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

[2023] SGHC(A) 26

Appellate Division / Civil Appeal No 67 of 2022

Between

Wee Ewe Seng Patrick John

… *Appellant*

And

(1) True Yoga Pte Ltd
(2) True Fitness (STC) Pte Ltd
(3) True Fitness Pte Ltd

… *Respondents*

JUDGMENT

[Contract — Breach — Breach of employment contract]
[Equity — Fiduciary relationships — Duties — Duty of director to act in the best interests of the company]

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Wee Ewe Seng Patrick John
v
True Yoga Pte Ltd and others

[2023] SGHC(A) 26

Appellate Division of the High Court — Civil Appeal No 67 of 2022
Kannan Ramesh JAD, Aedit Abdullah J, Quentin Loh SJ
10 February 2023

26 July 2023 Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

1 This appeal concerns the conduct of a director, who also held the position of the Chief Executive Officer, in relation to two related companies. The central issue in this case is whether such conduct constituted breach of duty as the Chief Executive Officer under his contract of employment and fiduciary duty as a director. Having reviewed the parties' written and oral submissions, we dismiss the appeal.

Facts

The parties

2 The appellant, Mr Patrick John Wee Ewe Seng ("Mr Wee"), was until 30 July 2021, a director of the respondents, True Yoga Pte Ltd ("True Yoga"), True Fitness (STC) Pte Ltd ("True Fitness (STC)") and True Fitness Pte Ltd ("True Fitness"), which are Singapore incorporated companies. Until end May

2017, Mr Wee was also a director of True Group (Thailand) ("TT") and True Group (Malaysia) ("TM"), which were companies incorporated in Thailand and Malaysia respectively. The respondents, TT and TM were subsidiaries of CJ Group Pte Ltd (the "CJ Group"), and were in turn members therein up until a restructuring exercise in May 2017 (see [12] and [13] below). The relevant entities in the CJ Group's organisational structure prior to the restructuring exercise was as follows:

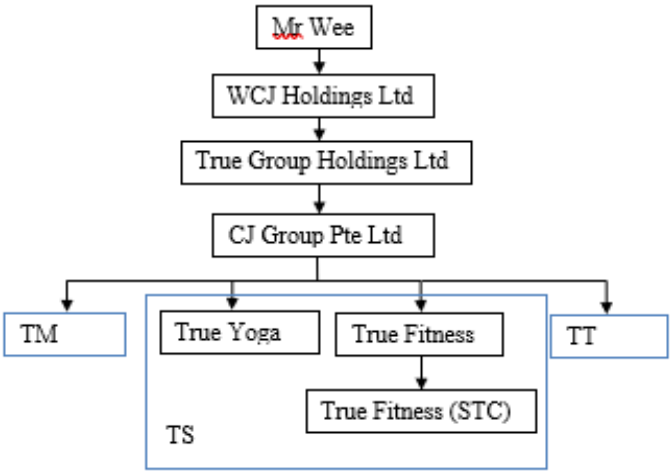

Figure 1 The relevant entities in the CJ Group pre-restructuring

3 Mr Wee was the founder and ultimate shareholder of the companies in the CJ Group. He indirectly owned a stake in the respondents (annotated collectively as "TS"), TT and TM through his 82.3% interest in the ultimate holding company, WCJ Holdings Ltd.

4 The CJ Group, through the respondents, TT and TM operated, *inter alia*, fitness centres and gymnasiums under the "True" brand.

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Background to the dispute

5 Mr Wee was also the Group Chief Executive Officer (the "Group CEO") of the CJ Group. By a contract of employment dated 19 March 2008 (the "Employment Agreement") issued on the letterhead of the CJ Group, Mr Wee was appointed the Group CEO for a term of five years from 13 March 2008 (see cll 1.1 and 10). Although the plain wording of the Employment Agreement referred to Mr Wee as being "[employed] with the Company [defined earlier in the Employment Agreement as "CJ Group Pte Ltd"]", the parties are on common ground that the counterparty to the Employment Agreement was True Yoga. Consistent with that, on 31 March 2008, True Yoga issued a letter "to confirm that the terms of [Mr Wee's] employment as [Group CEO] with True Yoga Pte Ltd ('the Company') [wa]s as per the terms set out in the [Employment Agreement]".

6 Significantly, notwithstanding the Employment Agreement carrying the title "Appointment as Group Chief Executive Officer" and describing Mr Wee's appointment as Group CEO, the parties disagree on the breadth of Mr Wee's contractual obligations, in particular, whether his duties under the Employment Agreement extended to TT and TM and if so, to what extent. The dispute turns on cl 1.3(a) of the Employment Agreement which states as follows:

> 1.3 During your employment with the Company, you must:
>
> (a) faithfully and diligently perform *such duties as may from time to time be assigned to you* by the Company, *whether those duties* relate to the business of the Company or to *the business of its related or associated corporations* (together with the Company and the Holding Company, the '**Group Companies**' or the '**Group'**) and you shall accept such offices in any Group Company as the Company may require;
>
> [emphasis in original in bold; emphasis added in italics]

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7 Mr Wee contends that his contractual obligation was limited to the affairs of True Yoga. He was not assigned any duties as regards the affairs of TT and TM, pursuant to cl 1.3(a). On the other hand, the respondents contend that Mr Wee's obligation extended to the affairs of TT and TM as he was assigned the duty to manage TT and TM's business and was consequently appointed a director of both companies, pursuant to cl 1.3(a) of the Employment Agreement. This is one of the principal issues in the present appeal and raises several sub-issues which are: (a) whether Mr Wee was assigned the duty to *manage* TT and TM pursuant to which he was appointed a director of the companies, as provided in cl 1.3(a) (see [52]–[60] below); (b) whether such duty included the duty to manage the closure of TT and TM (see [61]–[72] below); and (c) whether Mr Wee's conduct in relation to the closure of TT and TM was in breach of cl 1.3(a) (see [73]–[92] below).

8 Under the Employment Agreement, Mr Wee's gross salary and guaranteed bonus was initially collectively $1,120,000 (or $93,333.33 per month). With effect from 1 June 2012, Mr Wee's monthly salary was increased to $120,000 (an increase of $26,666.68). On 1 February 2013, Mr Wee was offered an extension of the initial five-year term under the Employment Agreement which he accepted, as a result of which his employment was extended to 12 March 2018.

Events leading up to the restructuring

9 Between late 2016 and early 2017, TT and TM started experiencing serious cash flow issues to the extent that the question arose as to whether their businesses were sustainable. By an email dated 24 November 2016, the respondents' then-Chief Financial Officer ("CFO") Mr Alvin Chen ("Mr Chen") provided Mr Wee with a bleak assessment of TT. He described the

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company as a resource-draining "black hole". This prompted Mr Wee to enter into negotiations in February and March 2017 with Jatomi Fitness Group and Evolution Wellness for the collective sale of the business of TT and TM, in particular the management of the gymnasiums operated by these companies. However, the negotiations proved unsuccessful. By April 2017, the situation had reached a point where Mr Wee was compelled to seek legal advice on the ramifications of TT and TM commencing insolvency proceedings. Mr Wee's conduct in these circumstances relates to the claims that have been brought against him. We discuss this in further detail below (see [74]–[92]).

The restructuring and the constitution of a new group

10 Against this backdrop, a sale and purchase agreement dated 6 May 2017 (the "SPA") (see [11] below) was entered into for the acquisition of the respondents and True Yoga Holdings Ltd, and the "True" brand by Tongfang Kontafarma Holdings Limited ("Tongfang"). As provided for in cl 8.1(a) of the SPA, a restructuring of the CJ Group took place on 19 May 2017. This formed part of the conditions precedent to the completion of the acquisition. As a result, shares in the respondents held, directly or indirectly, by the CJ Group were transferred to a new holding company, True Fitness Holdings (Singapore) Pte Ltd, which was in turn under a new ultimate holding company, TFKT True Holdings ("TFKT").

11 The SPA was between Active Gains Universal Ltd ("AGUL"), Fester Global Limited (BVI) ("Fester"), Tongfang and Mr Wee. Pursuant to cll 2 and 3 of the SPA, AGUL sold 51% of TFKT's shareholding to Fester. Further, Active Yield Investment Limited ("AYIL") sold 29% of TFKT's shareholding in True Yoga Cayman to Fester. Mr Wee was the ultimate beneficial owner of both AGUL and AYIL, and Fester was wholly owned by Tongfang. Thus, Mr

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Wee was the effective vendor and Tongfang the effective buyer. The total consideration payable to AGUL and AYIL (and therefore Mr Wee) was US$36.72m. Following the fulfilment of the conditions precedent pursuant to cl 8.1 of the SPA, the acquisition was completed on 29 May 2017.

