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

[2024] SGHC 313

Suit No 977 of 2021

Between

Khan Aisanullah

… Plaintiff

And

Rajib Kumar Dhali

… Defendant

JUDGMENT

[Companies — Members — Whether principle of reflective loss prevented shareholder from claiming against nominee director]
[Contract — Breach]
[Contract — Contractual terms — Express terms]
[Contract — Illegality and public policy — Common law]
[Equity — Fiduciary relationships — When arising]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

BACKGROUND ON THE COMPANY 2

ORAL AGREEMENT BETWEEN THE PARTIES 3

SERIES OF ACTS UNDERTAKEN BY THE DEFENDANT 5

MOVEMENT OF FUNDS INTO AND OUT OF THE OCBC BANK ACCOUNT 7

THE PARTIES' CASES **8**

ISSUES TO BE DETERMINED **10**

THE TERMS OF THE ORAL AGREEMENT **10**

WHETHER THE DEFENDANT WITHDREW MONEYS FROM THE OCBC BANK ACCOUNT **15**

WHETHER THE DEFENDANT BREACHED HIS FIDUCIARY DUTIES **17**

WHETHER THE DEFENDANT BREACHED THE ORAL AGREEMENT **22**

WHETHER THERE WAS A BREACH OF THE ORAL AGREEMENT 22

WHETHER THE PLAINTIFF CAN OBTAIN ANY REMEDIES FOR THE LOSSES PLEADED 23

Illegality *23*

Reflective loss principle *27*

WHETHER THE DEFENDANT CAN SUCCEED IN HIS COUNTERCLAIM **33**

CONCLUSION..37

Khan Aisanullah
v
Rajib Kumar Dhali

[2024] SGHC 313

General Division of the High Court — Suit No 977 of 2021
Chan Seng Onn SJ
20, 21 May, 18 September 2024

4 December 2024 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 The plaintiff and the defendant were directors of a company (the "Company"), in which the plaintiff was also the sole shareholder. The plaintiff advances two claims against the defendant[1] – a breach of an oral agreement and a breach of fiduciary duties – based on the following series of acts carried out by the defendant: removing the plaintiff as a director, transferring the plaintiff's shares to himself, assuming control of the Company's bank account and withdrawing the moneys therein, and striking off the Company.

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[1] Statement of Claim (Amendment No.1) filed on 24 January 2022 ("SOC") at paras 11 and 12; Plaintiff's Closing Submissions filed on 28 August 2024 ("PCS") at paras 7–14.

2 Aside from the withdrawal of moneys,[2] the defendant does not dispute that he committed these acts.[3] Instead, his defence appears to be one of illegality.[4] He also advances a counterclaim for a year's worth of salary that the plaintiff allegedly owed him, loss of income during the same period and S$500,000 in compensation for "trauma and harassment".[5]

Facts

Background on the Company

3 The Company is Secur Credentials Logistics & Services Pte Ltd. The Company was incorporated in Singapore on 11 June 2018 as a private company limited by shares.[6]

4 Sometime around 26 November 2019, the plaintiff, Mr Khan Aisanullah (the "Plaintiff"), purchased the Company and became its sole shareholder.[7] The Plaintiff is ordinarily resident in India. As the Plaintiff understood it to be a requirement for every company in Singapore to have at least one director who is locally resident in Singapore, the Plaintiff appointed the defendant, Mr Rajib Kumar Dhali (the "Defendant"), as a director of the Company.[8] The Defendant

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2 Certified trial transcript ("Transcript") (21 May 2024) at pp 19:14–20:29.

3 Defendant's Closing Submissions filed on 29 August 2024 ("DCS") at section III(A)(1); Affidavit of evidence-in-chief of Rajib Kumar Dhali filed on 17 February 2023 ("DA") at para 26.

4 Defence and Counterclaim filed on 4 January 2022 ("Defence and Counterclaim") at pp 6–7.

5 Defence and Counterclaim at pp 6–7.

6 Affidavit of evidence-in-chief of Khan Aisanullah filed on 10 October 2022 ("PA") at p 23; DA at p 9.

7 PA at para 4, pp 25 and 136; DA at p 11.

8 PA at paras 5–7 and p 24.

is resident in Singapore.[9] On 26 November 2019, the Plaintiff and the Defendant were appointed as directors of the Company.[10]

Oral agreement between the parties

5 It is undisputed that there was an oral agreement between the Plaintiff and the Defendant regarding their roles in the Company, entered into sometime around 14 December 2019 (the "Oral Agreement").[11] However, the parties dispute the terms of the Oral Agreement.[12]

6 The Plaintiff avers that the terms of the Oral Agreement were that:[13]

(a) the Plaintiff would have sole control and authority over the operation of the Company's OCBC bank account (the "OCBC Bank Account");

(b) the Plaintiff would be the sole signatory of the OCBC Bank Account;

(c) the Plaintiff would have sole control and authority over, amongst other things, the operations, logistics and management of the Company;

(d) the Defendant was to act as a nominee and local resident director of the Company;

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9 PA at para 6; DA at para 15.

10 PA at para 7 and p 24; DA at p 10.

11 Defence and Counterclaim at p 3; Transcript (21 May 2024) at pp 3:18–27, 7:14–31, 28:8–13 and 48:1–6.

12 PCS at paras 1 and 8; DCS at section II(A); Transcript (21 May 2024) at p 28:8–13.

13 PCS at para 8; PA at para 8.

(e) the Defendant's role would be limited to acting only as a nominee director and carrying out simple administrative tasks in relation to the OCBC Bank Account, such as sending the cheque book, digital token and starter package for the OCBC Bank Account by courier to the Plaintiff; and

(f) the Plaintiff would pay the Defendant a one-time fee of S$4,000 as consideration for the Oral Agreement

(collectively, the "Plaintiff's Alleged Oral Agreement").

7 On the other hand, the Defendant avers that the terms of the Oral Agreement were that:

(a) the Defendant would be a "full director", rather than a nominee director, of the Company;[14]

(b) before the Plaintiff returned to Singapore in February 2020,

(i) the Defendant would have full control and authority over the operations of the Company;[15]

(ii) the Plaintiff would be the sole signatory of the OCBC Bank Account;[16]

(c) after the Plaintiff returned to Singapore in February 2020,

14 DA at para 5.

15 DA at para 6.

16 DA at para 6.

(i) the Plaintiff and the Defendant would have joint control and authority over the operations of the Company;[17]

(ii) the Plaintiff and the Defendant would be co-signatories of the OCBC Bank Account;[18]

(d) the Defendant would be responsible for the day-to-day operations of the Company when it began its operations in Singapore;[19]

(e) the Plaintiff would pay the Defendant a one-time fee of S$4,000 as consideration for the Oral Agreement;[20] and

(f) in addition to the one-time fee, once the Company began operations in Singapore,[21] the Plaintiff would pay the Defendant a monthly salary of US$5,000, a monthly allowance of US$2,000 and a year-end bonus in the first year worth at least six-months' salary[22]

(collectively, the "Defendant's Alleged Oral Agreement").

