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

[2023] SGHC 114

Suit No 74 of 2020

Between

(1) Full House Building Construction Pte Ltd

… Plaintiff

And

(1) Tan Hong Joo
(2) Goh Siew Ling
(3) Ooi Chooi Teik

… Defendants

And

(1) Tan Hong Joo
(2) Goh Siew Ling
(3) Ooi Chooi Teik

… Plaintiffs in Counterclaim

And

(1) Full House Building Construction Pte Ltd
(2) Tan Hong Chian

… Defendants in Counterclaim

JUDGMENT

Version No 1: 28 Apr 2023 (19:36 hrs)

[Contract — Contractual terms — Warranties]
[Contract — Contractual terms — Rules of construction]
[Companies — Constitution — Directors — Powers]
[Confidence — Remedies — Injunctions]
[Injunctions — Purposes for grant — Protection of contractual rights]

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Full House Building Construction Pte Ltd
v
Tan Hong Joo and others

[2023] SGHC 114

General Division of the High Court — Suit No 74 of 2020
Andrew Ang SJ
12–14, 18–19 July 2022, 2 September 2022

28 April 2023 Judgment reserved

Andrew Ang SJ:

1 The claims and counterclaims in this case arose out of a settlement agreement dated 20 April 2018 ("the Settlement Agreement"), which was intended to resolve with finality the matters in dispute in HC/S 895/2017, HC/OS 67/2016, and HC/CWU 11/2018. Unfortunately, the Settlement Agreement did not see an end to the disputes between the parties. Instead, it gave rise to other issues, which have fallen to this court to decide.

Parties

2 Full House Construction Pte Ltd ("Full House") is the plaintiff and first defendant in counterclaim. It is a private limited company engaged in the construction business, and was incorporated in 1994.

3 Mr Tan Hong Chian ("THC") is the second defendant in counterclaim. At the time of Full House's incorporation in 1994, he was one of its two directors and equal shareholders.

4 Mr Tan Hong Joo ("THJ") is the first defendant and first plaintiff in counterclaim. He is the brother of THC, and was the other of Full House's two original directors and equal shareholders at the time of its incorporation.[1]

5 Ms Margaret Goh Siew Ling ("Mdm Goh") is the second defendant and second plaintiff in counterclaim. She is the wife of THJ, and became a director of Full House in 2013.

6 Mr Eric Ooi Chooi Teik ("Mr Ooi") is the third defendant and third plaintiff in counterclaim. He was also appointed to the directorship of Full House in 2013.

Background facts

7 Full House was incorporated with THC and THJ as equal shareholders. They were also its only directors until 2013, when Mdm Goh and Mr Ooi were appointed as additional directors.[2] By the end of 2016, Mdm Goh had also gained a small minority shareholding in Full House.[3]

8 Subsequently, relations soured between the parties, leading THC to file an application against Full House to inspect its documents in HC/OS 67/2016,

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1 Joint Defence and Counterclaim (Amendment No.1) dated 11 November 2019 ("Defence and Counterclaim") at para 2(a).

2 Defence and Counterclaim at para 2(a) and (c).

3 Defence and Counterclaim at para 2(e); AEIC of Tan Hong Chian (25 February 2022) at p 22.

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and also to commence HC/S 895/2017, which comprised a claim against Full House and the three defendants for minority oppression and an application for leave to commence a derivative action.[4] THJ also commenced HC/CWU 11/2018,[5] a winding up application concerning Prime Maintenance Pte Ltd ("Prime Maintenance"), another company in which both THC and THJ were equal shareholders and the only two directors,[6] and in respect of which THC raised various issues and allegations. In the course of those ongoing disputes, THC was removed as a director of Full House by 10 March 2017.[7] While he remained a 50% shareholder of Full House,[8] this left the directorship of Full House in the hands of the three defendants.

9 In an attempt to resolve their disputes, parties entered into mediation, which on 20 April 2018 resulted in the Settlement Agreement dealing with the matters arising out of HC/S 895/2017, HC/OS 67/2016, and HC/CWU 11/2018. Under the terms of the Settlement Agreement, THC was to purchase the shares of THJ and Mdm Goh in Full House, and the defendants were to step down from directorship of Full House by 15 June 2018.[9]

10 However, after the shares were transferred and paid for, THC subsequently took issue with various warranties the defendants had made regarding Full House's receivables, as well as their use of Full House's funds to pay their own legal fees in HC/S 895/2017. In turn, the defendants claimed

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4 Defence and Counterclaim at para 3.

5 AEIC of Tan Hong Chian (25 February 2022) at p 90.

6 Defence and Counterclaim at para 3(d).

7 Defence and Counterclaim at para 4.

8 Defence and Counterclaim at para 4.

9 AEIC of Tan Hong Chian (25 February 2022) at pp 24–25.

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that Full House owed them various forms of remuneration and sought payment thereof. The defendants also made further claims against THC in respect of his post-settlement conduct.

Parties' arguments and issues

11 Full House and THC (collectively "the plaintiffs") make two claims against THJ, Mdm Goh, and Mr Ooi (collectively "the defendants"). First, they allege that while the defendants were still in control of Full House, they had wrongfully caused Full House to reimburse them for legal fees which they had personally incurred in defending HC/S 895/2017 ("the Reimbursement Claim"). This reimbursement was said to be wrongful because Clause 24 of the Settlement Agreement ("Clause 24") obliged all parties to bear their own costs in HC/S 895/2017 and HC/OS 67/2016, and in any event, the preconditions to indemnifying the directors for legal costs under Article 114 of Full House's Articles of Association ("Article 114") had not been fulfilled.

12 Second, the plaintiffs also allege that the defendants had wrongly warranted in Clause 18 of the Settlement Agreement ("the Warranty") that Full House's trade receivables were not less than $3,300,000.00 as of 28 February 2018 ("the Warranty Claim").

13 The defendants' case in respect of the Reimbursement Claim is that a proper interpretation of Clause 24 does not preclude Full House from reimbursing the defendants for their legal expenses in HC/S 895/2017. They also argue that the preconditions in Article 114 should be interpreted as including situations where legal proceedings are resolved by way of settlement. As for the Warranty Claim, the defendants argue that there was still a possibility of recovering certain outstanding debts, and that their inclusion as part of Full

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House's receivables as warranted to the plaintiffs was objectively defensible. Additionally, the defendants generally seek to rely on Clause 10 of the Settlement Agreement, which they argue precludes any challenge to management decisions they had made while still in control of Full House.

14 Additionally, the defendants make several claims of their own. Mdm Goh and Mr Ooi claim entitlement to directors' fees, which they contend are provided for under Clause 12 of the Settlement Agreement and their respective service agreements ("the Directors' Fees Claim"). The plaintiffs maintain that Clause 12 did not actually provide for payment of directors' fees, and that in any event, nett profits for the financial year 2018, to which the defendants' directors' fees were pegged, were zero. Mr Ooi separately claims remuneration for services provided to Full House in the period between relinquishing his directorship and ceasing employment with Full House in mid-July 2018 ("the Services Remuneration Claim"). The plaintiffs resist his claim on the basis that he was merely serving out his notice period. Finally, the defendants allege that THC committed a breach of confidence by viewing and forwarding their privileged communications with their solicitors, and also breached the Settlement Agreement by making demands of the liquidators of Prime Maintenance. The defendants seek relief by way of an injunction and an order for specific performance ("the Miscellaneous Breaches Claim").

15 Accordingly, the issues which arise for my determination are as follows:

(a) Whether the defendants were entitled to reimburse themselves for their legal costs out of Full House's assets;

(b) Whether the defendants breached the Warranty;

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(c) Whether Mdm Goh and Mr Ooi were entitled to any directors' fees;

(d) Whether Mr Ooi was entitled to remuneration for services provided after relinquishing directorship at Full House; and,

(e) Whether THC's actions justify the grant of an injunction and/or specific performance.

Issue 1: Whether the defendants are entitled to reimbursement for their legal costs

16 On 20 October 2017, while the defendants were still directors of Full House, they passed a resolution pursuant to Article 114 to have Full House reimburse the legal costs and expenses which they incurred in connection with HC/S 895/2017.[10] In accordance with this resolution, Full House paid $190,913.78 out of its own funds towards the defendants' legal fees between 8 November 2017 to 17 April 2018, and a further $60,250.00 on 24 April 2018, for a total of $251,163.78. The plaintiffs seek recovery of this sum. As noted at [11] and [13], this issue essentially turns on the proper interpretation of Clause 24 and Article 114. I consider each in turn.