12 As a result of the acquisition, the respondents came under the control of a new majority owner, Tongfang, which held a 54% stake indirectly through Fester and TFKT. Fester was a wholly owned subsidiary of Tongfang and in turn, owned 54% of TFKT. Mr Wee held the other 46% stake in TFKT through AGUL, which was wholly owned by Ashmore Global Limited (in which Mr Wee held a 100% stake). Following the restructuring, the organisational structures of the CJ Group and the new group under Tongfang as the majority shareholder are set out below.

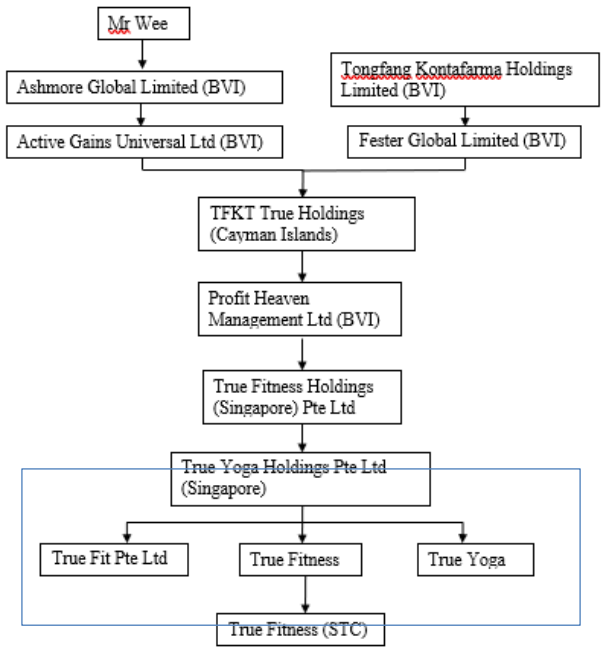

Figure 2 The new group post-restructuring

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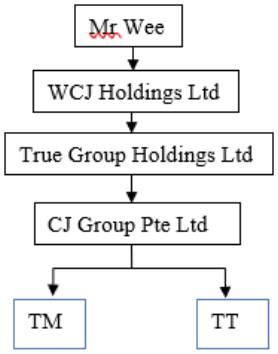

Figure 3 The CJ Group post-restructuring

13 It would be evident from the above that the restructuring did not involve the transfer of shares in TM or TT to Tongfang. Post-restructuring, TM and TT remained with the CJ Group, which remained wholly owned by WCJ Holdings Ltd.

Post-restructuring

14 Notably, post-restructuring, Mr Wee did not enter into a new employment contract with True Yoga or for that matter TFKT, the new holding company, to reflect the fact that True Yoga became part of a new group. He assumed the role of the Group CEO of the newly constituted group. However, he remained employed under the Employment Agreement. On 3 May 2017, prior to the SPA, Mr Xing Hu ("Mr Hu"), a representative from Anchor Capital, who was involved in the negotiations on the SPA, wrote an email titled "Executive Team Pay Allocation" to Mr Wee and Ms Catherine Si Tou ("Ms Si Tou"), a director of TFKT. In the email, Mr Hu stated that Mr Wee was "willing to cut 2/3 of [his] existing USD 1.14million annual salary to USD 380,000 … USD$ Patrick 200k Singapore, 180k TW [*ie*, Taiwan]". If this were true, Mr Wee's monthly salary would be reduced from $120,000 to about $22,500 per month. Whether Mr Wee agreed to a reduction in salary as set out in this email

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is a point of contention in the present appeal. Mr Wee held the position as Group CEO until his employment was terminated pursuant to a letter dated 9 May 2018 from TSMP Law Corporation ("TSMP") issued on behalf of True Yoga (see [20] below).

15 A shareholders' agreement (the "SHA") between Fester, AGUL and TFKT was executed on 29 May 2017. Mr Wee was not a party to the SHA, but nothing turns on this. Clause 4.11 of the SHA stated as follows:

> The Shareholders further agree to maintain the stability of the key management team of the Company for so long as Patrick John Wee Ewe Seng shall be the chief executive officer of the Company and he shall be retained for a term of three years from the date of this Agreement, provided that Patrick John Wee Ewe Seng shall not be guilty of any grave misconduct or wilful neglect in the discharge of his duties as the chief executive officer of the Company [TFKT], his employment shall be renewed.

16 This provision anticipated Mr Wee being appointed as Chief Executive Officer of TFKT for three years. However, he was not eventually appointed. As stated earlier, post-restructuring, he continued to be employed under the Employment Agreement.

17 On 30 May 2017, shortly after the SHA was executed, Mr Wee resigned as director of TT and TM. On 9 June 2017, TT ceased operations. A day prior, Mr Adisak Naruprempree ("Mr Adisak"), the Home Office Director (or the local Chief Executive Officer of TT) resigned because of the financial uncertainty surrounding the company. This uncertainty spread to the employees of the company as a result of which, they did not turn up for work on 9 June 2017. Consequently, TT issued a notice of closure, along with a list of answers to potential questions that its members might have arising from the closure.

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18 On 10 June 2017, TM also ceased operations. The creditors of True Fitness World Sdn Bhd (a key subsidiary of TM) filed a winding up petition on 5 June 2017 and interim liquidators were appointed on or about 9 June 2017. On 27 July 2017, TM was ordered to be wound up.

19 It is not disputed that significant negative publicity was generated in the media in the aftermath of the closure of TT and TM. The respondents assert that this caused them financial loss.

20 As stated above (at [14]), on 9 May 2018, Mr Wee's employment as Group CEO was terminated pursuant to a letter sent from TSMP (on behalf of True Yoga). The date of the termination of Mr Wee's employment is not in dispute. Whether the termination was with or without cause is an issue between parties, and at the heart of the Counterclaim (see [27] below).

Mr Wee's management of TT and TM

21 One of the main issues in the present appeal is whether Mr Wee was assigned duties as regards the affairs of TT and TM and consequently appointed a director of both companies, pursuant to cl 1.3(a) of the Employment Agreement. We deal with this below (see [52]–[60]). Regardless of whether Mr Wee was specifically assigned the duty to manage the affairs of TT pursuant to cl 1.3(a), it is apparent that at all material times he was in fact managing the affairs of TT and TM and was aware of the dire financial position of both companies (see [74]–[83] below).

22 Mr Wee's conduct as regards the affairs of TT and TM forms the basis of the respondents' claims (see [26] below). The respondents rely on the following aspects of his conduct (see [23]–[24] below).

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TM

23 As regards TM, the following assertions are made. First, despite TM's financial position and its uncertain future, Mr Wee authorised the sale of long-term membership and training packages in May 2017. A total of 43 long-term membership packages were sold. Second, between November 2016 and May 2017, Mr Wee promoted and authorised the sale of pre-launch membership packages for a new club that was planned in Plaza Damas. However, beyond the execution of the lease and payment of a deposit on 8 November 2016, no steps were taken to operationalise the club. Third, Mr Wee misled the members of TM by stating in a notice on 5 May 2017 (the "Subang Notice") that its Subang outlet would be closed *for renovations* for three months from 10 May 2017, when in fact it was closed because the Court bailiff needed to take inventory pursuant to a writ of seizure and sale for rental arrears. Fourth, despite notifying the members of TM that a working arrangement was in place with another fitness company, CHI Fitness Sdn Bhd ("CHI Fitness") for them to use CHI Fitness' facilities following the closure of TM, the arrangement was terminated in January 2018.

TT

24 As regards TT, the following points were made. First, despite TT's financial position, Mr Wee permitted the collection of monthly membership fees in May 2017 and the sale of term membership packages of 12-month, 24-month and 36-month periods from May to early June 2017. Second, Mr Wee permitted the sale of training packages until early June 2017. Third, the members of TT were not informed of the closure of TT until the day of closure, and Mr Wee failed to make alternative arrangements for those members with pre-paid term membership packages. Fourth, Mr Wee prioritised protecting the insurance pay-

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out of $3.25m that had been transferred to the CJ Group from the liquidators of TT. Fifth, at the end of February 2017, a few months prior to his resignation as director of TT, Mr Wee appointed Ms Moonjaisai as director of TT when she had no prior experience in the business.

25 It is apparent that the conduct outlined straddles the restructuring on 19 May 2017 and the completion of the acquisition pursuant to the SPA on 29 May 2017 (see [23]–[24] above).

The suit below

26 On 8 April 2019, the respondents brought the action below against Mr Wee in HC/S 376/2019 (the "Suit"). In the Suit, the respondents claimed as follows: (a) Mr Wee breached his Employment Agreement (the "Contractual Claim"); and (b) Mr Wee breached his fiduciary duty as director of the respondents to act in their best interests (the "Fiduciary Claim", collectively with the Contractual Claim, the "Claims"), relying on the conduct outlined above (at [23]–[24]).