Series of acts undertaken by the Defendant

8 I turn to the series of acts undertaken by the Defendant, which form the basis of the Plaintiff's claims for breach of contract and breach of fiduciary duties.

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17 DA at para 6.

18 Transcript (21 May 2024) at pp 8:14–9:17.

19 DA at para 8.

20 DA at para 5.

21 Transcript (21 May 2024) at pp 4:9–13, 11:14–25, 12:6–8 and 29:4–11.

22 DA at para 9.

9 On 4 January 2021, the Defendant lodged a Change in Company Information form with the Accounting and Corporate Regulatory Authority ("ACRA") to indicate that the Plaintiff had ceased to be appointed as a director of the Company, and that the "[r]eason for cessation" was that the Plaintiff had "[r]esigned".[23] The Defendant does not dispute that the Plaintiff did not actually resign.[24]

10 On or about 25 January 2021, the Defendant applied to OCBC to remove the Plaintiff's access to the OCBC Bank Account.[25] On 26 January 2021, the Plaintiff regained access but lost it again on 27 January 2021.[26] The Defendant took over the OCBC Bank Account by 27 January 2021.[27] Between 27 January 2021 and 29 January 2021, the Plaintiff regained access to the OCBC Bank Account, but lost access thereafter.[28]

11 On 26 January 2021, the Defendant lodged a Transfer of Shares form with ACRA to transfer all of the Plaintiff's shares in the Company to the Defendant.[29] The Defendant concedes that he did not furnish any consideration for the Plaintiff's shares; neither did he obtain the Plaintiff's consent.[30]

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23 PA at pp 28–29.

24 Transcript (21 May 2024) at p 49:18–23.

25 SOC at para 11(b); PA at p 32; Transcript (20 May 2024) at pp 35:8–12 and 110:1–5.

26 SOC at para 11(h).

27 Transcript (20 May 2024) at p 27:6–10; Transcript (21 May 2024) at p 82:23–26; PCS at para 115.

28 SOC at paras 11(i), 11(k) and 11(l).

29 PA at pp 59–61.

30 Transcript (21 May 2024) at p 65:5–25.

12 In addition, the Defendant filed the following applications relating to the Company with ACRA:

(a) two applications to change the activity of the Company dated 26 January 2021 and 3 March 2021;[31]

(b) an application to change the registered address of the Company to the Defendant's residential address dated 26 January 2021;[32] and

(c) an application to change the name of the Company dated 1 February 2021, with the intention of using the Company as the Defendant's own company.[33]

13 On 17 March 2021, the Defendant lodged an Application for Striking Off form with ACRA to strike off the Company on the basis that the Company "has ceased to carry on business or operate".[34]

Movement of funds into and out of the OCBC Bank Account

14 As at 24 January 2021 (*ie*, one day before the Defendant applied to remove the Plaintiff's access to the OCBC Bank Account), the OCBC Bank Account contained a balance of US$87,146.22.[35]

15 Sometime around 29 January 2021, the Company's clients, Technotip Marketing OPC Private Ltd ("Technotip") and Flowways Marketing OPC

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31 PA at paras 24 and 35; PA at pp 63–64 and 126–127.

32 PA at paras 25–26 and pp 66–69; Transcript (21 May 2024) at p 67:7–9.

33 PA at para 34 and pp 120–121; Transcript (21 May 2024) at pp 67:31–68:2.

34 PA at pp 129–130.

35 PA at para 20 and p 57; DA at p 24.

Private Ltd ("Flowways") made transfers amounting to US$310,435.00 to the OCBC Bank Account.[36]

16 The OCBC Bank Account was subsequently closed, although the parties were unable to pinpoint the date of closure.[37] The Defendant claims that the closure took place sometime in early February.[38] I am unable to verify this because the bank statements of the OCBC Bank Account from February 2021 to the date of closure were not provided.

The parties' cases

17 The Plaintiff argues that by committing the series of acts detailed at [9]–[13] above, as well as withdrawing moneys from the OCBC Bank Account, the Defendant breached his obligations under the Oral Agreement[39] and his fiduciary duties owed to the Plaintiff.[40] As a result, the Plaintiff suffered loss. I reproduce in full the loss pleaded by the Plaintiff in his Statement of Claim (Amendment No 1), as this forms a central part of my decision:[41]

> By reason of the matters pleaded above, the Plaintiff has suffered loss and damage *by way of diminution of the share value of his 100% shareholding in the Company* or otherwise.
>
> **Particulars**
>
> a. USD 310,435.00, the amount paid to the Company by the Company's clients;
>
> b. USD 87,146.22, the available balance in the OCBC Bank Account as at 24 January 2021;

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36 PA at paras 30, 56–57 and pp 797–804.

37 Transcript (20 May 2024) at pp 18:25–19:2 and 32:7–8.

38 Transcript (20 May 2024) at p 32:7–8.

39 SOC at para 11.

40 SOC at para 12.

41 SOC at para 13.

> c. All other monies in the OCBC Bank Account appropriated by the Defendant;
>
> d. Loss of goodwill and reputation;
>
> e. Loss of profits to be assessed as a result of the loss of Contracts with Technotip and Flowways (*as 100% shareholder of the Company, the Plaintiff would have obtained the profits arising from the Contracts with Technotip and Flowways* if the Defendant had adhered to the Oral Agreement); and
>
> f. Special damages to be assessed as a result of the loss of future contracts that were in the process of negotiations and could have been entered into with potential clients of the Company (*as 100% shareholder of the Company, the Plaintiff would have obtained the profits arising from these future contracts* if the Defendant had adhered to the Oral Agreement).
>
> [emphasis added]

18 I make the preliminary observation that *all* of the pleaded heads of loss pertain either to (a) losses incurred by *the Company*, or (b) losses incurred by the Plaintiff *resulting from his position "as 100% shareholder" of the Company*. I discuss the significance of this later in my decision.

19 The Plaintiff argues, in the alternative, that the Defendant made a secret profit by misappropriating moneys from the OCBC Bank Account.[42]

20 The Defendant's defence is that his acts were "lawful, justified, and necessary to protect the Company's interests in response to the Plaintiff's misconduct".[43] In essence, the Defendant claims that the Plaintiff used the Company for illegal activities including tax evasion and money laundering.[44] The Defendant also claims that the Plaintiff had misappropriated the Company's

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42 SOC at para 14.

