operations before SMSPL was incorporated.[5]

9 What was in dispute was the treatment of amounts received by MOX and SDPL from projects that were in existence on the Incorporation Date ("pre-incorporation projects"). Edmund alleged that the agreement was that the amounts received by MOX and SDPL, pursuant to invoices dated after the Incorporation Date, were to be transferred to SMSPL, after deducting the expenses incurred.[6] Patty's version was that MOX and SDPL would continue to own the revenue from their respective pre-incorporation projects (even if invoiced after the Incorporation Date), but MOX and SDPL had to reimburse SMSPL for the use of its resources (primarily manpower).[7]

10 From 2012 to 2015, MOX and SDPL effected various transfers of monies to SMSPL. The reasons for these transfers are in dispute. Edmund and Patty each argued that these transfers supported their respective versions of the Oral Agreement.

11 Edmund received $200,000 as director's fee and $48,700.05 as dividends for 2012. As for 2013, Edmund's director's fee was $315,000 (of which he has received $50,000) and his share of dividends was $280,000 (of which he has received $150,000). In these proceedings, SMSPL and Patty alleged that the director's fee paid to Edmund for 2012 was a loan and that it was agreed on 22 June 2015 that with respect to Edmund's director's fee for 2013, the outstanding amount of $265,000 would be loaned to SMSPL as working capital.[8] SMSPL and Patty further alleged that the declarations of

Version No 2: 27 Oct 2020 (22:41 hrs)

dividends for 2012 and 2013 were made under a mistake of fact as to what SMSPL's profits were.[9]

12 Patty had indicated to Edmund by March 2015 that she intended to go on a "sabbatical leave" and would retire in June 2015. SMSPL would then be left to Edmund to run,[10] with the assistance of Ane. Ane was the new design director (though not appointed to SMSPL's board), and, as stated earlier, had been given a 5% shareholding in SMSPL.[11]

13 However, various disagreements arose between Edmund and Patty. On 13 July 2015, Edmund informed Patty and Ane that he intended to leave SMSPL and that he was prepared to give three months' notice. The three of them agreed to meet again in October 2015 "to put in place the closure of the company".[12]

14 On 15 July 2015, Patty withdrew a total amount of $1,164,580 from SMSPL's bank account with UOB for herself. This amount was withdrawn by way of 23 cheques for $50,000 each and one cheque for $14,580. All 24 cheques were signed by Patty. The reason for the multiple cheques was that cheques for sums above $50,000 required Edmund's signature. Patty claimed that these payments were meant to be her gratuity and adjusted pay for the period from January to June 2015.[13] Patty further claimed that she subsequently realised she had been overpaid by mistake. Patty returned the alleged excess amount of $492,580 to SMSPL's account on 27 July 2015.[14] Edmund disputed Patty's claims to her gratuity and pay adjustment.

15 Edmund discovered that Patty was withdrawing monies from SMSPL's bank account and on 21 July 2015, Edmund learnt from UOB that $1.15m (comprising the 23 cheques for $50,000 each) had been paid out to Patty on 15

Version No 2: 27 Oct 2020 (22:41 hrs)

July 2015.[15] Edmund subsequently made various requests (including requests through his lawyers) for SMSPL's financial documents. One of the issues in dispute is whether Edmund was denied access to SMSPL's financial documents.

16 Subsequently, sometime between 13 July to 25 July 2015, Edmund was removed as a joint signatory and account holder of SMSPL's bank account.[16]

17 On 29 July 2015, Patty signed off on nine debit notes from SDPL to SMSPL amounting to $1,765,057 ("the Debit Notes").[17] Patty deducted a total amount of $230,000 allegedly for drafting services performed by SMSPL. The total amount payable to SDPL was therefore $1,535,057 before GST. After adding GST, the total amount became $1,642,510.99. Patty signed nine cheques in favour of SDPL for the total amount of $1,642,510.99. This amount was paid out to SDPL on 30 July 2015.[18] SMSPL and Patty alleged that these were returns of various loans from SDPL to SMSPL. Edmund disputed this.

18 On 12 August 2015, Edmund received a notice of an extraordinary general meeting ("EGM") to be held on 27 August 2015, to propose payment of consultancy fees to SDPL amounting to $640,532 for 2012, $794,993 for 2013 and $329,532 for 2014. Edmund disputed SDPL's entitlement to charge consultancy fees. Patty and Ane subsequently agreed to the withdrawal of the notice of the EGM, subject to the assent of the other shareholders.[19] As no response had been received from Anita, on 24 August 2015, Edmund commenced the present action and filed Summons No 4106 of 2015 for, among other things, an injunction to restrain SMSPL from holding the EGM on 27 August 2015. On 26 August 2015, Anita replied that she agreed to withdraw the notice of the EGM. On the same day, a consent order was recorded to the effect that among other things, the proposed EGM would not be held and SDPL

Version No 2: 27 Oct 2020 (22:41 hrs)

undertook to pay the sum of $1,642,510.99 to its solicitors to be held by them until further order.

19 Meanwhile, on 25 August 2015, Edmund, Patty, Anita and Ane met and agreed that the directors would work towards the cessation of SMSPL's operations by October 2015.[20] A list of projects was drawn up, with various courses of actions to be undertaken by the respective directors-in-charge.[21] Edmund's last day of work at SMSPL was 12 October 2015. He was not paid his salary for the period from 1 to 12 October 2015, which amounted to $4,063.35.

20 On 9 October 2015, Edmund filed an application in Originating Summons 921 of 2015 ("OS 921/2015") to inspect the documents of SMSPL in his capacity as a director of SMSPL. On 9 November 2015, Patty filed an affidavit affirming that SMSPL was not resisting the application. However, on 20 November 2015, SMSPL's solicitors informed Edmund's solicitors that SMSPL had taken the position that Edmund was not entitled to inspect its documents.[22]

21 Before OS 921/2015 could be dealt with, on 15 December 2015, Edmund received a notice of a directors' meeting to be held on 17 December 2015 to consider, among other things, convening an EGM to remove Edmund as a director. Edmund's request to adjourn the directors' meeting was not acceded to and the meeting proceeded in his absence on 17 December 2015. Edmund's subsequent request to adjourn the EGM (fixed for 8 January 2016) till after the hearing of OS 921/2015 was also refused.[23]

Version No 2: 27 Oct 2020 (22:41 hrs)

22 On 6 January 2016, Edmund filed an application for an injunction to restrain SMSPL and Patty from removing him as a director of SMSPL. On 7 January 2016, an interim injunction was granted to preserve Edmund's capacity as director to proceed with the application in OS 921/2015 and to inspect SMSPL's accounts and papers if the application in OS 921/2015 was granted. On 25 January 2016, I granted Edmund's application in OS 921/2015.

23 SMSPL ceased operations in April 2016.[24]

Edmund's claim

24 Edmund's pleaded case is that

(a) Patty has

(i) conducted the affairs of SMSPL and/or exercised her power in a manner oppressive to him, in disregard of his interest as a member and shareholder of SMSPL;[25]

(ii) caused acts to be done or threatened by SMSPL and/or proposed to pass a resolution which unfairly discriminates against, or is otherwise prejudicial to Edmund;[26]

(b) he is entitled to retain the director's fees and dividends that he received for 2012 and 2013 and that SMSPL has failed to pay him his outstanding director's fees and dividends for 2013;[27]

(c) SDPL has to pay SMSPL certain sums of money that were wrongfully paid by SMSPL to or for the benefit of SDPL;

Version No 2: 27 Oct 2020 (22:41 hrs)

(d) Patty has to pay SMSPL certain sums of money that were (i) wrongfully paid by SMSPL to Patty and (ii) losses that Patty wrongfully caused SMSPL to incur;

(e) SMSPL and SDPL have to give an account of all projects / clients engaged, and all monies received, by each of them respectively since the Incorporation Date; and

(f) Patty should be ordered to buy out his shares in SMSPL at a fair value to be determined. In his closing submissions, Edmund submitted that a winding up order would be more appropriate in this case.[28]

What were the terms of the Oral Agreement?

25 It would be useful to start with the dispute over the terms of the Oral Agreement. As stated earlier, the Oral Agreement was for a merger between MOX and SDPL to form SMSPL with all new businesses being undertaken by SMSPL. The dispute was over the treatment of amounts received by MOX and SDPL from pre-incorporation projects. Edmund alleged that all such amounts received by MOX and SDPL, pursuant to invoices dated after the Incorporation Date, were to be transferred to SMSPL (after deducting expenses incurred). Patty's version was that MOX and SDPL would continue to own the revenue from all their respective pre-incorporation projects, but they had to reimburse SMSPL for any use of its resources (primarily manpower).

26 During his oral testimony, Edmund clarified that there was no discussion on whether work that had been completed before the Incorporation Date but invoiced only after the Incorporation Date, should be treated differently.

Version No 2: 27 Oct 2020 (22:41 hrs)

Edmund then confirmed that he was agreeable to such cases being excluded from the Oral Agreement.[29]

No records of the use of SMSPL's resources were kept

27 After the Incorporation Date, all the employees of SDPL and MOX (except for those who were foreigners) were transferred to SMSPL. Work on SDPL's and MOX's pre-incorporation projects necessarily had to be carried out by SMSPL. Patty's version of the Oral Agreement alleged that SDPL/MOX would have to reimburse SMSPL for manpower costs incurred by SMSPL. Yet, Patty did not put in place any system to keep records, and no records whatsoever were kept, of the use of SMSPL's manpower. Clearly, such a system and such records would have been essential if Patty's version of the Oral Agreement were true.

28 Patty asserted that the exact mechanics of how to account for the use of SMSPL's resources was left to the discretion of Patty (for SDPL), Edmund (for MOX) and Anita (for Chiu Design) and that it was understood that this would primarily be by way of accounting for the use of SMSPL's manpower.[30] I do not accept Patty's assertion. Without any records of the use of SMSPL's manpower, how could anyone account for such use? Patty had had many years of experience managing SDPL.[31] It is unbelievable that she would not have put in place a system to keep such records if indeed the use of SMSPL's manpower had to be accounted for.

29 It was only after Edmund's resignation from SMSPL that Patty worked with Ms Chua Choon Geok ("Choon Geok"), a part-time employee of SMSPL, to try to calculate the amounts that SDPL and MOX had to pay as reimbursement for the use of SMSPL's manpower. There were no timesheets.

Version No 2: 27 Oct 2020 (22:41 hrs)

Choon Geok testified that she would look at emails from and drawings by SMSPL employees, as well as the jobs they were working on, and estimate the amount of time spent on each job.[32] Patty would make final adjustments based on her own estimates.[33] Choon Geok accepted that not all emails were sent to her and that she did not have access to all the employees' computers and emails.[34]

30 In my view, Choon Geok's estimates bordered on being arbitrary and were at best unreliable. The difficulty in trying to compute the reimbursement amounts only testifies to the importance of keeping proper records of the use of SMSPL's manpower if Patty's version were true. The absence of such records testifies to the improbability of Patty's version of the Oral Agreement.

31 In fact, not only were there no records kept of the use of SMSPL's resources, Patty's evidence showed that her version of the Oral Agreement was unlikely to be true. Patty testified that what SDPL and MOX had to reimburse SMSPL for were just the CPF contributions, salaries and bonuses of SMSPL's employees who worked on MOX's and SDPL's pre-incorporation projects. This does not make commercial sense because then, SMSPL would be bearing SDPL's and MOX's shares of overheads, operational expenses and general office expenses, all of which Patty conceded were paid for by SMSPL.[35]

Payments by MOX to SMSPL

32 Edmund referred to the following payments by MOX to SMSPL and submitted that they were transfers of amounts received by MOX in respect of pre-incorporation projects:

(a) $100,000 in October 2012; and

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) two payments in 2013 and another two in 2014, amounting to $148,500.

Payment of $100,000 in October 2012

33 This payment is described in SMSPL's general ledger as payment by MOX in respect of "Design Consultancy" without any reference to any project.[36] The relevant invoice from SMSPL (SM 2012-031) describes the invoiced amount as "Design Consultancy Fee" but does not refer to any project either.[37] However, SMSPL's list of incoming funds links this payment to "10 Aljunied & Maldives" which were pre-incorporation projects of MOX.

34 Patty claimed that the payment of $100,000 was a reimbursement for the use of SMSPL's manpower which she alleged amounted to $104,535.11. Patty relied on (a) MOX's accounts for 2012 which showed a sum of $104,535 owing to a "related party" as a result of expenses paid on behalf" of MOX,[38] (b) MOX's accounts for 2013 which no longer reflected this sum,[39] and (c) MOX's general ledgers which showed payment of $100,000 to SMSPL for salary and payment of $4,535.11 to Edmund's director's account.[40]

35 I agree with Patty that the evidence does not support Edmund's claim that the $100,000 was payment of receivables. However, I also do not think the evidence supports Patty's claim that the payment of $100,000 was a reimbursement for the use of SMSPL's resources either. Payment of salaries by SMSPL on behalf of MOX is very different from reimbursement by MOX for use of SMSPL's resources. There is also no evidence showing what were the resources used that gave rise to the amount of $104,535.11. In addition, this payment is also separately described as a "loan" in SMSPL's general ledger.[41] SMSPL's expert witness, Mr Abuthahir Abdul Gafoor ("Gafoor"), from RSM

Version No 2: 27 Oct 2020 (22:41 hrs)

Corporate Advisory Pte Ltd, relied on instructions given to him that the payment was for the use of SMSPL's drafting services.[42] He was not able to explain the exact purpose of the various classifications in MOX's general ledger.[43] Neither was he able to conclude that the $100,000 was reimbursement for the use of resources.[44]

36 In my view, the evidence with respect to the payment of the $100,000 in October 2012 is simply too unreliable to support either Edmund's or Patty's version of the Oral Agreement.

Payments in 2013 and 2014 amounting to $148,000

37 MOX paid a total amount of $148,000 to SMSPL in 2013 and 2014, comprising $16,250 and $81,250 paid in 2013, and $21,000 and $30,000 in 2014. SMSPL's general ledger describes the first three payments as payments by MOX in respect of "Chiltern Drive", "Chennai", and "MK 19 Wak Hassan Drive".[45] Each of the invoices for these three payments describes the invoiced amount as "Design Consultancy Fee" and also references the specific project.[46] As for the fourth payment of $30,000, SMSPL's general ledger[47] refers to its invoice SM 2014-007 which in turn refers to a project at "Kasara, Sentosa".[48] All these projects were pre-incorporation projects of MOX. Edmund claimed that these four payments were transfers of amounts received by MOX in respect of pre-incorporation projects.

38 It is not disputed that the four payments were of the entire amounts received by MOX, without deduction of expenses incurred by MOX (*eg*, costs of engaging freelance drafting services). Edmund explained that this was an oversight by the SMSPL employee who handled administrative matters in SMSPL, Ms Barkath Nisha Mohamed Ibrahim ("Nisha").[49] I accept Edmund's

Version No 2: 27 Oct 2020 (22:41 hrs)

explanation. Further, as Edmund submitted, in practice, SMSPL bore most of the expenses of SDPL and MOX after the Incorporation Date in any event. As such, paying SMSPL the full amount received, would not have raised eyebrows.

39 Edmund acknowledged that MOX had also received further payments from its pre-incorporation projects, which should have been but were not, transferred to SMSPL. Edmund explained that he had left it to Nisha who handled the maintenance of files and preparation of invoices. Nisha had failed to effect the transfers. I accept Edmund's explanation. The evidence showed clearly that Edmund generally did not handle the accounts and the transfer of payments.[50] In an email to Edmund dated 8 August 2015, Patty herself pointed out that Edmund never managed the accounts.[51]

40 Patty alleged that the second payment of $81,250 (made in 2013) included a sum of $50,111.99 which was reimbursement of salaries paid by SMSPL ($21,000 paid to Shawn and $29,111.99 paid to Mr Ong Eng Meng). According to Patty, the balance of $31,138.01, together with the first, third and fourth payments, were "lump sum" reimbursements for MOX's use of SMSPL's resources.[52] Patty also alleged that the reason for the fourth payment of $30,000 was that SMSPL had taken over the project at Edmund's request.[53] In my view, the evidence does not support Patty's allegations of lump sum reimbursements.

(a) First, Patty's explanation, that these were lump sum reimbursements for the use of SMSPL's resources, is too convenient and unbelievable. Even going by Patty's own evidence, two of the amounts involved ($16,200 and $31,138.01[54]) are hardly what one would describe as "lump sums". It is also unbelievable that the parties would

Version No 2: 27 Oct 2020 (22:41 hrs)

have been content to rely on a "lump sum" estimate without any records being kept of the use of resources; and

(b) Second, Patty's two explanations for the fourth payment of $30,000 are inconsistent with each other. There can be no question of reimbursement for use of only SMSPL's resources if SMSPL took over the project, since in the latter case, the whole fee would be earned by SMSPL.

41 In my view, the payments which Patty described as lump sum reimbursements, were in fact transfers of amounts received by MOX from its pre-incorporation projects.

Payments by SDPL to SMSPL

42 Edmund argued that payments by SDPL to SMSPL amounting to $600,000 in 2012 and $719,652.02 in 2013–2014, were transfers of amounts received by SDPL from its pre-incorporation projects pursuant to his version of the Oral Agreement.

Payment of $600,000

43 The amount of $600,000 comprised payments of $176,000 made in August 2012 and $424,000 in September 2012. The payment of $176,000 included GST of $11,514.02 whilst the payment of $424,000 included GST of $27,738.33. Patty claimed that these two payments were advances by SDPL to SMSPL.[55]

44 Patty testified that SMSPL was short of funds with a bank balance of only $248,875.93 in August 2012 and $276,008.13 in September 2012. In

Version No 2: 27 Oct 2020 (22:41 hrs)

comparison, SMSPL's outgoing payments from April to August 2012 amounted to $785.738.90 and SMSPL's total expenditure for 2012 was $1,421,633.00 whereas the revenue was only $471,517.50.[56]

45 However, the payments of $176,000 and $424,000 were recorded in SMSPL's general ledgers as profit and loss items which included goods and services tax ("GST"). Edmund's expert witness, Mr Owen Malcolm Hawkes ("Hawkes"), from KPMG Services Pte Ltd, testified that these records are inconsistent with the payments being loans because loans are balance sheet items and no GST would be payable in the case of loans.[57]

46 As mentioned earlier, SMSPL's employee, Nisha, was responsible for the maintenance of files and preparation of invoices. She testified that in December 2012, SMSPL's then book-keeper, Mr Shin Say Hock ("Shin"), asked her for documentation supporting SMSPL's receipt of the $176,000 and $424,000, and that he instructed her to prepare invoices issued by SMSPL. Nisha prepared six invoices, backdated to dates between March 2012 and August 2012. The six invoices described each of the amounts invoiced as an "administrative billing".[58] According to Nisha, Patty instructed her to use the same description that was used previously for invoices in respect of two payments by SDPL in February and March 2012 amounting to $203,430.71. The invoices for those two payments had similarly described each of the amounts invoiced as an "administrative fee".[59] It is not disputed that these two payments were payments by SDPL on behalf of SMSPL and that SMSPL repaid SDPL in April 2012.

47 Nisha explained that she had used the description "administrative fee" for the previous invoices, on the advice of Shin.[60] In turn, Shin explained that

Version No 2: 27 Oct 2020 (22:41 hrs)

he did not know then that the payments were advances extended by SDPL.[61]

48 Nisha testified that when she told Patty that the description in the earlier invoices was "administrative fee", Patty told her to use the description "administrative billing" for the six invoices.[62]

49 Nisha had also prepared SDPL's payment vouchers for the payments of $176,000 and $424,000. She subsequently wrote the word "loan" on her copy of the payment vouchers.[63] Nisha could not remember when she did this but suggested it was likely to have been sometime in December 2012/January 2013 after Shin asked her for the supporting documents for the $600,000.[64]

50 I accept Nisha's explanations as to why she issued the six invoices with the description "administrative billing". The invoices explain the treatment given to the two payments of $176,000 and $424,000 in SMSPL's general ledgers. Loans should not be treated this way, but as Hawkes observed, the accounts were in a state of mess.

51 In my view, the evidence supports the defendants' claim that the payments of $176,000 and $424,000 were in fact loans from SDPL to SMSPL. First, contemporaneous documents support the defendants' claim. SDPL's lists of expenses for August 2012 and September 2012 recorded the payments of $176,000 and $424,000 as "payout to Suying Metropolitan to cover expenses".[65] In addition, a contemporaneous post-it note from Nisha referred to the sum "$601,000" (including the $1,000 to open SMSPL's bank account) and stated the following: "this one which was took out from Suy-D [SDPL] to Suy-M [SMSPL] to balance the new company Suy-M" (*sic*).[66]

Version No 2: 27 Oct 2020 (22:41 hrs)

52 Second, Edmund admitted that he could not link the payments of $176,000 and $424,000 to amounts received by SDPL from any specific pre-incorporation project.[67]

53 Third, Patty testified that at a meeting on 8 June 2015, Patty had informed Edmund and Ane that there was an $800,000 loan owing from SMSPL to SDPL. On 1 July 2015, Patty sent Edmund and Ane the following message:[68]

> "Good news, the amount to be return to [SDPL] is much smaller..Nisa (*sic*) is checking and will give me the list to check.. The amount is about $600,000 and not S$800,000"
>
> Edmund replied "Thank you so much".

54 Edmund admitted that he was told during a discussion in August 2012 that SMSPL's bank account balance was low, although he claimed that Patty had then told him there was no cause for concern as there would be incoming receivables.[69]

55 Edmund explained that his reply to Patty's message was not an acknowledgement that there was a loan from SDPL to SMSPL and that it was merely to thank her for taking the time to check the amounts.[70] I do not accept Edmund's explanation. It is not a reasonable interpretation of his reply. More importantly, it is telling that in his reply, Edmund did not question the fact that there was $600,000 that had to be repaid to SDPL. The fact that it had to be repaid was clearly inconsistent with the amount being a transfer of receivables.

Payment of $719,652.02

56 The amount of $719,652.02 reflected payments made by way of seven cheques from SDPL to SMSPL from April 2013 to November 2014.[71] The

Version No 2: 27 Oct 2020 (22:41 hrs)

payments were made in respect of the following ten invoices issued by SMSPL:[72]

Date of invoice	**Invoice number**	**Amount ($)**	**Date of payment**	**Name of SDPL project**
15 April 2013	SM-2013-013	288,900.00	19 April 2013	Keppel Bay Plot 3
1 July 2013	SM-2013-038	3,210.00	9 July 2013	45 Faber Crescent
3 July 2013	SM-2013-039	51,360.00	9 July 2013	17 Greenleaf Rise
5 July 2013	SM-2013-040	9,630.00	9 July 2013	Riversails Common Area
8 July 2013	SM-2013-041	160,500.00	9 July 2013	Riversails Typical Apartment Units
10 September 2013	SM-2013-066	49,980.00	17 September 2013	Chennai Villa
25 November 2014	SM-2014-098	56,101.01	4 December 2014	China Project
27 November 2014	SM-2014-099	56,101.01	4 December 2014	China Project
28 November 2014	SM-2014-100	21,400.00	4 December 2014	Sky Suits, Typical Apartment Units
28	SM-2014-	22,470.00	4 December	Sky Suits

Version No 2: 27 Oct 2020 (22:41 hrs)

November 2014	101		2014	Common Area
Total		**719,652.02**		

57 The amounts in the invoices represented fees from SDPL's pre-incorporation projects.[73] The invoices described the amounts invoiced as "consultancy fee". Patty claimed that she instructed Nisha to use the description "consultancy fee" because this was the description used in the invoices for the payments by MOX to SMSPL (see [33] and [37] above).[74]

58 Patty described these payments as "project-linked loans" by SDPL to SMSPL. According to her, these payments were from "fees earned from whichever project SDPL happened to have money payable to it".[75] Patty claimed that[76]

(a) SMSPL required further loans as working capital. According to Patty, as a "rough rule of thumb", SMSPL would need a cash buffer of three times the monthly operational expenses. This excluded any additional cash that SMSPL may need to purchase furniture, fitting and equipment ("FF&E") to fit out the project under its design and build contracts.[77]; and

(b) she decided to transfer the whole amounts received by SDPL under "specific invoices" rendered for specific projects because the repayment of the loans could subsequently be set off against any reimbursement owed by SDPL to SMSPL. The "overpayment" to SMSPL arising from the loans would provide SMSPL a cash buffer for its projects.