Clause 24 of the Settlement Agreement does not preclude Full House from reimbursing the defendants' legal fees

17 The plaintiffs' first argument is that the reimbursement was inconsistent with the defendants' obligations under the Settlement Agreement. Clause 24 provides that "Each Party shall bear his/her own costs for HC/S 895/2017 and

[10] Plaintiffs' Core Bundle for Closing Submissions dated 2 September 2022 ("PCB") at p 20.

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HC/OS 67/2016",[11] and the preamble of the Settlement Agreement identifies each of THC, THJ, Mdm Goh, Mr Ooi, and Full House as being a party to it.[12] Each defendant was therefore under a "free-standing obligation" to individually bear their legal fees in HC/S 895/2017,[13] and was precluded from seeking reimbursement of the same from any other party.

18 As against this, the defendants contend that the effect of Clause 24 simply mirrors that of a court making no order as to costs.[14] It does not impose any positive obligation on any of the parties to personally bear the costs of their own legal defence in HC/S 895/2017, or any negative obligation to refrain from seeking or accepting reimbursement of such costs from another party.

19 I agree with the defendant that the proper interpretation of Clause 24 is simply that no party to HC/S 895/2017 and HC/OS 67/2016 may be legally *compelled* to reimburse the legal costs of another. Such a provision is consistent with the complete settlement of all differences and disputes without any admission of liability, as is provided for in Clause 1 of the Settlement Agreement and also a common feature of settlement agreements (see for example *Lim Sze Eng v Lin Choo Mee* [2019] 1 SLR 414; *Allplus Holdings Pte Ltd and others v Phoon Wui Nyen (Pan Weiyuan)* [2016] SGHC 144; *Sita Jaswant Kaur v Surindar Singh s/o Jaswant Singh* [2013] 4 SLR 838). It does not mean that the parties to the Settlement Agreement are prohibited from receiving voluntary reimbursement of their legal fees.

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11 AEIC of Tan Hong Chian (25 February 2022) at p 27.

12 AEIC of Tan Hong Chian (25 February 2022) at p 21.

13 Plaintiffs' Skeletals (2 September 2022) at para 26.

14 Defendants' Skeletals (2 September 2022) at para 25(b).

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20 The evidence also suggests that this was consistent with the way in which both THC and the defendants understood Clause 24 at the time they entered into the Settlement Agreement. Mr Ooi testified that in the period between April and July 2018, shortly after the agreement had been concluded, THC had complained to him about how "fortunate" THJ and Mdm Goh were to have their legal fees covered by Full House.[15] It would of course have been preferable if this account had been put to THC during cross-examination. However, Mr Ooi's uncontested testimony nonetheless suggests THC was fully aware that Full House had covered the defendants' legal fees, and despite being unhappy about the perceived unfairness of this situation, did not appear to see this as inconsistent with his understanding of Clause 24. Such post-contractual conduct goes towards establishing parties' understanding of their agreement at the time it was concluded (*Centre for Laser and Aesthetic Medicine Pte Ltd v GPK Clinic (Orchard) Pte Ltd* [2018] 1 SLR 180 at [51]), and the proper interpretation thereof. As for the defendants, it should be noted that they had as of 20 April 2018 already caused Full House to reimburse $190,913.78 of their legal fees. It is difficult to imagine that they would have agreed to Clause 24 if their understanding thereof was that it obliged them to return this sum.

21 Accordingly, I find that the proper interpretation of Clause 24, as understood by all parties as of 20 April 2018, was that it simply had the same effect as no order being made as to costs. It did not oblige each party to personally bear their costs as the plaintiff now claims, and cannot serve as the basis for the Reimbursement Claim.

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15 Hearing Transcript Day 5 (19 July 2022) at p 98 lines 19–22; AEIC of Ooi Chooi Teik (25 February 2022) at para 72.

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The preconditions to reimbursement under Article 114 of Full House's Articles of Association were not fulfilled

22 I next proceed to consider the plaintiffs' argument in respect of Article 114, which provides as follows:[16]

> Every director, managing director, agent, auditor, secretary and other officer for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, *in which judgment is given in his favour or in which he is acquitted or in connexion with any application under the Act in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust.* [emphasis added]

23 The plaintiffs' case is that Article 114 only permits the indemnification of directors against costs incurred in defending proceedings which are resolved by way of judgment in favour of the director, acquittal, or relief granted under the Companies' Act.[17] As HC/S 895/2017 had been resolved by the Settlement Agreement, this precondition had not been fulfilled. The defendants therefore were not entitled to invoke Article 114 to justify indemnifying themselves for their legal expenses out of Full House's assets, and their doing so gave rise to a claim in unjust enrichment for the sums which had been improperly reimbursed.

24 The defendants do not make any attempt to dispute the plaintiffs' argument in respect of unjust enrichment. Their case is that the applicability of Article 114 should not be restricted only to the situations expressly enumerated, but rather as permitting indemnification of the company's directors in *all* situations *except* where there is a positive finding that they are "guilty of

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16 Affidavit of Tan Shi Hao (14 June 2019) at p 88.

17 Plaintiffs' Skeletals (2 September 2022) at para 30.

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wrongdoing."[18] They contend that the plaintiffs' interpretation would lead to the "absurd result" of "penalising the Defendants for agreeing to settle" and thus "mandating protracted litigation".[19] As the Settlement Agreement expressly provided that it was executed without any admission of liability by any party, the defendants were perfectly entitled to rely on Article 114 to indemnify themselves out of Full House's assets. In any event, as their decision to indemnify themselves was a management decision, the plaintiffs were precluded from challenging it by Clause 10 of the Settlement Agreement ("Clause 10"),[20] the relevant part of which reads as follows:[21]

> No issue or objection shall be taken with the running and management of Full House and Prime Maintenance Pte Ltd (now in liquidation) (UEN No. 201324630C) ("Prime Maintenance") or its affairs prior to the date of signing of the Agreement …

25 I disagree with the defendants' interpretation of Article 114. While a construction which leads to unreasonable results is to be avoided unless it is required by clear words and there is no other tenable construction (*Zurich Insurance (Singapore Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]), the plaintiffs' interpretation *is* the only one that is tenable on the plain words of Article 114.

26 Moreover, it is not nearly as unreasonable as the defendants make it out to be. Allowing for the indemnification of directors where proceedings have been settled or discontinued may lend itself to abuse by directors who have in

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18 Defendants' Skeletals (2 September 2022) at para 37; AEIC of Ooi Chooi Teik (25 February 2022) at para 47.

19 Defendants' Skeletals (2 September 2022) at paras 36 and 42.

20 Defendants' Skeletals (2 September 2022) at para 19.

21 AEIC of Tan Hong Chian (25 February 2022) at p 24.

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fact committed serious wrongdoing, but have somehow caused the company to settle. A company may quite sensibly wish to guard against such potential abuses by making indemnification conditional on a prior positive finding of innocence by an independent and objective adjudicator, rather than simply the absence of a finding of guilt. And while I accept that courts should not be overly pedantic when interpreting a company's constitution or articles of association, it is one thing to split hairs over the difference in meaning between "will" and "shall", as the court rightly declined to do in the case of *Rayfield v Hands and others* [1958] 2 WLR 851 at 853 which the defendants have sought to rely on, but it is entirely another, and quite beyond the permissible bounds of contractual interpretation, to read such an indemnity as applicable beyond what is expressly provided for.

27 Additionally, while THC's comments to Mr Ooi regarding Full House's reimbursement of the defendants' legal fees were relevant to the interpretation of Clause 24 as discussed at [20], they have little bearing on that of Article 114. Where Clause 24 was concerned, the Settlement Agreement had been concluded only a few months before those comments were made. The agreement and preceding discussions during mediation must have been relatively fresh in THC's mind, such that he could have been expected to object to anything which was inconsistent with his understanding thereof. However, Full House was incorporated, and its Articles of Association passed, in 1994,[22] and the defendants' own case is that THC was a "sleeping director" and "knew nothing about Full House's finances and accounts".[23] It is very likely that THC simply had no idea what was provided for in Article 114 at the time of the exchange, or that it even existed until informed of it by his counsel. His failure to object,

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22 Plaintiffs' Skeletals (2 September 2022) at para 37.

23 Defendants' Skeletals (2 September 2022) at paras 2(a) and 94.

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while indicative of his understanding of the Settlement Agreement, cannot be relied on to determine his subjective understanding of Full House's Articles of Association, or their proper objective interpretation.