43 DCS at sections I and III(A)(2).

44 Defence and Counterclaim at p 5, point (d) and p 7; DA at paras 25 and 30.

funds.[45] The Defendant argues that he did not withdraw moneys from the OCBC Bank Account and that as of 27 January 2021, the OCBC Bank Account only contained US$534.60.[46]

21 The Defendant filed a counterclaim for a year's worth of salary that the Plaintiff allegedly owed him, loss of income during the same period "due to false hope given by the Plaintiff", as well as S$500,000 in compensation for "trauma and harassment" allegedly caused by the Plaintiff.[47]

Issues to be determined

22 The issues to be determined are:

(a) what the terms of the Oral Agreement were;

(b) whether the Defendant withdrew moneys from the OCBC Bank Account;

(c) whether the Defendant breached his fiduciary duties;

(d) whether the Defendant breached the Oral Agreement; and

(e) whether the Defendant can succeed in his counterclaim.

The terms of the Oral Agreement

23 To recapitulate, the Plaintiff's Alleged Oral Agreement and the Defendant's Alleged Oral Agreement primarily differ in three related aspects: (a) the role that the Defendant was to have in the Company (that is, whether the

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45 DCS at section III(A)(2).

46 DA at para 19; Defence and Counterclaim at p 5, point (c).

47 Defence and Counterclaim at pp 6–7.

Defendant was to be a nominee director or "full director"); (b) the extent of control that the Defendant was to have over the Company's operations and the OCBC Bank Account; and (c) the terms of the Defendant's remuneration.

24 Having considered the evidence before me, I find that the Plaintiff's Alleged Oral Agreement accurately reflects the terms agreed to by the parties.

25 First, it was most unlikely that the Plaintiff would have entrusted the role of being a "full director" in the Company to the Defendant and offered him the handsome remuneration package claimed:

(a) The Defendant possessed no relevant qualifications and experience. The Company was in the business of providing management consultancy services and value-added logistics.[48] The Defendant had a diploma in electronics and computer engineering, which he confirmed had no relation to management consultancy or logistics.[49]

(b) The Plaintiff and the Defendant also did not share a prior relationship, so there was no opportunity for the Plaintiff to assess the Defendant's competency. The Defendant accepted that the Plaintiff was a "stranger" to him.[50]

(c) During the first meeting between the Plaintiff and the Defendant, when the Plaintiff purportedly appointed the Defendant as a

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48 PA at p 23; DA at p 9.

49 Transcript (21 May 2024) at p 37:15–20.

50 Transcript (21 May 2024) at p 36:6–15.

"full director" of the Company, there was no discussion as to the business of the Company.[51]

(d) In fact, the Defendant acknowledges that the alleged monthly salary and allowance of US$5,000 and US$2,000 respectively, given his qualifications, did not seem like a "legitimate offer".[52]

26 Second, even assuming in the Defendant's favour that the Company was purely a vehicle for unlawful activity, such that the Defendant's qualifications were possibly immaterial to the Plaintiff, the Defendant's own evidence suggests that he was the Plaintiff's nominee:

(a) Tellingly, when the Defendant was asked to describe the business of the Company, the Defendant had to reference the Company's ACRA records and provided an answer based on the same.[53] It is incredible that a "full director" of a company, who claims that he would be responsible for its day-to-day operations, would not have the faintest inkling of that company's business activity. At the very least, he would have made inquiries in this regard, but the Defendant was content to be appointed as the Company's director without any discussion as to the business of the Company.[54]

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51 Transcript (21 May 2024) at pp 36:17–37:4.

52 Transcript (21 May 2024) at p 32:4–6.

53 Transcript (21 May 2024) at pp 34:18–35:30.

54 Transcript (21 May 2024) at pp 36:17–37:4.

(b) The Defendant conceded during cross-examination that he would take instructions from the Plaintiff once the Company began operations in Singapore. He stated:[55]

> Once … the full operations started that once he comes to Singapore and he start renting out office and everything, *he tells me what to do, I'll just do it for him.* … [emphasis added]

Such behaviour is more consistent with the role of a nominee director, rather than a "full director" of the Company.

(c) The Defendant's claim for his unpaid monthly salary and allowance is made against the Plaintiff, rather than the Company. Again, this is consistent with the Defendant's role as the Plaintiff's nominee. As the Defendant was responsible for striking off the Company, it is possible for him to have commenced an action against the Company; he chose to proceed against the Plaintiff instead.

27 Third, I do not accept the Defendant's claim that he was actively involved in the Company's operations. The Defendant relies on the Company's bank statement in January 2021 to argue that they "detail numerous transactions where [he] was directly involved in managing the Company's finances", including "payment authorizations, banking activities, and day-to-day financial management tasks".[56] The Defendant further claims that he was responsible for "filing statutory returns, maintaining accurate financial records, and ensuring that the Company met its regulatory obligations".[57] I find these claims to be devoid of credibility:

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55 Transcript (21 May 2024) at p 11:28–30.

56 DCS at section II(A)(1).

57 DCS at section II(A)(2).

(a) These assertions, raised in the Defendant's closing submissions, are directly contradicted by the Defendant's concession on the stand that he did not carry out work for the Company from the date of his appointment to January 2021, whether in Singapore or in any other jurisdiction.[58] They strike me as afterthoughts.

(b) As regards the Defendant's purported involvement in the Company's financial transactions, he was specifically asked on the stand whether he had any part to play in the transactions and contracts of the Company, including the transactions involving the OCBC Bank Account. The Defendant expressly denied having any involvement.[59] Further, little can be gleaned from the January 2021 bank statement. It is not apparent who effected the transactions and the context in which the transactions were made.[60]

(c) In relation to the other duties that the Defendant purportedly carried out, they appear largely administrative in nature and are therefore consistent with the Plaintiff's claim that the Defendant's role was limited to the performance of administrative tasks. In any event, there is no evidence before me that the Defendant carried out those duties. The Defendant referred me to a letter dated 12 July 2021 from the Plaintiff to OCBC requesting for bank statements of the OCBC Bank Account, but nothing in that letter supports the Defendant's assertions.[61]

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58 Transcript (21 May 2024) at pp 33:25–34:8.

