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

[2025] SGHC 176

Originating Application No 1330 of 2024

In the matter of Section 216A of the Companies Act 1967

Between

Vivaz Group Holdings Pte Ltd

… *Claimant*

And

TripleOne (Cambodia)
Investment Pte Ltd

… *Defendant*

And

Lee Kok Heng Jeremiah

… *Non-Party*

GROUNDS OF DECISION

[Companies — Statutory derivative action — Section 216A of the Companies Act 1967 (2020 Rev Ed) — Whether complainant was acting in good faith]
[Companies — Statutory derivative action — Whether complainant was acting in good faith — Utmost candour and honesty]

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[Companies — Statutory derivative action — Whether complainant was acting in good faith — Delay]

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Vivaz Group Holdings Pte Ltd
v
TripleOne (Cambodia) Investment Pte Ltd
(Lee Kok Heng Jeremiah, non-party)

[2025] SGHC 176

General Division of the High Court — Originating Application No 1330 of 2024
Mohamed Faizal JC
19 May, 10 June 2025

5 September 2025

Mohamed Faizal JC:

1 HC/OA 1330/2024 ("OA 1330") was an application under s 216A of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") for the claimant, Vivaz Group Holdings Pte Ltd ("Vivaz"), to be granted leave to commence proceedings in the name of the defendant, TripleOne (Cambodia) Investment Pte Ltd (the "Company"), against three identified parties for engaging in various transactions that resulted in the alleged wrongful disposal of corporate assets under the Company's umbrella. Vivaz was a shareholder of the Company and contended that the alleged wrongful disposal had resulted in the diminution in value of its ownership of the Company.

2 Vivaz thus sought leave to commence proceedings for breaches of directors' duties against Mr Lee Kok Heng Jeremiah ("Mr Lee"), who was the

respondent non-party in this case, and Mr Poh Boon Hua ("Mr Amos Poh").[1] Mr Lee was, at all material times, a director of the Company, while Mr Amos Poh was a director of the Company between 4 January 2017 and 19 October 2020.[2] Vivaz alleged that the disposal was wrongful because it was ostensibly done for no consideration, without informing or obtaining the approval of other directors and shareholders, and that the assets were transferred to companies which Mr Lee and/or Mr Poh had beneficial ownership of.[3] Vivaz also sought leave to commence proceedings against TPC Properties Pte. Ltd. ("TPC Properties") and/or any recipients and/or beneficiaries of the alleged wrongfully disposed assets, which Vivaz alleged were held on constructive trust for the Company.[4]

3 The main argument raised by Mr Lee in response was that Vivaz had not brought OA 1330 in good faith as it had not come to court with utmost candour and honesty. Mr Lee asserted that, contrary to Vivaz's contentions, Vivaz had, in fact, been aware of the transactions involving the alleged wrongful disposal of assets at the time of the relevant transactions. As I explained to the parties during the oral hearing of this matter, much therefore necessarily turned on this question because, as will soon be apparent, if Vivaz had known of the transactions taking place at the time, then it would appear to be somewhat anomalous for Vivaz to be taking issue with them at this stage, a number of years later.

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1 Non-party's Bundle of Documents Volume 1 dated 9 May 2025 ("1BOD") at pp 4–9 (HC/OA 1330/2024 Originating Application filed 20 December 2024 ("Originating Application") at Prayers 2(a) and 2(b)).

2 1BOD at pp 15–16 (Claimant's director, Quek Lay Wah's 1st Affidavit dated 20 December 2024 ("QLW-1") at paras 13, 16).

3 1BOD at pp 7–9 (Originating Application at Appendix 1 and 2).

4 1BOD at pp 4–5 (Originating Application at Prayer 2(c)).

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4 On balance, I was of the view that, on the evidence before me, Vivaz did, in fact, have knowledge of the relevant transactions at or about the material time, and consequently, had not brought OA 1330 in good faith. As a result, on 10 June 2025, I dismissed OA 1330. Vivaz has since filed a notice of appeal against my decision. I therefore have issued these grounds to set out the full reasoning for my decision.

Facts

5 The underlying facts surrounding the various corporate transactions in this case are extremely complex and involve numerous transactions which implicate various related entities. As will be seen later, even with the parties' submissions, some of these transactions remained mired in opacity (perhaps, I would add, intentionally) and were left unexplained by either party. In any event, I will do no more than set out the features that are of especial salience for the purposes of contextualising OA 1330.

6 The Company was incorporated in 2013 with the aim of being a holding company.[5] The Company was the sole shareholder of One Eleven Investment Private Limited ("OEI"), which in turn, was the 49% shareholder of One Eleven Development Co., Ltd. ("OED").[6] The registered shareholder of the remaining 51% of OED's shares was the parties' Cambodian partner.[7] OED, in turn, owned a hotel development named Lumiere Hotel in Cambodia ("Hotel 228") which was assessed to be worth approximately US$15m as of 30 November 2023.[8]

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5 1BOD at pp 15, 255 (QLW-1 at para 11; Mr Lee's 1st Affidavit dated 7 February 2025 ("LKHJ-1") at para 9).

6 1BOD at pp 15, 256–257 (QLW-1 at para 12; LKHJ-1 at paras 13(a)–13(b)).

7 1BOD at pp 21–22 (QLW-1 at paras 35–36).

8 1BOD at pp 32, 257 (QLW-1 at para 70; LKHJ-1 at para 13(c)).

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Based on the evidence placed before me, it would appear that the Company had no assets of significant value other than Hotel 228.[9]

7 There had been numerous changes to the constitution of the board of directors of the Company since its incorporation. For the purposes of the present application, the terms of the relevant directors or former directors were as follows:

(a) Mr Lee has been a director since 26 January 2015 and remains the sole remaining director at the time of the proceedings;[10]

(b) Mr Amos Poh: From 4 January 2017 to 19 October 2020;[11]

(c) Mr Wong Chun Mun (also known as Alan) ("Mr Wong"): From 29 June 2017 to 17 December 2020;[12] and

(d) Mr Wu Yanwu (also known as Wilson) ("Mr Wu"): From 29 June 2017 to 18 November 2024.[13]

8 From 2014 to 2017, various investors (including Vivaz) purchased shares in the Company. After various share transfers and a subsequent issuance of new shares, the shareholders of the Company, prior to the alleged wrongful disposal of assets and the 2019 share sale agreement between Kingsland and Vivaz (which will be elaborated on below), were as follows:

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9 1BOD at p 31 (QLW-1 at para 67).

10 1BOD at pp 58, 253 (Company's ACRA business profile as of 8 November 2024; LKHJ-1 at para 2).

11 1BOD at pp 16, 260 (QLW-1 at para 16(b); LKHJ-1 at para 22).

12 1BOD at pp 16, 294 (QLW-1 at para 16(a); LKHJ-1 at para 104).

13 1BOD at pp 16, 261 (QLW-1 at para 15; LKHJ-1 at para 25).

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Party	**Registered shareholding**	**Beneficial shareholding (see details at [9]–[11] below)**	**Shareholders of the entity (where applicable and relevant)**
Vivaz	35%	35% - 10.7% - 24.3% = 0%	Mr Wong and Ms Quek Lay Wah (also known as Celine) ("Ms Quek") each held 50% of Vivaz's shares and were Vivaz's directors[14]
Threepohco Private Limited ("Threepohco")	24.76%	24.76% - 10.7% + 24.3% (+10% +0.12% +0.12%) = 48.6%	Mr Amos Poh, Mr Poh Wen Yi ("Mr Poh WY"), Mr Poh Wen Si ("Mr Adrel Poh") collectively held 85% of TPC's shares[15]

[14] 1BOD at pp 13, 258 (QLW-1 at para 7; LKHJ-1 at para 15).

[15] 1BOD at p 260 (LKHJ-1 at para 19).

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			At the time of these proceedings, Mr Amos Poh and Mr Poh WY were both undischarged bankrupts.[16] Mr Lee also claimed that Threepohco and Mr Adrel Poh were insolvent, though no evidence was led to corroborate this.[17]
Galaxy Ace Investment Limited ("Galaxy")	20%	20%	Mr Wu was the sole shareholder of Galaxy[18]
Golden Light Investments Pte Ltd ("Golden Light")	10%	10% - 3.6% = 6.4%	Threepohco and Mr Adrel Poh[19]
Assets Leader Limited ("Assets Leader")	10%	0%	Identity of shareholders were not material to the present application

16 1BOD at p 260 (LKHJ-1 at para 20).

17 6BOD at p 48 (LKHJ-3 at para 99).

18 1BOD at p 260 (LKHJ-1 at para 23).

19 1BOD at p 267 (LKHJ-1 at para 44).

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Mr Lee	0.12%	0%	NA
Mr Sok Hang Chaw ("Mr Sok")	0.12%	0%	NA
Kingsland (KH) Development Co Ltd ("Kingsland")	0%	25%	Subsidiary of Kingsland Global Limited, a public company limited by shares in which Mr Lee was a director[20]

9 There were two further transactions which affected Vivaz's beneficial ownership, although Vivaz's registered shareholding in the Company remained at 35% as no share transfer was, in fact, effected. The first was the share purchase agreement that Kingsland entered into with Vivaz on 29 May 2017.[21] Based on the share purchase agreement, it would seem that Kingsland agreed to purchase 25% of the Company's shares from Vivaz for a composite sum of US$3,570,000.[22] However, the true arrangement between the various shareholders was instead for the 25% shareholding to comprise of 10.7% from Vivaz, 10.7% from Threepohco and 3.6% from Golden Light's shares in the Company.[23] Curiously, this true arrangement was not documented in the share purchase agreement, for reasons best known to the parties.

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20 1BOD at pp 257–258 (LKHJ-1 at para 13(e)).