27 Mr Wee denied the Claims and counterclaimed (the "Counterclaim") against True Yoga (*ie*, the first respondent) for $1.9m. This comprised salaries owed to him for the period between 1 January 2018 and 9 May 2019, including 12 months' salary in lieu of notice payable upon termination. Notably, Mr Wee's computation of the Counterclaim was based on a monthly salary of $120,000, which as noted earlier is a matter of dispute (see [14] above). Mr Wee contended that the Employment Agreement had been extended beyond 12 March 2018 by mutual agreement with True Yoga and that there was no agreement with Mr Hu to vary his monthly salary as alleged by the respondents. The email of 3 May 2017 sent by Mr Hu merely referred to negotiations to revise

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Mr Wee's salary which did not result in an agreement. Further, Mr Wee argued that he had been terminated without cause and was therefore entitled to 12 months' salary in lieu of notice under cl 11.1 of the Employment Agreement.

28 As regards the Counterclaim, the respondents' position was that the Employment Agreement had ended on 12 March 2018 and the monthly salary had been varied in June 2017 from $120,000 to $22,500 as result of an agreement between Mr Hu and Mr Wee (see [14] above). The respondents also contended that Mr Wee's employment was terminated with cause and True Yoga was therefore not required to pay 12 months' salary in lieu of notice pursuant to cl 11.2 of the Employment Agreement.

The decision below

29 In *True Yoga Pte Ltd and others v Wee Ewe Seng Patrick John* [2022] SGHC 155 (the "Judgment"), the learned Judge in the General Division of the High Court (the "Judge") found that the Claims were made out. He held that: (a) Mr Wee owed the respondents contractual and fiduciary duties to properly manage the closure of TT and TM (at [12]); and (b) Mr Wee breached those duties (Judgment at [31]). The Judge directed that the respondents' loss and damage be assessed at a later date (Judgment at [31]).

30 The Judge made the following findings, that: (a) Mr Wee failed to stop the sale of long-term membership packages by TT and TM when he knew of the companies' impending closure; (b) Mr Wee caused TT and TM to close abruptly; (c) Mr Wee failed to make alternative arrangements for the members of TT and TM following their closure. The Judge also found that Mr Wee was more concerned about evading responsibility as a director of TT and TM, rather

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than dealing with the consequences of the closure to the employees and members of both companies (Judgment at [18]–[24]).

31 The Judge did not consider Mr Wee's resignation as local director of TT in late May 2017 a breach of contractual or fiduciary duties. Also, the Judge made no finding on whether Mr Wee deliberately engineered the timing of the closure of TT in order to avoid a "claw back" of the sum of $3.25m by its liquidators (see [24] above). However, the Judge observed that Mr Wee's conduct in this regard showed that he prioritised his own interests over addressing the consequences of the closure of TT and TM (Judgment at [23]).

32 The Judge found that the Employment Agreement was impliedly extended beyond 12 March 2018 and Mr Wee continued as the Group CEO after that date (Judgment at [26]). The Judge reasoned that if Mr Wee's employment had in fact ended on 12 March 2018, the respondents would have notified their employees that he was no longer the Group CEO (Judgment at [26]). Further, the Judge found that an agreement had been reached between True Yoga and Mr Wee to reduce his monthly salary from $120,000 to $22,500 with effect from June 2017 as asserted by the respondents (see [14] above). As such, Mr Wee's entitlement to unpaid salary for the period from 1 January 2018 to 9 May 2018 was reduced to $62,660.70, after deducting payments that had been made to Mr Wee in that period (Judgment at [27]–[29] and [31]). Finally, the Judge held that Mr Wee's mismanagement of the closure of TT and TM was sufficient grounds for True Yoga to terminate the Employment Agreement with cause pursuant to the letter dated 9 May 2018 from TSMP. Accordingly, Mr Wee was not entitled to 12 months' salary in lieu of notice under cl 11.1 of the Employment Agreement (Judgment at [30]).

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The appeal

The appellant's case

33 Mr Wee relies on the following grounds of appeal in relation to the Claims:

(a) The duty to manage the closure of TT and TM was neither stipulated in the Employment Agreement nor within the scope of Mr Wee's fiduciary duty as director of the respondents.

(i) Mr Wee asserts that the duty to manage the closure of TT and TM was not expressed in the Employment Agreement. Nor was such duty "assigned" by True Yoga to him pursuant to cl 1.3(a) of the Employment Agreement. The specific responsibility to manage the closure of TT and TM is distinct from the responsibility to manage the affairs of TT and TM generally. Further, Mr Wee claims that his management of the business of TT and TM was carried out in his capacity as their director and not pursuant to a duty assigned under cl 1.3(a) of the Employment Agreement. Mr Wee argues that in any event, post-restructuring, TT and TM ceased to be "related or associated corporations" for the purpose of cl 1.3(a) as they were part of the group under Tongfang.

(ii) Mr Wee contends that the duty to manage the closure of TT and TM was not part of his fiduciary duty to the respondents.

(b) Even if the alleged contractual or fiduciary duties were owed by Mr Wee, the conduct relied upon by the respondents was not a departure from expected standards, and was in any event commercially explicable.

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The respondents had not shown exactly what Mr Wee ought to have done in the circumstances in order not to have breached the duties. The respondents' case was not about the manner of closure, which Mr Wee's conduct related to. Instead, it was about the fact of closure which was a result of the actions of others and not Mr Wee.

(c) If Mr Wee had indeed breached his fiduciary duty, the Court ought to grant relief under s 391(1) of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act") as he had acted honestly and reasonably as a director of the respondents. Notably, this is a point that was neither pleaded nor raised before the Judge.

(d) Mr Wee's conduct related to TT and TM and therefore the proper plaintiff rule applied. TT and TM, and not the respondents, were the proper plaintiffs with standing to bring the Suit.

34 On the Counterclaim, Mr Wee makes the following arguments:

(a) There was no basis to terminate his employment as Group CEO with cause under cl 11.2 of the Employment Agreement. Further, the termination was not valid as the letter of termination from TSMP was not issued on True Yoga's instructions. This point is not pursued on appeal with the same force as it was before the Judge.

(b) Mr Wee's monthly salary was not reduced from $120,000 to $22,500 pursuant to an agreement as alleged. There were only negotiations between Mr Hu and Mr Wee on the salary and no agreement was reached. Further, even if an agreement was reached, True Yoga was not a party to it as Mr Hu had no authority to represent it. Finally, the respondents' reliance on the audit confirmation form is

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misplaced because Mr Wee had only confirmed the amount True Yoga *paid* to him as salary in 2017, and not the amount that was in fact *payable*.

35 Mr Wee's final argument is that the respondents failed to prove causation and loss. Therefore, the Judge should not have ordered damages to be assessed.

The respondents' case

36 The respondents make the following points on the Claims:

(a) The Judge's decision did not violate the proper plaintiff rule. Mr Wee's argument rests on the incorrect premise that the respondents are claiming for losses suffered by TT and TM. The respondents are in fact claiming losses suffered by themselves.

(b) Mr Wee's argument that he was not assigned the duty to manage the closure of TT and TM pursuant to cl 1.3(a) of the Employment Agreement is not credible or logical as Mr Wee accepted that he was managing TT and TM prior to their closure and in fact managed their closure. Mr Wee's argument that post-restructuring, TT and TM were not "related or associated corporations" is a red-herring because (a) the breaches occurred prior to the restructuring (*ie*, 19 May 2017); and (b) TT and TM were "associated" corporations even after the restructuring as *inter alia* Mr Wee remained a common shareholder of TT, TM and True Yoga.

(c) It would have been apparent to Mr Wee that mismanaging the closure of TT and TM would not be in the respondents' best interests

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and therefore would amount to a breach of his fiduciary duty. This was because all the companies shared and used the "True" brand. Mismanaging the closure of TT and TM would therefore be detrimental to the respondents' brand and reputation. Finally, Mr Wee's conduct was not commercially explicable.

(d) The respondents' case relates to the manner and not the fact of the closure of TT and TM. Further, it cannot be said that the closure was a result of the conduct of others.

(e) Mr Wee's contention that the respondents failed to prove causation and loss is incorrect in fact and in law. The fact of causation and loss was explained by Ms Reina Lim ("Ms Lim"), the CFO and director of the respondents, at trial. At the liability stage, the respondents were only required to show a causal connection between breach and loss. The full extent of loss was a matter to be addressed during the assessment of damages.

(f) Mr Wee's reliance on s 391 of the Companies Act was not pleaded, did not feature in his written or oral opening submissions and appeared for the first time in his written closing submissions. It therefore ought not to be considered.