59 Transcript (21 May 2024) at p 34:9–13.

60 Plaintiff's Bundle of Documents (Volume 1) ("1PBD") at Tab 19.

61 DCS at section II(A)(2); 1PBD at Tab 20.

28 For the above reasons, I find the Defendant's Alleged Oral Agreement to be far from the truth, and that the Plaintiff's Alleged Oral Agreement reflected the terms of the Oral Agreement.

Whether the Defendant withdrew moneys from the OCBC Bank Account

29 The other factual issue in dispute is whether the Defendant withdrew moneys from the OCBC Bank Account. The Defendant denies this. As stated above (at [16]), I was not provided with the bank statements of the OCBC Bank Account from February 2021 to the date of closure. Further, while the bank statements for the month of January 2021 was put into evidence, it is unclear from the bank statements who effected the withdrawals.

30 At trial, I directed the Defendant to obtain from OCBC and produce (a) the bank statements from 1 January 2021 to the date of closure of the OCBC Bank Account (the "Relevant Period");[62] (b) the identity of the authorised signatories to the OCBC Bank Account during the Relevant Period, and the dates on which they were the signatories;[63] and (c) the user ID used to carry out each of the transactions during the Relevant Period.[64]

31 The Defendant wrote to OCBC on 20 September 2024 requesting the above information and received a response on 3 October 2024.[65] OCBC informed the Defendant that there was a retrieval charge and that it would forward the Defendant the relevant documents upon receipt of the retrieval

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62 Transcript (21 May 2024) at p 108:22–26.

63 Transcript (21 May 2024) at pp 109:14–110:6; 111:19–21.

64 Transcript (21 May 2024) at p 116:1–18.

65 Defendant's Letter to Court filed on 18 October 2024 ("18 October Letter") at pp 1–3.

charge.[66] The Defendant made payment of the retrieval charge on 12 November 2024.[67] On 14 November 2024, OCBC provided the Defendant with only the Business Account Maintenance Forms of the OCBC Bank Account; no bank statements were furnished.[68] In essence, the Business Account Maintenance Forms show that the Defendant applied to OCBC on 25 January 2021 to replace the Plaintiff as the authorised signatory and contact person for the OCBC Bank Account, and to amend the address of the Company in OCBC's records.[69] It is stated in the Business Account Maintenance Forms that the change in signing mandate may take up to seven working days to complete processing.[70]

32 The state of the evidence before me remains unsatisfactory. While it is clear that the Defendant's application to replace the Plaintiff as the signatory of the OCBC Bank Account was filed on 25 January 2021, I am unable to verify the Defendant's claim that he only received access to the OCBC Bank Account on 27 January 2021, at the point when the account contained US$534.60.[71] Further, even on the Plaintiff's account, he retained intermittent access to the OCBC Bank Account from 25–29 January 2021.[72] In the absence of objective evidence of the user IDs carrying out each of the transactions during this period, there is considerable uncertainty as to the amounts of money that the Defendant had in fact withdrawn from the OCBC Bank Account before he closed it.

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66 18 October Letter at p 15.

67 Defendant's Letter to Court filed on 25 November 2024 ("25 November Letter") at p 9.

68 25 November Letter at pp 10–19.

69 25 November Letter at pp 12–15.

70 25 November Letter at p 16.

71 DA at para 19 and p 27.

72 SOC at paras 11(b), 11(h), 11(i), 11(k) and 11(l).

33 It is unnecessary for me to decide this issue conclusively given my subsequent findings that the Defendant was not a fiduciary of the Plaintiff, and that the reflective loss principle precluded the Plaintiff from recovery of the losses pleaded. Considering the scant evidence available at this juncture, I make no finding as to whether the Defendant had withdrawn the amounts of money from the OCBC Bank Account as pleaded by the Plaintiff.

34 For completeness, the Plaintiff has argued in his closing submissions that the court should draw an adverse inference against the Defendant in respect of the amounts of money that the Defendant had withdrawn from the OCBC Bank Account.[73] The context at the point of closing submissions was that the Defendant had not written to OCBC, and had instead indicated in a letter to court that the court's directions raised "significant fairness concerns for the Defendant" and "threaten[ed] the Defendant's rights to privacy, fair legal process, and effective defense [*sic*]".[74] However, given the Defendant's subsequent compliance with the court's directions, I do not consider it appropriate to draw an adverse inference.

Whether the Defendant breached his fiduciary duties

35 I turn to consider the Plaintiff's claim that the Defendant breached his fiduciary duties. An anterior issue for determination is whether the Defendant owed fiduciary duties to the Plaintiff; it will only be relevant for me to consider if there was a breach of fiduciary duty if this anterior question is answered in the affirmative.

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73 PCS at paras 114 and 138.

74 Defendant's Letter to Court filed on 18 June 2024 at pp 11–12.

36 The Plaintiff alleges that the Defendant owed him fiduciary duties to act *bona fide* in the interest of the Plaintiff, to act for proper purposes and to not make a secret profit.[75] The Plaintiff argues that the Defendant owed him fiduciary duties by virtue of the Oral Agreement and the Defendant's position as a nominee director of the Company, because (a) the Defendant had scope for the exercise of a significant amount of discretion and power as a director of the Company; (b) the Defendant could unilaterally exercise that power or discretion so as to affect the Plaintiff's legal or practical interests; and (c) the Plaintiff was peculiarly vulnerable to or at the mercy of the Defendant.[76] The Defendant asserts more generally that he was not the Plaintiff's nominee director.[77]

37 A fiduciary refers to "someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence": *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto*") at [42], citing *Snell's Equity* (John McGee gen ed) (Sweet & Maxwell, 33rd Ed, 2015) at para 7-005. The three common features of a fiduciary relationship are (*Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 ("*Susilawati*") at [41]):

> (1) The fiduciary has scope for the exercise of some discretion or power.
>
> (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
>
> (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

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75 PCS at para 12.

76 PCS at paras 10–11; PA at para 12.

77 Defendant's Reply Submissions filed on 18 September 2024 at paras 3.1–3.3.

38 I have found that the Oral Agreement provided for the Defendant to act as the Plaintiff's nominee director. The relationship between the parties was therefore one of agent and principal, which falls within the settled categories of fiduciary relationships: *Susilawati* at [41], citing *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 96–97. However, an agency relationship does not invariably give rise to a fiduciary duty: *Susilawati* at [40]. Instead, there is a strong, but rebuttable, presumption that fiduciary duties are owed: *Turf Club Auto* at [43].