21 1BOD at pp 18, 84, 272 (QLW-1 at para 21; Share purchase agreement between Vivaz and Kingsland dated 29 May 2017 at H; LKHJ-1 at para 57); 3BOD at p 298 (Ms Quek's 2nd Affidavit dated 26 March 2025 ("QLW-2") at para 205).

22 1BOD at p 18 (QLW-1 at para 21).

23 1BOD at pp 18, 296–297 (QLW-1 at para 22; LKHJ-1 at para 110).

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10 The second was an agreement for the transfer of a loan entered into between Vivaz and Threepohco on 31 December 2018 ("Threepohco-Vivaz Transfer of Loan Agreement"). The parties were in agreement that the Threepohco-Vivaz Transfer of Loan Agreement had been backdated.[24] Vivaz had apparently taken loans from New Union Capital Pte Ltd ("NUCAP") in 2016 and 2017 (collectively, the "NUCAP Loan") and subsequently defaulted on the interest payments.[25] As was stated in the Threepohco-Vivaz Transfer of Loan Agreement, in consideration for transferring the loan to Threepohco, Threepohco was to "own shares of [the Company] which amount[ed to] S$7,350,000" (*ie*, 35% of the Company's shares).[26] Vivaz has clarified on affidavit that there was a "mistake" in the Threepohco-Vivaz Transfer of Loan Agreement and that Threepohco was instead only to "attain [Vivaz's] 24.3% shares of the Company worth S$5,103,000, instead of S$7,350,000".[27]

11 Based on the beneficial shareholding of the Company alleged by Vivaz,[28] it seemed that there was a third series of transactions that eventually led to Threepohco becoming the true beneficial owner of the shares held by Assets Leader, Mr Sok and Mr Lee (amounting to 10%, 0.12% and 0.12% of shares in the Company respectively, as set out in the table at [8] above). While both parties somewhat oddly elected not to place any supporting documentation or specifics of this third series of transactions on affidavit, the fact that this series of transactions had taken place did not appear to be contested by Mr Lee.

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24 3BOD at pp 302–303 (QLW-2 at para 221); Non-party's Written Submissions dated 9 May 2025 ("NPWS") at para 20.

25 1BOD at p 266 (LKHJ-1 at paras 41–42).

26 1BOD at pp 18–19, 118–119 (QLW-1 at para 24; Threepohco-Vivaz Transfer of Loan Agreement dated 31 December 2018 at cll 1.2, 1.3).

27 1BOD at p 19 (QLW-1 at para 24(b)).

28 Claimant's Written Submissions dated 9 May 2025 ("CWS") at para 4.

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The Impugned Transaction

12 Vivaz's case for there having been a wrongful disposal of assets found its genesis in a transfer of all of the Company's shares in OEI to TPC Properties, a company fully owned by Threepohco,[29] on 24 September 2019 (the "Impugned Transaction"). The Impugned Transaction was effected pursuant to a board of directors' resolution signed by Mr Amos Poh *qua* director of the Company.[30]

13 The change in beneficial ownership of Hotel 228, however, did not stop there. In or about March 2020, TPC Properties proceeded to further transfer OEI's 49% shareholding over OED to Mr Lee's nominee, My Square Metre (KH) Co., Ltd ("MSQM (KH)").[31] At the material time, Mr Lee was the primary beneficial owner of MSQM (KH), holding 86% of the shares in My Square Metre Pte. Ltd. ("My Square Metre"), the sole shareholder of MSQM (KH).[32] Thereafter, in or around 2022, the shares in OED were transferred from MSQM (KH) to MSQM ZTH Co., Ltd ("MSQM ZTH"), of which an entity represented by Mr Lee held 49% of shares and a company represented by one Mr Horng Pheap held the remaining 51%.[33]

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29 1BOD at p 32 (QLW-1 at para 72).

30 1BOD at pp 199, 285 (The Company's board resolution dated 24 September 2019; LKHJ-1 at para 86(b)).

31 1BOD at p 289 (LKHJ-1 at para 96); Non-party's Bundle of Documents Volume 3 dated 9 May 2025 ("3BOD") at p 31 (TPC Properties board resolution dated 10 March 2020).

32 1BOD at p 290 (LKHJ-1 at para 97); Non-party's Bundle of Documents Volume 6 dated 9 May 2025 ("6BOD") at pp 32–33 (Mr Lee's 3rd Affidavit dated 28 April 2025 ("LKHJ-3") at para 63).

33 1BOD at pp 294–295 (LKHJ-1 at para 106).

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Kingsland-Vivaz SSA

14 Another pertinent transaction, for which the parties' accounts vastly differed, arose from a share sale agreement that was ostensibly entered into between Kingsland and Vivaz on 11 June 2019 ("Kingsland-Vivaz SSA").[34] The Kingsland-Vivaz SSA was for the sale of Kingsland's "rights, title and interest in the [25% of the Company's shares which it was the beneficial owner of] to Vivaz for the sum of US$4,000,000".[35] For reasons that were again left curiously unexplained, Vivaz claimed it did not in fact pay the sum set out in the Kingsland-Vivaz SSA, but only paid just over US$3.2m.[36]

15 It was not disputed that the moneys that were due (whether be it US$4m or just over US$3.2m) were transferred to Kingsland and the transaction was completed.[37] However, the parties were in disagreement regarding the beneficial owner of the 25% shares of the Company. Vivaz contended that it held 25% beneficial ownership over the Company pursuant to the Kingsland-Vivaz SSA while Mr Lee contended that there was more to the Kingsland-Vivaz SSA than what appeared on paper and that Vivaz had in fact purchased the shares as part of a three-party resolution between Vivaz, Threepohco and OED.[38] Based on that account, under this resolution, Vivaz was to purchase and hold the shares on OED's behalf such that the true beneficial owner was OED.[39] The details of this resolution will be expounded upon at [22] below.

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34 1BOD at pp 121–127 (Kingsland-Vivaz SSA).

35 1BOD at pp 19, 123 (QLW-1 at para 25; Kingsland-Vivaz SSA at N).

36 3BOD at p 269 (QLW-2 at para 122); CWS at para 3(c).

37 1BOD at pp 19, 284 (QLW-1 at para 26; LKHJ-1 at para 84).

38 1BOD at p 19 (QLW-1 at para 26); CWS at paras 3(c), 4.

39 1BOD at pp 275–277 (LKHJ-1 at paras 68(a)–68(c)); NPWS at para 19(e).

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Procedural history

16 On 5 July 2024, Vivaz sent its first notice pursuant to s 216A of the Companies Act demanding that the Company's directors (*ie*, Mr Lee and Mr Wu) initiate proceedings against Mr Lee, Mr Horng Pheap and MSQM ZTH for the alleged dissipation and misappropriation of the Company's assets. Vivaz had discovered that the Company was no longer the beneficial owner of Hotel 228 and instead, MSQM ZTH was now the sole shareholder of OED (which, in turn, owned Hotel 228).[40]

17 On 7 August 2024, a shareholders' meeting was held to discuss the contents of the s 216A notice.[41] Vivaz claimed that it was shown the board of directors' resolution which effected the Impugned Transaction for the first time during this shareholders' meeting;[42] on the other hand, Mr Lee contended that Vivaz had been aware of the resolution at all material times.[43]

18 On 21 November 2024, Vivaz sent its second notice pursuant to s 216A of the Companies Act demanding that the Company's directors commence legal proceedings in respect of the alleged wrongful disposal of the OEI shares which diminished the value of the Company and its shares.[44]

19 On 20 December 2024, Vivaz filed its originating application in OA 1330 seeking, *inter alia*, the orders set out at [2] above.

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40 1BOD at pp 28, 184–186 (QLW-1 at para 59; First s 216A notice dated 5 July 2024 at paras 4–5, 7–14, 16).

41 1BOD at pp 28, 300 (QLW-1 at para 60; LKHJ-1 at para 121).

42 1BOD at pp 29–30 (QLW-1 at paras 62, 64).

43 1BOD at p 300 (LKHJ-1 at para 122).

44 1BOD at pp 36, 237–239 (QLW-1 at para 83; Second s 216A notice dated 21 November 2024 at paras 8, 13).

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The parties' cases

20 At its core, the question was whether Vivaz had been kept in the dark about an apparent diminution in the value of its ownership of the Company through the wrongful disposal of corporate assets under the Company's umbrella (as set out in some detail at [12]–[13] above).

Vivaz's case

21 Vivaz's case was that it had not been informed about the Impugned Transaction and had only discovered the change in beneficial ownership over OED (and consequently Hotel 228) through its own investigations in or around April 2024.[45] Consequently, Vivaz claimed that Mr Lee and/or Mr Poh had wrongfully converted, disposed and/or sold the Company's shares in OEI to TPC Properties.[46] Mr Lee had also wrongfully caused and/or facilitated the transfer of the Company's beneficial interest in OED from TPC Properties to MSQM ZTH, an entity which he had beneficial ownership over.[47] These transactions had hollowed the Company of its sole meaningful asset (*ie*, Hotel 228) and Vivaz was seeking to commence proceedings, in essence, to reinstate (at least some of) the Company's value.[48]

Mr Lee's case

22 Mr Lee's case was that Vivaz had knowledge of the Impugned Transaction. Mr Lee asserted that Vivaz had in fact agreed to the Impugned Transaction (and a series of other transactions, including the Threepohco-Vivaz

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45 1BOD at pp 26–27 (QLW-1 at paras 52–58); CWS at paras 7–8.

46 1BOD at pp 39–41 (QLW-1 at paras 95–98).

47 1BOD at p 42 (QLW-1 at para 101).

48 1BOD at p 43 (QLW-1 at paras 104–105).