37 On the Counterclaim, the respondents endorse the Judge's reasons for concluding that Mr Wee's monthly salary was revised down to $22,500 with effect from June 2017 and that the letter of termination by TSMP was authorised by True Yoga. The respondents contend that Mr Wee's conduct offered sufficient basis for termination of his employment as the Group CEO with cause under cl 11.2 of the Employment Agreement.

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Issues to be determined

38 The following issues arise for consideration in the present appeal. On the Claims:

(a) whether the respondents have standing to bring the Claims;

(b) whether Mr Wee breached the Employment Agreement in the manner in which he managed the closure of TT and TM;

(c) whether Mr Wee breached his fiduciary duties to the respondents in the manner in which he managed the closure of TT and TM; and

(d) whether the respondents suffered loss as a result of the breaches.

39 In respect of Issue 2 (at [38(b)] above), we consider the following sub-issues: (a) whether Mr Wee was assigned the duty to manage the business of TT and TM and appointed a director of the companies, pursuant to cl 1.3(a) of the Employment Agreement; (b) if so, whether that duty extended to managing the closure of TT and TM; and (c) whether Mr Wee's conduct as regards TT and TM as outlined above breached the obligation under cl 1.3(a) to "faithfully and diligently perform" duties assigned to him.

40 On the Counterclaim:

(a) whether Mr Wee's monthly salary was reduced from $120,000 to $22,500; and

(b) whether the Employment Agreement was terminated with cause.

41 We do not address the issue of the applicability of s 391 of the Companies Act. We accept the respondents' submissions in this regard. This is

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not a point that was pleaded or canvassed below, and Mr Wee made no application in the present appeal to amend his pleadings to include this relief. In any event, even if an application had been made, we would not have been inclined to allow it as to do so seems to us to be prejudicial to the respondents.

Issue 1: Whether the respondents had standing to bring the Claims

42 We begin by addressing the threshold issue of whether the respondents had standing to bring the Claims.

43 In the present appeal, Mr Wee argues that the respondents were not the proper plaintiffs as the alleged conduct of Mr Wee was in respect of TT and TM, and not the respondents. Conversely, the respondents emphasise that the Claims are for losses and damages *occasioned to them* by reason of Mr Wee's conduct in managing the closure of TT and TM.

44 There can be no question that True Yoga had standing to bring the Contractual Claim, which was grounded in the Employment Agreement, if Mr Wee was assigned duties as regards the affairs of TT and TM pursuant to cl 1.3(a) of the Employment Agreement (see [6] above). The language of the clause is clear. We address the question of whether Mr Wee was assigned the duty to manage the closure of TT and TM under cl 1.3(a) under Issue 2 below (see [51]–[92]).

45 As to whether the respondents have standing to bring the Fiduciary Claim, it is clear that the respondents are not suing for losses suffered by those companies. Rather, the respondents claim for losses suffered by them as a result of breach of fiduciary duty *owed to them* by Mr Wee. Mr Wee's reliance on the decision in *Fu Loong Lithographer Pte Ltd and others v Mok Wing Chong (Tan Keng Lin and others, third parties)* [2018] 4 SLR 645 ("*Fu Loong*") is

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misplaced. In *Fu Loong*, unlike here, there was no independent duty owed to the plaintiffs. There, a group of subsidiary proprietors ("SPs") sued the chairman of the management corporation, for causing the management corporation to undertake items of work, favour certain SPs in its decisions and appoint a managing agent without authorisation and disclosure of his interest in the managing agent (at [12]). The court held that the cause of action was based on a duty owed to the management corporation and not the SPs, and should therefore be properly pursued by the management corporation (at [76]–[77]). The court further held that allowing the SPs to pursue a claim on a duty owed to the management corporation carried the risk of double recovery.

46 The circumstances here are entirely different. The cause of action here is based on an independent duty owed to the respondents by Mr Wee arising from the fact that he was their director at the material time. The loss that is sought to be recovered (*ie*, reputational loss) is that which was suffered by the respondents as result of a breach of that duty. Consequently, the respondents are owed a duty by Mr Wee that is independent of TT and TM and claim for a loss that they suffered as a result of a breach of that duty which is independent of any loss suffered by TT and TM.

47 It follows therefore that there is no question of a risk of double recovery. The losses of the respondents, and TT and TM, are distinct and separate. In *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 ("*Tendcare*"), the holding company claimed against a third party for dishonestly assisting its director to transfer sums of money from its subsidiary to another unrelated company in breach of his duties. The court held that while the holding company was also a shareholder of the subsidiary company (which was wound up), the claim was not for the

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diminution in the value of its shareholding or its distributions from the subsidiary (at [207]). The reflective loss principle therefore had no application (at [207]). Although *Tendcare* was in relation to the reflective loss principle, the Court of Appeal observed that the reflective loss principle is the corollary of the proper plaintiff rule (at [200]). The proper plaintiff rule is explained as being that the law does not recognise any loss that is not "separate and distinct from the loss sustained by the company" (at [153]).

48 Consistent with *Tendcare*, in *OOPA Pte Ltd v Bui Sy Phong* [2022] 4 SLR 537 ("*OOPA*"), the court held that "a breach of duty to another principal does not negate or limit the first principal's rights against the defaulting fiduciary" (at [29]). In *OOPA*, the director of the holding company was found to be liable for its conduct in respect of the subsidiary company (at [46]).

49 In the present case, the loss suffered by the respondents is separate and distinct from the loss sustained by TT and TM and the respondents are the proper plaintiffs because they are claiming for *their* loss arising from a breach of a duty owed to them. This may be distinguished from *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 because the Fiduciary Claim pursued by the respondents is grounded in legal rights and liabilities separate from those owed to TT and TM (at [70]–[75]).

50 Thus, the respondents have standing to bring the Suit.

Issue 2: Whether Mr Wee breached the Employment Agreement in the manner in which he managed the closure of TT and TM

51 We turn next to consider whether Mr Wee breached cl 1.3(a) of the Employment Agreement in the manner in which he managed the closure of TT

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and TM. In addressing this issue, as noted earlier at [39], the following sub-issues arise: (a) whether Mr Wee was assigned the duty to manage the business of TT and TM and was consequently appointed director of the companies, pursuant to cl 1.3(a) of the Employment Agreement; (b) if so, whether the scope of the duty that was assigned extended to the closure of TT and TM; and (c) whether Mr Wee's conduct breached the obligation under cl 1.3(a) to "faithfully and diligently perform" duties assigned to him. Each of these sub-issues are dealt with in turn below.

Sub-issue 1: Whether Mr Wee was assigned the duty to manage the business of TT and TM and was consequently appointed director of the companies pursuant to cl 1.3(a) of the Employment Agreement

52 Central to the issue of the alleged breach of the Employment Agreement by Mr Wee (*ie* Contractual Claim) is whether he was assigned the duty to manage the business of TT and TM and was consequently appointed a director of the companies, pursuant to cl 1.3(a). This is a question of fact.

53 The parties' respective positions in the present appeal are set out above at [7]. Based on the evidence before this court, it is evident that Mr Wee was assigned the duty to manage the affairs of TT and TM. Indeed, Mr Wee himself does not dispute that he managed the business of TT and TM. However, he seeks to draw a line between managing the business as a "local director" of TT and TM and managing pursuant to a duty assigned under cl 1.3(a) of the Employment Agreement.

54 We are unable to accept the line that Mr Wee seeks to draw. It seems to us that it is a line without substance and one that is drawn as a matter of an afterthought. It is significant that this line is only raised on appeal. It was not raised before the Judge, which only supports the conclusion that it is an

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afterthought. At the close of the trial, the thrust of Mr Wee's submissions was in fact that the respondents had not adduced any evidence that he was assigned "any duties to manage the closure[s] of TM and TT, much less to do so adequately". Notably, he did not contend that he was not assigned the duty to manage the *business* of TT and TM generally. A closer examination of his evidence in this regard shows that Mr Wee's submission on appeal that he only managed the affairs of TT and TM as a "local director" rings hollow. We point to several aspects of his evidence.

55 First, in his affidavit of evidence-in-chief ("AEIC"), Mr Wee averred that he was "the [Group CEO] of the True Group from 19 March 2008 until [his] purported termination on 9 May 2018", and provided an exhaustive list of entities he considered to be part of the "True Group" – this included TT and TM. When this was pointed out to Mr Wee in cross-examination, Mr Wee took the position that his use of the "True Group" in his AEIC had been "loose" without offering an explanation as to exactly what that meant. There was no re-examination on this issue. It seems to us that the position stated in Mr Wee's AEIC reflects the true position on his responsibilities towards the entities listed therein. It corresponds directly to the description of his role in the Employment Agreement and duties assigned to him as regards "related or associated corporations" under cl 1.3(a).