39 Whether fiduciary duties are owed by an agent depends on the extensiveness of the agency relationship. The following principles are instructive (*Tonny Permana v One Tree Capital Management Pte Ltd and another* [2021] 5 SLR 477 at [99]):

> Viewed from the lens of equity or the law on fiduciaries, this is a question of the extent of the agent's position of ascendancy over the principal and authority to act on behalf of the principal. This is the cornerstone of all fiduciary relationships, in recognition of the fact that authority of this nature is often reposed in the agent in trust and confidence. Where an agent is able to unilaterally and significantly influence his/her principal's position or interests and has been conferred such powers in trust and confidence, extensive fiduciary duties may arise. On the other hand, where the agent has limited authority and discretion, the agent will owe few, if any, fiduciary duties.

40 In my view, the Defendant did not owe any fiduciary duties to the Plaintiff. The Oral Agreement did not stipulate any such duties. On the contrary, it provided that "the Defendant's role would be limited to acting only as a *nominee* director and *carrying out simple administrative tasks* in relation to the OCBC Bank Account" [emphasis added] (see [6(e)] above). In other words, as a nominee director, the Defendant's scope of responsibilities was restricted to

"minor administrative matters",[78] without control over the day-to-day operations of the Company.[79] That the Defendant was not actively involved in the operations of the Company (see [27] above) is consistent with the highly limited role of the Defendant under the Oral Agreement. Thus, notwithstanding the Plaintiff's absence from Singapore and consequent geographical distance from the Defendant (who acted as the local director of the Company), what is crucial is that the Defendant had hardly any scope for the exercise of discretion or power that would affect the Plaintiff's legal or practical interests. The restriction of the Defendant's role to simple administrative work meant that the Plaintiff was not peculiarly vulnerable to or at the mercy of the Defendant.

41 Support for this conclusion can be found in the decision of *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] 4 SLR 1760, where the General Division of the High Court ("GDHC") held that an employee did not owe fiduciary duties to her company because her responsibilities were purely administrative in nature (at [141]):

> In the present case, I do not think that a fiduciary relationship arose between Ms Chong [*ie*, the employee] and FEM [*ie*, the employer]. Indeed, as I have mentioned, *Ms Chong's responsibilities in FEM were limited to those of an administrative nature* and she was not a party to the negotiations. Unlike Mr Lim (see [49] above), she also did not have the same broad powers to contract as an agent for FEM. Therefore, it can hardly be said that she had any discretionary power to exercise which could have affected the position of FEM, or that FEM was vulnerable to her exercise of power. As such, I do not find that Ms Chong was a fiduciary for FEM and, for this reason, FEM's claim against her for breach of fiduciary duties fails. [emphasis added]

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78 PA at para 10.

79 PCS at paras 22 and 27.

The GDHC's findings in this regard were not the subject of the appeal in the Appellate Division of the High Court's decision in *Axis Megalink Sdn Bhd and another v Far East Mining Pte Ltd* [2024] SGHC(A) 15.

42 The Plaintiff relies on the case of *Daniel Fernandez v Edith Woi and another* [2021] SGHC 117,[80] but the facts there are clearly distinguishable from the present case. The first defendant in that case was the plaintiff's nominee shareholder and director in respect of a company incorporated in Singapore. The plaintiff resided in the United Kingdom, while the first defendant travelled to Singapore to set up the company and its bank account. The plaintiff claimed for recovery of moneys that had been transferred out of the company's bank account. He alleged, *inter alia*, that the first defendant breached her fiduciary duties as nominee.

43 On the question of whether the first defendant owed the plaintiff fiduciary duties, the court found in the affirmative on the basis that the first defendant had *exclusive* access to the company's bank account, and was therefore entrusted with funds in her position as agent. That, in the court's view, provided the first defendant "a special opportunity to act to the detriment of the plaintiff, who is accordingly vulnerable to abuse by the first defendant's position as the plaintiff's agent" (at [77]).

44 In contrast, under the Oral Agreement, the Plaintiff was to have sole control and authority over the OCBC Bank Account and act as its sole signatory (see [6(a)]–[6(b)] above). I am unconvinced that the Defendant owed any fiduciary duties to the Plaintiff.

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[80] PCS at para 10.

45 Given my finding that the Defendant did not owe the Plaintiff fiduciary duties, the Plaintiff's claim for breach of fiduciary duties fails *in limine*. It is unnecessary for me to further consider whether there was, in fact, any breach on the Defendant's part.

Whether the Defendant breached the Oral Agreement

46 This leaves the Plaintiff with his contractual claim based on the Oral Agreement. I analyse this claim in two stages – (a) whether there was a breach of the Oral Agreement; and (b) if the first issue is answered in the affirmative, whether the Plaintiff can obtain any remedies for the losses pleaded. At the second stage, I will consider the Defendant's defence of illegality, as well as the reflective loss principle.

Whether there was a breach of the Oral Agreement

47 For ease of reference, I reproduce the salient terms of the Oral Agreement here:

(a) The Plaintiff would have sole control and authority over the operation of the OCBC Bank Account.

(b) The Plaintiff would be the sole signatory of the OCBC Bank Account.

(c) The Plaintiff would have sole control and authority over, amongst other things, the operations, logistics and management of the Company.

(d) The Defendant's role would be limited to acting only as a nominee director and carrying out simple administrative tasks in relation to the OCBC Bank Account.

48 By filing *unauthorised* applications with ACRA to remove the Plaintiff from his directorship; transfer all the Plaintiff's shares in the Company to the Defendant; alter the name, activities and registered address of the Company; and strike off the Company, I am of the view that the Defendant breached the Oral Agreement. In particular, the Defendant breached the term providing for the Plaintiff to have sole control and authority over the operations and management of the Company, as well as the Defendant's obligation to act only as a nominee director (see [47(c)] and [47(d)] above). Further, by removing the Plaintiff's access to the OCBC Bank Account and taking control of the same, the Defendant breached the terms of the Oral Agreement providing for the Plaintiff to be the sole signatory of, and have sole control and authority over, the OCBC Bank Account (see [47(a)] and [47(b)] above).

49 Thus, the Defendant breached the Oral Agreement.

Whether the Plaintiff can obtain any remedies for the losses pleaded

Illegality

50 On the issue of remedies, I first consider the Defendant's defence of illegality. To recapitulate, the Defendant argues that the Plaintiff used the Company for illegal activities including tax evasion and money laundering, and that the Plaintiff had misappropriated the Company's funds. To my mind, this was an allusion to the doctrine of illegality, although the Defendant, a self-represented person, never explicitly pleaded reliance on this doctrine. In other words, the Defendant did not expressly argue that the Plaintiff cannot recover under the Oral Agreement because it was entered into with the object of committing illegal acts.