28 Finally, I do not accept that Clause 10 prevents the plaintiffs from bringing the Reimbursement Claim. I recognise the sense in agreeing that THC would not be allowed to challenge the soundness of commercial, operational, or financial decisions the defendants might have made, such as whether to accept a given project, or compromise certain loans owed to Full House. Certainly, even in the absence of a contractual provision akin to Clause 10, courts will be slow to interfere with *bona fide* management or commercial decisions taken by directors, even if they later turn out to have been money-losing ones (*Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [30]; *ECRC Land Pte Ltd (in liquidation) v Ho Wing On Christopher and others* [2004] 1 SLR(R) 105 at [49]). However, not every decision or act undertaken by a director will necessarily be considered a management decision. In *Swiss Butchery Pte Ltd v Huber Ernst and others and another suit* [2010] 3 SLR 813, the court observed as follows (at [12]):

> It is thus clear that while the court will not question a management decision which was exercised in a bona fide manner, anyone who owes a fiduciary duty is not allowed to enter into transactions in which he has a personal interest conflicting with the interest of those whom he is bound to protect.

29 By the same token, the passage of a directors' resolution that is plainly inconsistent with the constitution of the company, and thus *ultra vires* the directors' powers, cannot be considered a management decision deserving of the court's deference, or the protection of Clause 10.

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30 Accordingly, I find that the preconditions to Article 114 did not include settlement, and that the defendants were therefore not entitled to invoke it for their own benefit in the present case. It follows that they are obliged to return the sums which they caused Full House to pay towards their legal fees.

Issue 2: Whether the defendants had breached the terms of the Warranty

31 The Warranty Claim arises out of Clause 18 of the Settlement Agreement ("Clause 18"), which provides as follows:[24]

> Each Party represents and warrants that it has full capacity, power and authority to enter into and perform this Settlement Agreement on its own behalf and/or on behalf of any party or parties that it represents, and all corporate acts required to enable each Party to lawfully enter into and perform this Settlement Agreement have been carried out. In this regard, the Current Directors warrant that as of 28 February 2018, the trade payables of Full House is not more than Singapore Dollars Two Million (SGD$2,000,000.00), *the trade receivables are not less than Singapore Dollars Three Million and Three Hundred Thousand (SGD$3,300,000.00)* million [*sic*], the cash in bank balances are not less than Singapore Dollars Three Million and Four Hundred Thousand (SGD$3,400,000.00), and there are no bank borrowings other than hire purchases and a mortgage. [emphasis added]

32 The plaintiffs' case is that the total value of Full House's trade receivables in fact fell below the warranted sum of not less than $3,300,000.00. This was because outstanding debts owed to Full House by BL Construction Pte Ltd ("BL Construction") and Buildforms Construction (Pte) Ltd ("Buildforms"), which had been included in the defendants' computation of Full House's receivables using the Sage 300 ERP accounting software ("Sage 300"), were extremely unlikely to be recoverable. They therefore could not objectively have been considered "receivables" within the meaning of Clause 18, and with

[24] AEIC of Tan Hong Chian (25 February 2022) at p 26.

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the remainder of Full House's receivables amounting to less than $3,300,000.00, the defendants were thus in breach of the Warranty.

33 On the other hand, the defendants argue that there was still a realistic prospect of recovering the BL Construction and Buildforms debts in full, such that their inclusion as part of Full House's receivables cannot be said to have been wrong.[25] Additionally, they again seek to rely on Clause 10, arguing that their decision to include the outstanding debts as part of Full House's receivables was a management decision and thus could not be challenged by THC.[26]

34 The question in respect of the Warranty Claim is whether it can be said that the BL Construction debt and the Buildforms debt were in fact not part of Full House's receivables as of 28 February 2018. As the circumstances surrounding the outstanding debts from BL Construction and Buildforms are materially different from each other, I shall consider each separately.

The BL Construction debt is not properly considered part of Full House's receivables

35 The BL Construction debt was a judgment debt obtained by Full House against BL Construction in 2017. While interest and costs were also awarded, these were not entered into Sage 300, and were not included as part of Full House's receivables as warranted to THC.[27] It is thus only the judgment sum of $614,959.15 that is relevant in the present case.

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25 Defendants' Skeletals (2 September 2022) at para 57.

26 Defendants' Skeletals (2 September 2022) at paras 19 and 58.

27 Plaintiffs' Skeletals (2 September 2022) at para 92.

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36 On 26 April 2017, Full House and BL Construction entered into a settlement agreement ("the BL settlement agreement") under which BL Construction would pay Full House a total of $100,000.00 across 100 equal monthly instalments, in exchange for full discharge of the judgment debt. The BL settlement agreement also provided that if BL Construction defaulted on the payment of any instalment, the entirety of the original judgment sum would become due and payable. As the defendants had by this point already entered the $614,959.15 judgment sum into Sage 300 as a receivable, a directors' resolution was passed on 28 December 2017 to make provision for the difference of $514,959.15 in Full House's accounting records over a period of three years from financial years ending 30 June 2017 to 30 June 2019.[28] Thus, instead of writing off the difference in one year, the directors amortised the writing off over three years. Accordingly, they wrote off $170,986.00 in financial year 2017,[29] approximately one-third of the difference. Given the theoretical possibility that BL Construction might default on the payment of its monthly instalments, the question was whether the entire original BL Construction debt of $615,959.15 was still properly considered part of Full House's receivables despite the BL settlement agreement, or whether the difference of $514,959.15 should have been written off.

37 I am of the view that the difference cannot be said to remain part of Full House's receivables as of 28 February 2018. In coming to this conclusion, I rely primarily on the expert evidence given by the plaintiffs' expert, Mr Sim Guan Seng ("Mr Sim"). Three points from his evidence are particularly salient.

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28 Defendants' Core Bundle (2 September 2022) (DCB) at p 94.

29 PCB at p 175.

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38 First, while the defendants argue that the question whether the difference was properly considered a receivable was simply a matter of opinion or judgment,[30] it was clear from Mr Sim's report and testimony that this is not the case. While some judgment is necessary in determining how likely it is that a debt will be recovered, that judgment must be informed by prevailing accounting standards and practice.[31] Where a warranty or representation is made to a third party in respect of the extent of a company's receivables, that third party must be entitled to assume that the representor's computation thereof had in fact been conducted in accordance with those standards and practices.

39 Second, where settlement agreements such as that executed between Full House and BL Construction are concerned, Mr Sim had the following to say:[32]

> Q: So when they say the management should only write off the trade receivable once it is aware that the balance is not recoverable, you would agree with me that you will only be aware that the balance is not recoverable when the 100th instalment is paid, yes?
>
> A: No. I mean the fact that they settled, right, *you must have an assumption that the settlement agreement will hold*. I mean, you can't – I mean, in accounting practice, you wouldn't foresee all possible scenario. You'll take what you believe to be the scenario that you should accept. In this case, *the management having entered into a settlement agreement, obviously that is the outcome to be accounted for in the manner according to the settlement agreement*. In fact, in the audited accounts, the company's own accounting principles require that write off – no, that *provision to be made once that is evidence of a possibility of the debt being uncollectible*.

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30 Defendants' Skeletals (2 September 2022) at para 57; Hearing Transcript Day 4 (18 July 2022) p 36 lines 1–4.

31 Hearing Transcript Day 4 (18 July 2022) at p 34 lines 18–20, p 46 lines 16–24.

32 Hearing Transcript Day 4 (18 July 2022) at p 34 lines 8–25, p 35 lines 1–4.

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> *It's in the accounting policy, the company's own accounting policy*.

[emphasis added]

40 Additionally, as concerns the defendants' decision to write off the difference over three years instead of all at once, Mr Sim commented as follows:[33]

> A: The short answer *is amortisation is not acceptable practice*, that's the short answer. If you look at the company's accounting policy itself, which is in line with accounting standard, it says that when you have evidence that a customer cannot pay, or – of course, in a case of a settlement, it's obviously a revised figure, the receivables, then you have to take the full amount *into that year*, that financial year profit and loss *and provide in full*. That is the accounting practice and, of course, in 2018 audit, PKF actually do a prior adjustment to set it right; that the provision should be made in the year they make the settlement agreement. And, your Honour, you are absolutely right when you say that *you provide in full in the year that it happened, the event took place*, and then subsequently, should there be a change in circumstances, like a default in payment of the $1,000 and the full amount becomes due and payable, and the client, upon taking the necessary legal action, manages to recover more than $100,000, then that can then be restated to the receivable amount and that is only done at the point that there is certain certainty in recoverability. That's the accounting practice in fairly layman terms [emphasis added]

41 It is thus clear from Mr Sim's evidence that, according to both prevailing accounting standards and Full House's own accounting policy, there was only *one* acceptable course of action in respect of a settlement agreement which entailed the forgiveness of part of a debt. This would have been to assume that the settlement agreement would be observed, and write off the entirety of the

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[33] Hearing Transcript Day 4 (18 July 2022) at p 46 line 15–25, p 47 line 1–16.