56 Second, Mr Wee was inconsistent in the manner in which he characterised his involvement in the management of TT and TM after 30 May 2017 (*ie*, the date he ceased to be local director of TT and TM) (see [14] above). Under cross-examination, Mr Wee claimed that he only *assisted* the other directors of TT and TM after he stepped down as their director on 30 May 2017. However, such evidence has to be juxtaposed against his previous concession

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that he had managed TT and TM in the months prior to their closures on 9 and 10 June 2017 respectively.

57 Third, contrary to Mr Wee's characterisation of his role in TT and TM as being supporting and supplementary in nature, it is clear from correspondence with the employees that he continued to manage TT and TM even after he resigned as their director. The correspondence shows quite clearly that Mr Wee continued to play the role of a decision-maker for TT and TM. As he was no longer their director after 30 May 2017, the only basis upon which Mr Wee continued to engage in the affairs of TT and TM must be as Group CEO of the "True" Group as stated in his AEIC. This points to an assignment of duties pursuant to cl 1.3(a) of the Employment Agreement. This is underscored by three documents. First, an email dated 2 June 2017 from Ms Vivien Ho ("Ms Ho"), Vice-President (Marketing) of the respondents, where Mr Wee's approval was sought for the proposed answers to frequently asked questions ("FAQs") that were intended for use for media queries arising from the closure of both companies. The document was titled "ANTICIPATED QUESTIONS AND ANSWERS FOR TRUE GROUP ANNOUNCEMENTS". Second, an email dated 7 June 2017 from Mr Nicholas Kraal ("Mr Kraal"), the Regional Operations Manager of True Yoga at the time, sought Mr Wee's approval for the proposed method of issuing potential vouchers to members online for use of their facilities with CHI Fitness (see [90] below) following the closure of TM. Third, Mr Adisak's resignation from TT (see [17] above) was addressed directly to Mr Wee.

58 There is one final point which undercuts Mr Wee's argument. As stated above (at [9]), when Mr Wee was given a bleak assessment of TT and TM's financial state, he attempted to sell their business to Jatomi Fitness Group and Evolution Wellness in February 2017 and March 2017. Given that TT and TM

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were part of the CJ Group and Mr Wee was the Group CEO under the Employment Agreement, such efforts could only have been undertaken by Mr Wee in his capacity as Group CEO and not as a director of TT and TM.

59 In the final analysis therefore, the evidence is clear that Mr Wee was managing the affairs of TT and TM in his capacity as the Group CEO. This speaks to an assignment of duty pursuant to cl 1.3(a). There is good reason to draw this conclusion as the companies in the CJ Group, pre-restructuring, in substance belonged to Mr Wee. As the owner and Chief Executive of the CJ Group, Mr Wee would naturally want to exercise oversight and manage the affairs of the members of that group. This is consistent with cl 1.3(a) which clearly provides that Mr Wee would assume such office as True Yoga might require pursuant to an assignment of duty under cl 1.3(a). Thus, the fact that Mr Wee was appointed a director of TT and TM is a clear indicium that he was assigned duties as regards those companies.

60 We are therefore of the view that Mr Wee was assigned the duty to manage the business of TT and TM and was appointed director as a result, pursuant to cl 1.3(a) of the Employment Agreement.

Sub-issue 2: If sub-issue 1 is answered in the affirmative, whether the scope of the duty that was assigned extended to the closure of TT and TM?

61 The next question is the scope of the assigned duty under cl 1.3(a) of the Employment Agreement, and whether the closure of TT and TM fell within that duty. This requires consideration of the ambit of cl 1.3(a). Two lines of inquiry flow from our conclusion that Mr Wee was assigned the duty to manage the *business* of TT and TM and appointed a director as result. The first line is whether the management of the *closure* of TT and TM was part of the assigned duty to manage the business of TT and TM. The second is whether the duty

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assigned was attenuated or negated as a result of the restructuring (see [12] and [13] above).

62 We start with the first inquiry – did Mr Wee's duty to manage the business of TT and TM include the management of the *closure* of TT and TM? Mr Wee case on appeal is that he was not specifically assigned the duty to *manage the closure* of TT and TM pursuant to cl 1.3(a). In other words, Mr Wee seeks to draw a line between the duty to manage the business of TT and TM *generally* and the duty to manage their closure *specifically*, the contention being that the latter was not assigned even if the former had been. Reliance is placed on the following words in cl 1.3(a): "faithfully and diligently *perform such duties as may from time to time be assigned* to you by the Company" [emphasis added]. Again, we are of the view that this is a line without substance.

63 In our view, Mr Wee draws an artificial line between the general and specific duty. His argument is disingenuous. It seems to us that the former must surely encapsulate the latter. The duty to manage the business of TT and TM must inevitably include the duty to manage their closure if that becomes necessary or desirable. Thus, the question of a specific assignment of that duty does not arise. In view of our finding that Mr Wee was assigned the duty to manage the business of TT and TM (see [60] above), it follows that that duty would include the responsibility to manage the closure of TT and TM. We agree with the Judge's finding in this regard (Judgment at [13]).

64 We turn next to the second inquiry – did the restructuring attenuate or negate the duties? This question arises because of Mr Wee's argument that TT and TM ceased to be "related or associated corporations" of True Yoga following the restructuring. The argument proceeds on the basis that TT and TM remained with the CJ Group and the respondents were part of the new group

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under Tongfang. Mr Wee argues that the evidence of Mr Tan Kim Kang Sean ("Mr Tan"), director of TFKT, on the interpretation of the term "related or associated corporations" was hearsay and further that it was impermissible to use subsequent conduct to interpret the cl 1.3(a). The respondents contend that the issue of interpretation is "academic" because the breaches occasioned by Mr Wee's conduct occurred prior to the restructuring and there was no dispute that TT and TM were related to the respondents prior to the restructuring.

65 It is common ground that TT and TM were "related or associated corporations" pre-restructuring. The restructuring took True Yoga (and the other respondents) out of the CJ Group and placed it in a new group structure (see [12] above). TT and TM remained with the CJ Group. The question is whether as a result, the duty that was assigned to Mr Wee as regards the affairs of TT and TM pursuant to cl 1.3(a) ceased to apply because of this. This turns on the correct interpretation of the phrase "*the business of its related or associated corporations*" in cl 1.3(a). Before that, we address the respondents' contention that the point is moot.

66 In our view, the point is not moot. It is relevant not least because the conduct of Mr Wee that the respondents rely upon extends beyond the date of the restructuring (on 19 May 2017) and the completion of the acquisition under the SPA (on 29 May 2017). As an illustration, Mr Wee is alleged to have breached his contractual and fiduciary duties by allowing the continued sale by TT of term membership and training packages up to June 2017.

67 We now return to the question of interpretation. We are in broad agreement with the Judge's interpretation that "related and/or associated corporations" in the Employment Agreement carries a broader meaning than "related" companies in s 6 of the Companies Act. The Judge did not accept Mr

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Wee's submission that the phrase ought to be construed as referring only to (a) a holding company; (b) a subsidiary; or (c) a subsidiary of a holding company in respect of True Yoga, *per* s 6 of the Companies Act. This must be correct as not all the companies within "related and/or associated corporations" in cl 1.3(a) at the time of the Employment Agreement would have fallen within this definition (see for example, True Fitness STC (at [2] above)). We believe that the common thread that connects the companies is not that fact that they were part of the same group. It is the fact that they share a common brand, the "True" brand. Being part of the same group was a consequence of the companies being part of a common brand. They shared, marketed and used that brand. It was this common thread which connected them and made it relevant, and indeed important, for True Yoga to assign duties to the Group CEO with regard to the business of TT and TM and appoint him as their director. It is this ingredient which made them "related and/or associated corporations". The common ownership and corporate linkages arising from being part of the same group only served to reinforce the fact that the group functioned as one business unit in relation to the same line of business bearing a common brand.

68 When the Employment Agreement was entered into on 19 March 2008, the respondents, TT and TM belonged to the CJ Group and operated in the same business related to the fitness and wellness industry, using the "True" brand. Clause 1.3(a) was therefore to enable the Group CEO to discharge duties in relation to True Yoga and its related and associated corporations in the CJ Group to ensure that the business of the group as a whole was managed properly. This is consistent with the manner in which the rest of the clause reads, namely, "and ***you shall accept*** such offices in any Group Company as the Company may require" [emphasis added], which indicates that in addition to being assigned duties, Mr Wee would assume office in the related and associated corporations

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to facilitate the effective discharge of those duties. This was what happened with regard to TT and TM with Mr Wee being assigned duties and being appointed director of both companies. It is apparent that the parties intended this holistic management of the business for the reason that the entities all shared a common brand. We have already explained above (at [59]) that as the ultimate shareholder of the companies in the CJ Group, Mr Wee would have wanted this so that the brand equity of the "True" brand was not impaired. The restructuring did not impact these considerations (at [67] above) insofar as TT and TM continued to use the "True" brand. To the extent TT and TM continued to and was permitted to use the "True" brand following the restructuring, they were related or associated corporations of True Yoga. Clause 11.7 of the SPA is important in this regard. We reproduce cl 11.7 of the SPA below:

> Mr. PJW further undertakes to procure the closing down of the fitness related business operations in Thailand and Malaysia no later than 31 December 2017, failing which a franchise fee shall be payable by the operating companies ultimately controlled by Mr. PJW in accordance with the term of the Franchise Agreement as set out in Schedule 13.