Version No 2: 27 Oct 2020 (22:41 hrs)

59 In his expert report dated 9 November 2017, Hawkes pointed out that SMSPL's cash balances prior to each of the payments by SDPL do not suggest that SMSPL was short of funds. SMSPL's cash balance prior to the payment of $288,900 (under the first invoice) was $741,174.10. SMSPL's cash balance prior to payment of each of the remaining nine invoices ranged from just over $1m to more than $1.7m.[78]

60 In her oral testimony, Patty's response was that she did not look at SMSPL's bank statements or general ledgers.[79] Instead, she assessed SMSPL's need for funds by reviewing the monthly incoming funds (which she referred to as the incoming cheque listing) and the expenses list, and she tried to "balance, make sure that [she] receive[d] enough money to pay out".[80]

61 In my view, Patty's explanation lacks credibility. I find it unbelievable that Patty, with all her experience, would have tried to assess whether SMSPL needed funds by merely looking at the incoming funds and expenses list, without considering what SMSPL's cash balances were. In any event, assuming her evidence to be true, Patty was merely trying to balance the expenses against the incoming funds. Clearly, the question of whether SMSPL was short of funds or whether its cash buffer needed topping up, could not have been in her mind since she did not even look at SMSPL's cash balances.

62 Further, if Patty's evidence about maintaining a cash buffer is to be believed, one would expect the timing of the loans to correspond to times when the cash buffer was insufficient. However, as Hawkes pointed out, the timing of the alleged loans from SDPL does not appear to be correlated with the movements of the alleged cash buffer.[81] Instead, the timing of the alleged loans appeared to be more correlated to SDPL's receipt of payments from its own

Version No 2: 27 Oct 2020 (22:41 hrs)

clients.[82] This is also consistent with SDPL's instructions to its own expert, Mr Andrew Grimmett ("Grimmett") from Deloitte & Touche Financial Advisory Services Pte Ltd, that the flow of funds from SDPL to SMSPL was on a "back-to-back" basis, *ie*, SDPL would transfer the monies it received from its projects to SMSPL.[83] Further, Hawkes' analysis shows that with respect to nine of the ten alleged loans referred to in [56] above, SMSPL's cash balance prior to the payment exceeded the cash buffer by between 22% to 65%.[84] Clearly, the cash buffer could not have been the reason for those nine alleged loans.

63 Gafoor's evidence was that SMSPL's cash position fell short of the cash buffer it required after September 2012 until April 2014.[85] However, Gafoor computed the cash buffer based on what *he* thought SMSPL needed, *ie*, three months of operational costs and two months of FF&E. In her evidence, Patty noted the need to pay FF&E but referred only to three months of operational costs for the cash buffer that she claimed the loans were needed for.[86] In assessing the credibility of Patty's explanation, it is what Patty had in her mind as the cash buffer that is relevant. Gafoor's analysis was thus not helpful since it did not show whether SMSPL's cash balances fell short of the cash buffer that *Patty* wanted SMSPL to have. In any event, to test whether the cash buffer was the reason for the alleged loans, it is necessary to compare the cash balance against the cash buffer prior to the making of each of the alleged loans. Gafoor did not do so.

64 The evidence also shows that

(a) between August 2013 and November 2015, SDPL had collected a total sum of $1,066,087.13 in respect of SMSPL's projects for which SDPL allegedly acted as contract administrator;[87] and

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) by December 2013, SDPL's company in Shanghai, Suying Design ("SD (Shanghai)") had received payment of RMB2.16m for SMSPL's projects in China, and in August 2014, SD (Shanghai) received payment of another RMB278,875.[88]

65 The monies were due from SDPL to SMSPL. Patty could not give any credible explanation for not transferring these monies to SMSPL to meet SMSPL's funding needs, instead of taking loans from SDPL. Interestingly, Gafoor testified that Patty instructed him to disregard the monies from SD (Shanghai) because they were used for the running expenses in China, to purchase FF&E and were "not a significant amount".[89] Clearly, these should have been considered for inclusion in Gafoor's comparisons of SMSPL's cash balances against the cash buffer since Patty did not dispute that they were SMSPL's monies. Further, the amounts received by SD (Shanghai) were clearly significant amounts when compared to the amount of alleged "project-linked loans" taken by SMSPL in 2013 ($563,580) and 2014 ($156,072.02) (see [56] above).

66 Finally, SMSPL paid $70,433.55 towards Patty's Bedok property in May 2013 (which Patty claimed was a temporary loan) and SMSPL's funds were used to pay SDPL's income tax of $154,707.65 on 20 November 2013 and SDPL's GST liabilities of $14,800.02 on 28 January 2014.[90] These payments are clearly inconsistent with Patty's allegation that SMSPL was short of funds such that a loan of $288,900 was needed in April 2013, and loans amounting to $156,072.02 were needed in November 2014 (see [56] above).

67 In my judgment, Patty's allegation that the payments by SDPL to SMSPL amounting to $719,652.02 were loans taken from SDPL, was an

Version No 2: 27 Oct 2020 (22:41 hrs)

afterthought. Her description of these payments as "project-linked loans" was itself clearly an afterthought. The evidence shows that it is far more probable that these payments were transfers by SDPL to SMSPL of fees collected from SDPL's pre-incorporation projects.

Ode to Art's transfer of $162,193.93 to SMSPL

68 Jazz owns Ode to Art, an art gallery and shop in Singapore. At Jazz's request, SD (Shanghai) paid RMB817,133 on behalf of Ode to Art, to various artists in China. Ode to Art was to reimburse SDPL in Singapore dollars ($162,193.93).[91]

69 However, the sum of $162,193.93 was paid to SMSPL instead of SDPL. Patty claims that she told Nisha to transfer the amount to SMSPL because SMSPL was in need of funds.[92] The payment was made to SMSPL and recorded in SMSPL's general ledger on 8 February 2013 as cash receipts. The amount was also credited to Patty as an amount "owing to director".[93]

70 Leaving aside the question whether the amount was correctly credited to Patty in SMSPL's general ledger, in my view, this payment to SMSPL by SDPL was a loan and not a payment of fees collected by SDPL for pre-incorporation projects. Edmund himself admitted that he had no knowledge whether this was a payment of fees collected.[94]

Other evidence

SDPL's unbilled fees vs MOX's unbilled fees; no due diligence

71 Patty argued that she would not have agreed to Edmund's version of the Oral Agreement because SDPL's unbilled fees from its pre-incorporation

Version No 2: 27 Oct 2020 (22:41 hrs)

projects then were much greater than MOX's unbilled fees from its pre-incorporation projects. However, I agree with Edmund that it was not unreasonable for Patty and him to agree that fees from pre-incorporation projects that were invoiced after the Incorporation Date to be paid to SMSPL. After all, MOX's and SDPL's employees were all transferred to SMSPL (save for those who were foreigners). Further, Patty was planning her retirement and intended that Edmund would take over the running of SMSPL and preserve the "Suying" name.

72 Patty also argued that the fact that no due diligence was done on SDPL's and MOX's unbilled fees supported her version of the Oral Agreement. I do not think that this is a strong argument since Patty appeared to already know that SDPL's unbilled fees exceeded MOX's. Further, this has to be look at in the context of Patty's plans for her retirement and for Edmund to take over and preserve the "Suying" name.

Patty's email dated 8 August 2015

73 Next, after Edmund's resignation, Patty sent a confrontational email to him on 8 August 2015. Despite Patty having set out at length various aspects of the Oral Agreement, she made no mention of her assertion that MOX and SDPL had to reimburse SMSPL for the use of SMSPL's resources.[95] When she was queried about this, Patty replied that this was because her email was simply an "outline of the event"[96] and was "a general response" to Edmund's email requesting to handover his projects and for access to SMSPL's financial accounts.[97] Patty further alleged during re-examination that she had not mentioned reimbursement as it "was already done by 8 August".[98]

Version No 2: 27 Oct 2020 (22:41 hrs)

74 I do not accept Patty's explanation. Her email was not merely a "very quick response" to Edmund's email as she had alleged,[99] but went into great detail about SMSPL's incorporation, including the fact that Edmund had represented to the other shareholders that he "shared the "Suying" vision and that [he] would continue the legacy, built upon the "Suying" brand…"[100] Further, Patty's explanation that she did not mention reimbursement in her email because it "was already done", is suspect. The loans from SDPL had been repaid but this did not stop from Patty mentioning the loans in her email.

Parties' witnesses

75 Anita and Chai Boon testified in support of Patty's version of the Oral Agreement. Both were present at the fourth meeting (with Patty and Edmund) in January 2012 (see [6] above). Mr Seah Chin Kwang ("Seah") testified in support of Edmund's version of the Oral Agreement. Seah was an Associate Partner in MOX and subsequently moved over to SMSPL. His testimony was based on his discussions with Patty as well as briefings by Patty. Obviously, the conflicting evidence of these witnesses, as with the conflicting evidence of Patty and Edmund, has to be considered against the totality of the evidence.

Conclusion on the terms of the Oral Agreement

76 There are some aspects of the evidence that, looked at on their own, support Patty's case. However, in my judgment, the totality of the evidence discussed above points to Edmund's version of the Oral Agreement being more probable than Patty's. I find therefore that pursuant to the Oral Agreement, all fees (less expenses incurred) for pre-incorporation projects, collected by MOX and SDPL based on invoices issued after the Incorporation Date, are to be paid

Version No 2: 27 Oct 2020 (22:41 hrs)

over to SMSPL. However, as conceded by Edmund, this would not apply where the work had been completed before the Incorporation Date.[101]

Edmund's claim under s 216

77 In his closing submissions, Edmund relied on the following allegations:

(a) The payment of $1,164,580 to Patty on 15 July 2015.

(b) The payment of $1,642,510.99 to SDPL on 30 July 2015.

(c) The denial and/or obstruction of his access to SMSPL's financial documents.

(d) The claw-back of director's fees and dividends.

(e) The failure to pay Edmund's salary for October 2015.

(f) Excluding Edmund from decision-making in relation to SMSPL's affairs while he remained a director of SMSPL.

(g) Various claims set out in the Annexes to the statement of claim.

(h) SMSPL's payment of $50,048 for salaries of SDPL's employees.

(i) Writing off the sum of $194,290.08 owed by SDPL to SMSPL.

(j) Other wrongful reductions of SMSPL's revenue.

(k) SMSPL's continued payment of rent, overheads and salaries after it had ceased operations in April 2016.

(l) SMSPL's payment towards Patty's Bedok property.

Version No 2: 27 Oct 2020 (22:41 hrs)

Payment of $1,164,580 to Patty on 15 July 2015

78 As stated earlier, on 13 July 2015, Edmund informed Patty of his resignation from SMSPL and on 15 July 2105, Patty paid herself $1,164,580 by way of 23 cheques for $50,000 each and one cheque for $14,580. Patty claimed that Nisha made a mistake as to the amount and after she (Patty) realised the mistake, she returned $492,580 to SMSPL on 27 July 2015.[102]

79 Patty claimed that the balance amount of $672,000 was payment of her gratuity ($600,000) and pay adjustment for the period from January to June 2015 ($72,000).

80 Patty claimed that during a meeting with Ane and Edmund on 8 June 2015, she reiterated that her last day of employment with SMSPL would be 30 June 2015. According to Patty, it was agreed at this meeting that she be paid a gratuity of $600,000 and a pay adjustment amounting to $72,000 for the period from January to June 2015. Patty claimed that the gratuity amount was based on 4% of the value of projects that she had brought to SMSPL and the pay adjustment was to reflect what she had been entitled to in SDPL.[103] Patty also claimed that her gratuity was again discussed at another meeting with Anita and Edmund on 22 June 2015.[104]

81 Anita testified that Patty told her about the $600,000 gratuity sometime after the 8 June 2015 meeting and that Patty's gratuity was also discussed at the meeting on 22 June 2015 although the amount was not mentioned.[105]

82 In his affidavit evidence-in-chief ("AEIC"), Edmund denied any discussion of either a gratuity or a pay adjustment.[106] However, in his oral testimony, Edmund admitted that there was a discussion about paying Patty a

Version No 2: 27 Oct 2020 (22:41 hrs)

gratuity and the figure of $600,000 was raised; however, Edmund would have to look at the accounts, and it would depend on whether the SMSPL's accounts show that it was able to pay her that amount.[107] Edmund also conceded that the relative billings and contributions were also discussed.[108]

83 I do not accept Patty's explanations for the withdrawal of the amount of $1,164,580. First, Patty admitted that she told Nisha to issue multiple cheques in order to "fit [her] single signatory limit of $50,000".[109] A single cheque could have been issued for Edmund's and Patty's joint signature. Edmund was in the office then; Patty even claimed that he was within earshot. Since the withdrawal was for Patty's gratuity and pay adjustment and Edmund had allegedly agreed to both, there was no reason for Patty to issue 24 cheques in order that Patty could sign the cheques without requiring Edmund's signature. The irresistible inferences are that Patty did not want Edmund to know that she was making the withdrawals and that Edmund had not agreed to the gratuity.

84 Second, Patty and Anita signed a resolution dated 30 December 2014, authorising the payment of $600,000 to Patty.[110] Under cross-examination, Patty admitted that the resolution was signed in late July 2015 (*ie*, after Edmund had resigned but before he had left SMSPL) and backdated.[111] Clearly, if there had been an agreement to pay Patty $600,000 as gratuity or bonus, there would have been no need for the resolution to be backdated and neither would there have been any reason not to have asked Edmund to sign the same. Even if Patty wanted to backdate the resolution because the gratuity had already been paid, there was no reason to backdate it to 30 December 2014 which is some six months earlier than the alleged agreement to pay her the gratuity. Patty alleged that the resolution was suggested in late July by Ms Karen Ng ("Karen") from

Version No 2: 27 Oct 2020 (22:41 hrs)

M/s Karen Ng and Associates which provided book-keeping services to SMSPL.[112] However, Patty did not call Karen as a witness.

85 Third, Nisha testified that the reason for the initial payment of $1,164,580 (with the alleged overpayment of $492,580) was because she had misunderstood Patty's instructions and had thought Patty was asking her to prepare repayment of loans from SDPL. I do not accept Nisha's testimony for the following reasons:

(a) Patty alleged in her AEIC that she "reminded Nisha to prepare the payments for her gratuity and adjusted pay".[113] Nisha's claim that she misunderstood this to mean Patty was asking her to prepare repayment of loans from SDPL is simply too far-fetched.

(b) Nisha alleged that the amount of $1,164,580 included $563,580 which was supposed to comprise the loans extended by SDPL in 2013 and 2014, but she made a mistake in that she failed to include loans extended in 2014.[114] I do not accept Nisha's explanation. According to Nisha, she was tabulating the loans for 2013 and 2014. I find it hard to believe that she would not have noticed that the supporting documents that she allegedly relied on,[115] were only for 2013. In any event, the amount of $563,580 was part of the $719,652.02 which I have concluded (at [67] above) were not loans but transfers by SDPL to SMSPL of fees collected from SDPL's pre-incorporation projects.

(c) If the cheques were for the repayment of loans from SDPL, then they should have been made payable to SDPL instead of Patty. Nisha claimed that Patty instructed her to seek Shin's views and when she spoke to Shin, he told her to make payment to Patty.[116] In my view,

Version No 2: 27 Oct 2020 (22:41 hrs)

> Nisha's evidence was not credible. Why would Patty ask her to seek Shin's views if the payments were for her gratuity and pay adjustments, which according to Patty, had been agreed? Yet, if the payments were repayments of loans from SDPL, why would Nisha need to ask Shin who to make payment to, and why would Shin tell Nisha to make payment to Patty? Shin gave evidence for the defendants and, as Edmund submitted, Shin's AEIC is conspicuously silent on this matter.

86 Fourth, Patty claimed that she subsequently discovered that she had been overpaid and she then returned $492,580 to SMSPL on 27 July 2015. Nisha testified that on a date after 24 July 2015, on the instructions of either Patty or Shin, she prepared a payment voucher[117] for a loan of $492,580 from SMSPL to Patty and backdated it to 15 July 2015.[118] Clearly, the payment voucher was a false document. There was no loan of $492,580 by SMSPL to Patty. There was no need for Patty to go through the rigmarole of preparing a payment voucher falsely showing a loan to her, if indeed there was an overpayment by mistake.

87 Fifth, by Patty's own account, it took her almost one week to realise that she been overpaid, and a week thereafter to effect the repayment of $492,580. Patty was clear in her mind that her alleged entitlement was only for $672,000.[119] In her AEIC, she claimed she was "pleasantly surprised" and at trial she claimed it was a "shock" that the amount paid to her was $1,164,580. However, she could offer no explanation for why she nevertheless went on to accept the $1,164,580 (rather than $672,000) other than it was her fault.[120]

88 In my judgment, Patty's gratuity may have been discussed but there was no agreement reached. Neither was there any agreement to pay her any pay

Version No 2: 27 Oct 2020 (22:41 hrs)

adjustment. I agree with Edmund's submission that after Edmund gave notice of his resignation, Patty moved quickly to withdraw $1,164,580 from SMSPL without Edmund's knowledge. Patty achieved this by instructing Nisha to break the amount into 24 cheques each specifically drawn for an amount not exceeding her single cheque signing authority. Patty's explanations about her gratuity and pay adjustments, as well as her reason for repaying $$492,580 to SMSPL, were all nothing more than afterthoughts. Patty had to repay the sum of $492,580 to SMSPL because she could not come up with any other reason to justify the payment of that amount to her. Patty is not entitled to retain the balance of $672,000.

Payment of $1,642,510.99 to SDPL

89 By 25 July 2015, Patty had removed Edmund as a joint signatory for SMSPL's bank account with UOB. On 29 July 2015, Patty signed the Debit Notes to be issued by SDPL to SMSPL for payment of "consultancy fees".[121] The Debit Notes were all backdated to various dates from 12 June 2014 to 28 June 2015. As stated in [17] above, the total amount on the Debit Notes was $1,765,057. Patty deducted a total amount of $230,000 allegedly for drafting services performed by SMSPL. The total amount payable to SDPL was therefore $1,535,057 before GST. After adding GST, the total amount became $1,642,510.99. Payment to SDPL was by way of nine cheques (all dated 29 July 2015) which Patty signed.[122]

90 Patty alleged that around 24 July 2015, she had worked out the inter-company debts between SDPL and SMSPL and she asked Nisha to send the draft invoices for Karen's review.[123] It appears from email correspondence that it was Karen who suggested issuing debit notes instead.[124] It is not clear what

Version No 2: 27 Oct 2020 (22:41 hrs)

was told to Karen; Nisha's email to Karen merely referred to "incoming fund[s]" for SMSPL from 2012 to 2015.

91 Each of the Debit Notes was for "Consultancy Fee[s]" for a certain period. According to Patty, the consultancy fee reflected the loan from SDPL. Eight of the Debit Notes each showed a deduction for "drafting services". Patty claimed that these deductions reflected the reimbursement by SDPL for use of SMSPL's resources. GST was then added to the net amount on each debit note.

92 The relevant particulars of the nine debit notes were as follows:

Debit Note **Date** **Consultancy Fee**	**Alleged Loan from SDPL** **(according to Patty)**	**Less "drafting services"**	**Amount due to SDPL**	**Amount due to SDPL including GST**[125]
DN-001 12 January 2014 $176,000	Loan of $176,000 on 31 August 2012	$20,000	$156,000	$166,920
DN-002 12 June 2014 $424,000	Loan of $424,000 on 19 September 2012	$60,000	$364,000	$389,480
DN-003 12 June 2014 $40,532	Loan of $20,000 on 22 October 2013 (from SDPL's Chennai Villa project). Nisha added another $20,592 by mistake.	$10,000	$30,532	$32,669.24
DN-004 30	OTA payments to SMSPL on 8 February 2013 on behalf of			

Version No 2: 27 Oct 2020 (22:41 hrs)

November 2014 $162,193	SDPL	$20,000	$142,193	$152,146.51
DN-005 28 February 2015 $288,900	Loan on 19 April 2013 (from SDPL's Keppel Plot 3 project)	$40,000	$248,900	$266,323
DN-006 10 May 2015 $244,700	Loans of: (a) $3,210 on 9 July 2013 (from SDPL's 45 Faber Crescent project) (b) $51,360 on 9 July 2013 (from SDPL's 17 Greenleaf Rise project) (c) $9,630 on 9 July 2013 (from SDPL's Riversails Common Area project) (d) $160,500 on 9 July 2013 (from SDPL's Riversails Typical Apartment Units project) (e) $20,000 on 13 June 2013 (from SDPL's Chennai Villa project)	$40,000	$204,700	$219,029
DN-007 10 June 2015 $99,200	Loan of $49,980 on 4 December 2014 (from SDPL's Chennai Villa project). Nisha mistakenly	$20,000	$79,200	$84,744

Version No 2: 27 Oct 2020 (22:41 hrs)

	included $6,420, $10,700 and $32,100 which were for SMSPL's Sky Suites project.			
DN-008 21 June 2015 $99,510	Nisha mistakenly included $48,150, $19,260 and $32,100 which were for SMSPL's Sky Suites project.	$0	$99,510	$106,475.70
DN-009 28 June 2015 $230,022	Loans of: (a) $56,101.01 on 4 December 2014 (from SDPL's China project) (b) $56,101.01 on 4 December 2014 (from SDPL's China project) (c) $21,400 on 4 December 2014 (from SDPL's Sky Suites, Typical Apartment Units project) (d) $22,470 on 4 December 2014 (from SDPL's Sky Suites, Common Area project) Nisha mistakenly added $41,850 and $32,100 which were for SMSPL's Sky Suites project.	$20,000	$210,022	$224,723.54
Total:		**Total :**	**Total :**	**Total :**

Version No 2: 27 Oct 2020 (22:41 hrs)

$1,765,057		**$230,000**	**$1,535,057**	**$1,642,510.99**

93 The amounts in DN-001 ($176,000), DN-002 ($424,000) and DN-004 ($162,193) have been dealt with earlier and I have found that these were loans from SDPL to SMSPL – see [51] and [68]–[70] above. There was therefore nothing wrong with the repayment of these loans to SDPL.

94 The following amounts have also been dealt with earlier and I have found that these were not loans but payments by SDPL of fees collected from its post-incorporation projects (see [56] and [67] above):

(a) $288,900 under DN-005;

(b) $3,210, $51,360, $9,630 and $160,500 (out of the total amount of $244,700) under DN-006;

(c) $49,980 (out of the total amount of $99,200) under DN-007; and

(d) $56,101.01, $56,101,01, $21,400 and $22,470 (out of the total amount of $230,022) under DN-009.

The above add up to $719,652.02.

95 The remaining two items are DN-003 and an amount of $20,000 under DN-006. With respect to DN-003, Patty admitted that the correct amount should have been $20,000 and that the additional amount of $20,532 was a mistake by Nisha.[126] The amount of $20,000 under DN-003 and the amount of $20,000 under DN-006, both described by Patty as "cash from SDPL's Chennai Villa project",[127] have been paid to SMSPL under similar circumstances as the

Version No 2: 27 Oct 2020 (22:41 hrs)

payment of the amounts referred to in [94] above. In her AEIC on behalf of SDPL, Patty also asserted that Nisha neglected to include an additional $10,000 into the debit notes, which were also cash deposits from the Chennai Villa project and that this was also a loan from SDPL to SMSPL.[128] I reject Patty's explanations. Accordingly, I find that these payments were also payments by SDPL of fees collected from its post-incorporation projects.

96 Clearly therefore, not all of the debit notes were in respect of loans from SDPL to SMSPL.

97 The amounts which Patty alleged to have been included by Nisha by mistake, add up to $243,212.

98 In my view, the Debit Notes were just excuses for Patty to withdraw moneys from SMSPL's account following Edmund's resignation. As discussed above, only three of the Debit Notes related to loans from SDPL. Payment on the remaining six of the Debit Notes was therefore wrongful.

99 As for the deductions for "drafting services" in the debit notes, I have found in favour of Edmund's version of the Oral Agreement. There was therefore no basis for these deductions. In my view, the deductions for drafting services were just attempts by Patty made after the fact to support her allegation that under the Oral Agreement, SDPL and MOX were to reimburse SMSPL for use of SMSPL's resources.