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forgiven debt *immediately*, in the financial reports of the year in which the settlement agreement was concluded.

42 Crucially, the defendants are unable to produce any expert evidence to contradict that of Mr Sim. While they attempted to call Mr Simon Er Boon Chiew of Er & Co as a witness, and in fact subpoenaed him when he declined to testify voluntarily, he nonetheless became uncommunicative and eventually declined to appear.[34] This poses a particular difficulty for their case, as one of their main arguments is that their decision to write off the BL Construction debt over three years instead of one was taken on the advice of Er & Co, who were at the material time Full House's independent auditors.[35] In this connection, the plaintiffs argue that an adverse inference should be drawn against the defendants in light of their failure to take all reasonable measures to secure Mr Er's attendance,[36] especially since assistance had been offered by the court in this regard.[37] However, while I see the force in this argument, it is not necessary for me to decide this point. The fact remains that Mr Sim's evidence is the only expert opinion before this court, and while the court is not obliged to unquestioningly accept expert evidence, it would nonetheless be slow to substitute its views for those of the expert in the absence of good grounds (*Abhilash s/o Kunchian Krishnan v Yeo Hock Huat and another* [2019] 1 SLR 873 at [88]).

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34 Hearing Transcript Day (14 July 2022) at p 33 lines 21–31.

35 Defendants' Skeletals (2 September 2022) at para 69; AEIC of Goh Siew Ling (25 February 2022) at para 86; Hearing Transcript Day 5 (19 July 2022) at p 69 lines 7–12; Hearing Transcript Day 4 (18 July 2022) at p 156 line 25 to p 157 line 2.

36 Plaintiffs' Skeletals (2 September 2022) at para 105.

37 Hearing Transcript Day 2 (14 July 2022) at p 33 lines 1–31.

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43 The defendants' case thus turns on their own assertions that they still believed there to be a possibility of the full BL Construction debt becoming due and payable.[38] However, these assertions do not amount to compelling grounds which justify rejecting Mr Sim's expert opinion. Inasmuch as the court must consider the factual or other premises on which an expert bases his opinion and examine the correctness of those premises and the expert's reasoning process (*Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129 at [23]), the same must apply with equal force to the defendants' attempt to challenge that expert evidence.

44 Here, the defendants' premises and reasoning do not stand up to scrutiny. First, the objective circumstances made it very unlikely that Full House would ever recover the BL Construction debt. The sum which BL Construction was to pay under the BL settlement agreement was less than a sixth of the original judgment debt, and the monthly payments of $1,000.00 would not be difficult for most businesses to meet. Indeed, as of 20 February 2018, BL Construction had consistently made the monthly payments between June 2017 and February 2018.[39] It was therefore extremely improbable that they would choose to renege on the terms of the BL settlement agreement. On the other hand, if they had no choice *but* to default in view of financial difficulties, then it was very unlikely that Full House would be able to recover the full BL Construction debt, even if it had become due and payable by virtue of a default. Either way, Full House had no realistic chance of recovering the difference of $514,959.15.

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38 Defendants' Skeletals (2 September 2022) at paras 61 to 62; AEIC of Ooi Chooi Teik (25 February 2022) at paras 105 and 106.

39 AEIC of Sim Guan Seng (25 February 2022) at para 4.5.

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45 Second, it appears unlikely that the defendants themselves were genuinely under any subjective belief that they would recover the full BL Construction debt. Mr Ooi himself admitted that the very reason why the defendants had caused Full House to enter into the BL settlement agreement, instead of seeking to recover the full BL Construction debt, was because BL Construction had neither the money nor assets to meet the full $614,959.15 judgment debt, and was "not doing well."[40] In this light, it is very unlikely that he believed there to be any realistic chance of recovering it in its entirety. Additionally, as observed above at [36], the defendants had already written off $170,986.00, approximately a third of the difference, in their 2017 financial statement. This too is difficult to reconcile with any genuine belief that the full BL Construction debt would be recoverable – if the defendants had genuinely believed so, then it is more likely that they would not have written off any part of it at all.

46 The credibility of the defendants' case is further undermined by the inconsistencies in their accounts of how they understood the BL settlement agreement. According to Mdm Goh, "as long as a resolution was passed providing that the said sum of $514,959.15 would be amortised over 3 years, provisions could be made for this in terms of its accounting treatment."[41] This suggests that she expected that the sum would likely be written off over the course of three years, although she insisted it was still a slim possibility that the full BL Construction debt could be recovered.[42] On the other hand, Mr Ooi claims that the BL settlement agreement was intended to "first secure whatever Full House could get from BL Construction", and also to "buy Full House some

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40 Hearing Transcript Day 5 (19 July 2022) at p 70 lines 24–30, p 72 line 27.

41 AEIC of Goh Siew Ling (25 February 2022) at para 86.

42 Hearing Transcript Day 5 (19 July 2022) at p 8 lines 21–28.

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time to deal with the remaining sum of $514,959.15."[43] Not only does this evince an intention to recover the full BL Construction debt, which would seem at odds with Mdm Goh's expectations, it is itself quite inexplicable. The terms of the BL settlement agreement expressly provided that the remainder of the BL Construction debt would be fully and finally discharged, once the $100,000.00 had been fully paid.[44] In this light, how exactly Mr Ooi proposed to "deal with" the remaining sum, short of actively engineering a default on the part of BL Construction, is difficult to understand.

47 In view of these inconsistencies, the inherent implausibility of the defendants' explanations, and the lack of any expert evidence to the contrary, there is no compelling basis upon which to reject Mr Sim's expert evidence. The difference of $514,959.15 cannot properly be considered as part of Full House's receivables.

The Buildforms debt is not properly considered part of Full House's receivables

48 I also find that the Buildforms debt of $31,458.00 cannot be considered part of Full House's receivables. Mdm Goh attempted to explain that, even though the Buildforms debt had been outstanding for two years, Full House still had a reasonable prospect of recovering it. This was because the debt had been incurred for work done in the course of a Ministry of Education project, and in Mdm Goh's words:[45]

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43 AEIC of Ooi Chooi Teik (25 February 2022) at para 105.

44 DCB at p 25.

45 Hearing Transcript Day 5 (19 July 2022) at p 8 lines 9–18.

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> A: Okay. Basically, this Buildform project is a MOE project.
>
> Q: Can you explain to the Court what "MOE" is?
>
> A: Okay. Ministry of Education and doing project for the schools. So we are taking the contract of a sub-contract of the plumbing and sanitary from Buildform. So beside, I mean we have been doing all this Ministry of Education project for some time, even other main con. This 31,458 is the two invoice under Buildform. So normally for all this Ministry of Education project, Buildform has been paying us from only these two invoice, why? Because it's only after when MOE finish, finalise everything. It may takes about 4 years, 5 years. Then we can recover all this thing.

49 In short, it was the norm where such projects were concerned that the outstanding debt would only be repaid four or five years after they were incurred, and that even after two years, Full House had a sufficiently strong prospect of recovering the Buildforms debt for it to be considered a receivable.

50 However, while this explanation sounds plausible on its face, on 9 February 2017, the defendants had, as the management of Full House, written to their auditors instructing *inter alia* that a sum of $31,458.00 be debited from their financial statements for the financial year 2016, as "provision for impairment of trade receivables (from Buildform Construction Pte Ltd) which are outstanding for 2 years".[46] Much like the partial write-off of the BL Construction debt, it is difficult to reconcile this with any genuine belief on the part of the defendants that Full House had any realistic prospect of recovering this sum. And while the question whether the Buildform debt was properly regarded as part of Full House's receivables is an objective factual question rather than a matter of the defendants' subjective opinion, that the defendants were of this opinion is strong evidence that the debt was in fact unlikely to be

[46] PCB at p 189.