69 It is evident from this clause that after the acquisition, TT and TM and indeed Mr Wee were granted the liberty to decide whether TT or TM would shutter the existing business, which involved the "True" brand, by 31 December 2017, or continue operating under the "True" brand pursuant to a franchise agreement set out in Schedule 13 of the SPA. In other words, between the completion of the acquisition on 29 May 2017 and 31 December 2017, two scenarios could play out. TT and TM would either shutter their business or continue it and use the "True" brand with a view to executing a franchise agreement after 31 December 2017. In this window period, they were related or associated corporations of True Yoga because of the permission that was granted pursuant to cl 11.7 of the SPA to use the "True" brand. In either scenario, it cannot be said that the duty that Mr Wee was assigned pursuant to

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cl 1.3(a) of the Employment Agreement pre-restructuring ceased to apply to him as the Group CEO post-restructuring. Mr Wee continued to carry the responsibility to ensure that the "True" brand was not tarnished while he decided which course to take as regards the affairs of TT and TM in this window period. It is not at all reasonable to suggest that Mr Wee as the Group CEO of the new group could act in a manner that would damage the "True" brand in relation to TT and TM, post-restructuring. Having acquired the "True" brand, Tongfang and the respondents had a vested interest in ensuring that the brand remained intact. From Tongfang's perspective, it was critical to have the protection that was afforded by cl 1.3(a) of the Employment Agreement. The last thing they would expect or accept is for Mr Wee, as the Group CEO, to mismanage the brand equity of the "True" brand as regards the business of TT and TM in the window period. Indeed, that would go against the grain of the cl 11.7 which assumed the possibility of TT and TM entering into a franchise agreement after 31 December 2017 if the decision was not to shut them down.

70 The respondents point to the evidence of Mr Tan to the effect that TT and TM were related and/or associated with the "True" entities in Singapore because (a) they shared common marketing under the same brand; (b) TT and TM reported to the finance team of the respondents; (c) the respondents would be the port-of-call for funding requests from the other entities; and (d) that it was significant that Mr Wee, Group CEO of the respondents, had control over and managed the closure of TT and TM. This is all consistent with the conclusion above.

71 Mr Wee appears to recognise the same point. In his AEIC, he contended that the "[t]he plain meaning of 'Group Companies' and 'related or associated corporations' is that the entities have links in corporate structure or at least share the *same operations or management*" [emphasis added].

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72 In the final analysis, it is the common business of the "True" entities that threads their relationship together to make them related or associated corporations. Accordingly, we conclude that TT and TM continued to be related and/or at the very least associated corporations of True Yoga even after the restructuring. For completeness, having considered the express wording of cl 1.3(a) and the circumstances surrounding the formation of the Employment Agreement, we do not find it necessary to consider subsequent conduct to interpret cl 1.3(a) of the Employment Agreement.

Sub-issue 3: Did Mr Wee's conduct in relation to the manner in which he managed the closure of TT and TM breach cl 1.3(a) of the Employment Agreement?

73 We turn to consider Mr Wee's conduct in relation to the closure of TT and TM and whether that constitutes a breach of cl 1.3(a).

Mr Wee's knowledge of TT and TM's insolvency

74 We begin by considering Mr Wee's intention as regards TT and TM at the material time. This guides the assessment of whether he had faithfully and diligently performed the duty to manage the closure of TT and TM, pursuant to a duty assigned under cl 1.3(a) of the Employment Agreement.

75 On Mr Wee's case, he had intended to keep TT and TM afloat to delay the decision of whether to shutter TT and TM. This was because if the acquisition by Tongfang had collapsed, "there was a possibility that [TT] would have continued operations from the True Singapore entities or other investors at a later time". He described the closure of TT and TM as "*forced*" because (a) as regards TT, it was a result of the employees not turning up for work on Mr Adisak's instructions, and (b) as regards TM, it was a result of creditors applying and obtaining the appointment of interim liquidators. However, the

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emails relied upon by Mr Wee do not support such an inference. In fact, there is significant documentary evidence of Mr Wee attempting to close the business of both companies even prior to the execution of the SPA (see [9] and [81]).

76 The respondents contend that Mr Wee knew TT and TM had to be closed from as early as November 2016 and February 2017 respectively. They rely on documentary evidence of Mr Wee's failed efforts to sell TT and TM to Jatomi Fitness Group in February 2017 and to Evolution Wellness in March 2017, internal discussions on the appointment of liquidators as regards TM in April 2017, and inquiries in April 2017 made to lawyers on matters relating to insolvency of TT and TM. The respondents also rely on the poor cashflow of TT and TM to support the contention that Mr Wee knew before the restructuring that the companies were not going concerns.

77 In our view, the evidence is clear. Prior to and after the restructuring, Mr Wee could not have believed that TT and TM would be going concerns and would survive. We first address TT. Based on TT's financial information, it was already cashflow insolvent. Its quarter-on-quarter expenses as a percentage of cashflow from the fourth quarter of 2016 speak to this: -192% in 4Q2016 and -86% in 1Q2017. The CJ Group had to frequently extend funding to TT, without which it would have folded. Such funding was as follows:

Date	**Sum remitted by CJ Group to TT**
24/25 Nov 2016	THB5m
13/24 Dec 2016	S$65k
3 Feb 2017	S$50k

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16 Mar 2017	S$75k
31 May 2017	THB160k

This is consistent with the bleak assessment that Mr Chen provided Mr Wee on 24 November 2016.

78 As for TM, it was consistently in the red from the second quarter of 2015 and reported cashflow negative based on quarter-on-quarter expenses as a percentage of cashflow: -67% in 4Q2016 and -32% in 1Q2017.

79 Crucially, Mr Wee accepted under cross-examination that by April 2017, had the status quo prevailed for TT and TM, *they would have to shutter in the next few months*. This was just prior to the execution of the SPA on 6 May 2017. The pertinent sections of Mr Wee's evidence at the trial are set out below:

> Q: … Mr Wee, I put it to you that by early April, at least 5th April, when you were approaching the insolvency lawyers, you

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> knew that True Malaysia will not last more than a few months. Isn't that right?
>
> A: If the sales did not pick up, it would not last more than a few months.
>
> Q: *If status quo prevailed, it would not last more than a few months.* Is that a fair recharacterisation of your answer?
>
> A: *That is correct.* Unless we had injection of more funds.
>
> …
>
> Q: Yes. Therefore, by April 2017 as well, you would have known that *if there were no fresh capital injections into True Thailand, it would have to close in the next few months*. Isn't that right?
>
> A: *Yes. That is correct.*
>
> [emphasis added]

80 It is pertinent Mr Wee also sought legal advice from Siam City Law on clawbacks in insolvency cases in Thailand in an email dated 6 April 2017 (see [9] above). That Mr Wee accepted that TT and TM would have had to shut down in the months following April 2017 without funding and sought legal advice on clawbacks in Thailand in the same month is an important strand of evidence. This is because the conduct that the respondents have alleged against him in relation to cl 1.3(a) is from May 2017, save for the sales in relation to the planned outlet at Plaza Damas (see [85]).

81 It is therefore unsurprising that Mr Wee explored the various exit options described above (at [9]), given the dire circumstances. Indeed, Mr Wee had communicated his plans to others. Mr Kraal averred in his AEIC that Mr Wee had informed him in or around mid to late-April 2017 that the True Group was looking to exit both the Malaysia and Thailand markets and that he was looking for a tie-up with another fitness operator in Malaysia to mitigate the fall-out from the closure of TM's outlets. In an email to Ms Coreen Shan from TM dated

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17 April 2017, Mr Wee informed her that he hoped for the liquidation of TM to be completed "[b]y mid May". It is evident from these exchanges that from as early as mid-April 2017, Mr Wee had intended to shutter TT and TM. This is not at all consistent with Mr Wee's position, as stated above (at [75]), that he wanted to keep the TT and TM afloat in the event the deal with Tongfang collapsed.