Denial / obstruction of access to SMSPL's financial documents

100 I accept Edmund's evidence that he was denied and/or obstructed from having access to SMSPL's financial documents. First, it is clear that Patty did

Version No 2: 27 Oct 2020 (22:41 hrs)

not welcome Edmund's requests for SMSPL's accounts. In her email dated 8 August 2015 to Edmund, she said "we do not understand why you are requesting to see [SMSPL's] accounts. In the last three (3) years, you never manage[d] the accounts at all".[129]

101 Second, on 23 or 24 July 2015, Patty showed Edmund three documents – a notice of an annual general meeting ("AGM"), directors' resolution, and minutes of the AGM supposedly held on 30 June 2015. The minutes sought to adopt SMSPL's accounts for 2014. Patty wanted Edmund to sign the documents but Edmund refused.[130] Edmund claimed that he refused to sign because he asked for a copy of the 2014 accounts but was refused.[131] I reject Patty's denial that Edmund did not ask for the accounts. There is no reason why Edmund would have refused to sign the minutes otherwise. On 28 July 2015, Edmund sent an email to Patty, stating that he would not be able to sign the minutes as he had not received the 2014 accounts.[132] Edmund also repeated his request for the 2014 accounts. On 5 August 2015, Edmund's lawyers wrote to Patty seeking, among other things, copies of the company's accounts for 2012 to date.[133] In her oral testimony, Patty first claimed that SMSPL's accounts were on the shelves and Edmund could help himself to them, only to subsequently admit that the 2014 accounts were not on the shelves and that she did not have them.[134]

102 Third, Edmund also asked Nisha for certain documents. On 31 August 2015, Nisha emailed Edmund to get his lawyers to make a comprehensive list of what he wanted and send the list to Patty's lawyers.[135] Nisha admitted that her email was sent to Edmund on Patty's instructions.[136]

Version No 2: 27 Oct 2020 (22:41 hrs)

103 Fourth, on 5 October 2015, Edmund contacted Karen who refused to release any of SMSPL's documents to him and instead referred him to Patty's lawyers.[137]

104 Fifth, on 9 October 2015, Edmund applied to the Court for inspection of SMSPL's accounts in his capacity as director. SMSPL objected to the application on the ground that Edmund had an ulterior motive in seeking access to SMSPL's accounts. Before the application could be heard, Edmund received notice of a directors' meeting to be held on 17 December 2015 to consider, among other things, convening an EGM to remove Edmund as director. Edmund's requests to adjourn the directors' meeting and the EGM were not acceded to. Edmund then sought and obtained an injunction to restrain SMSPL and Patty from removing him as a director. On 25 January 2016, I granted Edmund's application to inspect the company's accounts. Patty's conduct is clear evidence that Edmund was denied and/or obstructed from having access to SMSPL's accounts.

105 Sixth, SMSPL's finalised 2014 accounts were never produced, not even during the trial. I do not accept Patty's assertion that she did not have the 2014 accounts for the following reasons:

(a) Patty had asked Edmund to sign the minutes of AGM adopting these accounts.

(b) Patty informed Jazz on 17 June 2015 that SMSPL had a profit of approximately $890,000 for 2014 after tax.[138] Patty said that this figure was based on information from Shin and agreed that it must have been based on the finalised 2014 accounts.[139]

Version No 2: 27 Oct 2020 (22:41 hrs)

(c) Karen had filed SMSPL's Annual Return on the basis that the 2014 accounts had been finalized and approved. Patty claimed that she was shocked.[140] I find it quite unbelievable that SMSPL's book-keeper would have filed the Annual Return without getting Patty's confirmation on the accounts. SMSPL and Patty did not call Karen as a witness and I draw an adverse inference against them in this regard.

(d) SMSPL's notice of assessment dated 12 May 2015 disclosed an income of $948,368 for 2014.[141] Patty agreed that the assessment could only have been prepared from an income statement given by SMSPL.

(e) During the course of the trial, SMSPL produced a copy of SMSPL's unaudited financial statement for 2014 and a set of several of SMSPL's accounting documents for 2014.[142] These were still not the finalised 2014 accounts. Even so, they were not given to Edmund earlier.

106 The 2014 accounts are relevant to several issues in this case. I find it most disturbing that SMSPL and Patty did not disclose the 2014 accounts and that even the unaudited financial statements for 2014 and several accounting documents for 2014 were only produced during the course of this trial.

Claw-back of director's fees and dividends

107 Edmund's director's fees and dividends for 2012 and 2013 were as follows:[143]

Year	Director's fees	Dividends
2012	$200,000.00	$48,700.05
2013	$315,000.00	$280,000.00

Version No 2: 27 Oct 2020 (22:41 hrs)

	(received: $50,000.00)	(received: $150,000.00)

108 Edmund thus received a total amount of $448,700.05. In this action, he is also claiming for the balance unpaid amounts of $265,000 (unpaid director's fees for 2013) and $130,000 (unpaid dividends for 2013). SMSPL has counterclaimed the amount of $398,700.05 (comprising the director's fee for 2012 and dividends for 2012 and 2013) that Edmund has received.

109 When Edmund notified Patty of his resignation on 13 July 2015, Patty wanted Edmund to return to SMSPL all the advances from SMSPL to him. Patty admitted to requiring Edmund to repay the total sum of the director's fees and dividends that had been paid to him, amounting to $448,700.05.[144]

110 SMSPL and Patty claimed that

(a) the director's fee paid to Edmund for 2012 was in fact a loan;[145]

(b) it was agreed on 22 June 2015 that with respect to Edmund's director's fee for 2013, the outstanding amount of $265,000 would be loaned to SMSPL;[146] and

(c) the declarations of dividends for 2012 and 2013 were made under a mistake of fact as to SMSPL's profits.[147]

Edmund's director's fee for 2012

111 I reject SMSPL's and Patty's assertions that Edmund's director's fee for 2012 was in fact a loan to him.

Version No 2: 27 Oct 2020 (22:41 hrs)

112 First, Patty relied on the fact that the sum of $200,000 was described in SMSPL's payment voucher as "Advanced Director Fee".[148] Patty argued that the word "advanced" meant it was a loan. In my view, this argument was contrived and unmeritorious. The payment voucher referred to a "director fee". There was simply no reason why it could not have been described as a loan if it was intended to be a loan. Further, under cross-examination, Anita explained that this was not a loan but a director's fee, paid to Edmund earlier than Patty or herself.[149] Anita's evidence is consistent with the fact that Patty and Anita received their respective payments of $50,000 each only in February 2014 and the payment vouchers clearly described the same as "director fees".[150] Edmund's director's fee had been paid to him earlier, in August 2013.

113 Second, even by Patty's own account, around June 2013 when SMSPL's 2012 accounts were closed, she was told by Karen that SMSPL could "take out" $300,000 as "director fees" if required.[151] Subsequently, at an AGM held on 30 June 2013, the shareholders of SMSPL approved payment of $300,000 as directors' fee for 2012, to Edmund ($200,000), Anita ($50,000) and Patty ($50,000).[152] Even if Edmund had asked at the end of 2012 if he could have an advance (as Patty claimed), the fact remains that the $200,000 was approved as director's fee for Edmund in June 2013 and paid to Edmund in August 2013 as director's fee.

114 Third, the sum of $300,000 was charged as directors' fee in SMSPL's financial statements for 2012 which were signed by Patty.[153]

115 Fourth, Edmund declared his receipt of $200,000 as director's fees and paid tax on it. There was no reason for Edmund to do so if it was just a loan.

Version No 2: 27 Oct 2020 (22:41 hrs)

116 Fifth, Patty claimed that she met with Edmund and Anita on 3 November 2014 and they agreed that, among other things, Edmund would receive $150,000 which, together with his director's fee of $200,000 for 2012, would allow him to recover his capital investment of $350,000 in SMSPL.[154] In his email to Jazz dated the same day, Edmund informed Jazz that SMSPL would pay all the directors their "seeding money" and that he would receive $150,000 to add to the "$200,000 previous[ly] paid".[155] In my view, Patty treatment of the $200,000 as part of Edmund's recovery of his capital investment confirmed that it could not have been a loan. It is completely illogical to treat the payment of $200,000 as part of Edmund's return of his capital investment if that payment was a loan.

117 Sixth, in a message dated 17 June 2015 to Jazz, Patty stated the following:[156]

> … for the record, Edmund got from the company so far for the director's fee and company's dividends for the last 2 years accounts (accounts for year ending 2012 & 2013) is quite a lot up [to] today (it is in excess of $400,000.00 to date.) Hope it goes to helping you guys pay the house mortgage or the rebuilding construction loan so that [you] guys do not have to shoulder the heavy weight [of] these loans…(*sic*)

Clearly, in her message, Patty did not treat Edmund's director's fee for 2012 as a loan.

118 Seventh, in an email dated 8 August 2015 to Edmund, Patty referred to the $300,000 paid as directors' fees for 2012 and took the position that since Edmund was paid $200,000 and Anita and she were only paid $50,000 each, therefore Edmund had taken an advance of $150,000.[157] This statement is inconsistent with Patty's present claim that the $200,000 was a loan. If the

Version No 2: 27 Oct 2020 (22:41 hrs)

$200,000 paid to Edmund had been a loan (as Patty now claims), Patty would have simply taken that position in her email. In my view, Patty's assertion of a loan (whether it was $150,000 or $200,000) was an afterthought.

119 In my judgment, the amount of $200,000 was paid to Edmund as director's fee for 2012. Patty had no reason to ask Edmund to repay the amount to SMSPL.

Edmund's director's fee for 2013

120 A total amount of $900,000 was approved as directors' fees for 2013. This amount was also reflected in SMSPL's Schedule of Expenses for 2013.[158] The director's fee for Patty was $405,000, Anita $180,000 and Edmund $315,000. Edmund received payment of $50,000 in January 2015[159] and Patty received payment of $100,000 in February 2015.

121 It is clear that a sum of $265,000 is due to Edmund in respect of his director's fee for 2013. SMSPL and Patty pleaded that Edmund is not entitled to the balance as it had been agreed that the monies would be kept in SMSPL as working capital.[160] I see no basis for SMSPL's and Patty's defences. Both have pleaded that the balance amount was to be loaned to SMSPL. Since no specific agreement as to its repayment has been pleaded, the loan must be repayable on demand.

122 SMSPL further pleaded that this sum should be set off against the alleged advance of $200,000 paid as director's fee for 2012, and the dividends paid to Edmund for 2012 and 2013.[161] I have held that the payment of $200,000 was not an advance but Edmund's director's fee for 2012. As for the dividends these are dealt with below.

Version No 2: 27 Oct 2020 (22:41 hrs)

Payment of dividends for 2012

123 SMSPL's financial statements for 2012, signed by Patty on 3 June 2013, showed a net profit of $139,967.[162] A sum of $139,143 was declared as dividends for 2012 and paid in June 2015 to Patty ($62,614.35), Anita ($27,828.60) and Edmund ($48,700.05).[163]

124 SMSPL and Patty now claim that the accounts have been reviewed *after* the commencement of this action, and after making adjustments and deducting tax, SMSPL in fact suffered a loss of $18,713.13 for 2012. SMSPL and Patty therefore say that the dividends for 2012 were wrongly declared and paid.

125 SMSPL and Patty pleaded the following adjustments to SMSPL's accounts for 2012:[164]

(a) The revenue was reduced by $125,837.43. SMSPL pleaded that this amount was wrongly classified as revenue.[165] However, it is not clear from the pleadings, AEICs or closing submissions, what this amount related to or why it was wrongly classified. Accordingly, I find that SMSPL and Patty have failed to prove that this adjustment was proper.

(b) A sum of $315,118.54 was added to the revenue. This comprised charges to SDPL and MOX for use of SMSPL's resources.[166] As I have found in favour of Edmund's version of the Oral Agreement, this adjustment was not justified.

(c) A sum of $560,747.65, originally recorded as income, was recorded as a liability instead. The sum of $560,747.65 refers to the $600,000 (comprising $176,000 and $424,000) paid by SDPL to

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL, after removing the GST.[167] SMSPL and Patty claimed that these were loans from SDPL. I have found (at [51] above) that these were indeed loans from SDPL. The adjustment was therefore justified.

(d) A sum of $203,430.71, originally recorded as income, was recorded as expenses instead. These were expenses (including salaries for SMSPL's employees) which SDPL paid on behalf of SMSPL before SMSPL opened a bank account.[168] Edmund did not dispute this.[169] This adjustment was justified.

(e) The sum of $300,000 originally recorded as an expense, was recorded as advances instead. This was based on the allegation that this amount was not paid as directors' fees but as advances to the directors.[170] I have found that the amount was not paid as advances but as directors' fees. The adjustment was therefore not justified.

Patty pleaded additional adjustments for freight and handling charges ($8,021.28) and sub-contractors' fees ($34,937.80). As no evidence was adduced to substantiate these, I find that Patty has not proved that these additional adjustments were justified.

126 Patty's reliance on the pleaded grounds for the adjustments to SMSPL's accounts for 2012 was not justified save for two adjustments involving $560,747.65 and $203,430.71 in (c) and (d) above. In the circumstances, Patty did not act in good faith when she insisted that Edmund returned the dividends received by him for 2012.

127 The adjustments involving $560,747.65 and $203,430.71 in (c) and (d) above are to be made to the original accounts of SMSPL for 2012. In addition,

Version No 2: 27 Oct 2020 (22:41 hrs)

as I have found in favour of Edmund's version of the Oral Agreement, all fees in respect of MOX's and SDPL's pre-incorporation projects which were collected based on *invoices in 2012* (after the Incorporation Date) have to be included as part of SMSPL's revenue for 2012. Fees from SDPL's pre-incorporation projects that are set out in Annex A of the statement of claim, are dealt with in [148] and [149] below. Further, fees collected by SDPL *in 2012* in respect of post-incorporation projects (see Annex B of the statement of claim and [157] below) will also have to be added to SMSPL's revenue for 2012.

128 Whether there were sufficient profits in 2012 to support the dividends declared will only be known after adjustments have been made to SMSPL's accounts for 2012 to give effect to the findings in this case. All fees in respect of MOX's and SDPL's pre-incorporation projects which have been paid pursuant to invoices issued in 2012 after the Incorporation Date have to be included as part of SMSPL's revenue for 2012. To the extent that the profits are insufficient to support the dividends declared, the respective shareholders will have to return either all or part (proportionally) of the dividends received by each of them.

Payment of dividends for 2013

129 SMSPL's financial statements for 2013, signed by Patty on 3 June 2013, showed a net profit of $898,989.[171] Patty's case is that in February 2014, Shin advised her that SMSPL could "take out" a sum of about $1.7m – $1.8m for 2013. She then met with Edmund and Anita and they agreed that $900,000 would be paid as directors' fees and $800,000 would be declared as dividends.[172] In November 2014, Anita was paid dividends of $200,000, Edmund $150,000 and Patty $450,000.[173] Edmund claimed that his 35% share of the dividends

Version No 2: 27 Oct 2020 (22:41 hrs)

amounted to $280,000 and there is therefore a sum of $130,000 still owing to him as dividends for 2013.

130 Patty claimed that she met with Edmund and Anita on 3 November 2014 and they agreed that the sum of $800,000 would be distributed as follows:

(a) $150,000 to Edmund. Together with his director's fee of $200,000 for 2012, this would allow Edmund to recover his capital investment of $350,000 in SMSPL;

(b) $450,000 to Patty to allow her to recover her capital investment of $450,000 in SMSPL; and

(c) $200,000 to Anita to allow her to recover her capital investment of $200,000 in SMSPL.

This meeting was referred to earlier in [116] above.

131 Patty's claim is supported by an email dated 3 November 2014 from Edmund to Jazz in which Edmund said:[174]

> This has been discussed with both Patty and Anita today 3 Nov 2014.
>
> Currently [SMSPL] receivable for January 2014 to October 2014 is $4.9m++. [SMSPL] will not bill for the rest of the year. Receivable will be bill next year.
>
> As for 2013 declared Directors Fees of $900,000.
>
> There is a $250K owing to director Patty which she is not claiming yet.
>
> [SMSPL] will payout to all director the seeding money.
>
> Patty - $450,000
>
> Edmund – ($200,000 previously paid) - $150,000

Version No 2: 27 Oct 2020 (22:41 hrs)

> Anita - $250,000
> Remaining $100K Patty says put back in account.

132 Edmund's email referred to the directors' fee of $900,000. I do not think that the reference to directors' fees instead of dividends, is material. It is not disputed that Edmund received $150,000 as dividends in November 2014 and $50,000 in January 2015 as payment of part of his director's fee for 2013. Patty received $450,000 in dividends for 2013 and Anita received $200,000. I agree with Patty that the three shareholders of SMSPL had agreed to the distribution of dividends as set out in [130] above. In the circumstances, Edmund is not entitled to any further dividends for 2013.

133 Next, as with the dividends for 2012, SMSPL and Patty now claim that after making adjustments to its accounts, SMSPL's profits were $575,952[175] and thus the dividends amounting to $800,000 for 2013 were wrongly declared and paid.

134 SMSPL and Patty pleaded the following adjustments to SMSPL's accounts for 2013:[176]

> (a) A sum of $259,980, originally classified as revenue, was recorded as a liability instead. The sum of $259,980 is the total of five invoices (SM-2013-038 to 041 and SM-2013-066) which form part of the $719,652.02 referred to in [56] above, after removing the GST.[177] SMSPL and Patty claimed that these were loans from SDPL. I have found (at [67] above) that these were payment of fees collected from SDPL's pre-incorporation projects and not loans. This adjustment is therefore not justified.

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) A sum of $237,537.15, originally classified as revenue, was wrongly classified.[178] However, it is not clear from the pleadings, AEICs or closing submissions, what this amount related to or why it was wrongly classified. Accordingly, I find that SMSPL has failed to prove that this adjustment was proper.

(c) A sum of $307,067.18 was added to the revenue. This comprised charges to SDPL and MOX for use of SMSPL's resources.[179] As I have found in favour of Edmund's version of the Oral Agreement, this adjustment was not justified.

Patty pleaded additional adjustments for freight and handling charges ($32,181.66) and sub-contractors' fees ($181,178.72). As no evidence was adduced to substantiate these, I find that Patty has not proved that these additional adjustments were justified.

135 Patty's reliance on the pleaded grounds for the adjustments to SMSPL's accounts for 2013 was not justified. In the circumstances, Patty did not act in good faith when she insisted that Edmund return the dividends received by him for 2013.

136 Again, whether there were sufficient profits in 2013 to support the dividends declared will only be known after adjustments have been made to SMSPL's accounts for 2013 to give effect to the findings in this case. All fees in respect of MOX's and SDPL's pre-incorporation projects which have been paid pursuant to invoices issued in 2013 have to be included as part of SMSPL's revenue for 2013. To the extent that the profits are found to be insufficient to support the dividends declared, the respective shareholders will have to return either all or part (proportionally) of the dividends received by each of them.

Version No 2: 27 Oct 2020 (22:41 hrs)

Failure to pay Edmund's salary for October 2015

137 Edmund was not paid his pro-rated salary of $4,063.35 from 1 October to 12 October 2015. SMSPL pleaded that he was not entitled to his salary as he had failed, refused and/or neglected to discharge his duties as an employee.[180] Alternatively, SMSPL sought to set off its counterclaim for damages against Edmund's claim for his salary.

138 Patty testified that Edmund was often late for work, left early and was absent from the office without informing anyone else. On Patty's instructions given around the end of September / early October 2015, Nisha kept a record of when Edmund was in the office. Nisha's record showed that Edmund was not in the office on 2 and 8 October 2015.[181] Nisha also recorded Edmund's absence on 13 October although his last day was on 12 October.

139 Edmund accepted Patty's records of when he was not in the office, but claimed he was out meeting with clients.[182] Edmund also disputed SMSPL/Patty's allegations and claimed that he had handed all outstanding matters to other staff of SMSPL and that there was no formal process for applying for leave or recording work done or time spent in SMSPL's offices.[183] The fact that Nisha had to record Edmund's absences on a sheet of paper lent support to Edmund's claim.

140 In my view, SMSPL did not adduce sufficient evidence to prove its allegations and Edmund is therefore entitled to his salary of $4,063.35 for the period from 1 to 12 October 2015.

Version No 2: 27 Oct 2020 (22:41 hrs)

Excluding Edmund from decision-making

141 Edmund claimed that Patty and/or the other shareholders had excluded him from decision-making in SMSPL since October 2015. Edmund alleged as follows:[184]

(a) A meeting was held on 30 October 2015 to discuss the status of SMSPL's projects and course of action for each project. Patty, Anita and Ane attended the meeting as "Director/Share Holder". Edmund was a director and shareholder but he was not given notice of, and thus did not attend, the meeting. Edmund received a copy of the minutes of the meeting the next day.[185]

(b) Patty and Anita decided to make adjustments to SMSPL's accounts without consulting Edmund.

(c) On 5 February 2016, SMSPL's solicitors informed Edmund's solicitors that, among other things, SMSPL will cease operations by 30 April 2016. Edmund was not consulted on this.

(d) On 5 February 2016, SMSPL's solicitors sent to Edmund's solicitors, copies of its letter to its book-keepers alleging that its book-keepers had lodged the Annual Return for 2014 without approval and the Annual Return should be expunged, and its letter to the Inland Revenue Authority of Singapore requesting time to file its tax return for Year of Assessment 2015 as adjustments had been made to its accounts for 2012 to 2014. These matters were not discussed with Edmund.

Version No 2: 27 Oct 2020 (22:41 hrs)

(e) Patty and/or the other shareholders prevented SMSPL from providing Edmund with a fair view of the financial state of, and management decisions taken for, SMSPL.

142 In her Defence and Counterclaim (Amendment No 5), Patty did not deny Edmund's allegations, choosing instead to not admit Edmund's allegations and to plead that Edmund voluntarily removed himself from the decision-making process.[186] In her closing submissions, Patty submitted that the legal effect of Edmund's resignation was that he had resigned from management of SMSPL.[187] I disagree. Edmund did not resign as director and he remained a shareholder. He was fully entitled to attend the meeting on 30 October 2015 as a director and shareholder, just like Patty, Anita and Ane.

143 Patty also submitted that Edmund's exclusion from SMSPL's management was justified because he had brought his exclusion upon himself by reason of his own misconduct: *Hollington on Shareholders' Rights* (8th Ed, 2017) at para 7-142. First, Patty has not pleaded this defence. Second, in my view, any misconduct on the part of Edmund does not justify his exclusion from the matters set out at [141] above.

144 Patty next submitted that the decisions to make adjustments to the accounts were management decisions and Edmund did not hold any management position in December 2015.[188] This was not pleaded. In any event, the accounts had to be approved by the directors and shareholders and Edmund was both a director and a shareholder.

145 Edmund had been asking for SMSPL's accounts. It is clear to me that Patty deliberately excluded Edmund's participation, at least with respect to the

Version No 2: 27 Oct 2020 (22:41 hrs)

decisions to make adjustments to the accounts and to expunge the Annual Return for 2014.

146 I find that Patty did exclude Edmund from decision-making in SMSPL without valid reasons.

Annex A – fees from SDPL's pre-incorporation projects

147 Annex A of the statement of claim sets out the fees collected by SDPL from its pre-incorporation projects, and which were invoiced after the Incorporation Date. These fees have not been paid over to SMSPL. Edmund claimed that pursuant to the Oral Agreement such fees are to be paid to SMSPL.

148 However, Edmund has accepted during his oral testimony that where work had been completed before the Incorporation Date, the fees need not be paid to SMSPL even if the invoices were issued after the Incorporation Date. Edmund has therefore withdrawn items 1, 3, 7–9, 11, 16–18, 20, 22, 25, 26, and 29 of Annex A.[189] The total amount under Annex A (excluding these withdrawn items) is $1,320,586.67. Edmund also accepted that $590,820 had already been transferred.[190]

149 I have found in favour of Edmund's version of the Oral Agreement. The fees in Annex A (excluding those that Edmund has withdrawn), amounting to $1,320,586.67 are therefore payable to SMSPL pursuant to the Oral Agreement. I find that Patty did wrongfully refuse or fail to cause SDPL to pay the same to SMSPL.