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recoverable since, as the management of Full House, they would be in the best position to make such a determination. For much the same reason, the plaintiffs' expert witness also expressed the view that the Buildform debt should have been excluded from the Full House's trade receivables.[47]

51 The plaintiffs' letter of demand to Buildforms demanding payment of the Buildforms debt is of little assistance to the defendants. To begin with, what the plaintiffs might have subjectively believed at the point of sending the letter on 29 April 2019 has little bearing on the question of whether the debt was objectively likely to be recoverable or not. In any event, I also agree with the plaintiffs that the sending of a letter of demand does not necessarily evince a belief that the subject debt would be recoverable. Such a letter may simply be a precursor to a winding up application pursuant to section 125(2)(*a*) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed), in which case an unsecured creditor would rank *pari passu* alongside other unsecured creditors and so stand very little chance of recovering the debt in full. At most, sending such a letter might be evidence of a *hope* that the subject debt would be recovered, but this is entirely consistent with a reality in which that hope turns out to be unrealistic.

52 It is also not for the defendants to maintain that the plaintiffs "chose not to follow up" with Buildforms' 7 May 2019 response to the plaintiffs' letter of demand,[48] which the defendants contend "indicated its willingness to make repayment subject to Full House providing certain supporting documents."[49] On

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47 AEIC of Sim Guan Seng (25 February 2022) at para 4.8; Hearing Transcript Day 4 (18 July 2022) at p 21 line 8, p 23 lines 9–17.

48 Defendants' Core Bundle (2 September 2022) ("DCB") at p 305; AEIC of Tan Shi Hao (25 February 2022) at p 710.

49 Defendants' Skeletals (2 September 2022) at para 66.

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10 May 2019, the plaintiffs did in fact follow up by requesting documentary evidence of Buildforms' rejection of their claim, as well as the maintenance contract between Full House and Buildforms which allegedly required the provision of the supporting documents.[50] When the plaintiffs presumably received no reply, they sent yet another letter on 21 May 2019 reiterating their request for the documents.[51] It was only on 27 May 2019 that Buildforms replied, stating that there was no written maintenance contract and the obligation to provide the requisite documents was part of a "verbal agreement" between Buildforms, THJ, and Mdm Goh, and that there was no written rejection of the plaintiffs' claims[52]

53 In light of this exchange, it cannot fairly be said that the plaintiffs "chose not to follow-up" or were "so eager" to write off the Buildforms debt. To the contrary, it appears that they did make a reasonable effort to seek repayment of the Buildforms debt, but simply decided that further attempts were unlikely to be successful given Buildforms' response. And while the defendants have not expressly pleaded failure to mitigate, I bear in mind that if they had, the burden would have been on them to prove that the plaintiffs were unreasonable in failing to mitigate their loss, and that this is ordinarily one which is not easily discharged as the standard of reasonableness required of the aggrieved party will not be too difficult to meet (*Bauer, Adam Godfrey and another v Wee Tien Liang, deceased* [2021] SGHCR 8 at [25]). In my view, this generous approach to assessing a claimant's conduct in mitigation further supports the finding that the plaintiffs' efforts to recover the Buildforms debt had been sufficient, such

50 AEIC of Tan Shi Hao (25 February 2022) at p 712.

51 Agreed Bundle of Documents p 1498.

52 AEIC of Tan Shi Hao (25 February 2022) at p 714.

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that they are not disentitled from asserting that it was not properly considered part of Full House's receivables.

54 Accordingly, after deducting the Buildforms debt of $31,458.00 and the $514,959.15 of the BL Construction debt from Full House's receivables of $3,381,209.58 as at 28 February 2018,[53] Full House's actual receivables amounted to $2,834,792.43. This is $465,207.57 less than the sum of $3,300,000.00 warranted in Clause 18. The defendants are thus in breach of the Warranty.

55 I briefly deal with two other points raised by the defendants. First, as was the case with the Reimbursement Claim as discussed at [28]–[29], I find their attempt to rely on Clause 10 to be misplaced. While a decision to forgive or compound a debt would constitute a management decision that would be shielded from challenge by Clause 10, the way in which that decision affects the company's financial state of affairs, and how the consequences of that decision are to be reflected in their financial records, is governed by established accounting standards and principles. How that state of affairs is represented to a third party, and whether that representation is in conformity with those standards and principles, cannot be regarded as simply a management decision, a matter of directorial discretion, or a "difference of opinion" within the meaning of Clause 10.

56 Second, I also do not accept the defendants' contention that the plaintiffs suffered no loss from the breach of the Warranty. The appropriate measure of damages in such cases is what would be required to put the innocent party in the position they would have been in had the warranty been true, otherwise known

[53] Plaintiffs' Skeletals (2 September 2022) at para 82.

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as expectation loss or loss of bargain (*Holland Leedon Pte Ltd (in liquidation) v Metalform Asia Pte Ltd* [2012] 3 SLR 377 at [53]). The court will not reconstruct parties' negotiations, hypothesise about what they might have agreed to if a particular warranty or representation had not been made, or use that counterfactual as a baseline against which to assess the loss suffered. The simple fact is that THC agreed to buy out the defendants' shares in Full House for a certain price, on the warranty that its receivables were at least $3,300,000.00. The defendants are thus liable to make good the $465,207.57 difference between the actual amount of Full House's receivables as ascertained according to established accounting standards, and the amount which they warranted.

Issue 3: Whether the second and third defendants are owed directors' fees by Full House

57 I now turn to the counterclaims brought by the defendants, starting with Mdm Goh and Mr Ooi's claims for directors' fees. This claim is made pursuant to Clause 12 of the Settlement Agreement ("Clause 12"), the relevant part of which reads as follows:[54]

> The Current Directors shall resign as employees and directors of Full House on or before 15 June 2018, and they shall be paid all salaries (including salaries in lieu of notice), commission (as at 31 December 2018) and bonuses due to them.

58 The defendants argue that the term "commission" refers to the directors' fees provided for under Clause 11.1 of their respective service contracts,[55] which are pegged to 10% of Full House's nett profit for Mdm Goh,[56] and 15% for Mr

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54 AEIC of Tan Hong Chian (25 February 2022) at p 24–25.

55 Defendants' Skeletals (2 September 2022) at para 83.

56 AEIC of Goh Siew Ling (25 February 2022) at p 716.

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Ooi.[57] They also argue that the phrase "nett profit" should be understood as referring to Full House's profits pre-tax, and that Full House did indeed turn a profit in financial year 2018 such that they were owed directors' fees.

59 As against this, the plaintiffs point out that Clause 12 refers to "commission (as at 31 December 2018)", which suggests that the amount of commission is to be determined at the end of the calendar year. According to the plaintiffs, "commission" therefore cannot be a reference to the defendants' contractual directors' fees, as the nett profits to which their said fees are pegged are determined at the end of every financial year, on 30 June.[58] The plaintiffs go on to say that even if Clause 12 did refer to the directors' fees in Mdm Goh's and Mr Ooi's service agreements, they should be calculated with reference to Full House's profits post-tax.

The phrase "commission" in Clause 12 refers to the defendants' directors' fees

60 I accept that "commission" more likely than not refers to directors' fees in Mdm Goh and Mr Ooi's service agreements, and this is chiefly because the plaintiffs simply provide no explanation for what else the phrase "commission" might refer to. Every other entitlement under Clause 12 corresponds to entitlements under the defendants' service contracts – salaries are provided for under Clause 4.1 of the defendants' respective service contracts, and bonuses under Clause 11.2.[59] Neither Mdm Goh nor Mr Ooi's service agreements, nor the Settlement Agreement of 20 April 2018, make any reference to a

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57 AEIC of Ooi Chooi Teik (25 February 2022) at p 56.

58 Plaintiffs' Skeletals (2 September 2022) at para 137.

59 AEIC of Goh (25 February 2022) at p 714–716; AEIC of Ooi Chooi Teik (25 February 2022) at p 55–56.

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"commission", or any form of remuneration other than the directors' fees which were to be calculated as a percentage of a larger sum.

61 Similarly, while the plaintiffs claim that the phrase "as at 31 December 2018" means that the "commission specified under Clause 12 is calculated to the end of the calendar year",[60] there is no mention of any distinct component of the defendants' remuneration in their service agreements, nor any entitlement to payment in the Settlement Agreement, which was to be calculated with reference to the end of each calendar year. Indeed, the plaintiffs have not pointed to any payment actually made to the defendants which might have been this commission. Coupled with the correspondence between THC and the defendants which evinced a mutual understanding that Mdm Goh and Mr Ooi's director fees were in fact payable by the plaintiffs,[61] I am left with little choice but to accept that the phrase "as at 31 December 2018" simply meant that the directors' fees, and the nett profits of Full House to which they were pegged, were to be worked out by 31 December 2018. I thus find Clause 12 did indeed oblige the plaintiffs to pay Mdm Goh and Mr Ooi the directors' fees provided for in their service agreements, determined with reference to Full House's nett profits.