51 Nonetheless, there are circumstances in which the court may invoke illegality of its own motion. In *Ting Siew May v Boon Lay Choo and another* [2014] 3 SLR 609 ("*Ting Siew May*") (at [29]), the Court of Appeal endorsed the following passage in the English High Court decision of *Edler v Auerbach* [1950] 1 KB 359 ("*Edler*") at 371:

> [F]irst, that, where a contract is ex facie illegal, the court will not enforce it, whether the illegality is pleaded or not; secondly, that, where … the contract is not ex facie illegal, evidence of extraneous circumstances tending to show that it has an illegal object should not be admitted unless the circumstances relied on are pleaded; thirdly, that, where unpleaded facts, which taken by themselves show an illegal object, have been revealed in evidence (because, perhaps, no objection was raised or because they were adduced for some other purpose), the court should not act on them unless it is satisfied that the whole of the relevant circumstances are before it; but, fourthly, that, where the court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not.

52 The Oral Agreement is not *ex facie* illegal. There are also no unpleaded facts revealed in evidence that show an illegal object. Thus, the first and third propositions in the passage above are inapplicable.

53 In respect of the second proposition (relating to the admission of extraneous circumstances tending to reveal an illegal object), the Defendant seeks to rely on (a) the bank statement of the OCBC Bank Account for the month of January 2021,[81] and (b) certain communications between OCBC and the Plaintiff,[82] to argue that the Plaintiff engaged in illegal conduct, including tax evasion, using the Company. As the Defendant had pleaded that the Plaintiff

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81 DCS at sections III(A)(2) and VII(A)(1); 1PBD at Tab 19.

82 DCS at sections III(A)(1) and VI(A); 1PBD at Tab 22.

"conducted illicit dealings, using 'Company' 'OCBC Bank Account'",[83] the evidence can be admitted. The difficulty that confronts the Defendant, however, is that the evidence relied on does not demonstrate that at the time the Oral Agreement was entered into, the Plaintiff intended to break the law (see *Ting Siew May* at [43]–[44]):

> (a) First, as stated above (at [27(b)]), it is unclear from the bank statement who effected the transactions and the context in which the transactions were made. I acknowledge that there were frequent transactions involving substantial sums of money, but this does not suffice to support the serious allegations put forth by the Defendant.
>
> (b) Second, the communications between OCBC and the Plaintiff involved requests by OCBC for the Plaintiff to furnish certain information regarding the Company, including certain transactions performed in 2020. The communications reveal a delay on the Plaintiff's part in providing OCBC with certain supporting documents, but they certainly do not go as far as to show that the Company engaged in illegal activity, much less that the Plaintiff had any intention to break the law at the time of the Oral Agreement.[84]
>
> (c) Third, it remains unclear how the Plaintiff used (or intended to use) the Defendant to further any unlawful purpose. The Defendant's own case is that he "was not involved in any of the shady dealings of the Plaintiff",[85] and that he did not carry out work for the Company from the

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83 Defence and Counterclaim at p 6.

84 1PBD at Tab 22.

85 Defence and Counterclaim at p 6.

date of his appointment to January 2021.[86] This further supports a finding that the Oral Agreement – pursuant to which the Plaintiff appointed the Defendant as his nominee director in the Company – was not entered into with the object of committing an illegal act.

(d) Fourth, in fact, the Defendant's argument is that he was justified in ousting the Plaintiff from the Company due to the Plaintiff's misconduct;[87] the Defendant does not expressly allege that the Oral Agreement was concluded for an illegal purpose.

54 For the same reasons, the fourth proposition in *Edler*, which applies where "the court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object", is of no relevance here.

55 Accordingly, the doctrine of illegality is of no assistance to the Defendant. In addition, insofar as the Defendant argues that he was justified in his acts due to the Plaintiff's alleged wrongdoings, I make two brief points. First, as explained above at [53], I am not satisfied on the evidence that the Plaintiff engaged in illegal activity. Second, even if the Plaintiff had engaged in illegal activity, it was clearly inappropriate for the Defendant to strip the Plaintiff of his directorship and shares, take over the OCBC Bank Account and attempt to use the Company as his own. Avenues that the Defendant could consider included reporting the Plaintiff to the authorities and commencing a derivative action against the Plaintiff.

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86 Transcript (21 May 2024) at pp 33:25–34:8.

87 DCS at section VI.

Reflective loss principle

56 I turn to consider the reflective loss principle. Pursuant to the reflective loss principle, "claims by shareholders for the diminution in the value of their shareholdings or in distributions they receive as shareholders as a result of actionable loss suffered by their company cannot be maintained": *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 ("*Miao Weiguo*") at [206].

57 Although the Defendant did not plead reliance on the reflective loss principle, both parties were invited to address me on its applicability in their closing submissions. The parties also had the opportunity to respond substantively to the arguments raised by the other side in their reply submissions. The applicability of the reflective loss principle is a matter of legal submission. In the circumstances, no injustice or irreparable prejudice is occasioned to the Plaintiff by my determination of the same. It is established that the court may determine an unpleaded point where "there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so": *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 at [20].

58 The Plaintiff submits that the reflective loss principle does not apply for four main reasons.[88] First, the loss and damage particularised by the Plaintiff are premised on wrongs inflicted by the Defendant directly on the Plaintiff, specifically, the breach of the Oral Agreement between the Plaintiff and the

[88] PCS at paras 53–77.

Defendant. The Plaintiff was thus making a claim in a capacity other than as shareholder of the Company. Second, the Plaintiff argues that his claim "is for the total loss of his shareholdings". Third, the Plaintiff is no longer a shareholder of the Company. Fourth, since the Company has been struck off, "the present action does not and cannot offend the rules of double recovery and/or the proper plaintiff … as there is no other plaintiff that can bring the action against the Defendant". Alternatively, the Plaintiff relies on the exception to the reflective loss principle in *Giles v Rhind* [2003] BCC 79 (the "*Giles v Rhind* exception"), which applies where a wrongdoer's actions disabled the company from pursuing its cause of action against the said wrongdoer, on the basis that the Defendant struck out the Company and thereby disabled it from bringing a claim against the Defendant.[89]

59 The Defendant submits that the Plaintiff's claims are a reflection of the loss suffered by the Company. The Company is the appropriate entity to bring any action for redress. The fact that the Company was struck out does not convert what would otherwise be a reflective loss into a personal loss that the Plaintiff can claim. The Defendant argues that the *Giles v Rhind* exception is inapplicable because the Company was struck off "due to the Plaintiff's own failure to maintain its corporate status".[90]

60 I agree with the Defendant that the present case engages the reflective loss principle. As I observed above (at [17]–[18]), it is patent from the Plaintiff's pleadings that *all* the alleged heads of loss pertain either to (a) losses incurred by *the Company*, or (b) losses incurred by the Plaintiff *resulting from his position "as 100% shareholder" of the Company*. The attempt in closing

89 PCS at paras 78–100.

90 DCS at section V.

submissions to reframe the loss pleaded as "the total loss of [the Plaintiff's] shareholdings", which "may be quantified by among other things, the full diminution of the share value of [the Plaintiff's] 100% shareholding",[91] cannot be reconciled with the unambiguous wording of the losses pleaded. The Plaintiff also did not seek any remedy to challenge his expulsion as a director of the Company.