Version No 2: 27 Oct 2020 (22:41 hrs)

Annex B – fees collected by SDPL for post-incorporation projects

150 Pursuant to the Oral Agreement, all new projects after the Incorporation Date are to be directed to SMSPL. Edmund alleged that the fees in Annex B of the statement of claim were collected by SDPL in respect of projects taken up by SDPL after the Incorporation Date. According to Edmund, only $446,589.99 has been paid to SMSPL and a balance amount of $3,063,104.01 remains due from SDPL to SMSPL.

Items 1–16

151 Patty claimed that items 1–16 in Annex B refer to pre-incorporation projects.[191] This makes no difference as I have found in favour of Edmund's version of the Oral Agreement.

152 However, I accept Patty's evidence that, with respect to item 4, the project was abandoned by the client and the invoice (SD-2012-027) for $192,600 remains unpaid.[192] On the stand, Edmund accepted that the project had been abandoned and withdrew his claim.[193] SDPL therefore is not liable to pay this amount to SMSPL.

153 With respect to items 5–7, Patty claimed that the works were completed by SDPL before the Incorporation Date.[194] Despite the alleged completion of the works before the Incorporation Date, there were three invoices issued after the Incorporation Date, two in July 2012 and one in August 2012. Patty has not produced any evidence in support of her allegation that the works were completed before the Incorporation Date and I therefore reject her claim. SDPL remains liable to pay the amount of $1,102,100 under items 5–7, to SMSPL.

Version No 2: 27 Oct 2020 (22:41 hrs)

154 The invoice in item 9 (SD-2013-004) for $50,000 has been cancelled and the same amount has been included in the invoice in item 10 (SD-2013-027) for $80.000.[195] Item 9 should therefore be excluded.

155 With respect to item 12, Patty testified that the invoice (SD-2013-008) for $64,200 was cancelled on 11 October 2016 by way of a tax credit note (SD/CN-11) and SDPL issued another invoice (SD-2016-11) for $64,200 on 11 October 2016.[196] The amount of $64,200 is still due to SMSPL from SDPL.

156 No issue arises with respect to item 14 since Edmund accepts that the monies have been paid to SMSPL.

157 In conclusion, the total amount of $1,545,904 in respect of items 1–16 (excluding items 4, 9 and 14), is payable by SDPL to SMSPL pursuant to the Oral Agreement.

Items 17–36

158 Patty did not dispute that items 17–36 are in respect of post-incorporation projects.

159 With respect to item 17 (invoice SD-2014-20 for $21,400), Patty testified that a sum of $36,272.89 is payable to SMSPL although SDPL claimed to set off the amount against debts allegedly owed by SMSPL to SDPL.[197]

160 No issue arises with respect to items 18 and 19 since Edmund accepted that the monies have been paid to SMSPL.

161 As for items 20–36, I accept Patty's evidence as follows:

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) With respect to item 20 (Chembur project; invoice SD-2015-19 for $$60,000), the invoice remains outstanding to date and therefore SDPL has no corresponding liability to SMSPL for this amount.[198]

(b) With respect to item 21 (Sancoale project; invoice SD-2015-22 for $21,500), SDPL abandoned the project and the invoice was cancelled by way of credit note dated 29 April 2016.[199] SDPL has no liability to pay SMSPL this amount.

(c) With respect to item 22 (Kota Kinabalu project; invoice SD-2015-25 for $10,700), SDPL abandoned the project and the agreement with the client was terminated.[200] SDPL has no liability to pay SMSPL this amount.

(d) With respect to items 23–32 (Goodwood Residence project) and items 33–36 (Leedon Residence project),

(i) SDPL paid $541,936.74 to its suppliers for the Goodwood Residence project;[201]

(ii) SDPL paid $337,108.13 to its suppliers for the Leedon Residence project;[202] and

(iii) the balance for the two projects has been paid to SMSPL.

162 My conclusion that the amounts in items 23–36 above (less expenses) have been paid to SMSPL, is based on the following:

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) SDPL received payment amounting to $1,498,000 for the Goodwood Residence project ($1,016,500)[203] and the Leedon Residence project ($481,500).[204]

(b) SDPL paid its suppliers a total of $919,044.87 comprising $541,936.74 for the Goodwood Residence project and $377,108.13 for the Leedon Residence project (see [161(d)] above).

(c) The balance payable to SMSPL for the two projects was therefore $578,955.13. This has been paid to SMSPL as follows:

(i) $230,000 (undisputed);

(ii) $106,999.99;[205] and

(iii) $241,955.14.[206]

The three payments above add up to $578,955.13.

163 Patty's account of the payments in respect of the Goodwood Residence and Leedon Residence projects was more complicated. SDPL received $1,016,500 in respect of the Goodwood Residence project. Both SMSPL and Patty pleaded that SDPL paid to SMSPL $471,955.14 which was the balance after deducting payments to vendors and contractors on behalf of SMSPL.[207] As stated earlier, it is not disputed that $230,000 was paid to SMSPL.

164 Patty relied on two payment vouchers (dated 1 and 21 December 2016) as evidence of payment of the balance amount of $241,955.14.[208] However, the vouchers referred to the Goodwood Residence project and the Leedon Residence project. Patty explained that she decided to account for the monies received for both projects together because SDPL made a loss on the Goodwood

Version No 2: 27 Oct 2020 (22:41 hrs)

Residence project and SDPL offset the losses from the Goodwood Residence project against the profits from the Leedon Residence project.[209]

165 The fact that SDPL made a loss on the Goodwood Residence project and this loss was set off against the profits on the Leedon Residence project, was not pleaded by SMSPL, SDPL or Patty. Be that as it may, it is clear that Patty's explanation does not add up:

(a) First, SDPL received payment of $1,016,500 in respect of the Goodwood Residence project. SDPL paid its suppliers $541,936.74. This contradicts Patty's assertion[210] that the SDPL suffered a loss because the amount it paid its suppliers exceed the amount collected.

(b) Second, SDPL was paid a total of $481,500 for the Leedon Residence project.[211] SDPL paid its suppliers $377,108.13. As stated earlier, SDPL paid the remaining monies amounting to $106,999.99 to SMSPL. The amount paid to SMSPL ($106,999.99) when added to the amount paid to suppliers ($377,108.13) actually gives a total of $484,108.12 which exceeds the amount received by SDPL ($481,500). Contrary to Patty's explanation, it is clear that there were no further profits to set off against the alleged loss on the Goodwood Residence project.

166 In my view, Patty concocted her explanation after causing SDPL to make the final payment of $241,955.14 in December 2016. Patty's clumsy attempts at concocting an explanation after belatedly causing SDPL to make the payment of $241,955.14 in December 2016 is relevant to her credibility as a witness in this action. As far as items 23 – 36 go, the fact remains that there was

Version No 2: 27 Oct 2020 (22:41 hrs)

nothing else owing by SDPL to SMSPL in respect of the Goodwood Residence and Leedon Residence projects.

167 In conclusion, with respect to items 17–36, SDPL is only liable to pay SMSPL $36,272.89 (as admitted to by Patty) in respect of item 17.

Annexes C1 and C2 – China projects

168 Edmund pleaded that Annexes C1 and C2 set out the fees collected by SD (Shanghai) for projects in China, pursuant to invoices issued between the Incorporation Date and 12 October 2015.[212]

169 Annex C1 refers to six invoices issued by SDPL to SD (Shanghai).[213] Patty explained that the invoices were internal billings between SDPL and SD (Shanghai) for the purpose of remitting funds (collected by SD (Shanghai)) out of China to SDPL.[214] The evidence given by Patty and Mr Shen Jia Jun ("Shen") (SD (Shanghai)'s financial controller) was not all that clear and at times seemed conflicting. Nevertheless, in my view, the more important point is that under the Oral Agreement, only fees invoiced after the Incorporation Date were to be paid to SMSPL. The invoices in Annex C1 were internal invoices from SDPL to SD (Shanghai). Therefore, Edmund has not discharged his burden of proving that the amounts in Annex C1 were in respect of invoices issued after the Incorporation Date. Accordingly, SDPL has no obligation to pay the amounts stated in Annex C1 to SMSPL pursuant to the Oral Agreement.

170 As for Annex C2, this merely sets out a list of eight projects and their respective contract amounts. Patty admitted that five of the projects were SMSPL's projects whilst the remaining three were SDPL's pre-incorporation projects.[215] According to Patty, SMSPL did not receive the full contract sums

Version No 2: 27 Oct 2020 (22:41 hrs)

with respect to the five SMSPL projects.[216] I find that Edmund has not discharged his burden of proving that

(a) with respect to the five SMSPL projects, there were monies collected by SD (Shanghai) or SDPL which had not been paid to SMSPL; and

(b) with respect to the three SDPL pre-incorporation projects, there were monies collected by SD (Shanghai) in respect of invoices issued after the Incorporation Date.

I am therefore unable make any finding that SDPL is liable to pay any sums of money under Annex C2, to SMSPL pursuant to the Oral Agreement.

171 I note that SD (Shanghai)'s financial controller, Shen, gave evidence on behalf of the defendants and confirmed that to date SD (Shanghai) has collected a total of RMB 6,180,584.24 on behalf of SMSPL in respect of SMSPL's projects from 2012 to 2016, and that after deduction of expenses, a sum of RMB 3,504,460 was remitted by SD (Shanghai) to SMSPL.[217] My findings above on Annex C1 and Annex C2 do not affect Shen's evidence in this respect.

Annex D - GST wrongfully incurred

172 Edmund claimed that in breach of the Oral Agreement and her duties as director of SMSPL, Patty wrongfully caused SMSPL to invoice SDPL for the fees collected by SDPL (which SDPL was required to pay to SMSPL pursuant to the Oral Agreement) less an amount for GST. This resulted in SMSPL receiving a smaller amount then it was entitled to, thereby reducing the value of the shares in SMSPL. [218]

Version No 2: 27 Oct 2020 (22:41 hrs)

173 As pleaded, Edmund's claims related to the following:

(a) On 6 March 2014, SDPL invoiced Keppel Bay Pte Ltd for payment of $130,000 plus GST of $9,100. Subsequently, SMSPL invoiced SDPL for $130,000 *inclusive* of GST of $8,504.67, resulting in SMSPL receiving only $121,495.33 instead of the full $130,000.[219]

(b) SDPL invoiced clients for work done outside Singapore. SMSPL then invoiced SDPL for the fees collected by SDPL and in doing so, SMSPL incurred GST. SMSPL would not have had to incur GST if the projects had been engaged and billed directly by SMSPL.[220] Annex D to the statement of claim set out the projects involved.

$130,000 paid by Keppel Bay

174 SMSPL and Patty have pleaded bare denials[221] and Patty's evidence did not deal with this matter. However, in his closing submissions, Edmund did not pursue this matter.

Annex D

175 Annex D sets out 11 invoices issued by SDPL. These invoices were for work done outside Singapore and hence SDPL did not have to charge GST.[222] In Annex D, Edmund claimed that SDPL then paid a total of $431,880 to SMSPL from which SMSPL paid GST which came up to $30,231.60. Although Annex D set out the amount paid by SDPL to SMSPL, Edmund did not identify the invoices from SMSPL to SDPL, whether in Annex D or in his AEIC.

176 Patty's responses to Annex D were as follows:[223]

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) With respect to item 1, no GST was paid on the sum of $49,980 paid to SMSPL.[224]

(b) With respect to items 2–11,

(i) SMSPL had to use SDPL to issue the invoices because SMSPL did not have the requisite Permanent Account Number ("PAN") Card issued by India's Tax Authority;

(ii) SMSPL's initial invoice to SDPL for the amount collected, did not include GST. However, in May 2014, as a result of a query from IRAS, SMSPL's former book-keeper advised SMSPL to issue invoices to SDPL inclusive of GST.

Patty therefore denied that she acted wrongfully.

177 As there was no other evidence from Edmund, I accepted Patty's explanations and find that she did not act wrongfully with respect to the items in Annex D.

Annex E – FF&E expenses paid by SMSPL

178 Annex E relates to FF&E expenses that SMSPL paid in respect of SDPL's projects. Edmund confirmed that his claim in Annex E arises only if I find in favour of Patty's version of the Oral Agreement.[225] As I have found in favour of Edmund's version, the expenses were rightly borne by SMSPL and Annex E is irrelevant.

Version No 2: 27 Oct 2020 (22:41 hrs)

Annexes F1–F3 and G – Patty's accrual of monies to herself

179 Annexes F1–F3 and G show various amounts of monies which have been accrued to Patty's account with SMSPL. These included payments by SMSPL's employees for rental, an amount refunded by an SMSPL client, payments of salaries and expenses that were not cashed out, and several miscellaneous items. The total amount in Annex F1 is $39,764.34, Annex F2 $27,188.12, Annex F3 $28,172.44 and Annex G $90,134.51.

180 With respect to Annexes F1–F3, Patty explained that[226]

(a) the entries were erroneously recorded in her director's account by SMSPL's previous external book-keeper, except for item 10 ($2,193.86) in Annex F2 which was correctly accrued as owing to Patty since she had paid the sum on behalf of SMSPL; and

(b) the monies are still with SMSPL and except for item 10 in Annex F2, the other entries have been re-classified as "Other Income".

181 As for Annex G, Patty has accepted that the amounts in Annex G should not have been accrued to her director's account, and explained that the entries have been re-classified as "Purchase in Advance", "General Expenses", "Other Income", "Travelling Expenses", "Entertainment Expenses" or "Other Receivables.[227] Some of the entries were erroneously recorded in Patty's director's account by SMSPL's previous external book-keeper.

182 SMSPL's previous book-keeper, Shin, gave evidence on behalf of the defendants. In essence, his evidence was that whenever he was uncertain where to record a payment, he would record it under Patty's account. It seemed to me that Shin was a somewhat muddleheaded book-keeper, as can be seen from the

Version No 2: 27 Oct 2020 (22:41 hrs)

messy state of the accounts that he kept for SMSPL. On balance, I accept Patty's evidence that the recording of the payments referred to in Annexes F1–F3 and G in her director's account was done by Shin without her instructions.

Annexes H1 and H2 – purchases in advance

183 Annexes H1 and H2 relate to purchases in advance paid for by SMSPL. Edmund confirmed that his claims in Annexes H1 and H2 arise only if I find in favour of Patty's version of the Oral Agreement.[228] As I have found in favour of Edmund's version, the expenses were rightly borne by SMSPL. Annexes H1 and H2 are therefore irrelevant.

SMSPL's payment of $50,048 for salaries of SDPL's employees

184 In his closing submissions, Edmund submitted that SMSPL has wrongfully paid $50,048 to SDPL to pay the salaries of two of SDPL's employees, Mr Low Lar Kee ("Low") and Mr Andrew Mak ("Mak"), both of whom were not SMSPL's employees,[229] but SDPL's directors.[230] Low is Patty's brother-in-law and Mak is Patty's husband.[231] At the material times, Low's salary was $1,740 per month, and Mak's salary was $1,388 per month.[232]

185 Edmund's case is that the amount of $50,048 comprises the following:[233]

(a) $40,664 for the salaries of Low and Mak for the period from January 2014 to January 2015. This was paid by way of a cheque signed by Patty on 20 March 2015.[234] SDPL's invoice and SMSPL's payment voucher stated that this amount was a "Consultancy Fee";[235]

(b) $3,128 being the salaries of Low and Mak for November 2013; and

Version No 2: 27 Oct 2020 (22:41 hrs)

(c) $6,256 being double payment (in view of (a) above) of the salaries of Low and Mak for the months of September and October 2014.[236]

186 Patty claimed that

(a) from around February 2014 to February 2015, Nisha mistakenly deposited a total amount of $39,276 being the salaries of Low and Mak, into SMSPL's bank account;[237] and

(b) Patty discovered the error in March 2015 and SDPL rendered an invoice (SD-2015-008) dated 2 March 2015 to SMSPL for "Consultancy Fees" for the sum of $40,664.[238] This amount was a mistake by Nisha who added an additional month of Mak's salary of $1,388 and the sum of $1,388 should be reimbursed by SDPL to SMSPL.[239]

187 Nisha confirmed Patty's explanations.[240] I accept Patty's and Nisha's evidence and find that the payment of $40,664 to SDPL was a proper reimbursement to SDPL to the tune of $39,276. The payment of the balance of $1,388 to SDPL was a mistake by Nisha. SDPL has accepted that it has to reimburse SMSPL the sum of $1,388.[241]

188 However, an amount of $39,276 (out of the payment of $40,664) was accrued to Patty's director's account.[242] This entry in SMSPL's accounts is to be rectified. The amount of $39,276 belongs to SMSPL.

189 As for Edmund's claims regarding payment of Low's and Mak's salaries for November 2013, September 2014 and October 2014, these claims have been dealt with by SDPL's and Patty's admissions that SDPL had inadvertently and

Version No 2: 27 Oct 2020 (22:41 hrs)

wrongly billed SMSPL a total amount of $48,333.72 in salaries for Low, Mak and Mr Nicholas Mak Keng Kit.[243] As they are SDPL's employees, SDPL is liable to pay SMSPL this amount.

Payment of SDPL's income tax and GST

190 It is common ground that SMSPL paid $154,707.65 for SDPL's income tax for year of assessment 2013, and $14,800.02 for SDPL's GST for the accounting period from 1 October 2013 to 31 December 2013.[244] Edmund pleaded that Patty wrongfully caused SMSPL to make these payments on behalf of SDPL.

191 The payment voucher and cheque for the payment of SDPL's income tax were jointly signed by Patty and Edmund.[245] I accept Patty's evidence that the payments of SDPL's income tax and GST were with Edmund's knowledge and approval. I therefore reject Edmund's claim that these payments were wrongful. Nevertheless, SDPL is liable to repay SMSPL the total amount of $169,507.67.

Writing off $194,290.08 owed by SDPL

192 Edmund pleaded that Patty had wrongfully caused SMSPL to write off $194,290.08 owing by SDPL to SMSPL.[246] In her closing submissions, Patty did not deny the write off but submitted that this amount was part of a repayment of SDPL's loans to SMSPL.[247] Patty has not adduced any evidence in respect of this. In any event, since I have found in favour of Edmund's version of the Oral Agreement, this means there are no project-linked loans from SDPL that can be used to set off against any amounts owing by SDPL to SMSPL. I find therefore

Version No 2: 27 Oct 2020 (22:41 hrs)

that Patty wrongfully caused SMSPL to write off the sum of $194,290.08 and I order SDPL to pay SMSPL this amount.

Other wrongful reductions of SMSPL's revenue

193 Edmund claimed that SMSPL's revenue was further reduced by the following:

(a) a sum of $270,000 from purchases in advance was set off against the consultancy fee of $270,000 (excluding GST) collected pursuant to SMSPL's invoice SM-2013-013;

(b) a sum of $300,801.32 from purchases in advance was set off against overseas sales collected for 2012;

(c) a sum of $1,329,076.59 from purchases in advance was set off against sales collected for 2013; and

(d) a sum of $3,124,744.58 from purchases in advance was set off against sales collected for 2014.

Purchases in advance refer to purchases of FF&E made by SMSPL in advance on behalf of its clients.

194 Edmund has not adduced the evidence required to explain and substantiate the above.[248] I find therefore that he has not proved that the above set offs were made, or if made, were without basis. I would also add that Edmund's claim of the set off referred to in [193(a)] above appears to be incorrect as the amount on invoice SM-2013-013[249] has already been paid to SMSPL (see [56] above).

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL's payment of rent, overheads and salaries after April 2016

195 SMSPL ceased operations by end of April 2016. Edmund claimed that after April 2016, SMSPL continued to pay[250]

(a) rent of office space occupied by SDPL amounting to $19,200.22;

(b) overheads and other expenses of SDPL amounting to $83,039.27; and

(c) salaries and other expenses of employees amounting to $49,042.94.

The three items above add up to a total of $151,282.43.

196 SMSPL and Patty claimed that although SMSPL no longer took on new business after April 2016, it still operated to collect payments, and to conclude the company's affairs and close its accounts.

197 SMSPL's and Patty's claim is reasonable and logical. In the absence of any other evidence, I find that Edmund has not proved that these additional expenses were wrongfully incurred or that they were incurred for SDPL's benefit.

Payment towards Patty's Bedok property

198 SMSPL paid a total of $70,433.55 on 29 May 2013 towards Patty's property at Bedok. Two payment vouchers were prepared dated the same day (29 May 2013) for $40,000 and $30,433.55 respectively.[251] Both payment vouchers stated as follows: "payment to be return (*sic*) by [SDPL] on 10 June 2013".

Version No 2: 27 Oct 2020 (22:41 hrs)

199 Patty admitted that two cheques were issued, each for an amount within her sole signatory limit.[252] Patty claimed that this was a temporary loan. It is not disputed that on 7 June 2013, SDPL repaid $70,433.55 to SMSPL.[253]

200 I accept Patty's evidence that this was a loan from SMSPL. I also accept Patty's evidence that she informed Edmund about this loan and he had no objections. The payment vouchers clearly state what the payments were for. The was no attempt to disguise the payments.

201 There are two other issues. The two payments by SMSPL were recorded by Shin as "Purchases in Advance". Subsequently, the repayment by SDPL was accrued to Patty's account. Shin said he recorded the two payment as "Purchases in Advance" because he thought they were for FF&E, and he recorded the payment in Patty's account as he did not then know that it was a repayment of SMSPL's advance to Patty.[254] Shin was not cross-examined on this aspect of his evidence. I find therefore that the erroneous entries for the loan and the repayment were not because of any instructions given by Patty.

202 In conclusion, Patty has not done anything wrong with respect to the loan from SMSPL in connection with her Bedok property, and was not responsible for the accounting entries in respect of the loan and the repayment.

Summary of findings of fact in Edmund's s 216 claim

203 The relevant findings are as follows:

(a) Patty wrongfully paid herself the sum of $1,164,580 by way of 24 cheques, without Edmund's knowledge. There was no agreement reached as to Patty's gratuity of $600,000 or her pay adjustment for

Version No 2: 27 Oct 2020 (22:41 hrs)

January to June 2015 amounting to $72,000. Although Patty has returned $492,580 to SMSPL, her retention of $672,000 was wrongful.

(b) With respect to the Debit Notes,

(i) three debits notes (DN-001, DN-002 and DN-004) represented loans from SDPL to SMSPL. Payment to SDPL on these three debit notes was proper;

(ii) there was no basis for the remaining six debit notes to be issued to SMSPL. Patty wrongfully caused SMSPL to pay SDPL on these six debit notes; and

(iii) there was no basis for the deductions for "drafting services" and these deductions were just attempts by Patty made after the fact to support her version of the Oral Agreement.

(c) Patty wrongfully denied Edmund access, and/or obstructed Edmund from having access, to SMSPL's financial documents.

(d) Patty had no basis to ask Edmund to repay his director's fee of $200,000 for 2012 or to refuse, or cause SMSPL to refuse, to pay Edmund the sum of $265,000 being the unpaid balance of his director's fee for 2013.

(e) Patty's reliance on the pleaded grounds for the adjustments to SMSPL's accounts for 2012 and 2013, was not justified save for two adjustments to the 2012 accounts. In the circumstances, Patty did not act in good faith when she insisted that Edmund returned the dividends received by him for 2012 and 2013. However, whether Edmund (and the other shareholders) ultimately needs to return any of the dividends,

Version No 2: 27 Oct 2020 (22:41 hrs)

received by him (and them) for 2012 and 2013, to SMSPL will depend on the adjustments to SMSPL's accounts to give effect to the findings in this case.

(f) Patty wrongfully caused SMSPL to deny Edmund his salary of $4,063.35 for October 2015.

(g) Patty wrongfully excluded Edmund's from decision-making in SMSPL.

(h) With respect to Annex A, SDPL has to pay $1,320,586.67 to SMSPL pursuant to the Oral Agreement. Patty breached the Oral Agreement by wrongfully refusing or failing to cause SDPL to pay this amount.

(i) With respect to Annex B, SDPL has to pay SMSPL the amounts of $1,545,904 (items 1–16, excluding items 4, 9 and 14) and $36,272.89 (as admitted by Patty for item 17) pursuant to the Oral Agreement. Patty breached the Oral Agreement by wrongfully refusing or failing to cause SDPL to pay these amounts.

(j) With respect to Annexes C1 and C2, Edmund has not proved that SDPL is liable, under the Oral Agreement, to pay SMSPL any of the amounts in those Annexes.