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Transfer of Loan Agreement) as part of a broader resolution reached with Threepohco in view of Vivaz's financial woes (the "Threepohco-Vivaz Resolution"). Apart from transferring the NUCAP Loan to Threepohco, Mr Lee asserted that the Threepohco-Vivaz Resolution bore a secondary aim of facilitating Vivaz's shift towards hotel management and operations.[49] The Threepohco-Vivaz Resolution was purportedly reached sometime between June to September 2018, the details of which (relevant to the present application) were allegedly as follows:[50]

(a) Threepohco-Vivaz Transfer of Loan Agreement: Threepohco would take over the NUCAP Loan from Vivaz and Vivaz would cease to have any beneficial ownership and/or management control over the Company.[51]

(b) Change in OEI's parent company: To facilitate Vivaz's exit from ownership over Hotel 228, a restructuring was undertaken such that TPC Properties would take over as the parent company of OEI in place of the Company.[52] Since Threepohco was the sole shareholder of TPC Properties, it would have been able to make the necessary arrangements with the other investors who previously had beneficial ownership over Hotel 228 through the Company (*ie*, Galaxy, Golden Light and Assets Leader).[53]

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49 1BOD at pp 274–275 (LKHJ-1 at para 67).

50 1BOD at pp 274 – 278 (LKHJ-1 at paras 67–68).

51 1BOD at p 275 (LKHJ-1 at para 67(c)).

52 1BOD at p 282 (LKHJ-1 at para 81).

53 1BOD at p 285–286 (LKHJ-1 at paras 87(a)–87(d)).

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(c) Vivaz's takeover as the hotel operator for Hotel 228: Vivaz was granted the right to manage/operate Hotel 228 at a bare-building rental rate that was considerably below market rate. Vivaz was also to take over all the furniture, fitting and equipment ("FF&E") of Hotel 228 for the sum of US$4m, a sum payable to OED ("Hotel 228 FF&E Consideration").[54]

(d) Purchase of Kingsland's 25% shareholding in the Company: OED was to use the Hotel 228 FF&E Consideration to purchase Kingsland's 25% shareholding in the Company. However, "to simplify matters and to limit [Kingsland's] and OED's liability for any capital gains tax in Cambodia", Threepohco and Vivaz instead agreed for Vivaz to pay the Hotel 228 FF&E Consideration directly to Kingsland (instead of to OED), although the 25% shares was still to be beneficially owned by OED (and not Vivaz).[55] This arrangement was "regularised by way of having Vivaz and [Kingsland] execute a share sale agreement",[56] *ie*, the Kingsland-Vivaz SSA (see [14]–[15] above).

23 Mr Lee further alleged that as a result of the COVID-19 pandemic, Hotel 228's business was adversely impacted such that "TPC Properties could not afford to upkeep Hotel 228 and [Threepohco] could not meet the interest payments due under the NUCAP Loan (which it had assumed from Vivaz)".[57] In light of its financial difficulties, Threepohco approached Mr Lee for help to

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54 1BOD at pp 275–276 (LKHJ-1 at paras 68(a)–68(b)).

55 1BOD at pp 276–277 (LKHJ-1 at para 68(c)).

56 1BOD at p 277 (LKHJ-1 at para 68(c)(ii)).

57 1BOD at p 287 (LKHJ-1 at para 90).

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take over ownership of a strata-titled property in order to appease its investors.[58] This then culminated in an asset swap arrangement between Mr Lee and Threepohco ("Mr Lee-Threepohco Asset Swap"), the details of which were as follows:[59]

(a) 49% of shares in OED held by OEI were to be transferred to Mr Lee's nominee, MSQM (KH); and

(b) 50% of shares in Macalland Holdings Pte Ltd ("Macalland"), which were beneficially owned by Mr Lee through another entity, were to be transferred to TPC Properties. This would allow TPC Properties to have ultimate beneficial ownership over a strata-titled service apartment named Lumiere Residence ("Hotel 118").

Issues to be determined

24 Under s 216A(3) of the Companies Act, for leave to be granted to bring a derivative action, three requirements must be satisfied. Section 216A(3) reads as follows:

> (3) No action or arbitration may be brought and no intervention in an action or arbitration may be made under subsection (2) unless the Court is satisfied that —
>
> (*a*) the complainant has given 14 days' notice to the directors of the company of the complainant's intention to apply to the Court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend or discontinue the action or arbitration;
>
> (*b*) the complainant is acting in good faith; and
>
> (*c*) it appears to be prima facie in the interests of the company that the action or arbitration be brought, prosecuted, defended or discontinued.

58 1BOD at pp 287–288 (LKHJ-1 at para 92).

59 1BOD at pp 288–289 (LKHJ-1 at paras 93–94).

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25 It was not disputed that the first requirement, *ie*, the notice requirement, was satisfied on the facts and, accordingly, no more needed to be said about it.[60]

26 The questions before the court therefore were whether the two remaining requirements had been satisfied: namely, whether Vivaz was acting in good faith and whether the action was *prima facie* in the interests of the Company.

Whether Vivaz was acting in good faith

27 I deal first with the question of good faith. The burden of proof was on the complainant (*ie*, Vivaz) to show that it had been acting in good faith: see *Ang Thiam Swee v Low Hian Chor* [2013] 2 SLR 340 ("*Ang Thiam Swee*") at [23]; *Petroships Investment Pte Ltd v Wealthplus Pte Ltd and others* [2015] SGHC 145 ("*Petroships Investment*") at [78]–[79].

28 As set out in *Jian Li Investments Holding Pte Ltd and others v Healthstats International Pte Ltd and others* [2019] 4 SLR 825 ("*Jian Li Investments*") (at [42]), "good faith" is a multi-dimensional requirement, with some of the key considerations being as follows:

> (a) Merits of the proposed derivative action: A complainant must "honestly or reasonably believe that a good cause of action exists for the company to prosecute": *Jian Li Investments* at [42]. Conversely, a complainant "may be found to lack good faith if it is shown that no reasonable person in his position, and knowing what he knows, could believe that the company had a good cause of action to prosecute": *Jian Li Investments* at [42], citing *Ang Thiam Swee* at [29].

60 NPWS at para 38.

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(b) Purpose for bringing the derivative action: A complainant must demonstrate he or she is "genuinely aggrieved": *Jian Li Investments* at [44]. A complainant may be found to lack good faith if a derivative action were brought for a collateral purpose that is "at odds with or runs counter to the company's interests, or where the complainant's judgment was clouded by purely personal considerations": *Syed Ibrahim Shaik Mohideen v Wavoo Abdusalam Shahul Hameed and others* [2023] 4 SLR 1106 ("*Syed Ibrahim*") at [69], citing *Ang Thiam Swee* at [13].

(c) Complainant's conduct in the proceedings: A complainant must "come to court with utmost candour and honesty" as "[h]ints of lack of candour may justify an inference of a lack of good faith": *Wong Kai Wah v Wong Kai Yuan and another* [2014] SGHC 147 ("*Wong Kai Wah*") at [66]. Consequently, in line with the need for complete candour, good faith requires a complainant to "set out the story in full from the beginning": *Jian Li Investments* at [48], citing *Agus Irawan v Toh Teck Chye and others* [2002] 1 SLR(R) 471 ("*Agus Irawan*") at [9].

29 Mr Lee's arguments for why OA 1330 had been taken out in bad faith fell within three categories:

(a) First, Mr Lee contended that Vivaz had not been candid and honest with the court. Vivaz had failed to set out the complete story from the beginning despite its knowledge of, *inter alia*, the Impugned Transaction, the Threepohco-Vivaz Resolution and the Mr Lee-Threepohco Asset Swap.[61] Mr Lee also contended that Vivaz had failed

[61] NPWS at paras 50–76, 83–94.

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to be candid as it failed to address the court on what he contends to be an important issue, *ie*, its decision not to claim against Mr Wong. Mr Wong was a director of the Company at the time of the Impugned Transaction and, as such, would have been equally culpable for any breach of directors' duties.[62]

(b) Second, Mr Lee contended that Vivaz had brought OA 1330 for entirely collateral purposes, namely (i) to pressure him into refunding a sum of US$1m owed to Vivaz and (ii) to use the Company to recoup from him the losses arising from the deal with Threepohco in 2020 which fell through as legal action against Threepohco and its representatives was no longer viable. Mr Lee claimed that in Vivaz's mind, legal action was no longer viable against Threepohco as it was "in bad financial shape" and was also not viable against Mr Amos Poh and Mr Poh WY given that they were facing bankruptcy.[63]

(c) Third, Mr Lee contended that Vivaz's inordinate five-year delay in bringing OA 1330 supported a finding that Vivaz was acting in bad faith.[64] Mr Lee contended that even if Vivaz did not initially know of the Impugned Transaction at the time it was entered into, at the latest, Vivaz would have known about the Impugned Transaction by 31 July 2019 when Mr Poh WY sent out an email to Vivaz's directors in which it was stated explicitly that the parties were "preparing TPC Properties Pte Ltd

62 NPWS at paras 69–76.

63 NPWS at paras 95–99; 3BOD at p 298 (QLW-2 at para 208).

64 NPWS at paras 77–82.

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> (Lumiere Hotel Private Limited) for the take over of One Eleven Investment Co., Ltd. (OEI)" [emphasis in original omitted].[65]

I will address each of these arguments in turn.

30 Before I commence my analysis, I highlight that my role here was not to come to a landing on the disputed facts. As was highlighted by Goh Yihan JC (as he then was), "[a]t this [leave] stage the court need not and ought not be drawn into an adjudication on the disputed facts. That is what a *prima facie* legitimate or arguable case is all about" [emphasis in original omitted] (*Syed Ibrahim Shaik Mohideen v Wavoo Abdusalam Shahul Hameed and others* [2023] 4 SLR 903 at [25], citing *Agus Irawan* at [6]). With that caveat, I now turn to the facts of the case.