The defendants' director fees are to be determined with reference to profits after tax

62 Next, I find that the phrase "nett profits" ought to be understood as referring to profits post-tax. Mr Ooi admitted that, at least as of 9 May 2018, he understood that "nett profits" referred to profits after tax,[62] and that this was in

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60 Plaintiffs' Skeletals (25 February 2022) at para 137.

61 DCB at p 191–198.

62 Hearing Transcript Day 5 (19 July 2022) p 36, lines 16–31.

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fact its proper meaning in the "normal commercial context."[63] Yet despite having ostensibly come to realise this even before the present action was commenced, he continued to use this phrase without qualification in his affidavit of evidence-in-chief on 25 February 2022.[64]

63 It is of little consequence that THC had "never objected to the manner in which Mdm Goh and Mr Ooi's directors' fees were calculated and paid".[65] As observed at [27], the defendants' own case is that THC had little to no involvement in the running of Full House, and scant knowledge of its affairs. His inaction cannot be taken as acquiescence or indicative of a mutual understanding, except in respect of the Settlement Agreement.

64 However, in the final analysis, it is unnecessary for me to decide this point. According to Full House's Statement of Comprehensive Income for financial year 2018 ("the Statement"), it had in fact made a *loss* both before and after tax, with the former figure being a loss of $530,394.00, and the latter being a loss of $539,132.00.[66] As such, if the figures in the statement are accurate, then regardless of whether Mdm Goh and Mr Ooi's directors' fees are based on pre-tax or post-tax profit, the result would simply be zero.

Full House had no profits in financial year 2018

65 The question is thus whether the Statement accurately reflects Full House's losses in financial year 2018, or whether Full House did in fact make a profit.

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63 Hearing Transcript Day 5 (19 July 2022) p 36, lines 18–23.

64 AEIC of Ooi Chooi Teik (25 February 2022) at para 83(a).

65 Defendants' Skeletals (2 September 2022) at para 80.

66 DCB at p 144; Plaintiffs' Skeletals (2 September 2022) at para 147.

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66 The defendants' argument is in essence that Full House could not have made a loss. Even though a profit and loss statement as of just a month before the close of financial year on 31 May 2018 showed an overall net loss, they explained that this was because only costs and not revenue would have been recorded at that stage.[67] Invoices for "ongoing term contracts and ad hoc contracts", which may have been completed before the end of the financial year, also might simply not have been issued at that point.[68] THC's lack of knowledge regarding Full House's finances and accounts made it highly probable that records had been kept inaccurately, and Full House's auditors indeed noted that there was a "risk of inaccuracy in the books as there might be over or under recognition of revenue".[69] Most importantly, the sizable withdrawals amounting to approximately $10,000,000.00 that THC had made across financial years 2018 and 2019 would not have been made if Full House had genuinely been suffering financially.[70] If Full House *had* made a loss, this was entirely the doing of THC, who was no longer interested in running Full House as a going concern, and was treating it as a "treasure chest to be plundered".[71]

67 The fatal flaw in the defendants' case is that despite having obtained specific discovery of Full House's financial documents for financial years 2018 and 2019, they were unable to identify the source of the alleged inaccuracy or give any example of an invoice or revenue item which should have been included in the revenue figure for financial year 2018, but was incorrectly omitted. I accept that their lack of accounting and financial expertise would have

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67 Defendants' Skeletals (2 September 2022) at para 88(a).

68 Defendants' Skeletals (2 September 2022) at para 88(b).

69 DCB at p 186.

70 Defendants' Skeletals (2 September 2022) at para 89 to 90.

71 Defendants' Skeletals (2 September 2022) at para 90.

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made it difficult for the defendants to do this personally, and that a professional "re-audit" might have been beyond their financial means. But on them rests the burden of proof, and if the defendants are unable to "conclusively show which projects are in issue,"[72] or otherwise identify the error which caused the Statement to inaccurately reflect a loss when there were in fact profits, then there is simply insufficient basis for this court to find on balance of probabilities that there was in fact an error.

68 The rest of the circumstantial evidence upon which the defendants' case rests also does not inexorably lead to the inference which they would like the court to draw. Rather than being due to the recording of costs but not revenue, or the omission of invoices for contracts which might or might not have been completed, the most straightforward explanation for the fact that net losses were reflected in *both* the profit and loss statement as well as the overall financial year, is simply that Full House was *actually making a loss*. THC's withdrawals from Full House's accumulated profits are not inconsistent with the fact that it might have made a loss in the relevant financial year. And if even THC's management of Full House might have contributed to that loss, and even if THC and his son "had no interest in carrying on Full House's operations and were simply running it into the ground",[73] there was nothing in the Settlement Agreement which obliged THC to continue Full House's business in such a way as to make a profit in financial year 2018, in order that the defendants would be eligible to collect directors' fees as per the formula in their service agreements.

69 Accordingly, as the defendants have provided no compelling reason to believe that the Statement was wrong, and are in any event in no position to

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72 Defendants' Skeletals (2 September 2022) at para 99.

73 Defendants' Skeletals (2 September 2022) at para 102 to 103.

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quantify the director fees to which they claim to be entitled, they are unable to establish that they are entitled to any directors' fees. I thus dismiss the Directors' Fees Claim.

Issue 4: Whether the third defendant is owed remuneration for the period between 15 June and 20 July 2018

70 The services remuneration claim is Mr Ooi's claim for remuneration for services rendered between 15 June and 20 July 2018, allegedly pursuant to a new employment contract under which he was to be paid $12,000.00 per month, which parties concluded sometime after his resignation from the directorship of Full House on 15 June 2018 as per Clause 12 of the Settlement Agreement. I note that, as Mr Ooi conceded at trial that he had in fact been paid for the period of 15 to 30 June,[74], the remuneration presently in issue is that for services rendered between 1 to 20 July for a sum of $8,181.82. This figure is derived by pro-rating his allegedly agreed monthly salary of $12,000.00 to the number of working days he worked in July.[75]

71 On the other hand, the plaintiffs' position is that that Mr Ooi's services were not rendered pursuant to any new contract, but rather in discharge of his contractual obligations to serve a notice period of two months under his previous service agreement with Full House. Further, as Mr Ooi decided to stop working before serving the entire two-month notice period which would have ended on 15 August 2018, he and the plaintiffs came to an understanding that he would be allowed to stop work in exchange for agreeing to forfeit any remuneration for his services which remained unpaid at that point.

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74 Hearing Transcript Day 5 (19 July 2022) at p 81 lines 16–32, p 82 lines 1–11.

75 Hearing Transcript Day 5 (19 July 2022) at p 88, lines 1–27.

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72 I find it unlikely that Mr Ooi and the plaintiffs had concluded any new agreement, whether written or verbal, for the former to continue rendering services to Full House at a rate of $12,000.00 per month. Such an agreement would be inconsistent with an email which he sent on 6 July 2018 to Full House's then-management, which reads as follows:[76]

> Hi Shi Hao,
>
> May I know the status of my employment as you are aware technically speaking I am without any employment contract starting 16th June 2018 with Full House yet *I am functioning and working as per normal now in Full House as I promised.*
>
> Till date I do not know what's the management's position on the offer to me as *we are basically ironing the fine details of the employment agreements*, yes *I have promised your father to give him some time and not to rush into*, having said that I still do look forward to some assurance from you and your family on my employment with Full House.
>
> As promised my stand is clear that I will stay on and nothing changed, I do hope that you and your dad will be able to sort this out for me when he is backed from his charity trip in Myanmar.
>
> …
>
> [emphasis added]

73 This email quite clearly shows that Mr Ooi himself was not under the impression that the services he was rendering as of 6 July 2018 were rendered pursuant to any new agreement that had been concluded with the plaintiffs. Rather, he had continued working for Full House while negotiating the terms of a new employment agreement with the plaintiffs in the hope that it would materialise.

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76 AEIC of Ooi Chooi Teik (25 February 2022) at p 698.