(k) With respect to Annex D, Patty did not act wrongfully in causing SMSPL to incur GST.

(l) With respect to Annexes F1–F3 and G, Patty did not instruct Shin to accrue the amounts in those Annexes to her director's account.

Version No 2: 27 Oct 2020 (22:41 hrs)

(m) The payment of $40,664 by SMSPL to SDPL as consultancy fee on 20 March 2013 was not wrongful. However, SDPL is liable to pay SMSPL the sum of $1,388 that SDPL has admitted was wrongly paid to it, and the sum of $48,333.72 being salaries that SDPL and Patty have admitted were wrongly billed to SMSPL.

(n) SMSPL's payment of SDPL's income tax and GST liabilities was with Edmund's knowledge and approval. However, SDPL remains liable to repay SMSPL the total amount of $169,507.67 which was paid by SMSPL on its behalf.

(o) Patty wrongfully caused SMSPL to write off the sum of $194,290.08 in December 2014. SDPL remains liable to SMSPL for this amount.

(p) Edmund has not proved that there were wrongful set offs of purchases in advance against consultancy fees and collections from sales.

(q) The additional expenses incurred by SMSPL for rent, overheads and salaries after April 2016 were not wrongfully incurred.

(r) Patty has not done anything wrong with respect to the loan from SMSPL in connection with her Bedok property, and was not responsible for the accounting entries in respect of the loan and the repayment.

204 The question is whether the findings in (a), (b)(ii), (c)–(i) and (o) above are sufficient grounds upon which to grant Edmund relief under s 216 of the Act.

Version No 2: 27 Oct 2020 (22:41 hrs)

Whether Edmund's s 216 claims are based on personal wrongs

The law

205 Section 216 of the Act provides as follows:

> **216.**—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —
>
> (*a*) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
>
> (*b*) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).
>
> (2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —
>
> (*a*) direct or prohibit any act or cancel or vary any transaction or resolution;
>
> (*b*) regulate the conduct of the affairs of the company in future;
>
> (*c*) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
>
> (*d*) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
>
> (*e*) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
>
> (*f*) provide that the company be wound up.

Version No 2: 27 Oct 2020 (22:41 hrs)

206 As a fundamental proposition, acts complained of under s 216 must affect the member as a member: Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) at para 4.202. This is clear from the language used in s 216(1). A distinction has been drawn between acts which are wrongs against the company (*ie*, corporate wrongs) and acts which are wrongs against the complainant shareholder (*ie*, personal wrongs).

207 The Court of Appeal has clarified the position under s 216. First, s 216 should not be used to vindicate wrongs which are in substance wrongs committed against a company and which are thus corporate rather than personal in nature. Second, in dealing with a s 216 claim that contains features of both personal and corporate wrongs, the key question is whether a plaintiff who brings an oppression action under s 216 instead of seeking leave to commence a statutory derivative action under s 216A, is abusing the process. In answering this question, the court is to consider the remedy sought, and the injury complained of and for which the remedy is sought. The appropriate analytical framework is as follows:

(a) Injury

(i) What is the real injury that the plaintiff seeks to vindicate?

(ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?

(b) Remedy

Version No 2: 27 Oct 2020 (22:41 hrs)

(i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?

(ii) Is it a remedy that can only be obtained under s 216?

See *Ho Yew Kong v Sakae Holdings Ltd and another appeal and other matters* [2018] SLR 333 ("*Ho Yew Kong*") (at [93] and [115]–[116]).

208 Where a s 216 action is based on conduct that constitutes both personal as well as corporate wrongs, the remedy should also address the corporate wrongs in order to bring an end to the matters complained of. Hence, it is usual to find claims for restitutionary orders in such cases. Where the *essential* remedy sought is one under s 216 (*eg*, a buyout order or a winding up order), the existence of restitutionary claims in the s 216 action does not mean that the action is an abuse of the process. This is because any benefit that accrues to the company from the s 216 action is purely incidental to the essential remedy sought, which is to bring to an end the matters complained of on the fairest terms possible. See *Ho Yew Kong* at [128].

209 As for the making of restitutionary orders, the Court of Appeal in *Ho Yew Kong* noted (at [118]) that it has a wide discretion to fashion such relief as it considers just under s 216. This extends to making orders for the errant shareholders or directors concerned to make restitution to the company of moneys that they have wrongfully diverted from the company.

210 Although the Court of Appeal referred to "errant shareholders or directors", in principle, there is no reason why restitutionary orders may not be made against third parties. I note also that one of the cases cited by the Court of

Version No 2: 27 Oct 2020 (22:41 hrs)

Appeal was *Lowe v Fahey and others* [1996] 1 BCLC 262 at 268, where the court held that

> …where for example the unfairly prejudicial conduct involves the diversion of company funds, a petitioner is entitled as a matter of jurisdiction to seek an order under s 461 for payment to the company itself not only against members, former members or directors allegedly involved in the unlawful diversion, but also against *third parties* who have knowingly received or improperly assisted in the wrongful diversion.
>
> [*Emphasis added.*]

211 Obviously, the claims against the third parties must be incidental to the essential remedy sought and the third parties must also be parties to the action. Most, if not all, of the facts supporting the restitutionary claims (whether against errant shareholders or directors, or third parties) would be the same facts relied upon as grounds for the s 216 action. Findings on those facts would have to be made regardless, and it is therefore appropriate that the restitutionary claims should be dealt with and orders made (f the claims are established) in the same action. It would be a waste of resources to leave such claims to separate proceedings to be commenced by or in the name of the company. In addition, dealing with such incidental claims in a s 216 action would, as the Court of Appeal recognised in *Ho Yew Kong* at [128], obviate the risk of multiple claims as well as the risk of prejudice to the shareholders and creditors of the company.

Applying the law to the facts

212 In my view, the following claims by Edmund are clearly in respect of personal wrongs and are therefore appropriate claims under s 216:

(a) That Patty wrongfully denied/obstructed his access to SMSPL's financial documents.

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) That Patty had no basis to ask Edmund to repay his director's fee for 2012 to SMSPL and that Patty refused or caused SMSPL to refuse to pay Edmund the unpaid balance of his director's fee for 2013.

(c) That Patty did not act in good faith when she insisted on Edmund returning the dividends received by him for 2012 and 2013.

(d) That Patty wrongfully caused SMSPL to deny Edmund his salary for October 2015.

(e) That Patty wrongfully excluded Edmund from decision-making in SMSPL.

213 The following claims however contain features of both corporate and personal wrongs ("the overlap claims"):

(a) That Patty wrongfully refused or failed to cause SDPL to pay the amounts found to be payable to SMSPL, in relation to Annexes A and B.

(b) That Patty wrongfully paid herself the sum of $1,164,580 and subsequently wrongfully retained $672,000 after repaying SMSPL $492,580.

(c) That Patty wrongfully caused six of the Debit Notes to be issued by SDPL to SMSPL and that Patty wrongfully caused SMSPL to pay SDPL on the six debit notes.

(d) That Patty wrongfully caused SMSPL to write off the sum of $194,290.09 in December 2014.

Version No 2: 27 Oct 2020 (22:41 hrs)

In my view, the above constitute breaches by Patty of her duties as a director of SMSPL. As for SDPL, it was clearly controlled by Patty and Patty's knowledge would be attributed to it. SDPL was therefore a knowing recipient of the monies that Patty wrongfully caused SMSPL to pay to it.

214 In applying the analytical framework in *Ho Yew Kong* to the overlap claims above, the analysis is similar to that in *Ho Yew Kong*:

(a) The injury which Edmund seeks to vindicate is the injury to his investment in SMSPL caused by Patty's breaches. In each of the overlap claims, Patty has misappropriated monies belonging to SMSPL, to either herself or her company, SDPL. These actions are in breach of Edmund's legitimate expectation as a shareholder that SMSPL's funds would not be siphoned away, and have a direct impact on Edmund's interests as a shareholder in SMSPL. Patty also breached the Oral Agreement by wrongfully causing payment to be made to SDPL on the six debit notes. It would be commercially unfair to Edmund if the breaches are not remedied; and

(b) The essential remedy sought by Edmund is to exit SMSPL. Both Patty and Edmund agree that a winding up order is the most appropriate remedy in this case.[255] The restitutionary orders sought against Patty and SDPL are necessary to ensure a fair value exit for Edmund. Any restitution received would go to SMSPL and increase the value of all the shareholders' shares in SMSPL. Any benefit that accrues to SMSPL from Edmund's s 216 action is purely incidental to the essential remedy which Edmund seeks, which is to bring to an end the matters that it complains of on the fairest terms possible.

Version No 2: 27 Oct 2020 (22:41 hrs)

215 In my view, it was not an abuse of process for Edmund to pursue his oppression claims by way of an action under s 216. I also see no reason why restitutionary orders should not be made against both Patty and SDPL where the claims have been established.

Whether Edmund's oppression claims satisfy the test of fair dealing

216 The common element in s 216(1) is that of unfairness: *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70]. The common test is that of "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": *Over & Over* at [77]. The standards of fair dealing or fair play that a shareholder is entitled to expect are not confined to observance of legal rights as enshrined in a company's constitution or in shareholder's agreements. Informal understandings and assumptions between shareholders may also be taken into account in determining whether the minority has been unfairly treated; such understandings may arise regardless of whether there is a quasi-partnership: *Over & Over* at [84]; *Lian Hwee Choo Phebe and another v Maxz Universal Development Group Pte Ltd and others and another suit* [2010] SGHC 268 at [61].

217 There can be no doubt that on the facts of this case, Patty's actions have violated the standards of fair dealing and fair play that Edmund is entitled to expect. Patty breached the Oral Agreement; Edmund was entitled to expect Patty to comply with it. In addition, upon Edmund's announcement of his resignation, Patty took steps to siphon off monies from SMSPL to herself/SDPL, issued multiple cheques so that Edmund's joint signature would not be required, concocted a tale of project-linked loans, made baseless claims

Version No 2: 27 Oct 2020 (22:41 hrs)

in an attempt to claw-back Edmund's director's fees and dividends, and denied Edmund access to SMSPL's financial documents.

Order in respect of Edmund's s 216 claim

218 Edmund therefore succeeds in his claim under s 216. As stated earlier, both Patty and Edmund agree that a winding up order is appropriate in this case. I agree, in particular since SMSPL has ceased operations. Accordingly, I order that SMSPL be wound up.

Edmund's claims against SDPL

219 In the present case, Edmund seeks the following restitutionary orders against SDPL.

Claim for repayment of $1,642,510.99

220 I have found that only three of the Debit Notes related to loans from SDPL and that payment to SDPL on the remaining six debit notes was wrongful (at [98] above). SDPL has no basis to retain the monies received by it on these six debit notes. The net amount received by SDPL on these six debit notes was $872,864 (after the deductions for alleged "drafting services" and excluding GST). SDPL is to pay $872,864 back to SMSPL.

Claims in respect of Annexes A, B, and C

221 Annex A sets out the fees collected by SDPL from its pre-incorporation projects, and which are to be paid to SMSPL pursuant to the Oral Agreement. I have found that a total amount of $1,320,586.67 is to be paid to SMSPL (at [149] above).

Version No 2: 27 Oct 2020 (22:41 hrs)

222 Annex B sets out the fees collected by SDPL in respect of projects taken up by SDPL after the Incorporation Date. Pursuant to the Oral Agreement, all new projects after the Incorporation Date are to be directed to SMSPL. I have found that a total amount of $1,545,904 is to be paid to SMSPL (at [157] above).

223 Annexes C1 and C2 set out the fees collected by SD (Shanghai). I have found that Edmund has not proved that any of the amounts in these Annexes are payable to SMSPL (at [170]) above.

224 Edmund seeks restitutionary orders against SDPL. The amounts are said to be payable to SMSPL pursuant to the Oral Agreement. SDPL argued that it was not a party to the Oral Agreement. Edmund has not pleaded that SDPL was a party to the Oral Agreement. In the circumstances, Edmund is not entitled to the restitutionary orders that he seeks against SDPL.

225 However, Patty was a party to the Oral Agreement and I have found that Patty wrongfully refused or fail to cause SDPL to pay the same to SMSPL. Patty controls SDPL. I order that Patty procures SDPL to pay the sum of $$1,320,586.67 (under Annex A) and $1,545,904 (under Annex B) to SMSPL.

Claim for repayment of $50,048

226 The claim for repayment of $50,048 relates to the payment by SMSPL to SDPL for the salaries of two of SDPL's employees. I have found that SMSPL's payment of $40,664 to SDPL as consultancy fee was not wrongful (at [187] above). However, SDPL has admitted that $1,388 was paid to it by mistake. I order SDPL to pay $1,388 to SMSPL.

Version No 2: 27 Oct 2020 (22:41 hrs)

227 SDPL and Patty have also admitted that SDPL had wrongly billed SMSPL for, and received payment of, a total amount of $48,333.72 as salaries for three of SDPL's employees (see [189] above). I order SDPL to pay this amount to SMSPL.

Claim for repayment of $363,797.75

228 The claim for repayment of $363,797.75 comprises

(a) $154,707.65 being SDPL's income tax for year of assessment 2013;

(b) $14,800.02 being SDPL's GST liabilities for 2013; and

(c) $194,290.08 being monies owed by SDPL to SMSPL, which were written off on 31 December 2014.

229 SDPL has admitted that SMSPL paid the amounts in [228(a)] and [228(b)] above on its behalf. SDPL is thus liable to pay SMSPL $169,507.67.

230 As for the amount in [228(c)] above, I have found that Patty wrongfully caused SMSPL to write off the sum of $194,290.08 (at [192] above), I order SDPL to pay SMSPL this amount.

Claim relating to $102,239.49 paid by SMSPL for the benefit of SDPL

231 This claim relates to the payments of rent, overheads and other expenses paid by SMSPL after it ceased operations. Edmund alleged that these payments were for the benefit of SDPL. I have found that Edmund has not proved that these amounts expenses were wrongfully incurred by SMSPL or that they were incurred for SDPL's benefit (at [197] above). This claim is therefore dismissed.

Version No 2: 27 Oct 2020 (22:41 hrs)

Edmund's claims against Patty

Claim for $672,000

232 This relates to the amount retained by Patty as payment of her alleged gratuity and pay adjustment. I have found that Patty is not entitled to retain the sum of $672,000 (at [88] above) and I order Patty to return this amount to SMSPL.

Claim for $130,000

233 As stated at [129] above, $800,000 was paid as dividends for 2013. Patty received $450,000. Edmund claimed that based on her 40% shareholding, Patty should have received only $320,00 and therefore she was overpaid by $130,000. I have found that the distribution of dividends for 2013 had been agreed among Patty, Anita and Edmund (at [132] above). Accordingly, this claim is dismissed.

Claims relating to losses incurred by SMSPL

234 Edmund claimed that Patty caused SMSPL to incur the following losses and seeks restitutionary orders against Patty in respect of the same.

Claim for $38,736.27 being GST losses incurred

235 This claim comprises GST payments of $8,504.67 and $30,231.60. I have found that Edmund has not pursued the first and that Patty did not act wrongfully with respect to the second (at [174] and [177] above). This claim is therefore dismissed.

Claim for $1,624,992.99

236 This claim comprises the following:[256]

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) Accrued Bonus Sum: $600,000.[257]

(b) Accrued Salary Sum: $72,000.

(c) Accrued Employee Sums in Annexes F1–F3: $95,124.90.

(d) Accrued House Sum: $70,433.55.

(e) Accrued Ode to Art Sum: $162,193.93.

(f) Accrued Consultancy Fee Sum: $40,664/$39,276.

(g) Accrued Loan Return Sum: $492,580.

(h) Annex G: $90,134.51.

237 The Accrued Bonus Sum and Accrued Salary Sum is a duplication of the claims relating to Patty's alleged gratuity and pay adjustment[258] which have been dealt with in [232] above. No further order needs to be made.

238 The Accrued Employee Sums in Annexes F1–F3 have been dealt with in [182] above. The accruals to Patty have been regularised and re-classified as "Other Income" save for a sum of $2,193.86 which was correctly accrued to Patty since she paid the sum on behalf of SMSPL. No further order needs to be made.

239 The Accrued House Sum refers to payments made by SMSPL on 29 May 2013 towards Patty' property at Bedok.[259] This has been dealt with in [202] above. No further order needs to be made.

Version No 2: 27 Oct 2020 (22:41 hrs)

240 I have found that the Accrued Ode to Art Sum was a loan by SDPL to SMSPL (see [70] above). The payment was accrued to Patty's director's account. Shin explained that he recorded thus because the thought this was a personal project undertaken by Patty.[260] Shin was not cross-examined on this aspect of his evidence. I find that Patty was not responsible for the accrual of the sum of $162,193.93 to her account. No further order needs to be made.

241 The Accrued Consultancy Fee Sum is part of the sum of $40,664 paid by SMSPL to SDPL as "Consultancy Fee". I have found that this payment was not wrongful (in [187] above). However, a sum of $39,276 was wrongly accrued to Patty's director's account. Patty is to pay this amount to SMSPL.

242 The Accrued Loan Return Sum is the amount that Patty returned to SMSPL from the amount of $1,164,580 which she had withdrawn using 24 cheques (see [78] above). No further order is needed.

243 Patty has accepted that the amounts in Annex G should not have been accrued to her account (see [181] above). The erroneous entries have been re-classified. I have found that Patty was not responsible for the erroneous entries (in [182] above). No further order is needed.

Consultancy fees of $270,000 set off against purchases in advance

244 This claim relates to invoice SM-2013-013. I have found that Edmund has not proved his claim and that in any event, the amount on the invoice has been paid (see [194] above). This claim is dismissed.

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL's sales revenue of $4,754,623 set off against purchases in advance

245 This claim appears to relate to the set offs in [193(b)] to [193(d)] above. I have found that Edmund has not proved his case (at [194] above). This claim is dismissed.

$1,593,778.38 - purchases in advance in Annexes H1 and H2

246 As stated in [183] above, these are irrelevant since I have found in favour of Edmund's version of the Oral Agreement.

$49,042.94 paid by SMSPL in respect of salaries of staff

247 This claim refers to the salaries which SMSPL paid after April 2016 (see [195(c)] above. I have found that Edmund has not proved his claim (see [197] above). This claim is dismissed.

Edmund's claims against SMSPL

248 In view of the findings that I have made, I make the following orders against SMSPL:

(a) SMSPL is to pay Edmund the sum of $4,063.45 being his outstanding salary for the period from 1 to 12 October 2015.

(b) I declare that the sum of $200,000 paid to Edmund in August 2013 was paid to him as director's fees for 2012.

(c) SMSPL is to pay Edmund the sum of $265,000 being the outstanding balance of his director's fee for 2013.

Version No 2: 27 Oct 2020 (22:41 hrs)

(d) Edmund's claim for $130,000 being outstanding dividends for 2013, is dismissed.

SMSPL's counterclaims

249 In its closing submissions, SMSPL pursued most (but not all) of the counterclaims that it had pleaded. I deal with each of SMSPL's counterclaims below.

SMSPL's counterclaim for an indemnity – loan from UOB to Jazz

250 SMSPL alleged that Edmund and Jazz conspired to defraud UOB into granting them a higher construction loan sum for the construction of Jazz's house at 22 Dunbar Walk than they would otherwise have been entitled to.[261] SMSPL alleged that Edmund and Jazz used the following documents to defraud UOB:

(a) fictitious cost estimates to inflate the contract sum from $1.8m to $2,462,850;

(b) an architect's instruction for fictitious "carpentry works" which were never carried out; and

(c) three sham cheques to deceive UOB into believing that Jazz had paid her 20% share of the contract sum so that she could start drawing down on the construction loan.

251 Edmund and Jazz denied defrauding UOB and pointed out that the original quote was $2.5m and the contract sum was $2,462,850. According to Edmund and Jazz, ultimately, Jazz paid a total of $2,220,368.63 because the

Version No 2: 27 Oct 2020 (22:41 hrs)

contractor gave Jazz a discount due to her dissatisfaction with the workmanship for the house.[262] Edmund testified that Patty complained to UOB in 2015 and UOB had no issues with this matter after Edmund and Jazz gave their explanations to UOB.[263] Jazz is still servicing the loan for the full sum of $2,462,580. Edmund and Jazz submitted that this claim is vindictive.

252 It is not necessary for me to make any finding as to whether Edmund and Jazz did defraud UOB into granting them a higher loan or into allowing Jazz to draw down on the loan. In my view, there is no reason to grant the indemnity sought by SMSPL.

253 SMSPL's claim is that Edmund breached his duties as a director because he implicated SMSPL by issuing documents using SMSPL's letterhead. Some of these documents included the letter of award for the construction works, interim certificates and correspondence to UOB in order to draw down on the loan.

254 However, SMSPL has not suffered any loss and there is no evidence of any claim by UOB against SMSPL. Indeed, following on Patty's complaint, UOB has investigated the matter and accepted the explanations given by Edmund and Jazz. It has not made any claim against Jazz, much less SMSPL. The loan has not even been withdrawn. In the circumstances, I see no reason to grant an indemnity: see *Freight Connect (S) Pte Ltd v Paragon Shipping Pte Ltd* [2015] 5 SLR 178 ("*Freight Connect*"). I also do not think there is any prejudice to SMSPL in not granting an indemnity. If UOB should make a claim against SMSPL over this matter, SMSPL can join Edmund and Jazz as third parties to the proceedings: see *Freight Connect* at [55].

Version No 2: 27 Oct 2020 (22:41 hrs)

255 SMSPL's claim against Edmund and Jazz for an indemnity is dismissed.

SMSPL's counterclaim for an indemnity – architectural services

256 SMSPL is not a licensed corporation under the Architects Act (Cap 12, Rev Ed 2000) and is therefore not allowed to offer or supply architectural services in Singapore. SMSPL's standard letters of offer provide, among other things, that SMSPL provides design consultancy services and the scope of services does not include architectural services, which if required will be provided by a qualified person.[264]

257 At the material times, Edmund was a qualified person for architectural services as he was registered under the Architects Act with Swan & Maclaren, an architectural firm. Edmund did not dispute that he issued architects' instructions, architects' directions and payment certificates with SMSPL's stationery for several projects that were under his charge. Edmund claimed that he could provide architectural services because he was a qualified person. However, Edmund agreed that he could not offer architectural services under SMSPL.[265]

258 Edmund claimed that Patty wanted him to be part of SMSPL so that SMSPL could offer both architectural services and interior design services to its clients. In my view, even though that may be true, it is clear that Edmund knew that he could not offer architectural services under SMSPL. Edmund had previously been given a warning by the Board of Architects for making submissions to the Building and Construction Authority ("BCA") under unapproved firms.[266] In addition, the evidence does not show that Patty agreed to him providing architectural services under SMSPL in breach of the Architects

Version No 2: 27 Oct 2020 (22:41 hrs)

Act. Accordingly, I find that Edmund did breach his duties as a director of SMSPL by offering architectural services under SMSPL, in breach of the Architects Act.

259 However, there is no evidence that SMSPL has faced or is facing any claims for providing unlicensed architectural services, save with respect to the project at 463 MacPherson Road. In Suit No 726 of 2017 ("Suit 726/2017"), the client, CCK Development Pte Ltd ("CCKD"), has sued Edmund and SMSPL for, among other things, fraudulent misrepresentation as to SMSPL's capacity and qualification to supply architectural services. In that action, Edmund has made a third party claim to be indemnified by SMSPL and/or Swan & Maclaren. On its part, SMSPL has made a third party claim to be indemnified by Edmund.

260 Neither has any regulatory action been taken against SMSPL for providing unlicensed architectural services. Indeed, it appears from the BCA's warning letter that any regulatory action is more likely to be taken against Edmund for providing architectural services under unapproved firms.[267]

261 In the circumstances, there is no reason to grant SMSPL an indemnity. With respect to the project at 463 MacPherson Road, SMSPL's claim for an indemnity against Edmund is best dealt with in Suit 726/2017. SMSPL's claim for an indemnity is therefore dismissed.

SMSPL's counterclaim for diversion of business

262 SMSPL claims that Edmund breached his duties as a director of SMSPL by diverting several projects to MOX. These claims are dealt with below.