Vivaz had not come to court with utmost candour and honesty

31 On the present facts, I was of the view that Vivaz has been less than candid about what it knew and the transactions that it had entered into with the various parties. The parties' oral accounts diverged, perhaps expectedly, so it would be of some importance to follow the paper trail in this regard to piece together a composite picture of what Vivaz knew of the Impugned Transaction.

32 In particular, there were some glaring pieces of documentation that, in my view, ran contrary to Vivaz's case and strongly suggested some level of knowledge on Vivaz's part of the Impugned Transaction and some of the other surrounding transactions.

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65 2BOD at p 372 (31 July 2019 Email from Mr Poh Wen Yi to Vivaz's directors titled "Re: Urgent: Issuance of Profit share, Rental plus Reimbursement of Fitout Cost").

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The Impugned Transaction

33 On balance, I found that Vivaz was broadly aware of the Impugned Transaction. In particular, I relied on two pieces of documentary evidence that would appear to support this finding.

34 The first piece of evidence was, as noted at [29(c)] above, an email sent on 31 July 2019 from Mr Poh WY to Vivaz's directors in which some questions were asked ostensibly for due diligence purposes as the parties were "preparing TPC Properties Pte Ltd (Lumiere Hotel Private Limited) for the take over of One Eleven Investment Co., Ltd. (OEI)" [emphasis in original omitted].[66] This was, in essence, the Impugned Transaction. Vivaz did not dispute the fact that it received this email or that it had acted on the contents therein. Instead, Vivaz raised the following points to support its assertion that, notwithstanding this email, it still did not have knowledge of the Impugned Transaction:

(a) Vivaz claimed that its directors were unaware of what the email of 31 July 2019 meant by the reference in question, contending that this was a period of uncertainty after the sudden withdrawal of investment by one of its potential investors, Epicentre Holdings Limited ("Epicentre"). To demonstrate such purported lack of awareness, Vivaz highlighted how it had not specifically responded to that statement on the takeover in its email reply.[67]

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66 2BOD at p 372 (31 July 2019 Email from Mr Poh WY to Vivaz's directors titled "Re: Urgent: Issuance of Profit share, Rental plus Reimbursement of Fitout Cost").

67 3BOD at pp 279–280 (QLW-2 at paras 145–146, 149); 2BOD at p 371 (Ms Quek's email responses to the 31 July 2019 email thread from Poh WH titled "Re: Urgent: Issuance of Profit share, Rental plus Reimbursement of Fitout Cost"); CWS at paras 66–67.

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(b) Vivaz contended that the issue of TPC Properties' take over of OEI was also not discussed in the next meeting that was held between Vivaz's directors, Mr Lee, and Threepohco in or around August 2019.[68] This supported Vivaz's contention that it did not know what Mr Poh WY meant in his email.[69]

35 I was, with respect, unable to accept Vivaz's assertions. When one studies the 31 July 2019 email, its very *raison d'être* was to obtain the necessary due diligence responses from the parties for TPC Properties to facilitate a takeover of OEI, *ie*, the Impugned Transaction. I therefore failed to see how anyone could have missed the point of that email or to not challenge its underlying premise if there was any confusion on the part of Vivaz as to why due diligence was being undertaken. Instead of questioning why Mr Poh WY required these pieces of information or what the purpose of the exercise was, Vivaz's directors co-operated by working with its own finance team to obtain the requisite information.[70] In my view, the contemporaneous act of providing a substantive reply, without raising any query or seeking clarification, was itself compelling probative evidence that Vivaz apprehended, and accepted, the underlying rationale set out in the email for why such information was required (*ie*, to provide the necessary information to facilitate the Impugned Transaction). Had they been genuinely unaware, the natural course of action would have been to question the basis of the request, rather than to substantively respond to it. That they provided the information being sought for the purposes

68 3BOD at pp 279–280 (QLW-2 at paras 147, 150).

69 19 May 2025 NEs at p 3 lines 11–18, p 4 lines 19–20.

70 2BOD at p 371 (Ms Quek's email responses to the 31 July 2019 email thread from Poh WH titled "Re: Urgent: Issuance of Profit share, Rental plus Reimbursement of Fitout Cost").

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of the Impugned Transaction very strongly corroborated Mr Lee's account that Vivaz was in the know in 2019 of the Impugned Transaction taking place.

36 On this point, Vivaz made significant hay about the fact that from its perspective, the Impugned Transaction would have been a transaction at an undervalue (therefore implying that it would not have been in the Company's interests for them to have agreed to it).[71] With respect, this did not get them very far. On the contrary, it raised even more questions regarding their actions: after all, if indeed the import of the Impugned Transaction was that it was being made for no consideration, this should itself have immediately raised significant alarm on their end. In that context, an email reply insisting on answers would have been even more pertinent and would have been the logical response, rather than simply complying with Mr Poh WY's request for details to achieve that very end. The fact that Vivaz's directors seemed entirely comfortable with answering questions for a transfer they now claim was at an undervalue suggested a level of knowledge of the Impugned Transaction that did not sit well with Vivaz's claims of ignorance before me.

37 The second piece of documentary evidence suggestive of the fact that Vivaz knew much more than they were letting on was an email sent out by Mr Lee to Vivaz's directors (amongst others) on 4 January 2022 that set out the parties' respective indirect shares in OED. The relevant extracts of the email are as follows:[72]

> …
>
> As discussed in Singapore, thank you for acknowledging the Tax responsibilities of the individual party. Together with Mr

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71 CWS at paras 27–35.

72 3BOD at pp 113–114 (4 January 2022 email from Mr Lee titled "OED Tax Obligation").

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> Pheap, we will quickly proceed to resolve this with the authorities by end of January for the sake of OED business continuity.
>
> **The total outstanding is United States Dollars One Million Eight Hundred Fifty Thousand Two Hundred Ninety-Two and cents Seventy Nine only (USD1,850,292.79).**
>
> We will try our best to reduce the tax but have no guarantees.
>
> For the avoidance of doubt:
>
> The year 2016 to the year 2018 Shareholders are as follows:
>
> 1. TPC (21.87%)(Msqm will underwrites 25% of TPC due)
> 2. Vivaz (21.87%)
> 3. Golden Light (5.76%)
> 4. Kaka Wilson (18%)
> 5. Kingsland (22.5%)
> 6. Camtrip (10%)
>
> The year 2019 to the year 2020 Shareholders are as follows:
>
> 1. TPC (95%)
> 2. Camtrip (5%)
>
> The year 2020 to the year 2022 Shareholders are as follows:
>
> 1. MSQM (49%)
> 2. ZTH (51%)
>
> …
>
> [emphasis in original]

38 On any reading, it was obvious from the contents of this email that from 2019, "TPC" (*ie*, Threepohco) was a majority shareholder of OED (at 95%) and Vivaz would no longer have any beneficial ownership over OED. Such a variation in shareholding would presumably be the result of the Impugned Transaction detailed at [12] above.

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39 Vivaz claimed that its directors had not responded to the email as its focus was on tax liability and responsibility (and not shareholding),[73] and Vivaz's position on its tax responsibilities in OED was consistent with the email (*ie*, that it did not have to contribute to OED's tax after 2018 since it would have already been responsible for paying Hotel 228's tax).[74] At the hearing before me, Vivaz added that its directors would not have been too concerned about the email as talks about cashing out Vivaz's shares in the Company had already been ongoing.[75]

40 I was, with respect, not able to accept these contentions. In fact, if cashing out was front and centre in Vivaz's directors' minds, they would have been especially concerned if the very shares they were attempting to sell no longer bore any value, having lost beneficial ownership over OED which held the main asset (*ie*, Hotel 228). In that sense, if the contents of the email were true, any subsequent "cash out" would have been of *de minimis* value. This would have immediately raised significant alarm and concern. Yet, once again, no questions were raised on this at the time. The inference from the lack of any substantive response on their end was, again, in my view, that the parties were likely all aware that Threepohco/TPC Properties would be taking over OED. The email suggested that, at the very least, Vivaz would have known full well by early 2022 (*ie*, when this email was sent) that Threepohco had become the key beneficial shareholder in OED sometime in 2019. Again, Vivaz was not able to provide any satisfactory response to why it had not raised any questions on this at the time.

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73 19 May 2025 NEs at p 6 lines 20–29..

74 CWS at para 69.

75 19 May 2025 NEs at p 6 line 31–p 7 line 10.

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Kingsland-Vivaz SSA

41 Next, I turn to the 25% shares in the Company which were ostensibly purchased from Kingsland pursuant to the Kingsland-Vivaz SSA. In my view, there is some significance to this transaction as it demonstrated that, contrary to Vivaz's contentions, it had knowledge that the overall plans went beyond a simple purchase of shares from Kingsland and (subsequently) an attempted sale of shares to Mr Lee.

42 Vivaz and Mr Lee had markedly different accounts of the details of this transaction. It would be unnecessary to go into the specifics of their contentions, save to highlight the one key distinction between the parties' cases, namely the subject matter of the transaction. Vivaz alleged that the transaction concerned the 25% shareholding in the Company while Mr Lee alleged that the transaction instead concerned Hotel 228's FF&E. I briefly summarise the parties' cases on the Kingsland-Vivaz SSA.

43 As was mentioned at [15] above, Vivaz's case was that the Kingsland-Vivaz SSA had purely involved a purchase of Kingsland's 25% shares in the Company. There was no need for Vivaz to purchase the Hotel 228 FF&E as Mr Lee had proposed that Vivaz could "utilise the FF&E without costs for as long as [they] were managing Hotel 228".[76] Vivaz contended that all mentions of Hotel 228's FF&E were purely for valuation purposes as the parties had purportedly agreed to "[ascribe] a value to the Company's 25% shares based on the rough value of Hotel 228's FF&E".[77]

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76 3BOD at p 240 (QLW-2 at para 58(b)).