61 The losses purportedly incurred by *the Company* – comprising the amount of US$397,581.22 withdrawn from the OCBC Bank Account, the Company's loss of goodwill and reputation and the Company's loss of profits resulting from the loss of contracts – give rise to claims in respect of which the Company is the proper plaintiff. In respect of the losses incurred by the Plaintiff resulting from the aforementioned losses *given his position "as 100% shareholder" of the Company*, the reflective loss principle applies squarely. The Plaintiff is seeking recovery for "the diminution in the value of [his] shareholdings or in distributions [he] receive[s] as [shareholder] as a result of actionable loss suffered by [his] company".

62 The Plaintiff's argument that he is claiming in a capacity other than as a shareholder of the Company, because his claim is founded on a breach of the Oral Agreement, is unconvincing. A shareholder cannot circumvent the reflective loss principle merely by asserting an independent cause of action against the defendant; the shareholder must also have suffered a loss that is separate and distinct from the loss of the company: *Burnford and others v Automobile Association Developments Ltd* [2022] EWCA Civ 1943 ("*Burnford*") at [30(ii)].

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91 PCS at para 57.

63 To provide some context, *Burnford* was a decision of the UK Court of Appeal that post-dated the UK Supreme Court's decision in *Marex Financial Ltd v Sevilleja (All Party Parliamentary Group on Fair Business Banking intervening)* [2021] AC 39 ("*Marex*") and applied the principles set out by the majority therein. The majority in *Marex* held that the reflective loss principle was a "rule of company law, applying specifically to companies and their shareholders" and that its application was "limited to claims by shareholders that, as a result of actionable loss suffered by their company, the value of their shares, or of the distributions they receive as shareholders, [had] been diminished" (at [9] and [89]). Locally, the majority decision in *Marex* was endorsed by the Court of Appeal in *Miao Weiguo* (at [6]).

64 Returning to *Burnford*, the claimant shareholders commenced a claim for, *inter alia*, the breach of an investment agreement that was entered into by the claimants, the company of which the claimants were shareholders, and the defendant. The defendant's breach purportedly brought about the failure of the company. The claimants argued that the breach resulted in a loss in the value of their shares, both in terms of their general market value and the value they would have fetched if the claimants had sold the shares to the defendant pursuant to a particular clause of the investment agreement. Newey LJ, with whom the rest of the judges agreed, held that the claimant's breach of contract claim was barred by the reflective loss principle (at [50]–[51]):

> 50. … If the claimants' pleaded case is correct, breaches of contract by [the defendant] have caused [the company] to fail and, in consequence, rendered the claimants' shares worthless, both in the sense that they lost any value in the general market and in the sense that there was no longer any prospect of selling them to [the defendant] pursuant to clause 12 of the Investment Agreement. The claimants are therefore claiming in respect of loss "in the form of a diminution in share value …, which is the consequence of loss sustained by [the company], in respect of

> which [t]he company has [(or had)] a cause of action against [the defendant]". …
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> 51. In my view, the Judge was right that the claim is barred in its entirety by the "reflective loss" principle and, accordingly, to strike it out. …

65 In this case, while the Plaintiff asserts an independent cause of action against the Defendant in breach of contract, the losses claimed are knock-on effects of the Company's loss. This is evident from the wording of the losses particularised by the Plaintiff – the Plaintiff seeks recovery for "diminution of the share value of his 100% shareholding", as well as losses incurred "as 100% shareholder of the Company" due to the Company's loss of contracts. Accordingly, the reflective loss principle applies to preclude the Plaintiff from recovery against the Defendant for the losses pleaded.

66 I am fortified in my conclusion by the following passages in *Miao Weiguo* (at [203]–[204]), which in my view reinforce the distinction drawn in *Burnford* between an independent *cause of action* and a separate and distinct *loss*:

> 203 We recognise that there may be some meritorious claims that shareholders may wish to bring against wrongdoers. However, we make two observations in this regard. First, in so far as the view of what a "meritorious" claim is predicated on an essentially *private law* view of the shareholder's remedy for losses caused to an asset, *viz*, the shares, that is an entirely different assumption than the one upon which we base the reflective loss principle. Even if, from a purely descriptive perspective, there is some loss suffered by the shareholder, the normative and legal significance of that loss is a matter for the law's determination. In this context, we must have due regard to the principles of company law in examining whether the losses claimed by a shareholder can be properly treated as being separate and distinct from the company's – if the conclusion is that such loss is not separate and distinct, then, in truth, there is no "meritorious" claim, in a legal sense, to begin with.

> 204 … [W]here an actionable wrong is done to a company that causes loss to the company, a shareholder cannot be said to have suffered any loss that is separate and distinct from the company's loss, and so cannot recover for such loss even if the shareholder has a personal cause of action against the same wrongdoer.
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> [emphasis in original]

67 As for the Plaintiff's contention that he is no longer a shareholder of the Company, it is unclear what conclusion the Plaintiff is asking the court to draw from his status. All that is argued is that the present case differs from "the cases in which the reflective loss principle would usually operate, [where] the shareholder in question seeking to claim for a loss would still hold their shares in the company".[92] Either the Plaintiff was a shareholder at the point when the Company suffered the losses in question (by reason of, for instance, a constructive trust arising after his shares were misappropriated), or the Plaintiff was not a shareholder and there is no loss – whether in the form of a diminution in shareholding value or fall in distributions received as a shareholder – to speak of. If the Plaintiff's case is the former, it is immaterial that he is no longer a shareholder of the Company. As the reflective loss principle is substantive in character, its applicability is to be assessed at the time when the loss alleged by the claimant is suffered: *Burnford* at [28]–[29] and [30(vii)]. If the Plaintiff's case is the latter, the losses pleaded by the Plaintiff are simply unfounded.

68 The Plaintiff's argument that there is no danger of double recovery as the Company has been struck off can be briefly dealt with. The Court of Appeal in *Miao Weiguo* expressly rejected the policy against double recovery as a justification for the reflective loss principle. Instead, the reflective loss principle was held to be a rule of company law, which was also the position taken by the

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92 PCS at para 59.

majority in *Marex* (at [193]). Accordingly, the Plaintiff cannot bypass the reflective loss principle on the ground that the policy against double recovery is not engaged.