Version No 2: 27 Oct 2020 (22:41 hrs)

263 In its closing submissions, SMSPL also alleged alternative claims that Edmund breached the Oral Agreement by referring projects, after the Incorporation Date, to MOX instead of SMSPL.[268] However, SMSPL was not a party to the Oral Agreement. SMSPL has also not pleaded that SMSPL was party to the Oral Agreement. It is not disputed that SMSPL was incorporated after the Oral Agreement had been entered into. SMSPL's alternative claims against Edmund for breach of the Oral Agreement must therefore fail.

22 Dunbar Walk

264 Edmund used MOX to issue a letter of offer dated 22 January 2013 for the project at 22 Dunbar Walk (Jazz's house). Edmund explained that the use of MOX was a matter of formality and he was doing this project free of charge because this was his matrimonial home. No professional fees were collected by MOX.[269] SMSPL also claimed that its resources were used and that Edmund tried to conceal the fact that he was working on this project. However, Patty herself claimed that she amended Edmund's designs extensively.[270] Although this happened after work on the project had commenced, there is no evidence that Patty raised any objections or asked any questions. In my view, Patty was aware that Edmund was working on this project and did not have any objections until this dispute arose. This claim is dismissed.

Level 1 KK Women's & Children's Hospital

265 This project involved a proposed change of use for the common and retail space at the hospital.[271] Edmund used MOX to issue a fee proposal dated 3 December 2013. The fee was $400. Edmund explained that this was charity work carried out for the hospital and that it was agreed that the fee would be donated to charity (which it was). His correspondence with the hospital was

Version No 2: 27 Oct 2020 (22:41 hrs)

copied to Nisha.[272] Edmund admitted that he had not sought the agreement of the other directors of SMSPL to carry out charity work in respect of this project.[273] However, I agree with Edmund that it was within his authority as a director of SMSPL to waive the fees for this matter. In any event, it has not been shown how this act of charity involving an insignificant amount was against the interests of SMSPL. It seems to me that SMSPL is being petty in pursuing this claim. This claim is dismissed.

Starhub at Plaza Singapura

266 Edmund used MOX to issue a quotation dated 21 October 2013 for interior renovation works for this project.[274] Edmund admitted that this should have been an SMSPL project. MOX was not eventually engaged for the project. Edmund has breached his duties in this regard but I agree with him that SMSPL has not proved its loss. There is no evidence which shows that the possibility that SMSPL might have been successful in pitching for the project, was real and not just speculative (see *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd* [2005] 1 SLR(R) 661 at [139]). I award SMSPL $1,000 as nominal damages.

246 Telok Kurau Road

267 On 2 March 2012, Edmund used MOX to send out a proposal for a five-storey apartment block at 246 Telok Kurau Road, Singapore. MOX was not eventually engaged for the project and no work was done or fees collected. I agree with SMSPL that Edmund breached his duties because he should have pitched for the project through SMSPL instead of MOX. However, SMSPL has not proved its loss. The possibility that SMSPL might have successfully pitched for the project is speculative. I award SMSPL $1,000 as nominal damages.

Version No 2: 27 Oct 2020 (22:41 hrs)

Burger King

268 Edmund used MOX to issue tender drawings in August 2012 for the Burger King outlet at the MRT station at Woodlands. Edmund explained that Burger King had been a longstanding client of MOX since 2009 and that it would have been difficult to switch the client over to SMSPL. Edmund accepted that this project belongs to SMSPL and claimed that any fees collected would have been paid to SMSPL in accordance with the Oral Agreement. Edmund's claim is supported by the transmittal forms for this project, all of which reflected SMSPL rather than MOX.[275]

269 No fees have been collected from the client because Edmund has forgotten to bill the client for this project.[276] Edmund has therefore been negligent and is liable to indemnify SMSPL for the fees for this project to the extent that such fees are not recoverable from the client otherwise than due to SMSPL's own omission or fault.

13B East Coast Road

270 SMSPL pleaded that Edmund diverted this project to MOX.[277] In her AEIC, Patty said this project should refer to 18B East Coast Avenue and that the reference to 13B East Coast Road was a typographical error.[278] She estimated that SMSPL's fee for a project of this nature would be $160,000.

271 Edmund agreed that the drawings were prepared in SMSPL's office and explained in his oral testimony that the drawings were part of a feasibility study for Jazz who was looking for a place to buy.[279] Ultimately, Jazz did not purchase the land.[280] In my view, SMSPL has not proved diversion of this project.

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL's claim is dismissed. In any event, SMSPL has not proven that it had a real possibility of securing this project if it had proceeded.

Kim Chuan Façade

272 SMSPL claimed that Edmund diverted this project to MOX. Edmund explained that the project was a pre-incorporation project. However, Edmund admitted that MOX had collected payments of $14,000 and $26,000 which should be paid to SMSPL pursuant to the Oral Agreement.[281] I therefore order Edmund to pay SMSPL the total sum of $40,000 in respect of this project.

12 Ewart Park

273 This project involved Edmund's uncle's house. SMSPL pleaded that Edmund used its employees and resources, including one of its independent contractors, Mr Diosdado Jr Gutierrez ("JR"), and that Edmund intended to have SMSPL pay for JR's drafting fees without the knowledge of the other directors. SMSPL also claimed that in late 2016, MOX issued drawings with respect to this project.[282]

274 Edmund claimed that the other directors were aware of this project.[283] Edmund claimed that his uncle eventually did not engage SMSPL and that he used MOX to pay JR because Patty objected to SMSPL engaging JR. Since Edmund's uncle no longer wished to continue with the project when Edmund left SMSPL (on 12 October 2015), this was not a project which the Oral Agreement applied to.[284] Edmund also claimed that in January 2016 (*ie*, after he had left SMSPL), his uncle said he was considering continuing with the project. Edmund then prepared tender drawings and issued them under MOX.

Version No 2: 27 Oct 2020 (22:41 hrs)

275 The evidence points to Edmund having continued to work on this project even in August 2015 when he was still with SMSPL. On 3 August 2015, Edmund asked to make a re-presentation for this project to his uncle[285] and on 28 October 2015, Edmund asked to postpone the presentation of an updated proposal which he had informed his uncle about the week before.[286]

276 I find that Edmund has diverted this project to MOX and is liable to account to SMSPL for the profits made by him in respect of this project.

Central Christian Church

277 In May 2015, Edmund sent a drawing master list, drawings and documents for the Central Christian Church ("CCC") to several recipients. SMSPL's name was stated on the drawings. When tender drawings dated August 2015 were eventually issued for this project to proceed, DDA Resources Architects ("DDA") and MOX were the names stated on the drawings.[287] SMSPL claimed that Edmund diverted this project to DDA and MOX.

278 Edmund explained that this was personal project which he did on a pro bono basis for his church.[288] The project involved addition and alteration works to the 5th storey of the existing church building. Edmund also claimed that SMSPL's name was mistakenly stated on the draft drawings.

279 I find that Edmund did not breach his duty to SMSPL in connection with this project. In any event, SMSPL has not shown why this pro bono project would be against its interests, and neither has it proved its loss. Further, there is no reason to order an account of profits since the project was done pro bono.

Version No 2: 27 Oct 2020 (22:41 hrs)

Play United at Plaza Singapura

280 This was a project that Edmund handled in 2014 for his brother-in-law and involved a three-dimensional rendering in respect of a space at Plaza Singapura. Edmund made a bare allegation that Patty agreed to the use of SMSPL's resources for this project.[289] I reject Edmund's allegation.

281 Edmund also claimed that this was done pro bono and on a one-off basis and that as director he could waive the fees.[290] In my view, Edmund was in a position of conflict and therefore could not make that decision himself. In the circumstances, Edmund has breached his duty to SMSPL. I accept Patty's evidence that based on the drawings and gross floor area of the shop, SMSPL was entitled to charge $10,000.[291] I therefore award SMSPL damages in the sum of $10,000.

Beijing House Gallery

282 Edmund prepared a preliminary design proposal for this project in December 2012 with the assistance of SMSPL's independent contractor, JR. The prospective client, who was introduced by Jazz, wanted a design proposal for an art gallery in Beijing, China. In the event, this project did not materialise.

283 There is no evidence of diversion. However, under cross-examination, Edmund admitted that he was doing his wife a favour by waiving fees.[292] In my view, this amounted to a breach of his duty to SMSPL. Patty gave an estimate of what SMSPL would have charge up to the concept stage.[293] As there is no evidence of SMSPL's loss specific to the work done by Edmund in this case, I award SMSPL nominal damages in the sum of $1,000.

Version No 2: 27 Oct 2020 (22:41 hrs)

Cambodia project

284 Jazz was considering developing a piece of land in Cambodia for the construction of a community centre, library and resort, *partly* for charity. Edmund agreed to help her and prepared some drawings for this project in Cambodia, with the assistance of JR. Edmund said he paid JR's fees himself. Subsequently, Jazz decided not to proceed with the project.[294]

285 Edmund admitted that had this been a paying project, it should have gone to SMSPL and that he did not consult any of the other directors of SMSPL.[295] However, there was no evidence that this would have been a paying project. I find that Edmund has not breached his duties to SMSPL with respect to this project. This claim is dismissed.

KL Ode to Art Retail Shop

286 This involved preliminary design sketches for Jazz's retail shop in Kuala Lumpur, Malaysia. Edmund claimed that this was a personal project which he undertook for SMSPL. Edmund admitted using SMSPL's resources, although he claimed it was very minimal and that he decided unilaterally not to charge Jazz.[296]

287 Edmund was in a positon of conflict. I find that Edmund breached his duties to SMSPL in unilaterally agreeing to waive fees. I accept Patty's evidence that based on the drawings and floor area of the shop, SMSPL's fees would have been $25,000.[297] I award SMSPL damages in the sum of $25,000.

Version No 2: 27 Oct 2020 (22:41 hrs)

6 Victoria Park

288 SMSPL's employees prepared a proposal for this project and presented it to the client. The project did not materialize and no fees were collected as the client did not respond.[298]. I reject Patty's bare allegation that Edmund intended to conceal this project from SMSPL's other directors and shareholders.[299] There was no diversion. This claim is dismissed.

Sentosa House

289 The client approached Edmund with enquiries about the design of his house. No proposal was issued as Edmund felt that the client would be a difficult client.[300] SMSPL claimed that it lost an opportunity because Edmund did not inform the other directors.[301] There was no evidence of diversion and I do not see why Edmund's decision not to take up the project for the reason he gave, meant that he had breached his duties to SMSPL. This claim is dismissed.

7 Holland Green

290 The client approached Edmund in relation to addition and alteration works for his house. Edmund had a discussion with the client on 4 July 2015. MOX subsequently issued a tender invitation dated 9 March 2016 indicating that full tender drawings were ready for collection. The works were eventually carried out and completed under MOX.

291 Edmund claimed that after he left SMSPL, the client got back to him.[302] SMSPL claimed that since the full tender drawings were ready by 9 March 2016, they must have been prepared in late 2015 when Edmund was still in the employment of SMSPL. Edmund's last day at SMSPL was some five months earlier, on 12 October 2015. SMSPL's bare allegation is not sufficient to prove

Version No 2: 27 Oct 2020 (22:41 hrs)

that the full drawings must have been done before Edmund left SMSPL. This claim is dismissed.

Starhub at Tampines Mall

292 The client approached Edmund in January 2015 for a quotation for the renovation of the shop. Edmund decided not to pitch for the project as he felt that SMSPL's fees would likely exceed the client's budget based on his knowledge of the client.[303] I find that Edmund did not breach his duties to SMSPL. This claim is dismissed.

Hood Bar & Café

293 Edmund's cousin approached him for advice on how to revamp the design of his café. Edmund gave some brief suggestions and comments and there was no further development. No drawings were produced.[304] In my view, there was no diversion. This claim is dismissed. In any event, SMSPL has not proven that it had a real possibility of securing this project if it had proceeded.

Tanglin Trust School – The Point

294 In February, the client sent an enquiry to Edmund for this project. Edmund instructed Nisha to send a fee proposal for $30,000. A full set of tender drawings were prepared by April 2014 and sent to the client. In January 2016, SMSPL issued an invoice for $32,100, based on the fee proposal and adding GST.[305] The client responded, saying that the project was aborted.[306] The client also confirmed that it did not sign any documents to award the project.

Version No 2: 27 Oct 2020 (22:41 hrs)

295 Patty claimed that Edmund colluded with the client to claim that the project had been aborted in order to avoid payment of the invoice. Patty produced no evidence of the alleged collusion. I dismiss this claim.

SMSPL's counterclaim for unauthorised disclosures of confidential information

296 SMSPL claimed that Edmund made unauthorised disclosures of fees proposals, accounting and financial information, project details, designs, drawings, and design templates to Jazz with the intention of building his own database for his and/or MOX's interest. SMSPL also claimed that Edmund made unauthorised disclosure of SMSPL's project presentation folder for the 6 Shenton Way project to his brother-in-law, Mr Ken Chong ("Ken").[307]

297 There is no evidence that Edmund was sending confidential information to Jazz in order to build his own database. SMSPL's claim is pure conjecture. Edmund sent Jazz financial statements of SMSPL and fee proposals for certain projects. It has not shown why these would be useful to Edmund for purposes of building his own database. Patty claimed that MOX is now engaging in the same line of business that SMSPL had been involved in.[308] However, there is no evidence that this is the result of the information disclosed to Jazz. Edmund stated he wanted to let Jazz know about developments in SMSPL.[309] On the stand, Jazz stated that she received these emails from Edmund simply because Edmund wanted to show her the projects he was excited to be working on. She testified she had not done anything else with the information[310] and SMSPL and Patty have not shown any evidence to the contrary. Edmund's breach of confidentiality is a technical one. SMSPL has not proved any loss. I award SMSPL nominal damages in the sum of $1,000.

Version No 2: 27 Oct 2020 (22:41 hrs)

298 As for Ken, Edmund claims that Ken asked if SMSPL had the capability to do work involving developing a budget hotel. It was in this context that Edmund sent Ken the presentation for 6 Shenton Way. Ultimately, Ken did not proceed with the project.[311] There is no evidence that Ken disseminated the presentation to anyone else. I find that Edmund sent the presentation to Ken for purposes of SMSPL's business. There was no breach of confidentiality and I dismiss this part of the claim.

SMSPL's counterclaim for exposing SMSPL to claims

299 SMSPL claimed that Edmund acted negligently with respect to the projects dealt with below, and exposed SMSPL to claims and/or potential liability.

463 MacPherson Road

300 The issue over Edmund offering architectural services through SMSPL in breach of the Architects Act has been dealt with at [256] to [261] above.

301 SMSPL claimed, among other things, that Edmund was negligent with respect to the construction of the electrical sub-station ("ESS") at 463 MacPherson Road.[312] SMSPL claimed that

> (a) the main contract between CCKD (the client) and the main contractor, Join Aim, stated that the incoming electrical supply was to have been 600Amp which meant that the ESS was required for this project;

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) Edmund failed to incorporate an ESS in the first set of drawings based upon which the Urban Redevelopment Authority ("URA") issued provisional permission on 3 February 2014;

(c) in May/June 2014, Edmund issued amended drawings incorporating the ESS, to Join Aim, marked "For Construction" through SMSPL's office even though the amended drawings had not been submitted to the URA. Join Aim proceeded to construct the ESS and completed the same in September 2014;

(d) on 7 November 2014, Edmund submitted the amended drawings to URA for approval. On 4 December 2014, the URA replied refusing to grant written permission because the required set-back had not been provided for. As a result, the ESS had to be completely demolished and rebuilt.

302 Edmund was the qualified person for the project as well as the lead designer. Edmund contended that Swan & Maclaren was responsible for the ensuring that the submissions to the URA complied with regulatory requirements.[313] The evidence supports Edmund's contention. SMSPL's preliminary drawings were initially sent to Mr Aloysius Chua (who was running an architectural services firm) for him to advise on regulatory and/or submissions related matters. Subsequently, Aloysius Chua was replaced by Swan & Maclaren.[314]

303 In an email dated 20 November 2013 to Swan & Maclaren, Edmund outlined the agreement that "the whole process for submission shall be undertaken by [Swan & Maclaren]".[315] The email was clear that Swan & Maclaren was responsible for the preparation of all drawings pertaining to the

Version No 2: 27 Oct 2020 (22:41 hrs)

submission, compliance with requirements by authorities, preparation of all drawings for Corenet submission, liaising with authorities and obtaining the Temporary Occupation Permit and Certificate of Statutory Completion. Corenet is an e-submission system for submissions to various regulatory authorities. Swan & Maclaren's reply on the same day showed that it was in agreement with Edmund as to its responsibilities.[316] In another email dated 29 January 2014, Swan & Maclaren confirmed its role in assisting SMSPL to follow through with the planning submissions.[317] Swan & Maclaren was paid $25,000 for its role.

304 As mentioned in [259] above, CCKD commenced Suit 726/2017 against Edmund and SMSPL in respect of this project. CCKD's claim includes a claim relating to the ESS. In that action, SMSPL has commenced third party proceedings seeking to be indemnified by Edmund. Edmund in turn has also commenced third party proceedings against SMSPL and Swan & Maclaren.

305 In the present case, SMSPL seeks to be indemnified by Edmund. In my view, it would be more appropriate to leave SMSPL's claim for an indemnity and all the issues relating to this project as between SMSPL and Edmund, to be dealt with in Suit 726/2017 in which all the relevant parties will be before the court.

The Radius Projects

306 Radius Developers ("Radius") appointed SMSPL as the design consultant for five projects in India – the Chembur project, MIG project, Hughes Road project, Mazgaon project and Lonavala project. By way of letter dated 13 August 2015, Radius terminated SMSPL's services in respect of six projects, including the five mentioned above.[318] SMSPL claimed that Edmund was the

Version No 2: 27 Oct 2020 (22:41 hrs)

director in charge of these projects and that his sub-standard work led to the termination of its services.[319]

307 Patty relied on emails from Radius complaining about Edmund's work. Edmund agreed that Radius blamed him for its termination of SMSPL's services.[320] Edmund also agreed that Radius did not want to carry on dealing with him.[321] However, Radius' unhappiness with Edmund's work did not necessarily mean that Edmund had been negligent in his work. Edmund denied that he was negligent in his work.[322]

308 In its counterclaim, SMSPL pleaded that it could no longer collect fees for work done as well as the balance contract sums for these projects, as a result of the termination.[323] However, in its closing submissions, SMSPL submitted only that Edmund is liable to indemnify SMSPL for his negligence and/or for breach of his fiduciary duties as a director of SMSPL.[324] There is no claim or threatened claim by Radius against SMSPL. Making the order sought by SMSPL would not be appropriate and I dismiss SMSPL's claim for an indemnity in respect of the Radius projects.

309 In any event, I note that Patty had intended to terminate all contracts and close SMSPL.[325] A new entity, SM Studio Pte Ltd ("SM Studio") was in fact incorporated on 15 October 2015, just two days after Edmund left SMSPL. SM Studio took over Radius' MIG project and built on perspective drawings that were done by Edward previously under SMSPL.[326] There is no evidence that Patty took any steps to ask Radius to pay SMSPL for the use of these drawings. Patty seemed quite content to just rely on Radius' complaints and pin blame on Edmund, whilst at the same time taking over the project under SM Studio.

Version No 2: 27 Oct 2020 (22:41 hrs)

The Rustomjee projects

310 Keystone Realtors Pvt Ltd (known to SMSPL as "Rustomjee") had engaged SMSPL for several projects, including the Paramount project, the La Fontaine project and the Elements Wing C project. SMSPL claimed that Edmund agreed that he would inform the client that SMSPL was unable to continue its obligations beyond October 2015, assist the client and facilitate a proper handover, and complete the full package pertaining to the different contract phases before handing over to the client. SMSPL alleged that Edmund refused to attend a meeting with the clients when they visited SMSPL on 8 and 9 October 2015 to resolve all outstanding issues.[327]

311 SMSPL's services were subsequently terminated. However, the contemporaneous documentary evidence shows that[328]

(a) on 5 February 2016, Patty informed Rustomjee that SMSPL was ceasing its business and would be unable to continue servicing Rustomjee after April 2016; and

(b) Rustomjee acknowledged Patty's email and confirmed a meeting with Patty on 15 February 2016 to "discuss the modalities for finalising project closure road map".

312 In its closing submissions, SMSPL submitted that Edmund is liable to indemnify SMSPL for his negligence and/or for breach of his fiduciary duties as a director.[329] However, the above evidence shows that the cessation of SMSPL's services had nothing to do with Edmund. Further, I note that SMSPL has not pleaded that Edmund was responsible for the termination of SMSPL's services; it merely pleaded that eventually SMSPL's appointment was

Version No 2: 27 Oct 2020 (22:41 hrs)

terminated.[330] In any event, there is no evidence of any claim or threatened claim by Rustomjee against SMSPL and it would be inappropriate to make the indemnity order sought by SMSPL. I therefore dismiss SMSPL's claim in respect of the Rustomjee projects.

Transcon (Auris project)

313 SMSPL pleaded that Edmund caused SMSPL to lose $260,000 in revenue by submitting a design proposal which the client, Transcon, found unacceptable.[331] No other details of Edmund's negligence or breach of duties have been pleaded.

314 It is not clear whether Edmund was in charge of this project. There are emails which show that Ane and one Lydeleen were the ones working on this project.[332]

315 In any event, according to Patty's AEIC, the contract (for the Auris project) was for $200,000.[333] Patty also claimed that, the client paid SMSPL's invoices for $40,000 and $60,000 in 2013 and 2014 respectively in respect of concept design works by SMSPL.[334] Patty has not produced any evidence of Edmund's negligence except to claim that the client contacted her over the phone in mid-2015 to express unhappiness and the client refused to pay an invoice dated 11 December 2015 for $60,000, demanding instead the return of the earlier payments amounting to $100,000, on the ground that the "previous works…were unacceptable because they were incomplete".[335]

316 Transcon subsequently set off the sum of $100,000 against an invoice for another project that it had with SMSPL.[336] Patty and Anita accepted the set

Version No 2: 27 Oct 2020 (22:41 hrs)

off because they wanted to close the matter in the light of SMSPL's intended cessation.[337]

317 In my view, SMSPL has not proved that Edmund has been negligent or has breached his duty or that he is responsible for SMSPL's loss of revenue. SMSPL's claim is dismissed.

Olympia projects

318 SMSPL pleaded that Edmund caused it to suffer the following losses:[338]

(a) Edmund failed to deliver the full package to the client in respect of the Park Residence project in Chennai. As a result, SMSPL did not receive payment of the balance amount of $36,000 under the contract which was for $180,000.

(b) As a result of Edmund's breaches in respect of a residential development at Cenotaph Road and Chitharanja Road, SMSPL was not paid the balance amount of $98,000 under the contract which was for $140,000.

(c) As a result of Edmund's breaches in respect of a residential development at Jayanthi Road, Chennai, SMSPL was not paid the balance amount of $78,000 under the contract which was for $120,000.

No other details of Edmund's negligence or breach of duty have been pleaded.

319 By way of letters dated 31 March 2016, SMSPL confirmed the termination of the three projects by mutual agreement.[339] The letters were signed by Patty.

Version No 2: 27 Oct 2020 (22:41 hrs)

320 Edmund testified that the client had no complaints prior to 13 July 2015 and that he had handed over the projects to other staff of SMSPL on 13 July 2015. Edmund also denied he was negligent.[340] In his AEIC, Edmund also exhibited an email from him dated 3 September 2015 to the client which referred to the client's confirmation to stop work on the Cenotaph Road project due to issues with local planning submissions.[341] The extent of cross-examination of Edmund by counsel for SMSPL was simply to refer Edmund to Patty's AEIC and put to him that SMSPL lost the Olympia projects as a result of their unhappiness with him; Edmund disagreed.[342]

321 I note also that Patty acknowledged that SMSPL's employees were resigning because of SMSPL's intended cessation.[343] In addition, the letters of termination referred to at [319] above, stated that they were further to SMSPL's email dated 15 February 2016 and a telephone conversation on 16 March 2016. It is not known what the email and telephone conversation were about as neither were dealt with in Patty's AEIC.

322 The burden of proof is of course on SMSPL. In my view, SMSPL has not proved its claims against Edmund. SMSPL's claims are dismissed.