77 CWS at para 44; 19 May 2025 NEs at p 11 lines 20–22.

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44 On the other hand, Mr Lee's case was that the Kingsland-Vivaz SSA was part of the matters agreed upon under the Threepohco-Vivaz Resolution. Under the Threepohco-Vivaz Resolution, Vivaz was to receive Hotel 228's FF&E but would not have beneficial ownership over the 25% shares in the Company.[78]

45 In my view, three pieces of documentary evidence supported Mr Lee's case that Vivaz had knowledge that the true subject of these transactions was *not* the 25% shares in the Company.

46 The first piece of documentary evidence was an email sent by Mr Lee on 15 May 2020 requesting Vivaz's assistance:

> …
>
> We are in the midst of doing our account for OED, can you assist to provide our team with the list of FF&E recognise [*sic*] in LH books?
>
> …

For context, Mr Lee clarified on affidavit that "LH" referred to Lumiere Hotel Co., Ltd, a Cambodian company which was Vivaz's nominee, used for managing the operations of Hotel 228.[79] Ms Quek replied to Mr Lee's email on 18 May 2020 stating, "[p]lease see attached as per your request". Ms Quek also attached an excel sheet to her email reply,[80] which valued Hotel 228's FF&E at about US$3.6m.[81]

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78 NPWS at para 19(e); 19 May 2025 NEs at p 10 lines 22–25, p 22 line 21.

79 1BOD at pp 272, 280–281 (LKHJ-1 at paras 59, 74–75).

80 2BOD at pp 286–287 (Emails between Mr Lee and Ms Quek titled "Re: List of inventories booked under Lumiere Hotel" dated 15 and 18 May 2020).

81 NPWS at para 86(b), referencing 2BOD at pp 288–310 (Excel sheets sent by Ms Quek on 18 May 2020 illustrating the list of FF&E recognised in Lumiere Hotel Co., Ltd's books)

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47 It would seem to me that this email exchange supported Mr Lee's contention that Vivaz had gained ownership over Hotel 228's FF&E. When pressed on this, Vivaz was unable to give a satisfactory answer for this email exchange. I was unable to accept Vivaz's contention that the excel sheet should be given little weight in view of how Hotel 228's FF&E had not been transferred to Vivaz or its nominee (based on Vivaz's nominee's own management accounts),[82] and how the excel sheet was apparently not prepared by Vivaz or its nominee.[83] In my view, if it were true that Vivaz was simply "utilis[ing] the FF&E without costs" without any ownership over the FF&E all along,[84] there would have been little reason for Mr Lee to have asked Vivaz for the numbers in question or for Ms Quek to have provided any numbers at all when asked for the FF&E that was *recognised in Vivaz's nominee's books*. This would have been true regardless of whether, at the time, Vivaz had thought that it would be cashed out.[85]

48 The second piece of documentary evidence comprised three WhatsApp messages sent by Ms Quek in a group chat named "118/228/PPGT Settlement" which demonstrated that Vivaz's knowledge in respect of the Kingsland-Vivaz SSA went far beyond what it claimed in the proceedings before me:

(a) Ms Quek had sent a message on 31 January 2023 at 10.23am stating that Vivaz was "still pending [a] response on … 228 FF&E as

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82 CWS at para 54; 3BOD at pp 243–247 (QLW-2 at paras 65–72); Non-party's Bundle of Documents Volume 4 dated 9 May 2025 ("4BOD") at pp 177–181 (Vivaz's nominee's management accounts for year 2019).

83 19 May 2025 NEs at p 12 lines 16–17.

84 3BOD at p 240 (QLW-2 at para 58(b)).

85 *cf* 3BOD at pp 246–247 (QLW-2 at para 72).

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part of asset value".[86] In the hearing before me, Vivaz's only attempt to contextualise this message and to dilute the obvious inference stemming from what was stated was that this conversation had taken place later on and that therefore contemporaneous documents would be more accurate.[87] As should be obvious, that did not explain why Ms Quek would have sent such a message to begin with since, on Vivaz's case, there was little reason why Hotel 228's FF&E would be mentioned "as part of asset value", without any mention of Vivaz's shares in the Company (which was, based on its case, the only actual property being transferred and transacted).

(b) On the same day – 31 January 2023 – at 10.47am, Ms Quek sent another message in the same WhatsApp group chat stating that "[o]n 228, we will claim against OED".[88] On Vivaz's case, there was no agreement between OED and Vivaz for Vivaz to claim against as the only arrangement between the two parties was for Vivaz to "utilise the FF&E without costs for as long as [Mr Wong] and [Ms Quek] were managing Hotel 228".[89] It was only on Mr Lee's case that there would have been an agreement between OED and Vivaz as part of the Threepohco-Vivaz Resolution (thereby again suggesting that reality is, in all likelihood, more aligned to Mr Lee's version than to Vivaz's).

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86 NPWS at para 86(d), referencing 6BOD at p 119 (WhatsApp message from Ms Quek in group chat named "118/228/PPGT Settlement" dated 31 January 2023 at 10.23am).

87 19 May 2025 NEs at p 13 lines 14–16.

88 6BOD at p 119 (WhatsApp message from Ms Quek in group chat named "118/228/PPGT Settlement" dated 31 January 2023 at 10.47am).

89 3BOD at p 240 (QLW-2 at para 58(b)).

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(c) In the same group chat on 3 April 2023 at 5.50pm, Ms Quek sent a message stating that "[o]n 228 … USD3.2mil+ interest FF&E (pending settlement)".[90] Once more, based on Vivaz's case, there would have been little reason for Ms Quek to draft a message in such a manner, implying that US$3.2m was due in relation to Hotel 228. Vivaz's only counterargument to this message was the same as that at [48(a)] above – that contemporaneous documents would be more accurate than messages exchanged in 2023[91] – and I would repeat my observations at [48(a)] of the futility of such an argument in this regard.

In my view, all three messages aligned with Mr Lee's case that the subject matter of the transaction was in fact Hotel 228's FF&E.

49 The third piece of documentary evidence were WhatsApp messages in a chat group named "LHM" between Ms Quek and Mr Lee on 16 March 2022. At 2.02pm, Ms Quek first questioned, "who is over the 3.2mil?", before stating at 2.33pm, "how would our settlement consider free from liabilities".[92] While I accepted that this was not an especially significant point (as the nature of such a one-off statement by its nature would be potentially amenable to multiple interpretations), there would appear to have been little reason for the use of nomenclature such as "settlement" and "liabilities" in a transaction for the sale of shares, as would have been the case based on Vivaz's version of events.

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90 NPWS at para 86(e), referencing 6BOD at p 126 (WhatsApp message from Ms Quek in group chat named "118/228/PPGT Settlement" dated 3 April 2023 at 5.50pm).

91 19 May 2025 NEs at p 13 lines 14–32.

92 6BOD at pp 151–152 (WhatsApp messages from Ms Quek in group chat named "LHM" dated 16 March 2022 at 2.02pm and 2.33pm).

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50 Apart from finding that these three pieces of documentary evidence supported Mr Lee's case, I also rejected two points raised by Vivaz which I found to be rather speculative.

51 Vivaz first contended that if the Kingsland-Vivaz SSA was, in actuality, for the purchase of Hotel 228's FF&E, Vivaz would have entered into an asset purchase/transfer agreement (for which draft agreements had already been prepared for the (ultimately unsuccessful) investment by Epicentre) instead of a share sale agreement.[93] Vivaz also added that it would not have made commercial or logical sense to enter into a share sale agreement for shares in the Company had it known that the Company would be a shell company due to the Impugned Transaction.[94] In my view, these two points went neither here nor there as they simply flowed from whether I found that Vivaz had knowledge of the Impugned Transaction. For instance, if I had found that Vivaz had knowledge, it would have followed that Vivaz could very well have entered into an agreement which (on its face) made little commercial sense precisely to achieve a commercially sensible underlying purpose (*eg*, "to limit any capital gains tax in Cambodia" as alleged by Mr Lee[95]). I would also add, for good order that the parties had, at times, been selective about the extent to which they chose to formally record their agreements, or, at the very least, to disclose such agreements to the court (see, as illustrative examples, [9] and [11] above) and at other times, the documents had such glaring mistakes that they raised serious questions about whether such "mistakes" were intentional or otherwise (see [10] above); in that sense, any evidential gap (to the extent one existed) must also be assessed against this broader factual backdrop.

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93 CWS at para 53; 19 May 2025 NEs at p 4 lines 7–9.

94 19 May 2025 NEs at p 3 line 31–p 4 line 2.

95 NPWS at para 19(e).

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52 Next, Vivaz also pointed to messages exchanged between Mr Wong and Mr Lee on 8 April 2020 in support of its contention that the Kingsland-Vivaz SSA was for the purchase of shares, and not Hotel 228's FF&E.[96] The relevant messages were as follows:[97]

> [8/4/20, 12:26:16 PM] [Mr Wong]:
>
> …
>
> *LUMIERE ASSET REPAYMENT*
>
> 1. Leedon height Units value required for Lumiere payment = 3.2M USD
>
> 2. Need to clear whether Lumiere payment is for FF&E or transfer of KLO shares. As we need to draft out the agreement
>
> …
>
> [8/4/20, 12:32:27 PM] [Mr Lee]: LUmiere = KLO shares
>
> [8/4/20, 12:32:46 PM] [Mr Lee]: Noted on Pandora
>
> [8/4/20, 12:34:35 PM] [Mr Wong]: U mean Klo shares in lumiere?
>
> [8/4/20, 12:34:57 PM] [Mr Wong]: Or its listing shares
>
> [8/4/20, 12:40:02 PM] [Mr Lee]: Kingsland shares in LUmiere
>
> [8/4/20, 12:40:31 PM] [Mr Wong]: okok
>
> …

In my view, these messages did not further Vivaz's case. These messages were simply for the purpose of clarifying that the Kingsland-Vivaz SSA would state in writing that it was for the purchase of shares. These messages did not detract from Mr Lee's case that the Kingsland-Vivaz SSA on its face did not reflect the true substance of the transaction (*ie*, that the Kingsland-Vivaz SSA was part of

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96 CWS at paras 42–44.