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74 Crucially, such a hope or expectation is not incompatible with the possibility that Mr Ooi might have been serving out his notice period. I accept that the correspondence preceding the 6 July 2018 email suggests that both parties were actively considering the possibility of Mr Ooi remaining in Full House's employ,[77] on terms different from those under his original service agreement. It is also undisputed that Mr Ooi also applied for and obtained a licence from the Building and Construction Authority ("BCA") in his own name, which was critical for Full House's operations,[78] and that it was only on 20 July 2018, when Mr Ooi appears to have decided that it would not be tenable for him to continue working with THC, that he made a request to "remove my name from BCA".[79] Certainly, if the plaintiffs had all along intended that Mr Ooi would part ways with Full House after 18 August 2018, then there is little reason that the license application would have been made in his name in the first place, such that it would later need to be removed. However, while it is clear that parties were contemplating that Mr Ooi would continue to remain in Full House's employ, this is perfectly consistent with the fact that, unless they agreed upon and concluded a new employment agreement, the legal basis for any services rendered between 15 June 2018 and 15 August 2018 would have been the notice period in his original contract. Even though negotiations fell through, his contractual obligation to serve it in its entirety would have subsisted until fully discharged, or until parties expressly agreed to relieve him therefrom. It also does not matter that THJ and Mdm Goh, whose service contracts contained the same notice period obligation, were put on "garden leave" while Mr Ooi was not; it would have been entirely the plaintiffs' prerogative to allow or require any given employee to serve their notice period in this manner, without

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77 AEIC of Ooi Chooi Teik (25 February 2022) at pgs. 698–703.

78 Hearing Transcript Day 2 (13 July 2022) at p 9 lines 25–31, p 10 lines 1–9.

79 AEIC of Tan Shi Hao (25 February 2022) at pgs. 259–260.

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also permitting or requiring another to do the same. That they in fact did so is also entirely unsurprising, given that THC most likely would have wanted THJ and Mdm Goh out of the picture as soon as possible, but was hoping that Mr Ooi might stay on to assist with the running of Full House.

75 I thus find that Mr Ooi was simply serving out his notice period, and, in light of the fact that he did not serve it in its entirety, I also accept that he agreed to forfeit any unpaid remuneration for work done during that period in exchange for being released from having to serve it in its entirety.[80] Moreover, even if parties had not in fact subjectively arrived at such an agreement at the material time, Mr Ooi would still have been under a legal obligation to serve out the remainder of his notice period, and the plaintiffs would have a claim against him for failure to do so. It was open to them to give up that claim in exchange from being relieved of their obligation to pay him any outstanding remuneration, and in view of the arguments which the plaintiffs have made before me, I would in the alternative have taken them as having done so. This being the case, Mr Ooi is no longer entitled to any such outstanding remuneration, and the Services Remuneration Claim must fail.

Issue 5: Whether THC committed breaches of confidence and/or breaches of the Settlement Agreement

76 Finally, the defendants seek orders for injunctive relief and specific performance of the Settlement Agreement against THC, in response to various acts which he is alleged to have committed. First, they claim that THC forwarded email correspondence between the defendants and their solicitors to one Law Joo Teck, in breach of legal professional privilege and confidence ("the

[80] Hearing Transcript Day 2 (13 July 2022) at p 3 lines 24–29; Plaintiffs' Skeletals (2 September 2022) at para 158(2).

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email issue"). Second, by repeatedly requesting that the liquidators of Prime Maintenance revisit certain allegations which he had made in respect of HC/CWU 11/2018, THC was also in breach of Clause 10 of the Settlement Agreement ("the Prime Maintenance issue").

THC's forwarding of the email was a breach of confidence

77 The email issue concerns a single email which the defendants had received from their personal solicitors, WHM Law Corporation, on 28 August 2017. Amongst other things, this email stated that:[81]

> Finally, I understand that Joo Teck has suggested commencing a rights issue to "test" whether THC still has the finances to fight. Subject to your views, I do not think such an endeavour would be fruitful. First, THC can simply obtain a loan to deal with such a rights issue and we would be none the wiser. Second, and more importantly, if indeed THC's share value is diluted this would give THC the ammunition that he has been waiting for all along to commence a minority oppression suit.
>
> Of course, as usual, all such discussions with the Chinese company cannot be made known to THC or even Joo Teck.
>
> …

78 For context, Joo Teck, who was THC and THJ's cousin, had around May 2016 been acting as a purportedly neutral mediator between the brothers in respect of their dispute.[82] Consequently, upon discovering this email after taking over management of Full House, THC felt "angry and betrayed" by Joo Teck, as the email strongly suggested that he had been siding with THJ and helping him strategise against THC despite his pretence of neutrality.[83] THC proceeded

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81 DCB p 115.

82 AEIC of Tan Hong Chian (25 February 2022) at para 26 to 30.

83 AEIC of Tan Hong Chian (25 February 2022) at para 31. Hearing Transcript Day 3 (14 July 2022) at p 30 lines 4–19.

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to confront Joo Teck about this by forwarding him the email, accompanied by what appears to be a sarcastic, passive-aggressive message reading "'*xue nong yushui de xiongdi'. The world best "Mediator'. Many Many Many thanks to you*."[84] The defendants objected to THC's disclosure of this correspondence from their personal solicitors to Joo Teck, and sought an injunction restraining him from further "accessing, viewing and/or misappropriating the Defendants' private and/or confidential correspondence/communications (including such privileged correspondence/communications between the Defendants and their solicitors)".[85]

79 It is well-accepted that the court may grant an injunction against the use, disclosure, or publication of confidential information, pursuant to its equitable jurisdiction to restrain breaches of confidence (*Mykytowych, Pamela Jane v V I P Hotel* [2016] 4 SLR 829 at [59]; *Asplenium Land Pte Ltd v Lam Chye Shing and others* [2019] 5 SLR 130 at [132]; *HT SRL v Wee Shuo Woon* [2016] 2 SLR 442 at [26]). The question is thus whether a breach of confidence has arisen in the present case, and in this regard, Singapore law distinguishes between two types of situations. Where a defendant gains a benefit from unauthorised use or disclosure of confidential information, this implicates the plaintiff's interest in preventing the defendant from gaining such a benefit, otherwise known as the plaintiff's wrongful gain interest. In such cases, the test for breach of confidence is the modified *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 test in *LVM Law Chambers LLC v Wan Hoe Keet and another and another matter* [2020] 1 SLR 1083 ("*LVM Law Chambers*") at [15], which requires that the information have the necessary quality of confidence, that its acquisition occurred in

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84 Original mandarin from DCB p 114, romanization from Defendants' Skeletals (2 September 2022) at para 110.

85 Defence and Counterclaim at para 31.

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circumstances importing an obligation of confidence, and that there be a real and sensible possibility of the information being misused (*Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ("*Lim Oon Kuin*") at [35], [39]). On the other hand, cases involving unauthorised acquisition or "taking" of confidential information implicate the plaintiff's wrongful loss interest, or their interest in the protection of the confidentiality of the information *per se*. (*Lim Oon Kuin* at [36]–[41]). The appropriate test in such cases is that in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*"), which modifies the third limb of the *LVM Law Chambers* test to shift the burden on the defendant to prove that their conscience has not been affected, once the first two limbs are made out (*I-Admin* at [61]).

80 At this juncture, I observe that where legally privileged or otherwise confidential information is discovered by accident and only later deliberately published or disclosed, it may not be immediately obvious which test for breach of confidence would apply, owing to the lack of any "taking" or unauthorised acquisition on the one hand, and any pecuniary or tangible benefit from the use of the information on the other. However, I do not think that this poses any major impediment in the present case. Singaporean jurisprudence prior to *Lim Oon Kuin* and *I-Admin* clearly recognised that solicitor-client communications could be confidential and subject to an obligation of confidence (*LVM Law Chambers*; *Wee Shuo Woon v HT SRL* [2017] 2 SLR 94 ("*Wee Shuo Woon*")). I also do not think that the Court of Appeal, in formulating the wrongful gain and loss interests as it did, meant to render all such communications beyond the protection of the law of confidence. Indeed, *Lim Oon Kuin* was itself concerned with potentially privileged and confidential communications between a law firm and its clients, and its suggestion at [53] that both the *I-Admin* or *LVM Law*

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Chambers approaches might be applicable, despite the lack of any specific act of unauthorised acquisition by the respondent law firm or obvious pecuniary benefit to be derived from the use of the information, suggests that these concepts should not be construed so narrowly as to preclude their applicability in such cases.