Mr Sun's apartment in Xiamen, China

323 SMSPL pleaded that at a meeting on 25 August 2015, Edmund agreed to complete the project but resigned from the project on 4 September 2015.[344] According to SMSPL, it had to resolve the dispute with the client by cancelling an unpaid invoice and waiving all further charges. SMSPL claimed that its loss of revenue was $150,750 being the difference between the contract sum of $301,500 and an earlier payment of $150,750.

Version No 2: 27 Oct 2020 (22:41 hrs)

324 On the stand, Edmund agreed that he was the director in charge for this project.[345] He also conceded that he had not fulfilled his commitment to complete the project; he claimed that he could not proceed to complete the project because the atmosphere in the office was bad and he had no control in the office.[346]

325 In my view, the conditions in the office did not excuse Edmund. I find that Edmund has been negligent in his handling of this project. He has failed to fulfil his commitment to complete the project. In any event, he also failed to hand over the project properly. I award SMSPL damages in the sum of $150,750.

15 Coral Island

326 This was a bungalow on Sentosa Island. SMSPL pleaded that the client terminated the contract for this project as a result of Edmund's incompetence and delay.[347] SMSPL claimed that its loss of revenue was $216,000.

327 In its letter of termination (sent through its lawyers), the client also claimed a refund of $25,680 and damages.[348] Edmund refunded the sum of $25,680 to the client out of his own pocket.

328 In an email dated 8 August 2015 to Edmund, Patty confirmed the parties' agreement that this was one of the projects to be novated to Edmund's personal practice.[349] This agreement was also reflected in the minutes of the meeting on 25 August 2015.[350] In the circumstances, whether or not the termination of the contract was due to Edmund's fault, I do not see how SMSPL can claim loss of revenue for this project. No evidence has been adduced of any other loss suffered by SMSPL. SMSPL's claim is dismissed.

Version No 2: 27 Oct 2020 (22:41 hrs)

SMSPL's counterclaim in respect of Edmund's vehicle allowance

329 SMSPL claimed that Edmund was given an allowance to assist him in servicing his vehicle loan, and that Edmund wrongfully continued to draw his vehicle loan allowance of $1,500 per month for 19 months from January 2014 to July 2015, even though he was no longer servicing any vehicle loan because he had sold his car.[351] SMSPL claimed the total amount of $28,500.

330 Edmund claimed that the allowance was just a transport allowance. In my view, SMSPL has not proved that the allowance was solely to service the car loan. First, no documentary evidence has been adduced in support of SMSPL's claim. Nisha handled the payments but did not know what Edmund's hire-purchase instalments were and did not ask for a copy.[352] Second, Patty claimed she found out in June 2015 that Edmund had sold his car. Yet, Patty did not terminate payment of the allowance until August 2015, *after* Edmund had resigned. Third, Nisha confirmed that after Edmund started receiving his allowance of $1,500 per month, he stopped making claims for transport.[353] This is consistent with Edmund's assertion that the allowance was a transport allowance.

331 SMSPL's claim is dismissed.

SMSPL's counterclaim for monies paid by Yuanzhou Shanghai Hotel

332 SMSPL's client in China paid RMB 175,012.20 towards the Yuanzhou Shanghai Hotel project and this amount was paid into Edmund's account with the Hong Kong and Shanghai Banking Corporation in China. It is not disputed that Edmund's account was opened to facilitate SMSPL's receipt and utilisation

Version No 2: 27 Oct 2020 (22:41 hrs)

of funds from projects in China. SMSPL claimed that a sum of RMB 17,275.50 (S$3,490.82) has not been paid to SMSPL.

333 Edmund claims that he did not have access to the account from the time it was opened in November 2013 until sometime in November 2015. The ATM card associated with the account was handed to Nisha who assisted Patty with the financial matters of SMSPL. The Personal Identification Number for the account and the password to access the internet banking platform were given to Nisha. Nisha admitted that she was the one operating the account using the ATM card and password.[354]

334 In July 2015, Nisha informed Edmund that she was unable to withdraw monies from the account using the ATM card. Upon enquiring with the bank, Edmund was told that the card had been deactivated because there had been no transactions for more than a year. Edmund informed Nisha about this by email dated 23 July 2015; the email was also copied to Patty and Ane.[355] In November 2015, Nisha requested Edmund to transfer monies in the account to SD (Shanghai)'s account. By email dated 7 January 2016, Edmund informed Nisha that he had completed the requisite forms to transfer the monies and close the account; the email was copied to Patty, among others.[356] On 20 July 2016, Nisha informed Edmund that CNY 84,577.14 was transferred to SD (Shanghai)'s account on 1 July 2016.[357]

335 It is not clear why SMSPL holds Edmund responsible for the sum of RMB 17,275.50. It is not even clear that there is this amount outstanding. The bank statement exhibited to Nisha's AEIC showed that all of the balance in the account as at 6 January 2016 was transferred.[358]

Version No 2: 27 Oct 2020 (22:41 hrs)

336 Patty/Nisha had control of the account. It is for SMSPL to prove that a sum of RMB 17,275.50 in the account has not been accounted for and that Edmund is to be held responsible despite the fact that he did not control the account. Patty has not even produced the bank statements. Nisha did not dispute that Edmund had no access to the account and could not explain how he could be held responsible for any shortfall.[359] In fact, when asked, Nisha said she "wouldn't say [Edmund] is responsible" for the amount of $3,490.32.[360] In my view, SMSPL has not discharged its burden of proof.

337 SMSPL's claim is dismissed.

SMSPL's counterclaim relating to Venice Biennale expenses

338 A project by MOX, One Rosyth, was selected for exhibition at the Venice Architecture Biennale 2014 ("the Venice Biennale"). The total cost of participating in the event was estimated to be $75,000. SMSPL claimed that, at Edmund's request, it advanced him a total amount of $41,572.71 to enable him to participate in the Venice Biennale. SPRING Singapore eventually approved a grant of $14,946.03 and therefore SMSPL claimed the balance of $26,626.68. In its counterclaim, SMSPL pleaded that Edmund and Jazz conspired to cause loss and damage to SMSPL.[361] However, in its closing submissions, SMSPL no longer pursued the claim against Jazz.

339 Edmund claimed that the Venice Biennale was SMSPL's official business and the expenses should be borne by it. In her AEIC, Patty pointed to an email dated 10 July 2014 from Edmund to one Mr Tan Wee Yong, who was the developer of One Rosyth.[362] In that email, Edmund stated as follows:[363]

> ...Total expenditure is $80k ++ still consolidating the amount.

Version No 2: 27 Oct 2020 (22:41 hrs)

> Design Singapore is given max - $25k (but I think can meet their target to claim full cos they have max claim for each item.)
>
> Wee Yong - $25k
>
> Edmund - $25k
>
> Suying paying for all shortfall…

340 Patty relied on the email to refute Edmund's claim that all costs were for official business of SMSPL and should be borne by SMSPL.[364] It is true that the email shows that SMSPL did not agree to bear all the costs. However, it also does not support SMSPL's claim that it was merely giving Edmund an advance. Other than simply being referred to Patty's AEIC on behalf of SMSPL, Edmund was not cross-examined on this email.[365]

341 Edmund relied on the following:

(a) At the material time, pursuant to the Oral Agreement MOX and SMSPL operated as one entity and SMSPL had already marketed One Rosyth as its project.[366]

(b) At the Venice Biennale, One Rosyth was exhibited as an SMSPL project.[367]

(c) Patty had requested Edmund to invite Singapore's ambassador to Italy, Dr Loo Choon Yong, (who was also a client of SMSPL) to the Venice Biennale.[368]

(d) The amount paid by SMSPL was booked in its general ledger as an expense.[369]

Version No 2: 27 Oct 2020 (22:41 hrs)

(e) Patty agreed that all credit went to SMSPL and not Edmund personally because he would always mention that he was from SMSPL.[370]

342 On balance, I find that SMSPL has not proved its claim that its payment of $41,572.71 for the event was an advance to Edmund. SMSPL itself has treated the amount paid as an expense and the evidence shows that SMSPL contributed to the costs of participating in the Venice Biennale. SMSPL's claim is dismissed.

SMSPL's counterclaim against MOX for reimbursement for use of resources

343 SMSPL claimed $417,404.25, $2,300 and $2,200 being reimbursement for the use of SMSPL's resources to complete MOX's pre-incorporation projects[371] and $4,518.95 being expenses paid by SMSPL for MOX's projects.[372] As I have found in favour of Edmund's version of the Oral Agreement, SMSPL's claims fail and are dismissed.

SMSPL's counterclaim against Jazz – outstanding invoice for 22 Dunbar Walk

344 SMSPL issued Jazz an invoice (SM-2015-086-INV) dated 9 July 2015 for $262,150 for interior design services in respect of 22 Dunbar Walk.[373] Jazz claimed that Patty had agreed to provide the services at no cost, on account of their close friendship. Jazz also alleged that Patty had on previous occasions, refused to charge for her services. Patty disputed Jazz's claims.

345 I find that Patty did agree to provide the services at no cost. First, there is no doubt that until the disputes between Patty and Edmund started, Patty and

Version No 2: 27 Oct 2020 (22:41 hrs)

Jazz were close friends. Back in 2010 (before SMSPL was formed), when Jazz had offered to pay for Patty's services, Patty's reply was "don't insult me".[374] Patty's services for 22 Dunbar Walk were rendered after SMSPL had been formed. In my view, Patty would have been more inclined to not charge Jazz after SMSPL was formed, given that Edmund had a 35% stake in the company and the plan was for Edmund to take over from Patty.

346 Second, it is telling that despite the amount involved, Patty did not issue a fee proposal until 9 September 2015, after the commencement of this action. Not surprisingly, Jazz did not sign the proposal. The invoice itself was dated 9 July 2015, two months before the date of the fee proposal. Even then, the invoice was backdated; Jazz received the invoice in September 2015. Patty's explanation that she held back on invoicing Jazz as she was waiting for Edmund to account for his involvement on the project, rings hollow.[375] It seems to me highly unlikely that Jazz would have proceeded without settling the fee proposal when such a large sum was involved.

347 Third, sometime before 17 July 2015, Patty sent an angry message to Jazz complaining about Edmund's failure to pay SMSPL's subcontractors for working on 22 Dunbar Walk.[376] One would have imagined this would have been the *exact* moment Patty would have raised the issue of payment of SMSPL's fees for 22 Dunbar Walk. Instead, the only matter Patty raised was the $400,000 "advance" that Edmund allegedly owed SMSPL in connection with his director's fees and dividends.

348 Patty relied on a message from Jazz on 8 May 2014 stating as follows:[377]

> Next thing all finishing kitchen dry wet + furniture + living + wardrobe + David n ah lek cost + carpet + bed + all bedroom + bathroom + lighting can u keep all within $300k-$350k

Version No 2: 27 Oct 2020 (22:41 hrs)

Patty argued that this message showed that SMSPL was not providing its design services for free. I find Patty's argument disingenuous. The message from Jazz merely referred to the cost of the furnishings. There is nothing in the message about paying SMSPL for its services. It is also strange that the message makes no mention of the fees if indeed fees were to be charged. Further, the message emphasises Jazz's concern about costs and points to the fact that if fees were to be charged, Jazz would not have proceeded without settling the fee proposal.

349 Patty also pointed to a prior occasion in August 2012 in which SMSPL had billed Jazz $5,350 for design works for Jazz's gallery at Ode to Art.[378] On 29 April 2012, Jazz messaged Patty as follows:

> Hihi sorry disturb you. Can u help me do design for raffles city shop…But must pay ok. Not that much but Hv to ok…Can pls help…

Patty agreed to Jazz's offer to pay, stating amenably "[o]nly if [you] agreed to let my partner [in SMSPL] Edmund do it" (*sic*). Party argued that this showed that SMSPL did not perform its services for free. In my view, Jazz's insistence on paying, and the fact that Patty *had to agree* to charge, reinforces the fact that ordinarily, Patty would not charge Jazz for her services.

350 I find that SMSPL has not proved that there was any agreement that Jazz would pay for Patty's services. Accordingly, I dismiss SMSPL's claim.

SMSPL's counterclaim against Edmund and MOX – miscellaneous expenses

351 SMSPL claimed that Edmund had wrongfully charged the following expenses to SMSPL:[379]

Version No 2: 27 Oct 2020 (22:41 hrs)

(a) $19,938.77 being expenses for projects unrelated to SMSPL;

(b) $6,676.42 being Edmund's personal expenses;

(c) $16,892.52 which were charged to SMSPL without any proper documentation and which was unrelated to any of SMSPL's projects;[380] and

(d) $4,518.95 being expenses incurred by MOX.

Claim for $19,938.77

352 SMSPL claimed that the amount of $19,938.77 represented travel expenses which were unrelated to SMSPL's projects.[381] It appears that this amount is the total amount of items 33, 39, 77, 93, 94, 276 and 281 in Annex E to the statement of claim. SMSPL's responses in Annex 5 to its defence and counterclaim merely make the bare statement that these are Edmund's personal expenses. In her AEIC on behalf of SMSPL, Patty also does not explain why these items represent Edmund's personal expenses.[382]

353 The burden of proof is on SMSPL. I find that SMSPL has not discharged its burden of proof. This claim is dismissed.

Claim for $6,676.42

354 SMSPL claimed that the total amount of $6,676.42 represent Edmund's personal expenses.[383] It appears that this amount is the total amount of

(a) items 13 and 374–378 (total $1,676.42) in Annex H1 to the statement of claim; and

Version No 2: 27 Oct 2020 (22:41 hrs)

(b) item 75 ($5,000) in Annex H2 to the statement of claim.[384]

355 Again, SMSPL's responses in Annex 9 to its defence and counterclaim merely state that the items in Annex H1 mentioned above, are Edmund's personal expenses. In her AEIC on behalf of SMSPL, Patty does not explain why these items are Edmund's personal expenses.[385] I find that SMSPL has not proved its claim in respect of the abovementioned items in Annex H1 and its claim is dismissed.

356 As for item 75 in Annex H2, the description of the item (*ie*, "photography fee for Rosyth Road/Edmund residence")[386] does suggest that at least part of it is Edmund's personal expense. The burden therefore shifts to Edmund. Edmund has not explained why this item should properly be charged to SMSPL. I therefore order that Edmund pays the amount of $5,000 to SMSPL.

Claim for $16,892.52

357 SMSPL claimed that Edmund charged $16,892.52 to SMSPL without any proper documentation and that these expenses were unrelated to SMSPL's projects.[387] No particulars are provided in SMSPL's defence and counterclaim. Instead, Patty particularised this claim in her AEIC.[388] This is not satisfactory practice, even though I note that it was open to Edmund to ask for particulars. In any event, Patty did not explain what the problem was with the documentation. Neither did she explain why the items were unrelated to SMSPL's projects. SMSPL has not discharged its burden of proof. This claim is dismissed.

Version No 2: 27 Oct 2020 (22:41 hrs)

Claim for $4,518.95

358 SMSPL claimed that Edmund had caused SMSPL to pay for MOX's expenses in respect of projects which belonged solely to MOX.[389] Again, no particulars are given in SMSPL's defence and counterclaim. Patty provided the particulars in her AEIC.[390] Patty did not explain why the items set out in her AEIC were payable by MOX and not SMSPL. Further, all of the payments by SMSPL took place after SMSPL had been incorporated. Based on Edmund's version of the Oral Agreement, these could have been expenses that were meant to be borne by SMSPL. I find that SMSPL has not discharged its burden of proof. This claim is dismissed.

Patty's counterclaim

359 SMSPL first filed its defence dated 29 September 2015 without any counterclaim. On the other hand, Patty's defence and counterclaim dated 30 September 2015 included a prayer for an order to authorise proceedings to be brought in SMSPL's name or on its behalf, against Edmund for any loss and damage caused or to be caused to SMSPL. Subsequently, on 18 January 2016, SMSPL amended its defence and included a counterclaim against Edmund.

360 Patty acknowledged that it was no longer necessary for her to pursue her counterclaim since SMSPL has filed its counterclaim against Edmund. However, Patty now counterclaims against Edmund for the costs of having had to raise in her counterclaim, all the claims that SMSPL has since made against Edmund by way of SMSPL's counterclaim against Edmund and MOX.[391]

361 There is no evidence before me as to why SMSPL did not or could not have filed its counterclaim. Patty and Anita would have outvoted Edmund and

Version No 2: 27 Oct 2020 (22:41 hrs)

there is no evidence that Anita did not wish SMSPL to counterclaim against Edmund. Indeed, the evidence shows that Patty had the support of Anita and that Patty was in control of SMSPL in respect of the present proceedings. In the circumstances, there was no reason for the counterclaim by Patty in the first place. Patty's counterclaim is dismissed.

Conclusion

362 I find in favour of Edmund's version of the Oral Agreement, *ie*, all fees (less expenses incurred) for pre-incorporation projects, collected by MOX and SDPL based on invoices issued after the Incorporation Date, are to be paid over to SMSPL. However, as conceded by Edmund, this would not apply where the work had been completed before the Incorporation Date. (See [76] above). Patty and Edmund are to procure that SDPL and MOX respectively account to SMSPL for all invoices issued and payments received, in accordance with the Oral Agreement. In the case of SDPL, this is in respect of invoices and payments that have not already been included in Annexes A and B (see [366(a)] below).

363 Based on the findings summarised at [203] above, Edmund has established a case against Patty under s 216(1). It is common ground that a winding up order against SMSPL is appropriate and I so order.

364 SMSPL's accounts for 2012 and 2013 are to be adjusted to give effect to the findings in this case. All fees in respect of MOX's and SDPL's pre-incorporation projects which have been paid pursuant to invoices issued after the Incorporation Date have to be included as part of SMSPL's revenue. To the extent that the profits are found to be insufficient to support the dividends declared for 2012 and/or 2013, the respective shareholders will have to return

Version No 2: 27 Oct 2020 (22:41 hrs)

either all or part (proportionally) of the dividends received by each of them. (See [128] and [136] above).

365 SDPL is to pay to SMSPL the following:

(a) $872,864 in respect of six of the Debit Notes that Patty wrongfully caused SMSPL to pay SDPL on (see [220] above);

(b) $1,388 being the amount overpaid to SDPL (see [226] above);

(c) $48,333.72 being salaries for SDPL's employees which were wrongly billed to SMSPL (see [227] above);

(d) $169,507.67 being its tax and GST liabilities that SMSPL paid on SDPL's behalf (see [229] above); and

(e) $194,290.08 being the amount that Patty wrongfully caused SMSPL to write off (see [230] above).

366 Patty is to

(a) procure SDPL to pay the sum of $$1,320,586.67 (under Annex A) and $1,545,904 (under Annex B) to SMSPL (see [225] above);

(b) pay SMSPL the sum of $672,000 which she has wrongfully retained (see [232] above); and

(c) pay $39,276 that was wrongly accrued to her account (see [241] above).

367 SMSPL is to pay Edmund the sum of $4,063.45 being his outstanding salary for the period from 1 to 12 October 2015, and the sum of $265,000 being

Version No 2: 27 Oct 2020 (22:41 hrs)

the outstanding balance of his director's fee for 2013 (see [248] above). I also declare that the sum of $200,000 paid to Edmund in August 2013 was paid to him as director's fees for 2012.

368 Edmund is to pay SMSPL:

(a) $1,000 being nominal damages in respect of the project at Starhub at Plaza Singapura (see [266]);

(b) $1,000 being nominal damages in respect of the project at 246 Telok Kurau Road (see [267]);

(c) $40,000 in respect of the project at Kim Chuan Façade (see [272] above);

(d) $10,000 in respect of the project at Play United at Plaza Singapura (see [281] above);

(e) $1,000 being nominal damages in respect of the project at Beijing House Gallery (see [283] above);

(f) $25,000 in respect of the project at KL Ode to Art Retail Shop (see [287] above);

(g) $1,000 being nominal damages for breach of confidentiality (see [297] above);

(h) $150,750 as damages in respect of the project involving Mr Sun's apartment in Xiamen, China (see [325] above); and

(i) $5,000 in respect of item 75 in Annex H2 of the statement of claim (see [356] above).

Version No 2: 27 Oct 2020 (22:41 hrs)

369 Edmund is liable to indemnify SMSPL for the fees for the Burger King project to the extent that such fees are not recoverable from the client otherwise than due to SMSPL's own omission or fault (see [269] above).

370 Edmund is liable to account to SMSPL for the profits made by him in respect of the project at 12 Ewart Park (see [276] above).

371 All other claims and counterclaims are dismissed.

372 There shall be liberty to apply.

373 I will hear parties on costs.

Chua Lee Ming
Judge

Version No 2: 27 Oct 2020 (22:41 hrs)

Tan Chee Meng SC, Kerry Chan, Paul Loy and Jitr Vilaivongse
(WongPartnership LLP) for the plaintiff by original action
and first, second, and third defendants in counterclaim;
Boey Swee Siang, Lin Yuankai, Selina Toh and Just Wang
(Bird & Bird ATMD LLP) for the first defendant by original action
and second plaintiff in counterclaim;
William Ong, Lee Bik Wei and Robin Teo
(Allen & Gledhill LLP) for the second defendant;
Randolph Khoo and Sally Tan
(Drew & Napier LLC) for the third defendant
and first plaintiff in counterclaim.

---

1 Patty's Defence and Counterclaim (Amendment No 5), at para 133.
2 Patty's affidavit evidence-in-chief ("AEIC"), Defendants' Bundle of AEICs ("DBAEIC"), vol XXIV, tab 31, at paras 50 and 70.
3 Patty's AEIC, at paras 78 and 79.
4 Patty's AEIC, at para 107; Plaintiff's Bundle of AEICs ("PBAEIC"), vol 1, tab B, at p 207.
5 Notes of evidence ("NE"), 5 April 2018, at 12:21–13:20.
6 Edmund's AEIC, PBAEIC, vol 1, tab A ("Edmund's AEIC"), at para 19.
7 Patty's AEIC, at paras 84 and 92.
8 Patty's AEIC, at para 290; SMSPL's Defence and Counterclaim (Amendment No 4), at para 16A.
9 Patty's AEIC, at paras 274, 275, and 284; SMSPL's Defence and Counterclaim (Amendment No 4), at para 48A.
10 Edmund's AEIC, at para 42.
11 Patty's AEIC, at para 47.
12 Edmund's AEIC, at p 593.
13 Patty's AEIC, at para 218.
14 Patty's AEIC, at para 224.
15 PBAEIC, vol 1, tab B, at pp 658, 659, 662, 665, 668, 671, 674, 677, 684, 686 and 687.
16 Edmund's AEIC, at para 122.
17 Patty's AEIC, at paras 230–232.
18 Patty's AEIC, at paras 231–232.
19 Patty's AEIC, at para 238.
20 Patty's AEIC, at para 261.
21 Patty's AEIC, at para 262.
22 Edmund's AEIC, at paras 157 and 159.
23 Edmund's AEIC, at paras 161 and 162.
24 Edmund's AEIC, at para 72.
25 Statement of Claim (Amendment No 1), at paras 24–26.