97 3BOD at p 321 (WhatsApp messages from Mr Wong and Mr Lee in group chat named "LHM" dated 8 April 2020 between 12.26pm and 12.40pm).

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the broader Threepohco-Vivaz Resolution).[98] Indeed, it was not lost on me that the discussion that I had reproduced above explicitly made reference to FF&E, which itself hints to the idea that the arrangement in substance involved some deal pertaining to FF&E (although to be fair, this is clearly not determinative).

Mr Lee-Threepohco Asset Swap

53 While I would have found that Vivaz was not acting in good faith based on the Impugned Transaction and the Kingsland-Vivaz SSA as it clearly knew a lot more than it was letting on, for completeness, I also highlight why the Mr Lee-Threepohco Asset Swap supported the drawing of an inference that Vivaz had not brought the application in good faith.

54 To be clear, knowledge of the mere fact that an asset swap had occurred (essentially) swapping Hotel 228 for Hotel 118 did not have any bearing on whether Vivaz had knowledge of the Impugned Transaction, and consequently whether Vivaz had brought this application in good faith. Instead, knowledge that an asset swap had occurred between Mr Lee and *Threepohco* was required. This was best illustrated by assuming, for instance, that Vivaz did have knowledge that some asset swap had occurred. In such a situation, as Vivaz contended during the hearing, it could have understood the swap to have occurred between Mr Lee and the Company/OEI. In such a case, the Company would still have had value due to its ownership over Hotel 118 (whether registered or beneficial).[99] Therefore, I accept that the occurrence of an asset swap *per se* would not necessarily have raised alarm bells for Vivaz.

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98 6BOD at pp 33–34 (LKHJ-3 at paras 66(a)–66(b)).

99 19 May 2025 NEs at p 15 line 20–p 16 line 13.

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55 However, on the evidence, in addition to Vivaz knowing that an asset swap had occurred involving Hotel 228 and Hotel 118,[100] two pieces of evidence supported the inference that Vivaz had known that such asset swap was between Mr Lee and *Threepohco* (as opposed to the Company/OEI):

(a) The first piece of evidence was a message from Mr Lee explicitly stating that the shares in Macalland (which was the beneficial owner of Hotel 118) were to be transferred to "TPC", *ie*, TPC Properties as was clear from the written resolutions passed by Macalland's directors.[101] This was a WhatsApp message from Mr Lee in a group chat named "LHM" on 25 January 2021 at 6.27pm and, for context, the relevant extracts of the exchange between Mr Lee, Mr Wong and Ms Quek were as follows:[102]

> …
>
> [19/1/21, 3:13:31 PM] [Ms Quek]: Hi Miah. Can u help to briefly check 118 selling price?
>
> …
>
> [25/1/21, 6:04:59 PM] [Mr Wong]: Miah i mean we want to know 118 selling price.
>
> [25/1/21, 6:09:40 PM] [Mr Lee]: Alan I do not want to send something until I got permission or clearance
>
> [25/1/21, 6:10:00 PM] [Mr Lee]: Hope you understand
>
> [25/1/21, 6:23:09 PM] [Ms Quek]: I don't understand. So in the first place, can we or not to swop to 118?

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100 See 6BOD at pp 149, 154 (WhatsApp messages in group chat named "LHM" from Mr Lee and Ms Quek dated 4 March 2022 at 12.13pm and 17 March 2022 at 10.14am respectively); NPWS at paras 57(b)–57(c).

101 3BOD at pp 72, 77 (Record of the written resolutions passed by the directors of Macalland dated 1 July 2020 and 9 March 2021).

102 6BOD at p 145 (WhatsApp messages from Ms Quek, Mr Wong and Mr Lee in group chat named "LHM" dated 19 January 2021 at 3.13pm and 25 January 2021 between 3.13pm and 6.31pm).

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> …
>
> [25/1/21, 6:27:01 PM] [Mr Lee]: You guys are well aware isn't
>
> [25/1/21, 6:27:49 PM] [Mr Lee]: *You are to free to check with TPC if I am transferring Macalland to them now*
>
> …
>
> [25/1/21, 6:31:08 PM] [Ms Quek]: Miah, i really dont understand. This are 2 different issues. Letting us know the price is just like any agents or interested buyers enquiring on the price.
>
> …
>
> [emphasis added]

Despite Mr Lee's explicit mention of "TPC", neither Ms Quek nor Mr Wong raised any concerns and the two were instead more concerned about the selling price of Hotel 118.[103]

(b) The second piece of evidence was a message from Ms Quek suggesting that following the Mr Lee-Threepohco Asset Swap, "TPC" would have taken over. This was a WhatsApp message in the same group chat on 17 March 2022 at 10.14am in which Ms Quek stated as follows:[104]

> … our last understanding is that 228 and 118 swap happened, thats [*sic*] mean *Taiwan taking over Tripleone due to PPGT*, that means also their 4.8 due to them can also clear. *But now, it become TPC*. So which mean we will have to wait till TPC give a repayment resolution, then we can settle RC 3mil and etc. I cannot wait for them to take their own sweet time.
>
> [emphasis added in italics]

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103 See NPWS at para 57(b).

104 6BOD at p 154 (WhatsApp message from Ms Quek in group chat named "LHM" dated 17 March 2022 at 10.14am).

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> I acknowledge that, on the face of this message, the precise subject matter that appeared to be the subject of being taken over by "TPC" was unclear – "Tripleone due to PPGT" could possibly have referred to a loan from a related company, PPGT Development Pte Ltd, to the Company as opposed to Hotel 228 itself,[105] but we were unable to make any such inference in the absence of further evidence regarding such a loan. Regardless, the message suggested that, at the very least, Vivaz had knowledge that "TPC" (whether it be Threepohco or TPC Properties) had some stake in this asset swap and (based on Vivaz's case) this ought to have raised concern.

Allegations of purchase of shares and Vivaz-Threepohco Asset Swap in 2020

56 For completeness, I also addressed why I was hesitant to draw any inference from an arrangement agreed to in or around 2020, in which Vivaz was to receive property units. While the initial arrangement in 2020 was for Vivaz to receive units in the Leedon Heights condominium,[106] this was changed to units in Hotel 118 in mid-January 2021.[107] The parties were in agreement that this arrangement did not eventually materialise.[108] However, the parties were in dispute over Vivaz's counterpart in this arrangement, as well as the consideration that Vivaz was to provide in return for these units.

57 Vivaz relied on this purported arrangement (subsequent to the Kingsland-Vivaz SSA) to support its case that the subject matter of the

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105 See 6BOD at pp 149, 153 (WhatsApp messages from Ms Quek in group chat named "LHM" dated 4 March 2022 at 12.14pm and 16 March 2022 at 3.58pm).

106 3BOD at p 248 (QLW-2 at para 76).

107 3BOD at p 256 (QLW-2 at para 93).

108 3BOD at p 261 (QLW-2 at para 106); 6BOD at p 47 (LKHJ-3 at para 96).

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Impugned Transaction was the 25% shares, and not Hotel 228's FF&E.[109] Specifically, Vivaz relied on Mr Lee's offer to purchase its 25% shareholding in the Company in or about early 2020 and the draft share purchase agreement that was prepared pursuant to this offer in or around April 2020.[110] For such a purchase to occur, according to its case, Vivaz claimed that it must have acquired the 25% shares sometime between 29 May 2017 (when it sold the 25% shares to Kingsland) and early 2020, and that this must have been through the Kingsland-Vivaz SSA. Vivaz also alleged that the arrangement was between itself and Mr Lee through My Square Metre, of which Mr Lee held 86% of shares.[111]

58 Mr Lee contended that the transaction was instead one where Vivaz had agreed to swap its contribution of US$3.2m for Hotel 228's FF&E for other assets from Threepohco ("Vivaz-Threepohco Swap"). This would allegedly have allowed Hotel 228's FF&E to be recognised as part of the asset value of Hotel 228.[112] This transaction was to be regularised by having Vivaz's shares in the Company be transferred to MSQM Pte Ltd, which TPC Properties was a shareholder of.[113] Mr Lee also claimed that the arrangement was strictly between Vivaz and Threepohco, and that he merely served as a facilitator.[114]

59 I was hesitant to draw any inferences from this arrangement based on the evidence before me given that these were heavily disputed facts (see [30]

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109 CWS at paras 47–49.

110 3BOD at pp 228, 248 (QLW-2 at paras 21, 77); 4BOD at pp 188–191 (Draft share sales and purchase agreement between Vivaz and OED dated 1 April 2020).

111 6BOD at p 32–33 (LKHJ-3 at para 63).

112 6BOD at p 13 (LKHJ-3 at para 21).

113 6BOD at p 33 (LKHJ-3 at para 65(b)).

114 6BOD at p 30 (LKHJ-3 at para 53).

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above). In my mind, the evidence was inconclusive as no inference could be drawn regarding Vivaz's candour and honesty from the evidence adduced for this arrangement, unlike the evidence for the Intended Transfer and the Kingsland-Vivaz SSA.