82 It is perhaps inevitable that the situation would deteriorate to a point where, in the case of TT, its employees did not turn up for work and in the case of TM, its creditors took steps to enforce their debt. However, the context is important. To illustrate, the actions of the employees were fuelled by Mr Wee's management of the company. Mr Wee approved funding for only the overheads and key personnel of the head office and withheld salaries for everyone else. Ultimately, the malaise precipitated the rapid closure of TT and TM in June 2017. It is apparent that the closures were not "*forced*".

83 It is important to bear this context in mind in analysing whether Mr Wee breached his duty under the cl 1.3(a) of the Employment Agreement. We turn to consider the specific acts that are alleged to have breached cl 1.3(a).

Continued publicity and sale of long-term memberships and training packages in TT and TM

84 Despite the circumstances outlined above, TT and TM continued to promote and sell new membership and training packages. In May 2017, TM sold 43 new long-term membership packages. TM also continued collecting monthly fees for existing membership and training packages in June 2017. As for TT, the sale of new term membership packages and the renewal of existing membership packages continued up to early June 2017. Mr Wee accepted that he had the authority to direct TT and TM to stop (a) selling new term

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membership packages, (b) collecting monthly fees for existing membership and training packages, and (c) accepting renewals of existing membership packages. Mr Wee clearly did not exercise this authority. The activities of TT and TM as outlined above show this to be the case. Indeed, Mr Wee accepted this. Thus, Mr Wee permitted such activities and, in effect, authorised them. Mr Wee must have well known that these membership and training packages would not be fulfilled by TT and TM. Yet, he allowed unsuspecting customers to purchase or renew packages, and continue to make payment of monthly fees on existing packages.

85 Further, Mr Wee conducted pre-sales for a new club in Plaza Damas under TM and pre-sold 50 membership packages between 8 November 2016 to May 2017. Part of this period was after Mr Wee explored options to exit TT and TM in February and March 2017 (see [76]–[81] above). The sale was authorised despite that fact that no work was done to open the club (for example, the purchase of gymnasium equipment) following the signing of the lease and the payment of the deposit in November 2016. It is evident why no work was done – the cashflow of TM was already dire in 2016 (see [78] above). At trial, Mr Wee did not expressly deal with this in his AEIC and agreed, under cross-examination, that he permitted the pre-sale of 50 membership packages for a club at Plaza Damas which did not eventually open (see [23] above).

86 In our view, Mr Wee's conduct as outlined above (at [84]–[85]) was in breach of his duty under cl 1.3(a) to "faithfully and diligently" manage the business of TT and TM, in particular the closure of the entities. Undoubtedly, the continued sale of packages that would not be fulfilled would lead to public outcry and distrust, and cause consequent damage to the brand equity of the "True" brand. This would naturally have ramifications for True Yoga and the other respondents which used the same brand.

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The Subang Notice

87 The Subang Notice stated that the outlet would be closed for renovations for three months from 10 May 2017. This was patently untrue. As stated earlier (at [23]), the outlet was in fact closed because the Court bailiff needed to take inventory pursuant to a writ of seizure of sale arising from rental arrears.

88 Mr Wee does not dispute that he authorised the announcement. However, his position is that disclosing the true reason for the closure would have led to a "panic and run" on TM. This argument is not to the point. Mr Wee's responsibility was to manage the closure of TT and TM – a core aspect of this was to mitigate the fallout that came with the closure of the companies' outlets. The mismanagement, as the Judge rightly points out (Judgment at [20]), was the fact that Mr Wee maintained the appearance that there was nothing afoot and left its members stranded upon the abrupt closure of TM. Indeed, the Subang Notice must be contextualised against the sale of packages by TM in May 2017. Mr Wee had to keep up appearances in order to ensure the sale of the packages, and the Subang Notice was part of that. In actively concealing the true state of affairs of TM, Mr Wee acted in breach of his contractual obligation to True Yoga to "faithfully and diligently" perform his duty to manage the closure of TM.

Failure to procure and/or maintain alternative service providers

89 It is clear that Mr Wee did not take steps to adequately arrange for and maintain the arrangement with alternative service providers to take on the members of TT and TM following their closures.

90 As regards TM, Mr Wee stated that the arrangement with CHI Fitness "remained unfinalized and tentative even up to 8 June 2017". It was only

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finalised after the closure of TM on 14 June 2017. He contends that the discontinuance of the arrangement with CHI Fitness was because TM did not have funds and the CJ Group "could no longer afford to pump in funds to sustain the arrangement". However, Mr Tan's evidence is relevant. He explained that the tie-up with CHI Fitness was to be for 24 months from 3 July 2017 to 3 July 2019 but fell through because of Mr Wee's mismanagement. The situation was aggravated by Mr Wee's announcement on 10 June 2017 (the day of TM's closure) that CHI Fitness would provide services to members of TM with existing packages, which was followed by CHI Fitness's announcement contradicting Mr Wee's assertion. CHI Fitness stated that there was "no contract or arrangement to honour or take over commitment from [TM]". It would therefore seem that Mr Wee's announcement was not accurate. The contradictory position suggests that there was no real plan in place for the members for TM to utilise their remaining packages with an alternative service provider.

91 As for TT, Mr Wee did not take any steps to provide members with alternatives after the closure of TT. Against this, Mr Wee claimed that "*if [he] had already made plans 'to provide members… with alternative options for the use of fitness facilities' and informed the sales teams to cease selling memberships and personal training sessions, [TT] would have folded overnight*". We make two points. First, there is no evidence that any alternative arrangements were put in place. Second, similar to the observation we made above at [88], Mr Wee's argument is besides the point – his duty under cl 1.3(a) encompassed managing the closure of TT and TM. That is hardly consistent with the continued sale of packages which would be left unmet by TT or any other alternative service provider.

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92 We are therefore of the view that Mr Wee did not take reasonable steps to ensure that the closure of TT and TM were properly managed by arranging for alternative service providers. This was in breach of cl 1.3(a) of the Employment Agreement. Needless to say, the failure to arrange alternatives was exacerbated by the continued sale of packages shortly before the closure of TT and TM.

Issue 3: Whether Mr Wee breached his fiduciary duty to act in good faith to the respondents in relation to the manner of closure of TT and TM

93 We turn now to consider the Fiduciary Claim.

94 As the Employment Agreement was between Mr Wee and True Yoga, there is no contractual obligation owed by Mr Wee to True Fitness and True Fitness STC respectively vis-à-vis TT and TM. Indeed, True Fitness and True Fitness STC do not bring a claim on this basis. Their claim is brought solely on the basis of the fiduciary duty owed by Mr Wee to True Fitness and True Fitness STC as a director.

95 Following from our analysis above on the proper plaintiff rule as regards the Fiduciary Claim (see [46]) and on common brand equity (see [68] above), it seems to us that each of the respondents (a) was owed a fiduciary duty by Mr Wee as director to manage the affairs of TT and TM appropriately; and (b) suffered an independent loss if the brand equity of the "True" brand was damaged as a result of Mr Wee's conduct. To recapitulate (see [68] above), the respondents held a common brand equity namely, the "True" brand which they used for the fitness and wellness businesses each undertook. The diminishment of the value of the "True" brand would therefore result in the knock-on consequence of lowered brand perception and reputational loss for each of the respondents. It also seems to us that our analysis on the conduct of Mr Wee at

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[74]–[92] above applies equally to our assessment of whether Mr Wee breached his fiduciary duty to each of the respondents. We explain the second point.

96 It is trite that a director must exercise his fiduciary duty in good faith and in the best interests of a company. The test is an objective-subjective one: Hans Tjio, Pearlie Koh & Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) ("*Corporate Law*") at paras 09.039 and 09.043. The question is whether the director honestly believed that his act or omission was in the interests of the company: *Regentcrest v Cohen* [2001] BCLC 80 at [120]. Where the director's alleged beliefs are objectively unreasonable, this may constitute evidence that the director did not in fact honestly hold such beliefs at the time: *Extrasure Travel Insurances v Scattergood* [2003] BCLC 598 at [90]. The court, however, will be slow to interfere with the commercial decisions of directors which have been made honestly even if they prove to be financially detrimental. However, in considering whether a director has acted honestly, the court will consider whether an intelligent and honest person in the position of the director could reasonably have believed that the transactions were for the benefit of the company. The following guiding principles were articulated by the Court of Appeal in *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329: (a) where the transaction is not objectively in the company's interests, a judge may very well draw an inference that the directors were not acting honestly; and (b) the requirement of good faith would also not be satisfied if the director has acted dishonestly, even if for the purported aim of maximising profits for the company (at [38]–[39]).

97 It can hardly be said that Mr Wee had acted in good faith in the best interests of the respondents in the manner in which he handled the closure of TT and TM. For the same reasons at [74]–[92] above, it was clear that Mr Wee's conduct in reasonable probability would result in damage to the "True" brand

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and he would have known that this would adversely affect the respondents. To starkly illustrate the point, selling membership packages under the "True" brand with no expectation that they would be performed to unsuspecting customers would surely have a deleterious effect on the brand. We therefore agree with the Judge that the fiduciary duty owed by Mr Wee to the respondents was breached by the manner in which he managed the closure of TT and TM.