81 In this light, I have little difficulty finding that THC's actions amounted to a breach of confidence. The email had not in any way been released into the public domain, and so retained its quality of confidence (*Wee Shuo Woon* at [39]; *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 at [29]; *Candey Ltd v Bosheh and another* [2022] EWCA Civ 1103 at [115]). The fact that information is accessed without a plaintiff's knowledge or consent (*I-Admin* at [61]), and a defendant's knowledge that the plaintiff would not want them to be accessing or publishing the information in question (*Wee Shuo Woon* at [40]), are circumstances sufficient to import an obligation of confidentiality which are present in this case. Indeed, the email itself made clear that its contents should not be disclosed to THC or Joo Teck, and although THC claimed to believe that he had a "right to access" the email given that it was in the defendants' company email account,[86] he also accepted that the defendants were being represented by WMH Law Corporation in their personal capacity, and not as the management of Full House.[87] It is fair to say that there was a real and sensible possibility that, having already misused the information once, THC might do so again. Given that THC had no real excuse for doing so, and indeed makes no attempt to defend his actions other than to assert that he has not since repeated them,[88] he also has little prospect of proving that his conscience was not affected.

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86 AEIC of Tan Hong Chian (25 February 2022) at para 30.

87 Hearing Transcript Day 3 (14 July 2022) at p 29 lines 25–31.

88 Plaintiffs' Skeletals (2 September 2022) at para 162.

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Accordingly, all three limbs of both the *LVM Law Chambers* and *I-Admin* tests for breach of confidence are made out.

82 I finally turn to consider the scope of the injunction to be granted. The injunction the defendants have sought is couched in wide terms, in respect of all their private or confidential correspondence and communications. However, a party seeking an injunction as a remedy for breach of confidence must be specific about the confidential information in question (*Lim Oon Kuin* at [43]). In this case, there is only one category of confidential information the defendants have identified, that being correspondence between them and their solicitors. Accordingly, I grant the injunction sought by the defendants, but only in respect of such correspondence.

THC's multiple requests for further investigations into Prime Maintenance constituted a breach of Clause 10

83 Finally, the defendants allege that THC breached Clause 10 of the Settlement Agreement by making multiple requests of the liquidators of Prime Maintenance ("the liquidators") in respect of certain transactions with which he took issue.[89] This correspondence is outlined as follows:

(a) On 4 July 2018, THC instructed one Esther Lee to send an email to the liquidators, containing, *inter alia*, queries from THC's personal auditor, whom he had engaged to look into Prime Maintenance's accounts. This was "retracted" on 13 July 2018, by way of another email to the liquidators stating that THC "no

[89] Defence and Counterclaim at para 18(p) to 20.

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longer requires the review / assessment / investigation of the matters raised in his CWU Affidavit."[90]

(b) On 13 September, THC attended a physical meeting of the contributories and creditors of Prime Maintenance, at which he "raised concerns about the matters raised in [THC's] CWU Affidavit, and asked the liquidators to conduct a review of the same".[91] The liquidators subsequently sought to confirm by way of an email sent on 20 September 2018 whether THC's position was that they ought to look into those matters.[92]

(c) THC responded on 24 September 2018, highlighting two "questionable" transactions which allegedly lacked supporting documents and proper approval, and requested that THJ reverse the transactions. When THJ declined, the liquidators again wrote to THC on 4 October 2018, seeking to confirm THC's position on whether an investigation was required.[93] After receiving no response, the liquidators informed THC on 13 March 2019 that they would proceed with the winding up of Prime Maintenance and the distribution of surplus cash.[94]

(d) On 14 March 2019, THC informed the liquidators that he would not accept the distribution, and that he was maintaining his position that they should look into the "questionable"

90 AEIC of Tan Hong Chian (25 February 2022) at para 35 to 37.

91 AEIC of Tan Hong Chian (25 February 2022) at para 39 to 41.

92 AEIC of Tan Hong Chian (25 February 2022) at para 42.

93 AEIC of Tan Hong Chian (25 February 2022) at para 44.

94 AEIC of Tan Hong Chian (25 February 2022) at para 46.

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transactions.[95] The liquidators again followed up on 15 March 2019, seeking confirmation as to whether THC's intention was for them to review the said transactions.[96]

(e) THC then responded on 28 March 2019, stating again that it was not his intention for the liquidators to conduct a review of the highlighted transactions. However, he also "drew the Liquidators attention" to section 271 of the Companies Act (Cap 50, 2006 Rev Ed),[97] which requires a liquidator to submit a preliminary report to the Official Receiver, regarding *inter alia* whether "further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of the business thereof." When the liquidators subsequently sought to clarify his intentions, he responded on 4 April 2019 claiming that he "intend[ed] nothing more than to state the legal obligations of a liquidator".[98]

(f) After some further attempts at clarification, the liquidators proceeded to complete the winding up of Prime Maintenance, and paid THC his share of the surplus proceeds.[99]

84 The foregoing account makes it abundantly clear that THC was trying to apply pressure on the liquidators to look into what he felt to be "questionable" transactions. Notwithstanding his claims that his official position was that no

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95 AEIC of Tan Hong Chian (25 February 2022) at para 47.

96 AEIC of Tan Hong Chian (25 February 2022) at para 48.

97 AEIC of Tan Hong Chian (25 February 2022) at para 49.

98 AEIC of Tan Hong Chian (25 February 2022) at para 52.

99 AEIC of Tan Hong Chian (25 February 2022) at para 53 to 60.

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investigations were required and that he was simply "reminding" the liquidators of their duties, this was a clear breach of Clause 10, which, in addition to generally prohibiting THC from taking issue with the running and management of Full House and Prime Maintenance as discussed at [24], also specifically provided that:

> … In respect of Prime Maintenance, THC shall retract all allegations made and Parties agree that no investigations are required. No issue shall be taken with the running of Prime Maintenance and its affairs.

85 I am of the view that this portion of Clause 10 did not simply reflect an agreement that no investigation was required as of the date of the signing of the Settlement Agreement, but also imposed upon them an obligation to refrain from seeking such an investigation going forward – indeed, THC conceded at trial that his actions did amount to such a breach.[100]

86 This being the case, and bearing in mind the extent of his actions, an injunction is plainly warranted. While I accept that Prime Maintenance has been wound up and the liquidators released, I do not think that the purpose of Clause 10 was only to prevent THC from interfering in the winding up process. Given the prolonged and acrimonious nature of the dispute and THC's conduct therein, I am of the view that Clause 10 was meant to prevent him from making *any* allegations to *anybody* regarding Prime Maintenance, the running of its affairs, or its winding up. And where a defendant has or is about to breach a negative covenant in a contract, an injunction restraining further breaches will readily be granted unless doing so would cause undue hardship over and beyond simply having to observe the contract (*RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 at [32]–[33]; *Viking Engineering*

[100] Hearing Transcript Day 3 (14 July 2022) at p 14 lines 27–31, p 15 lines 1–8.

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Pte Ltd v Feen, Bjornar and others [2022] SGHC 144 at [13]). In this case, THC cannot show any particular hardship which such an injunction might cause, especially since his own case is that the winding up of Prime Maintenance has been completed.[101] However, as this does not necessarily obviate the possibility that he may continue to make allegations and demands in respect thereof directly to the defendants or other third parties, I grant the defendants an injunction restraining THC from making any further allegations or requests for investigations in respect of Prime Maintenance, which would in effect be to grant the order for specific performance they seek.

Conclusion

87 Having found in favour of the plaintiffs in respect of the Warranty Claim, the Reimbursement Claim, the Directors' Fees Claim, and the Services Remuneration Claim, and in favour of the defendants on the Prime Maintenance and email issues, I make the following orders.

88 In respect of the Reimbursement Claim, THJ is to pay Full House $83,441.26, Mdm Goh is to pay $86,347.26, and Mr Ooi is to pay $81,375.26, with interest at 5.33% per annum running from 24 April 2018 until payment in full.

89 In respect of the Warranty Claim, the defendants are to pay $465,207.57 to THC, with interest at 5.33% per annum running from 20 April 2018 until payment in full.

90 In respect of the Prime Maintenance and email issues, I grant injunctions prohibiting THC from accessing, viewing, and/or misappropriating any private

[101] Plaintiffs' Skeletals (2 September 2022) at para 161(3).

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or confidential correspondence between the defendants and their solicitors, and from making any allegations or requests for investigations in respect of Prime Maintenance.

91 I shall hear parties on costs.

Andrew Ang
Senior Judge

Wong Thai Yong (Skandan Law LLC) for the plaintiffs;

Lee Kok Weng Mark, Sarah Yeo Qi Wei, and Tan Shi Yuin Teri (WMH Law Corporation) for the defendant.

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