60 I start with why I was unable to draw any meaningful inference of bad faith (or otherwise) on the part of Vivaz from the two pieces of evidence raised by Mr Lee.

(a) The first piece of evidence were messages from Mr Lee suggesting that the arrangement was with Threepohco, and not with him. These were Whatsapp messages in the same "LHM" group chat dated 25 January 2021 which stated as follows:[115]

> [25/1/21, 6:04:59 PM] [Mr Wong]: Miah i mean we want to know 118 selling price.
>
> [25/1/21, 6:09:40 PM] [Mr Lee]: Alan *I do not want to send something until I got permission or clearance*
>
> [25/1/21, 6:10:00 PM] [Mr Lee]: Hope you understand
>
> [25/1/21, 6:23:09 PM] [Ms Quek]: I don't understand. So in the first place, can we or not to swop to 118?
>
> [25/1/21, 6:24:26 PM] [Ms Quek]: We have no time to lose. We are drowning
>
> [25/1/21, 6:26:41 PM] [Mr Lee[: Can swop but proper procedure
>
> [25/1/21, 6:26:49 PM] [Mr Lee]: *I don't want to be F for no reason*
>
> [25/1/21, 6:27:01 PM] [Mr Lee]: You guys are well aware isn't
>
> [25/1/21, 6:27:49 PM] [Mr Lee]: You are to free to check with TPC if I am transferring Macalland to them now

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115 6BOD at p 145 (WhatsApp messages from Mr Lee and Ms Quek in group chat named "LHM" dated 25 January 2021 between 6.04pm and 6.42pm); NPWS at para 69; NPWS at para 60.

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> [25/1/21, 6:28:14 PM] [Mr Lee]: *Don't want like last time I try to help* then I get left & right for helping
>
> [25/1/21, 6:28:36 PM] [Mr Lee]: Hope you understand
>
> [25/1/21, 6:31:08 PM] [Ms Quek]: Miah, i really dont understand. This are 2 different issues. Letting us know the price is just like any agents or interested buyers enquiring on the price.
>
> [25/1/21, 6:32:07 PM] [Ms Quek]: We have been very understanding from the start till now. But now we really have no time to lose.
>
> [25/1/21, 6:41:42 PM] [Mr Lee]: Celine
>
> [25/1/21, 6:42:18 PM] [Mr Lee]: *I seriously don't want to be a conduit*
>
> [emphasis added in italics]

I acknowledged that on the plain reading of the messages, it seemed that Mr Lee did serve as a mere facilitator for a transaction involving a swap of Hotel 118. However, it was not strictly clear from the messages that the swap that the parties were referring to in these messages was the alleged Vivaz-Threepohco Swap. As such, I was hesitant to draw an inference of bad faith from this WhatsApp exchange alone.

(b) The second piece of evidence was a message from Mr Wong explaining to Mr Lee that he had swapped the Leedon Heights condominium units for Hotel 118, stating: "[Vivaz] swop for 118 and explain to [the investors] easier to sell [*sic*]".[116] It was not clear to me how this message supported Mr Lee's case since both parties agreed that there was a change in the consideration to be received by Vivaz under the arrangement from the Leedon Heights condominium units to Hotel 118.

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116 6BOD at pp 47, 354 (LKHJ-3 at para 97(b); WhatsApp message from Mr Wong to Mr Lee dated 4 March 2023 at 12.54pm); NPWS at para 61.

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61 I was also unable to draw any inference from the evidence raised by Vivaz. Vivaz pointed to two messages regarding the drafting of an agreement for the purchase of shares in the Company to support its contention that the arrangement was for the purchase of shares, and not Hotel 228 FF&E.[117] The two messages relied on were as follows:[118]

> [12/8/20, 9:53:21 AM] [Mr Lee]: Will send you a simple agreement between Vivaz & msqm to buy your OED shares the amount stated in the unit
>
> …
>
> [29/12/20, 12:42:20 PM] [Ms Quek]: I think to speed up the process, meanwhile we can get lawyer to draft the agreement on:
>
> - MSQM PL buying over VG's shares in Tripleone and using its PPGT's shares as a form of payment to VG

Similar to a point I made above at [52] regarding the Kingsland-Vivaz SSA, in my mind, these two messages did not further Vivaz's case. Even on Mr Lee's case, the arrangement would have involved a transfer of Vivaz's shares in the Company to regularise the Vivaz-Threepohco Swap.[119] Therefore, these two messages, on their own, did not themselves particularly support any inference to be drawn in favour of Vivaz.

62 In any case, the inability to draw any inferences from this arrangement did not detract from my finding that Vivaz had not come to court with utmost candour and honesty. That finding rested on the three abovementioned transactions and this arrangement would be secondary to those transactions.

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117 CWS at paras 48–49.

118 3BOD at pp 323, 326 (WhatsApp messages in group chat named "LHM" from Mr Lee and Ms Quek dated 12 August 2020 at 9.53am and 29 December 2020 at 12.42pm respectively).

119 6BOD at p 33 (LKHJ-3 at para 65(b)).

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Vivaz's failure to address the court on its decision not to claim against Mr Wong

63 For completeness, I deal with the contention by Mr Lee that Vivaz's failure to address the court on what he claims to be an important issue of its decision not to sue Mr Wong for breaches of director's duties owed to the Company (when he would have borne equal culpability to Mr Lee) suggested that Vivaz was not acting in good faith.[120] On that specific contention, I disagreed with Mr Lee. In my view, the allegation involving the purported complicity of Mr Wong (as contended by Mr Lee) was a red herring that did not significantly vary the complexion of the case.

64 On Vivaz's case, Mr Wong was not aware of the Impugned Transaction and this transaction had been kept from him. To the extent I accepted that version of events, then it would appear perverse to suggest that Vivaz could not take action merely because its director (*ie*, Mr Wong) was concurrently a director of the Company at the time of the Impugned Transaction. The fact that the duty was non-delegable was beside the point given that the information on which it was suggested he should have acted upon was (based on Vivaz's case) intentionally shielded from him. To be clear, I was not suggesting that this was in fact the case, but I was suggesting that Vivaz's case (as set out in its affidavit) would not be weakened by this argument, because such a fact, even if true, would not have been fundamentally inconsistent with its case. The fact that Vivaz was not seeking to sue Mr Wong for breach was, in my view, therefore entirely tangential to its case, and would not support the assertion of there being a collateral purpose (I should add for good order that this was to be contrasted with a case like *Petroships Investments* at [137], which involved a scenario of

120 NPWS at paras 69–76.

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an ostensible abdication of duties). In any event, to the extent Mr Lee's case was that Mr Wong ought to be liable, Mr Lee would be, as Vivaz noted, at liberty to add him as a party in due course to ensure that he would be made to provide any necessary indemnity or contribution.[121]

65 Nonetheless, the point I would make is that since the very premise of Vivaz's case for taking derivative action was what I had suggested earlier, namely their concerns about the Impugned Transaction and the transferring of OED shares out of OEI's possession later on, then it would seem to me that the evidence suggested that Vivaz knew a lot more about these transfers at the time they occurred than it was, in fact, letting on in this application.

Summary

66 On balance, it seemed quite clear that Vivaz's directors knew a lot more than they had let on before me, and that the transactions that Vivaz claimed to be concerned about were not of the nature Vivaz posited or claimed before this court. To be clear, it was impossible for me, at this stage, to come to any conclusions on what the precise state of mind of all parties were, and what precisely was going on behind the scenes, as the parties appeared to all be complicit in numerous curious arrangements relating to various corporate holdings for reasons that I was somewhat sceptical about, and which raised serious questions about their underlying motivations. One instance of this was how the suite of transactions (particularly those raised by Mr Lee) hinted at the contravention of numerous laws, whether it be the commingling of assets between different companies, breaches of the Companies Act (*eg*, breach of s 21 of the Companies Act as a subsidiary is not permitted to hold shares in a parent

[121] CWS at para 103.

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company),[122] or what potentially was an attempt to evade Cambodian tax. Another instance laid in the Threepohco-Vivaz Transfer of Loan Agreement whereby there was a discrepancy of about S$2m in the stated share value to be transferred to Threepohco, which was conspicuously left unexplained by parties (save for a passing suggestion during the proceedings that such a million-dollar variation in the amounts in question was "not a big mistake", which was an odd assertion to make),[123] above and beyond the fact that the document in question was made to seem as if it had been signed on 31 December 2018.[124] The motivations underlying the somewhat questionable and puzzling dynamics and transactions (some of which I have already expressed considerable scepticism about earlier at [51]) were not before me at this stage. Nonetheless, it seemed very likely to me that neither party before me was being completely candid about what had transpired, what each of their deals involved, and what their precise motivations were to engage in numerous curious, circuitous arrangements, involving many millions of dollars with documents at times misstating quanta, at others times not even being documented (despite their obvious financial significance) and, at other times, being curiously "back-dated", without clear explanation. In the premises, it was hard not to conclude that none of the accounts placed before the court were wholly aligned (or even largely aligned) to the truth.

67 In saying this, I stress that I was not suggesting that the respective players in this case had not committed any wrong against Vivaz. It would be unsafe on the evidence before me presently to conclusively make such a

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122 19 May 2025 NEs at p 22 line 21.

123 1BOD at pp 118–120 (Transfer of loan agreement between Vivaz and TPC dated 31 December 2018); 19 May 2025 NEs at p 9 lines 11–15.

124 19 May 2025 NEs at p 8 lines 27–29, p 9 lines 30 – 32.

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determination. Indeed, I could see some hints on the facts supportive of Vivaz's case as Mr Lee's case was admittedly not without its own question marks.