Issue 4: Whether the respondents suffered loss as a result of the breach of the duties

98 We are of the view that True Yoga has shown that it has suffered loss as a result of the breach of cl 1.3(a) and the respondents have shown their loss as a result of the breach of the fiduciary duties owed to them by Mr Wee. The loss is in the form of financial loss arising from damage to the brand equity of the "True" brand.

99 At the liability stage of the proceedings, it suffices to demonstrate that there was some loss occasioned by the breach: *Tan Woo Thian v PricewaterhouseCoopers Advisory Services Pte Ltd* [2021] 1 SLR 1166. Having said that, it remains relevant for the respondents to show at the assessment of damages that their individual losses were suffered as a result of breach of the relevant duty.

100 Mr Wee does not dispute that the closure of TT and TM had an impact on the respondents and the "True" brand. Indeed, the evidence supports this.

101 Ms Lim testified that there was drastic decrease in the financial performance of the "True" entities in Singapore for the months of July to December 2017 for which the total decline was $4.7m. There is substance to Ms Lim's assertion. We explain below (at [102]–[104]).

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102 By an email dated 13 July 2017, Mr Wee requested to temporarily utilise US$1 million of the US$5 million in capital (the "China Fund") which Fester injected into the entities in Singapore associated with the "True" brand (including the respondents) for expansion into the market in China to deal with the cash crunch being faced at that time by these entities. Mr Wee acknowledged that this was due to their business being affected by the closure of TT and TM. Subsequently, Mr Wee asked for even more funding to be drawn from the China Fund to deal with the cash crunch being faced *inter alia* by the respondents. By early February 2018, Mr Wee had drawn down on all the monies in the China Fund to plug various cashflow gaps. Thereafter, Mr Wee continued to seek further funding from TFKT (see [13] above) to plug various other cashflow gaps. Between February and March 2018, Mr Wee prepared a "TRUE GROUP 2018 Revitalisation Business Plan" which he presented to the board of TFKT. In an email sent by Mr Chen on behalf of Mr Wee (copying him) on 2 February 2018 titled "Draft True Group 2018 Rejuvenation Business Plan and Proposed Repayment Plan", the attached PowerPoint slides contained the actual cashflow of *inter alia* the respondents in 2017 as compared to the forecasted cashflow. It was explained that the actual numbers fell far short of the forecasted numbers because the "***Closure of Thailand and Malaysia in mid Jun 2017 has affected our members' confidence***" (at explanatory note 3) [emphasis added]. In the revised version of the presentation slides which Mr Wee sent to the board of TFKT on 3 March 2018, Mr Wee identified at Slide 2 (titled "A SWOT Analysis of TRUE Group's Business"), that one of the "WEAKNESSES" of the "True" entities in Singapore which necessitated funding was its "***Brand perception due to negative publicity in 2017***" [emphasis added]. This could only have been a reference to the negative publicity generated as a result of the closure of TT and TM. It is clear that Mr Wee acknowledged that the poor financial performance

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of the "True" entities in Singapore in 2017 (which extended into 2018) was related to negative publicity associated with the closure of TT and TM in 2017.

103 Mr Wee's response to this is that such negative publicity was "inevitable" and that "there would have always been damage to the 'True' brand from the closures of [TT] and [TM] regardless of how they were managed". In other words, it was the fact and not the manner of closure that caused the negative publicity.

104 We cannot accept this submission and make two points. First, given the evidence that was adduced by the respondents, the evidential burden of establishing the absence of a causal link was on Mr Wee. He failed to discharge that burden. Second, Mr Wee's submission misses the point. While the closure might have arguably caused some negative publicity, it is evident that the manner in which Mr Wee went about it gravely exacerbated the situation. His conduct was deeply questionable for the reasons stated earlier (see [74]–[92] above).

Conclusion on the Claims

105 We therefore dismiss the appeal in respect of the Claims. Mr Wee is liable to True Yoga for breach of cl 1.3(a) in mismanaging the closure of TT and TM. He is also liable for breach of fiduciary duties owed to the respondents to act in good faith in their best interests.

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Issue 5: Whether the termination of Mr Wee was justified under cl 11 of the Employment Agreement

Sub-issue 1: Whether the Employment Agreement was varied such that Mr Wee's salary was reduced from $120,000 to $22,500

106 Mr Wee challenges the Judge's decision that the Employment Agreement was varied such that his salary was reduced from $120,000 to $22,500 per month. We cannot agree with Mr Wee because the documentary evidence and his subsequent conduct indicate otherwise. We make three points.

107 First, the email sent by Mr Hu to Mr Wee and Ms Si Tou on 3 May 2017 titled "Executive Team Pay Allocation" shows that there was an agreement reached between Mr Wee and True Yoga that he would accept a lower remuneration. It states that "[p]er our conversation, for a prosper future partnership, as True CEO and shareholder you [*ie*, Mr Wee] are willing to cut 2/3 of your existing USD 1.14million annual salary to USD 380,000." In the same email, Mr Hu directs Ms Si Tou that "… on the salary issue, we can use the following allocation for the group … Patrick [*ie*, Mr Wee] 200k Singapore, 180k TW". The "200k Singapore" is meant to refer to USD$200,000 in annual salary for his role as Group CEO in Singapore, which translates to approximately $22,500 per month.

108 Second, Mr Wee signed an audit confirmation form confirming that his salary slip in 2017 (containing his reduced salary from June to December 2017) was "complete and accurate". We do not accept his contention that he had only confirmed the quantum of salary "paid" or "provided" by signing the audit confirmation form. The form provided for confirmation that "the compensation paid, payable or provided … as set out in Section A on pages 2 to 4 of this confirmation, is *complete* and *accurate*" [emphasis added]. By signing the audit

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confirmation form, Mr Wee had acknowledged that the section detailing the wages paid or payable to him set out therein presented the *full picture* regarding his remuneration for 2017. That the confirmation form was returned by Mr Wee only on 24 October 2018 *after he had been terminated on 19 May 2018* (without any objections raised in that time) provides a basis for inferring that he believed that that was the salary due to him as Group CEO in 2017. This supports the conclusion that Mr Wee had in fact reached agreement with Mr Hu on the lower salary as asserted by the respondents.

109 Third, Mr Wee averred in his AEIC that he *agreed* to accept the lower remuneration in his role as Group CEO and for "Tongfang to make up for the shortfall in an agreeable mode within three years thereafter". Thus, on his own case, Mr Wee acknowledges that he had agreed to the lower salary, albeit conditioned upon future repayment of some form from Tongfang.

110 We turn to the question regarding Mr Hu's authority. Although Mr Wee argues that Mr Hu did not have the authority to vary the Employment Agreement, this is a red herring. It is not for Mr Wee to assert Mr Hu's lack of authority to vary the contract. It is for True Yoga to do so. It was clear that Mr Hu purported to act on behalf of True Yoga by revising Mr Wee's salary downwards. Even if he was not authorised to act, True Yoga accepted and ratified his acts by paying the reduced salary from 1 June 2017 and sending an audit confirmation slip stating that Mr Wee's salary was $22,500. This confirms the contents of the email sent by Mr Hu, and buttresses the Judge's finding that Mr Wee's salary pursuant to the Employment Agreement was varied.

111 We are therefore of the view that the Judge was correct in concluding that an agreement was reached between Mr Hu and Mr Wee to reduce his monthly salary to $22,500.

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Sub-issue 2: Whether the Employment Agreement was terminated with cause

When was the Employment Agreement terminated?

112 There was some disagreement before the Judge over when the Employment Agreement was terminated. However, Mr Wee has not appealed against the Judge's finding that the Employment Agreement was terminated on 9 May 2018. Similarly, although the respondents contended that Mr Wee's employment terminated on 12 March 2018 when Mr Wee's extended term under the Employment Agreement lapsed, they have not appealed against the Judge's finding that the termination was on 9 May 2018. There is therefore no basis to disturb the Judge's finding that the Employment Contract was validly terminated on 9 May 2018.

Had the Employment Agreement been terminated with cause?

113 Given our finding on the breach of cl 1.3(a) of the Employment Agreement (see [92] above), we agree with the Judge that the Employment Agreement was terminated with cause on 9 May 2018.

114 We therefore dismiss the appeal against the Counterclaim in its entirety.

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Conclusion

115 We dismiss the appeal in its entirety (see [105] and [114] above). Parties are to file written submission on costs limited to ten pages each within ten working days.

Kannan Ramesh
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

Quentin Loh
Senior Judge

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