Version No 2: 27 Oct 2020 (22:41 hrs)

[26] Statement of Claim (Amendment No 1), at paras 27–117.
[27] Statement of Claim (Amendment No 1), at paras 118–121. See, also, reliefs claimed.
[28] Plaintiff's Closing Submissions ("PCS"), dated 11 May 2018, at para 203.
[29] NE, 21 March 2018, at 156:3–160:6.
[30] Patty's AEIC, at para 92.
[31] Patty's AEIC, at para 9.
[32] NE, 20 April 2018, at 20:5–9, 35:2–22; Choon Geok's AEIC, DBAEIC, vol XXVI, tab 34, at paras 20–21.
[33] NE, 24 April 2018, at 9:23–10:16.
[34] NE, 20 April 2018, at 21:21-26:19; Exhibit P15; PCS, at para 85(a)(i).
[35] NE, 12 April 2018, at 28:11–15.
[36] DBAEIC, vol X, at p 275 (Invoice No SM2012-031).
[37] PBAEIC, vol 2, at p 1302.
[38] Defendants' Bundle of Documents ("DBD"), vol A11, at p 6265.
[39] DBD, vol A11, at p 6492.
[40] PBAEIC, vol 2, at p 1421.
[41] Shin's AEIC, DBAEIC, vol X, at pp 272 and 281.
[42] Gafoor's AEIC, exhibit AAG-1, DBAEIC, vol XI, tab 17, at para 6.1.5.
[43] NE, 24 April 2018, at 73:16–22.
[44] NE, 25 April 2018, at 19:2–8.
[45] DBAEIC, vol X, at pp 324, 325, and 398.
[46] PBAEIC, vol 2 at pp 1303, 1304 and 1306.
[47] DBAEIC, vol X, at p 397.
[48] PBAEIC, vol 2, at p 1305.
[49] NE, 27 March 2017, at 8:10–19.
[50] NE, 20 March 2018, at 85:15–87:15.
[51] PBAEIC, vol 2, at p 841.
[52] Patty's AEIC on behalf of SMSPL ("Patty's SMSPL AEIC"), DBAEIC, vol I, tab 1, at paras 596–642.
[53] Patty's SMSPL AEIC, at para 607.
[54] Patty's SMSPL AEIC, at para 605,
[55] Patty's AEIC, at para 172.
[56] Patty's AEIC, at paras 168–170.4.
[57] NE, 4 April 2018, at 9:9–20.
[58] Nisha's AEIC, DBAEIC, vol IX, tab 11, at pp 138–143.
[59] Nisha's AEIC, at pp 114–115.
[60] Nisha's AEIC, at para 24.
[61] Shin's AEIC, DBAEIC, vol IX, tab 12, at para 24.
[62] Nisha's AEIC, at para 32; NE, 18 April 2018, at 47:11–14.
[63] DBD, vol B1, at pp 8 and 11.
[64] Nisha's AEIC, at para 40.
[65] Patty's AEIC on behalf of SDPL ("Patty's SDPL AEIC"), DBAEIC, vol XVII, tab 23, at para 28.
[66] Nisha's AEIC, at para 70.
[67] NE, 22 March 2017, at 19:10–23:4.
[68] DBD, vol B1, at p 168.
[69] NE, 22 March 2018, at 10:18–11:8.
[70] NE, 22 March 2018, at 31:7–12

Version No 2: 27 Oct 2020 (22:41 hrs)

71 Patty's AEIC, at para 193.
72 Patty's AEIC, at pp 428–437.
73 Patty's AEIC, at para 194.
74 Patty's AEIC, at para 194.
75 Patty's AEIC, at para 195.
76 Patty's AEIC, at para 191; Patty's SDPL AEIC, at para 34; Closing Submissions for 2nd Defendant (SDPL) ("2DCS"), dated 11 May 2018, at para 167.
77 Patty's SDPL AEIC, at para 36.
78 Hawkes's AEIC, PBAEIC, vol 13, tab Q, exhibit OH-1, at paras 4.7.5–4.7.7.
79 NE, 17 April 2018, at 19:20–20:5 and 22:9–11.
80 NE, 17 April 2018, at 22:10–14.
81 Hawkes' AEIC, PBAEIC, vol 21, tab Z, exhibit OH-2, at para 4.6.8.
82 Hawkes' AEIC, exhibit OH-2, at paras 5.6.3–5.6.4.
83 Grimmett's AEIC, DBAEIC, vol XXIII, tab 30, exhibit AG-1, at para 3.56.
84 Hawkes' AEIC, exhibit OH-2, at paras 4.6.6–4.6.7.
85 Gafoor's AEIC, exhibit AAG-1, at para 17.4.5.
86 Patty's SDPL AEIC, at para 36.
87 Exhibit P13.
88 Gafoor's AEIC, exhibit AAG-1, at para 7.2.4 and Appendix 43 (DBAEIC, vol XIII, tab 19, at p 1059).
89 NE 24 April 2018, at 79:24–80:17.
90 DBAEIC, vol XXV, at pp 1020 and 1023.
91 Patty's AEIC, at paras 196–197.
92 Patty's AEIC, at para 197.
93 Hawkes' AEIC, exhibit OH-1, at section 4.8.
94 NE, 20 March 2018, at 139:17–140:19.
95 PCS, at para 84; PBAEIC, vol 2, at p 837.
96 NE, 11 April 2018, at 132:10–15, 133:5–12,
97 NE, 11 April 2018, 133:5–12, 17 April 2018, 62:9-63:18; Edmund's email on 28 July 2015, at PBAEIC, vol 2, at p 872.
98 NE, 17 April 2018, at 65:13-21.
99 NE, 11 April 2018, at 133:5–12.
100 PBAEIC, vol 2, at p 838.
101 NE, 21 March 2018, at 156:3–160:6.
102 Patty's AEIC, at para 224.
103 Patty's AEIC, at paras 209.6-209.7; NE, 17 April 2018, at 110:1–21.
104 Patty's AEIC, at para 214.6.
105 NE, 5 April 2018, at 44:25–45:10; Anita's AEIC, DBAEIC, vol VIII, tab 10, at para 77(e).
106 Edmund's AEIC, at para 49;
107 NE, 21 March 2018, at 47:25–48:8 and 50:8–17.
108 NE, 21 March 2018, at 50:18–24.
109 Patty's AEIC, at para 219.
110 PBAEIC, vol 1, at p 757.
111 NE, 12 April 2018, at 90:5–91:2.
112 NE, 12 April 2018, at 90:12–20.
113 Patty's AEIC, at para 218.
114 Nisha's AEIC, at para 79.

Version No 2: 27 Oct 2020 (22:41 hrs)

115 Nisha's AEIC, at para 79 and pp 235–237.
116 Nisha's AEIC, at para 83.
117 PBAEIC, vol 1, at p 681.
118 NE, 18 April 2018, at 92:22–94:1
119 PCS, at para 34; NE, 12 April 2018, at 115:18–116:11.
120 Patty's AEIC, at para 221, NE, 12 April 2018, at 116:5–11.
121 Patty's AEIC, at paras 230-232; DBAEIC, vol XXV, tab 33, at pp 597–605.
122 DBAEIC, vol XXV, tab 33, at pp 607–610.
123 Patty's AEIC, at para 229; DBAEIC, vol XXV, tab 33, at pp 587–595.
124 DBAEIC, vol XXV, tab 33, at pp 584–586.
125 [(Consultancy Fee) – (Drafting Services)] x 1.07.
126 Patty's AEIC, at para 230.4.
127 Patty's AEIC, at paras 230.4 and 230.8.
128 Patty's SDPL AEIC, at paras 65 and 106(3).
129 PBAEIC, vol 2, at p 841.
130 Edmund's AEIC, at paras 109–111.
131 NE, 27 March 2018, at 62:9–13.
132 PBAEIC, vol 2, at p 872.
133 PBAEIC, vol 2, at p 874.
134 NE, 10 April 2018, at 153:18–154:15.
135 PBAEIC, vol 2, at p 904.
136 NE, 18 April 2018, at 103:7–15.
137 Edmund's AEIC, at para 155(o).
138 PBAEIC, vol 1, at pp 602–603
139 NE, 10 April 2018, at 99:11–102:7.
140 NE, 10 April 2018, at 103:8–13.
141 PBAEIC, vol 2, at p 832.
142 Exhibit 1D-11 and 1D-12.
143 Edmund's AEIC, at para 68.
144 Patty's Defence and Counterclaim (Amendment No 5), at para 28.
145 Patty's AEIC, at para 272.
146 Patty's AEIC, at para 293.1.
147 Patty's AEIC, at paras 274 and 284.
148 Edmund's AEIC, at p 521.
149 NE, 5 April 2018, at 24:23–26:10.
150 PBAEIC, vol 1, at pp 524 – 525.
151 Patty's Defence and Counterclaim (Amendment No 5), at para 28.3; Patty's AEIC, at para 271.
152 PBAEIC, vol 1, at pp 517–520.
153 PBAEIC, vol 1, at p 626.
154 Patty's AEIC, at para 278.
155 DBD, vol A10, at p 5306.
156 PBAEIC, vol 1, p 602.
157 PBAEIC, vol 2, at pp 840–841 (at para 22).
158 PBAEIC, vol 1, at p 654.
159 Edmund's AEIC, at para 68.
160 SMSPL's Defence and Counterclaim (Amendment No 4), at para 21; Patty's Defence and Counterclaim (Amendment No 5), at para 36.1.

Version No 2: 27 Oct 2020 (22:41 hrs)

161 SMSPL's Defence and Counterclaim (Amendment No 4), at para 47.
162 PBAEIC, vol 1, at p 631.
163 Patty's AEIC, at para 275; DBAEIC, vol XIV, at pp 1359–1361.
164 SMSPL's Defence and Counterclaim (Amendment No 4), at paras 27–31; Patty's Defence and Counterclaim (Amendment No 5), at para 28.7.
165 SMSPL's Defence and Counterclaim (Amendment No 4), at para 27.
166 SMSPL's Defence and Counterclaim (Amendment No 4), at para 28.
167 SMSPL's Defence and Counterclaim (Amendment No 4), at para 29; Gafoor's AEIC, exhibit AAG-1, at para 5.2.7.
168 SMSPL's Defence and Counterclaim (Amendment No 4), at para 30; Gafoor's AEIC, exhibit AAG-1, at paras 5.2.1–5.2.4.
169 Edmund's AEIC, at para 96.
170 SMSPL's Defence and Counterclaim (Amendment No 4), at para 31.
171 PBAEIC, vol 1, at p 653.
172 Patty's AEIC, at para 276.
173 Patty's AEIC, at para 278.
174 DBD, vol A10, at p 5306.
175 SMSPL's Defence and Counterclaim (Amendment No 4), at para 33.
176 SMSPL's Defence and Counterclaim (Amendment No 4), at para 33–37; Patty's Defence and Counterclaim (Amendment No 5), at para 29.4.
177 SMSPL's Defence and Counterclaim (Amendment No 4), at para 34; Gafoor's AEIC, exhibit AAG-1, at para 5.2.29.
178 SMSPL's Defence and Counterclaim (Amendment No 4), at para 35.
179 SMSPL's Defence and Counterclaim (Amendment No 4), at para 37.
180 SMSPL's Defence and Counterclaim (Amendment No 4), at para 8F.
181 Patty's SMSPL AEIC, at p 482.
182 NE, 21 March 2018, at 129:18–130:16.
183 Edmund's AEIC, at para 197.
184 Statement of Claim (Amendment No 1), at paras 59-60.
185 PBAEIC, vol 2, at pp 1267–1274.
186 Patty's Defence and Counterclaim (Amendment No 5), at paras 74A and 60A3.
187 3rd Defendant's Closing Submissions ("3DCS"), dated 11 May 2018, at para 264.
188 3DCS, at para 273.
189 Annex 1 to PCS.
190 Statement of Claim (Amendment No 1), at para 65(iii); Annex 1 to PCS, p 6.
191 Annex 2 to Patty's Defence and Counterclaim (Amendment No 5).
192 Patty's SDPL AEIC, at paras 286–287.
193 NE, 22 March 2018, at 53:18–55:1.
194 Patty's SDPL AEIC, at paras 355–356.
195 Patty's SDPL AEIC, at para 388; DBAEIC, vol XX, tab 26, at pp 1961 and 1962.
196 Patty's SDPL AEIC, at para 345; DBAEIC, vol XX, tab 26, at 1922–1923.
197 Patty's SDPL AEIC, at paras 416–417.
198 Patty's SDPL AEIC, at para 435.
199 Patty's SDPL AEIC, at paras 458–461.
200 Patty's SDPL AEIC, at paras 465–468.
201 Patty's SDPL AEIC, at para 442; DBAEIC, vol XX, tab 26, at pp 2176–2431.
202 Patty's SDPL AEIC, at para 450; DBAEIC, vol XX, at pp 2458 - 2573
203 Patty's SDPL AEIC, at para 441; DBAEIC, vol XX, at pp 2165–2174.

Version No 2: 27 Oct 2020 (22:41 hrs)

[204] SDPL's Defence (Amendment No 5), at para 35C(14); Patty's Defence and Counterclaim (Amendment No 5), at para 100.
[205] Patty's SDPL AEIC, at para 451; DBAEIC, vol XXI, at pp 2575,2582 and 2583.
[206] DBAEIC, vol XXI, at pp 2585–2586.
[207] Annex 2 to SMSPL's Defence and Counterclaim (Amendment No 4); Annex 2 to Patty's Defence and Counterclaim (Amendment No 5).
[208] Patty's SDPL AEIC, at para 452; DBAEIC, vol XXI, tab 27, at pp 2585–2586.
[209] Patty's SDPL AEIC, at para 452.
[210] Patty's SDPL AEIC, at paras 444 and 452.
[211] SDPL's Defence (Amendment No 5), at para 35C(14); Patty's Defence and Counterclaim (Amendment No 5), at para 100.
[212] Statement of Claim (Amendment No 1), at para 68(iv).
[213] Annex C1 to Statement of Claim (Amendment No 1); PBAEIC, vol 8, at pp 5150, 5200, 5211, 5190, 5253 and 5259.
[214] SMSPL's Defence and Counterclaim (Amendment No 4), at Annex 3, items 1–6.
[215] Patty's AEIC, at para 369. The reference in para 369 to Annex C1 appears to be a typographical error; the eight projects referred to in para 369 are from Annex C2.
[216] Patty's AEIC, at paras 366 and 368.
[217] Shen's AEIC, DBAEIC, vol XX, tab 28, at para 40.
[218] Statement of Claim (Amendment No 1), at para 69(iv).
[219] Statement of Claim (Amendment No 1), at para 69.
[220] Statement of Claim (Amendment No 1), at para 70.
[221] SMSPL's Defence and Counterclaim (Amendment No 4), at para 8N; Patty's Defence and Counterclaim (Amendment No 5), at para 119M.
[222] PBAEIC, vol 8, at pp 5270–5280.
[223] Patty's AEIC, at para 372; Annex 5 to Patty's Defence and Counterclaim (Amendment No 5).
[224] DBAEIC, vol XXV, tab 33 at p 433.
[225] PCS, at para 141(c).
[226] Annexes 7–9 of Patty's Defence and Counterclaim (Amendment No 5); Patty's AEIC, at para 378.
[227] Annex 10 of Patty's Defence and Counterclaim (Amendment No 5); Patty's AEIC, at para 380.
[228] PCS, at para 141(e).
[229] PCS, at para 142.
[230] Patty's SDPL AEIC, at para 85.
[231] Patty's SDPL AEIC, at para 484.
[232] Patty's AEIC, at para 386.1.
[233] Statement of Claim (Amendment No 1), at paras 92–93.
[234] Statement of Claim (Amendment No 1), at para 84(i); PBAEIC, vol 8, at p 5491.
[235] PBAEIC, vol 8, at pp 5490–5491.
[236] Edmund's AEIC, at para 278; PBAEIC, vol 8, at pp 5492–5495.
[237] Patty's Defence and Counterclaim (Amendment No 5), at para 126.2; Patty's AEIC, at para 386.3.
[238] Patty's AEIC, at paras 386.4–386.5.
[239] Patty's AEIC, at para 386.7.
[240] Nisha's AEIC, at paras 55–60.
[241] SDPL's Defence (Amendment No 5), at para 44(4).

Version No 2: 27 Oct 2020 (22:41 hrs)

242 Statement of Claim (Amendment No 1), at para 84; Edmund's AEIC, at para 274.
243 Patty's SDPL AEIC, at para 488; Patty's AEIC, at para 386.8.
244 Statement of Claim (Amendment No 1), at para 94; SDPL's Defence (Amendment No 5), at para 44C; Patty's Defence and Counterclaim (Amendment No 5), at para 127B.3.
245 Patty's AEIC, at para 389; DBAEIC, vol XXV, at pp 1023 and 1025.
246 Statement of Claim (Amendment No 1), at para 95.
247 3DCS, at para 281.
248 Edmund's AEIC, at para 294; PCS, at paras 145–146.
249 DBAEIC, vol XXV, at p 428.
250 Statement of Claim (Amendment No 1), at para 109
251 DBD, vol A9, at p 5089–5090.
252 Patty's AEIC, at para 225.
253 Patty's AEIC, at para 383.
254 Shin's AEIC, at para 56.
255 PCS, at para 203; 3rd Defendant's Reply Submissions ("3DRS"), dated 25 May 2018, at para 143.
256 Statement of Claim (Amendment No 1), at prayer (c)(ii)(b).
257 Stated as $603,250 in prayer (c)(ii)(b) but should be $600,000 as defined in para 79.
258 Statement of Claim (Amendment No 1), at paras 79–80.
259 Statement of Claim (Amendment No 1), at para 82; DBD, vol A9, at p 5089–5090.
260 Shin's AEIC, at para 41.
261 SMSPL's Defence and Counterclaim (Amendment No 4), at para 51.
262 Edmund's AEIC, at para 334; PCS, at para 211.
263 NE, 27 March 2018, at 28:19–29:5.
264 DBD, vol C1, at pp 329–334.
265 NE, 22 March 2018, at 111:6–10.
266 PBAEIC, vol 8, at p 5649.
267 PBAEIC, vol 8, at p 5649.
268 1DCS, at paras 104–105.
269 Edmund's AEIC, at para 360.
270 Patty's SDPL AEIC, at para 156.
271 Edmund's AEIC, at para 369.
272 PBAEIC, vol 9, at pp 5745–5749.
273 NE, 23 March 2018, at 108:1–25.
274 PBAEIC, vol 9, at p 5830.
275 PBAEIC, vol 9, at p 5881 – 5883.
276 NE, 23 March 2018, at 121:20–21.
277 SMSPL's Defence and Counterclaim (Amendment No 4), at para 62(c).
278 Patty's SMSPL AEIC, at para 183.
279 NE, 23 March 2018, at 123:20–124:6.
280 NE, 23 March 2018, at 125:23–126:8.
281 Edmund's AEIC, at para 393; DBD, vol C2, at p 887; NE, 23 March 2018, at 127:17–129:18.
282 SMSPL's Defence and Counterclaim (Amendment No 4), at para 62(e).
283 Edmund's AEIC, at paras 396.
284 Edmund's AEIC, at paras 398 and 401.
285 DBAEIC, vol III, tab 4, at p 1686.
286 DBAEIC, vol III, tab 4, at p 1688.

Version No 2: 27 Oct 2020 (22:41 hrs)

287 DBAEIC, vol IV, tab 5, at pp 2070–2128.
288 Edmund's AEIC, at paras 408–409; DBAEIC, vol IV, tab 5, at p 1795.
289 Edmund's AEIC, at para 410.
290 Edmund's AEIC, at para 411.
291 Patty's SMSPL AEIC, at para 233.
292 NE, 23 March 2018, at 140:17–20.
293 Patty's SMSPL AEIC, at para 251.
294 Edmund's AEIC, at paras 417–419.
295 NE, 23 March 2018, at 142:10–16.
296 NE, 23 March 2018, at 149:1–16.
297 Patty's SMSPL AEIC, at para 268.
298 Edmund's AEIC, at para 428; PBAEIC, vol 9, at p 6266.
299 Patty's SMSPL AEIC, at paras 261–262.
300 Edmund's AEIC, at para 438.
301 Patty's SMSPL AEIC, at paras 272 and 275.
302 NE, 23 March 2018, at 155:13–156:11.
303 NE, 23 March 2018, at 156:20–157:7.
304 NE, 23 March 2018, at 159:4–9.
305 DBAEIC, vol V, tab 6, at p 2531.
306 DBAEIC, vol V, tab 6, at pp 2532–2533.
307 SMSPL's Defence and Counterclaim (Amendment No 4), at paras 67A–68.
308 Patty's SMSPL AEIC, at para 302.
309 Edmund's AEIC, at para 458.
310 NE, 27 March 2018, at 113:22–114:4.
311 Edmund's AEIC, at paras 453–456.
312 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(a).
313 Edmund's AEIC, at paras 496 and 499.
314 Cabigas Joseph Francis Perez's AEIC ("Francis' AEIC"), at paras 23–24; PBAEIC, vol 12, tab P, at pp 89–92.
315 PBAEIC, vol 12, at p 106.
316 PBAEIC, vol 12, at p 106.
317 DBD, vol C4, at p 2464.
318 DBAEIC, vol VI, at p 3284.
319 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(b).
320 NE, 23 March 2018, at 66:25–67:2.
321 NE, 23 March 2018, at 67:15–25.
322 Edmund's AEIC, at para 511.
323 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(b).
324 1DCS, at para 136.
325 NE, 6 April 2018, at 92:22–93:11, 94:15–21.
326 NE, 6 April 2018, at 96:22–97:14.
327 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(e).
328 DBAEIC, vol VII, tab 8, at p 3543.
329 1DCS, at para 143.
330 SMSPLS's Defence and Counterclaim (Amendment No 4), at para 77(e)(iv).
331 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(f).
332 PBAEIC, vol 11, tab L, at pp 7109–7114.
333 Patty's SMSPL AEIC, at para 529; DBAEIC, vol VII, tab 8, at pp 3554–3557.

Version No 2: 27 Oct 2020 (22:41 hrs)

334 Patty's SMSPL AEIC, at para 530.
335 Patty's SMSPL AEIC, at para 533.
336 Patty's SMSPL AEIC, at para 537.
337 Patty's SMSPL AEIC, at para 540.
338 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(g).
339 DBAEIC, vol VII, tab 8, at pp 3629–3631.
340 Edmund's AEIC, at paras 533–535.
341 PBAEIC, vol 11, tab L, at p 7116.
342 NE, 23 March 2018, at 93:20–94:3.
343 Patty's SMSPL AEIC, at para 554.
344 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(d).
345 NE, 23 March 2018, at 28:22–29:6.
346 NE, 23 March 2018, at 31:25–32:9.
347 SMSPL's Defence and Counterclaim (Amendment No 4), at para 77(c).
348 DBAEIC, vol VII, tab 8, at pp 3387–3388.
349 PBAEIC, vol 2, at pp 837–841 (paras 17–18).
350 DBAEIC, vol XXV, tab 33, at p 696 (item 1.7).
351 SMSPL's Defence and Counterclaim (Amendment No 4), at paras 89–91A.
352 NE, 18 April 2018, at 109:16–20 and 110:10–12.
353 NE, 18 April 2018, at 110:17–23.
354 NE, 18 April 2018, at 68:9–12.
355 PBAEIC, vol 10, at p 6531.
356 PBAEIC, vol 10, at p 6538.
357 PBAEIC, vol 10, at p 6585.
358 Nisha's AEIC, at p 195; NE, 18 April 2018, at 72:25–73:17.
359 NE, 18 April 2018, at 71:15–18.
360 NE, 18 April 2018, at 72:12–16.
361 SMSPL's Defence and Counterclaim (Amendment No 4), at para 94.
362 Patty's SMSPL AEIC, at para 651.
363 DBAEIC, vol VIII, at p 3947.
364 Patty's SMSPL AEIC, at para 652.
365 NE, 27 March 2018, at 46:18–47:10.
366 PBAEIC, vol 10, at p 6588–6625 (at 6624).
367 PBAEIC, vol 10, at p 6626, 6697 and 6823.
368 PBAEIC, vol 10, at p 6624.
369 NE, 13 April 2018, at 101:13–16.
370 NE, 13 April 2018, at 103:11–14.
371 SMSPL's Defence and Counterclaim (Amendment No 4), prayer (1).
372 SMSPL's Defence and Counterclaim (Amendment No 4), prayer (2).
373 DBAEIC, vol II, tab 3, at p 1121.
374 PBAEIC, vol 12, at p 259.
375 Patty's SMSPL AEIC, at para 161.
376 PBAEIC, vol. 2, p 835.
377 DBAEIC, vol II, tab 3, at p 1116.
378 DBAEIC, vol II, tab 3, at 1118–1119.
379 1DCS, at para 195.
380 1DCS, at para 103A.
381 SMSPL's Defence and Counterclaim (Amendment No 4), at para 8O.

Version No 2: 27 Oct 2020 (22:41 hrs)

382 Patty's SMSPL AEIC, at paras 661–662.
383 SMSPL's Defence and Counterclaim (Amendment No 4), at para 8CC.
384 Patty's SMSPL AEIC, at para 664.
385 Patty's SMSPL AEIC, at para 663.1.
386 PBAEIC, vol 8, at p 5389 (item 844318),
387 SMSPL's Defence and Counterclaim (Amendment No 4), at para 103A.
388 Patty's SMSPL AEIC, at para 665.
389 SMSPL's Defence and Counterclaim (Amendment No 4), at para 105B.
390 Patty's SMSPL AEIC, at para 666.
391 Patty's Defence and Counterclaim (Amendment No 5), at para 133.

Version No 2: 27 Oct 2020 (22:41 hrs)