69 Finally, the *Giles v Rhind* exception does not assist the Plaintiff, although I disagree with the Defendant's argument that the Company was struck off not due to any action he took but because of the Plaintiff's own failings. While the acceptance of the *Giles v Rhind* exception remains an open question in Singapore (see *Miao Weiguo* at [155]), it is unnecessary for me to determine this. Even if the exception is accepted, I am unconvinced that it applies because the Company can be restored to the register (see *Wilson v Dodd and others* [2012] EWHC 3727 (Ch) at [352]). The six-year limit for the Plaintiff to apply to restore the Company to the register under s 344(5) of the Companies Act (Cap 50, 2006 Rev Ed) has yet to elapse.

70 For the foregoing reasons, the reflective loss principle operates to preclude the Plaintiff's recovery in respect of the losses pleaded. While I sympathise with the Plaintiff's predicament, shareholders cannot enjoy the benefits of the corporate form, including limited liability, without also assuming its disadvantages (see *Miao Weiguo* at [197]). The appropriate course of action is for the Plaintiff to apply to restore the Company to the register, and for the Company to commence an action against the Defendant for his misconduct.

Whether the Defendant can succeed in his counterclaim

71 In his counterclaim, the Defendant seeks a year's worth of salary that the Plaintiff allegedly owed him, loss of income during the same period "due to

false hope given by the Plaintiff", as well as S$500,000 in compensation for "trauma and harassment" allegedly caused by the Plaintiff.[93]

72 I have rejected the Defendant's Alleged Oral Agreement, which includes the alleged obligation of the Plaintiff to pay the Defendant a monthly salary of US$5,000, a monthly allowance of US$2,000 and a year-end bonus in the first year worth at least six-months' salary, once the Company began operations in Singapore. Thus, the Defendant's claim for salary and loss of income must fail. In any case, the Defendant claims that the Company was never operational in Singapore.[94] Since the payment of the purported salary was premised on the Company beginning its operations in Singapore, the Plaintiff had no obligation to do so.

73 The parties also dispute whether the Defendant received payment of the one-time fee of S$4,000, which the Plaintiff promised under the Oral Agreement.[95] The Defendant bears the burden of proving that he has not received this sum, but no evidence has been adduced to discharge this burden. Weighing the Defendant's bare assertion against the textured testimony of the Plaintiff that he had exchanged Indian rupees for Singapore dollars at the Indian airport, brought the cash with him and handed S$4,000 to the Defendant in a mall, I am inclined to prefer the Plaintiff's version of events.[96] More generally, the Defendant had a poor recollection of details pertaining to the one-time fee. He deposed on affidavit that the Plaintiff had agreed to pay him a sum of

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93 Defence and Counterclaim at pp 6–7.

94 Transcript (21 May 2024) at pp 40:29–41:4.

95 Defence and Counterclaim at p 3; Transcript (20 May 2024) at p 82:2–4.

96 Transcript (20 May 2024) at pp 81:12–82:14.

S$4,000,[97] but took various other positions on the stand – he first claimed that "no initial sum was promised", then that the sum was "4 to 6 thousand", and subsequently that he "[did] not remember the exact figure".[98] In the circumstances, the Defendant failed to satisfy me that the sum of S$4,000 remains outstanding.

74 Finally, the Defendant justifies his claim for "trauma and harassment" on the basis that he "placed a great deal of trust in the [P]laintiff".[99] The Defendant goes as far as to argue that the Plaintiff was the Defendant's fiduciary, as the parties were both directors of the Company and the Defendant would be liable for actions taken by the Plaintiff, including actions relating to the OCBC Bank Account.[100] Having regard to the legal principles discussed at [37] above, I disagree. Nothing before me suggests that the Plaintiff undertook to act on behalf of the Defendant or for his benefit. As a director of the Company, the Plaintiff owed the Company, rather than the Defendant, fiduciary duties. I consider the following principles set out in *Sharp and others v Blank and others* [2015] EWHC 3220 (Ch) (at [12]–[13]) relevant, notwithstanding that they pertained to the question of whether a company's directors owed its shareholders any fiduciary duties:

> 12. I take it therefore to be established law, binding on me, that although a director of a company can owe fiduciary duties to the company's shareholders, *he does not do so by the mere fact of being a director, but only where there is on the facts of the particular case a "special relationship" between the director and the shareholders*. It seems to me to follow that this special relationship must be something over and above the usual relationship that any director of a company has with its

97 DA at para 5.

98 Transcript (21 May 2024) at pp 30:22–31:24.

99 Defence and Counterclaim at p 6.

100 Defence and Counterclaim at pp 3–4.

> shareholders. It is not enough that the director, as a director, has more knowledge of the company's affairs than the shareholders have: since they direct and control the company's affairs this will almost inevitably be the case. *Nor is it enough that the actions of the directors will have the potential to affect the shareholders – again this will always, or almost always, be the case.* On the decided cases the sort of relationship that has given rise to a fiduciary duty has been where there has been some personal relationship or particular dealing or transaction between them.
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> 13. … [*T*]*he distinguishing obligation of a fiduciary is the obligation of loyalty: someone who has agreed to act in the interests of another has to put the interests of that other first.* But the relationship between directors and shareholders is not in general like that. *A director is a fiduciary for his company: by agreeing to act as director, he necessarily agrees to act in the interests of the company.* But he does not have, by virtue of his appointment as director, any direct relationship with the shareholders: no doubt the interests of the shareholders and the company are in general aligned but this does not mean that a director has agreed to act for the individual shareholders or has a direct relationship with them – *his relationship is with the company*. If he is to be held to owe fiduciary duties to the individual shareholders, there must be something unusual in the nature of the relationship which gives rise to it. That no doubt explains why the cases where such a duty has been held to exist mostly concern companies which are small and closely held, where there is often a family or other personal relationship between the parties, and where, in almost all cases, there is a particular transaction involved in which directors are dealing with the shareholders, from which the directors often stand to benefit personally. …
>
> [emphasis added]

75 Accordingly, I dismiss the Defendant's counterclaim in its entirety.

Conclusion

76 In conclusion, I dismiss both the Plaintiff's claim and the Defendant's counterclaim. I will hear the parties on costs.

Chan Seng Onn
Senior Judge

Cephas Yee Xiang and Kieran Martin Singh Dhaliwal (Aquinas Law Alliance LLP) for the plaintiff;
The defendant in person.