68 I note, for completeness, that Vivaz made reference to the fact that it was undisputed that the necessary approvals for the disposal of the shares were done without the approval of the shareholders at a general meeting.[125] Even if this had been true, in my view, on these facts, this was at best of tangential relevance. This was because the issue before me was not whether the formalistic requirements under the law were followed, but whether Vivaz was aware of the Impugned Transaction at the material time. As I had explained to counsel for Vivaz during the oral hearing, if Vivaz was aware that the transactions were taking place at the time, then it would be beside the point for them to now belatedly take issue with the lack of procedural formalities to the very transactions they were complicit in accepting or otherwise agreeing to.[126]

69 I took the same position for the many contentions made by Vivaz in the evidence before me about possible breaches of duties and breaches of shareholders agreements – all of this may potentially have been correct depending on which version of facts I accepted, but if Vivaz was aware of such breaches at the time, and had no concerns at the time, then it would not lie in its mouth to claim that today, many years later, it should be given the right to lodge an action on behalf of the company on that very same basis: see *Tan Chun Chuen Malcolm v Beach Hotel Pte Ltd and another* [2023] 3 SLR 1312 ("*Tan Chun Chuen Malcolm*") (in which there was similarly knowing acceptance of certain alleged breaches for years, see [45]–[46]), and *Petroships Investment* (at [114]–[116]).

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125 CWS at paras 18–26; 19 May 2025 NEs at p 4 lines 20–25.

126 19 May 2025 NEs at p 4 lines 27–31.

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The existence of a clear sense of a collateral purpose

70 As was briefly mentioned at [29(b)] above, Mr Lee contended that Vivaz had brought OA 1330 for the collateral purposes of pressuring him into refunding moneys owed and for recouping losses from the deal it had struck with Threepohco in 2020, which ultimately fell through.

71 All in all, it was clear to me that there was a collateral purpose to this entire exercise. This application could not have been brought for the purpose of restoring value to the Company's shares when Vivaz itself had not been fully candid about the details *at the heart of this proposed derivative action*, *ie*, the details of the transactions which led to the Company diminishing in value. Failing to be candid about such foundational facts was precisely at the expense of the Company's interests (see *Jian Li Investments* at [47]).

72 To be clear, the fact that I have not assessed each of Vivaz's potential collateral motivations (as is conventionally done, see *Ang Thiam Swee* at [32]–[46]; *Syed Ibrahim* at [67]–[70]) is not a bar to finding that Vivaz had a collateral purpose in bringing this application. This was not a case where the question of Vivaz's knowledge was peripheral to the issues at hand, but instead it formed the pith of its entire complaint. In cases where the complainant's lack of candour and honesty go towards the very foundation of the proposed derivative action (which would have been in the interests of the company to pursue), a strong inference can be drawn from this finding alone that the complainant had pursued the application for a personal purpose at the expense of the company's interests. I say this because it would appear to me to be odd if a party is able to present to the court an account that is squarely at odds with the documentary evidence and to then demand that the court grants it powers to commence a derivative action on those very premises unless the court is able to identify what the underlying

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cancerous motivations of that party might be. The court is inevitably hamstrung from doing so because the complainant itself seeks to obscure the truth behind a veil (though, to be fair, on these facts, as I noted earlier, it was difficult not to conclude that both parties were not completely transparent about what was going on). In such circumstances, the clear sense of a collateral purpose, or indeed a compound of collateral purposes, necessarily meant that I could not say, on balance, that these proceedings were being taken in good faith.

73 I said this because a derivative action allows a shareholder to step into the shoes of the company, effectively overriding the collective judgment of the company. This power, while important for accountability, is also susceptible to abuse, particularly where a complainant harbours personal animosity or collateral motives. Complete disclosure, and an honest rendition of the facts as a complainant knows it, operates as an important check on such abuse. It ensures that complainants are not selectively painting a self-serving narrative of the key facts, but rather, coming to the court with clean hands and a genuine concern for the company's interests, and not their own. Seen in this context, the absence of clean hands, and a scepticism that the court has of a complainant's account that arises from an inability to explain away rather damning documentation rebutting their assertions of purported non-knowledge of disputed transactions that form the substratum of their complaint, can, as in this case, be critical to whether the application succeeds.

Vivaz's inordinate delay in making the s 216A application

74 As was briefly mentioned at [29(c)] above, Mr Lee contended that there had been an inordinate five-year delay between the time Vivaz became aware of the Impugned Transaction in or around 2019 to when it filed this s 216A application on 20 December 2024. Mr Lee contended that the inordinate delay

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suggested that Vivaz had brought the application for its own purposes and in bad faith.[127]

75 In *Tan Chun Chuen Malcolm* (at [45]–[48]), the court found that the plaintiff's inordinate four-year delay in taking out an s 216A application, in spite of the alleged seriousness of the problem to the company's interests, supported the finding that the plaintiff was not acting in good faith.

76 In the present case, the question of whether there had been an inordinate delay necessarily followed from whether I found that Vivaz had knowledge of the Impugned Transaction at the time, or at the latest, in 2019. If it did not (because it had not even known about the Impugned Transaction at the time), then there would be no question of an inordinate delay to begin with.

77 Nonetheless, given my findings at [34]–[35] above that it probably was aware of the Impugned Transaction, there was indeed an inordinate delay as Vivaz would have had knowledge of the Impugned Transaction at or around the time of the transaction in question but it elected not to file the s 216A application until more than five years later.

78 Therefore, I found that Vivaz had not acted in good faith in bringing this application due to its failure to come to court with utmost candour and honesty, the fact that it had brought this application for a collateral purpose at the expense of the Company's interests, and its inordinate delay in making the s 216A application.

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127 NPWS at paras 77–82.

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Whether the action was *prima facie* in the interests of the Company

79 For completeness, had I accepted Vivaz's version of events *in toto* and also accepted that Vivaz was truly in the dark about the transfers at the time such that they were acting in good faith, I would have held that the third requirement for leave to be granted for the bringing of a derivative action would be satisfied (*ie*, that it would *prima facie* be in the interests of the Company that the action be brought).

80 In determining whether the action was *prima facie* in the interests of the Company as is required under s 216A(3)(*c*) of the Companies Act, a complainant must pass the threshold test of proving that the company's claim would be legitimate and arguable: *Ang Thiam Swee* at [53]. The court "may also go further to examine whether it would be in the practical and commercial interests of the company for the action to be brought": *Syed Ibrahim* at [77], citing *Ang Thiam Swee* at [56]. The standard of proof required at this interlocutory stage is low: *Ang Thiam Swee* at [55].

81 I make two observations in this regard. First, I agreed with Vivaz that assuming their asserted case were true, there would have been a legitimate and arguable case, and it would have been in the practical and commercial interests of the Company for the action to be brought.[128] Based on Vivaz's case, the Company had been hollowed out of its value to the tune of many millions of dollars (in the form of the value of Hotel 228) without the knowledge of its shareholders, and in rather unfair circumstances without good consideration (ostensibly at least) and, in that sense, this would have been a matter for which

[128] CWS at paras 94–98.

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it was clear that there would be alignment between Vivaz's interest and the Company's interests.

82 Second, I was unable to accept Mr Lee's contention that it was not in the interests of the Company to have Vivaz commence the derivative action. Contrary to Mr Lee's submissions, I was of the view that in such a situation, there were few viable alternatives to an s 216A application. Mr Lee contended that it would have been open for Vivaz to effectively take over the Company by removing him as a director and appointing their own director. This was because between Vivaz and Galaxy, they held 55% of the shares in the Company.[129] With respect, Vivaz has claimed from the outset that, between itself and Galaxy, they would only have about 45% beneficial ownership. If I were to take Vivaz's case at face value, Vivaz would likely not have had a reasonable chance of changing the direction of the Company as a minority shareholder and of more carefully scrutinising the transactions. Even putting aside the matter of Galaxy's shareholdings, there would be the separate matter of whether Galaxy would have been supportive of any such moves by Vivaz (which itself appeared quite unlikely on the facts, given that Galaxy had apparently entered into a settlement in a separate claim against, *inter alia*, Mr Lee, involving related issues[130]).

Conclusion

83 As should be apparent from what I have articulated above (see in particular my comments at [51] and [66]), I had serious reservations all around about the veracity of the accounts given by the parties in the proceedings before me. Neither of their accounts aligned entirely with the documentary evidence

129 NPWS at paras 102–103.

130 4BOD at pp 14–29 (Originating Claim and Statement of Claim in HC/OC 59/2024 dated 22 January 2025); 6BOD at p 51 (LKHJ-3 at para 111).

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before me, and the nature of the transactions (and the dissonance between the documentation placed before me and the parties' version of events) raised real questions about what was going on behind the scenes. Nonetheless, as I explained earlier, the integrity of an application for leave to institute proceedings on a company's behalf rests on the candour of the applicant. Where a party, otherwise without standing, seeks to clothe itself with the company's authority to pursue alleged wrongdoing by others, it is that party who must most scrupulously come with clean hands. In this context, the perceived lack of transparency by others is tangential, and what the court is primarily concerned about is whether the party seeking what is indubitably an exceptional remedy comes to court with utmost candour and honesty. This is not a procedural formality but the very foundation upon which the court's discretion is invited to be exercised.

84 On the present facts, I am of the view that Vivaz had not made full and frank disclosure of the underlying circumstances in which it sought the relief it applied for. In particular, the evidence suggested that Vivaz knew far more about the true nature of the various transactions between the parties (including

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the Impugned Transaction) at the time of the transactions than it sought to persuade the court.

85 For the reasons above, I dismissed the application.

Mohamed Faizal
Judicial Commissioner

Tang Shangwei (Zheng Shangwei), Tian Warren, Neo Yi Ling (WongPartnership LLP) for the claimant;
Lim Alfred, Lye May-Yee Jaime, Tan Su (Meritus Law LLC) for the non-party.

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