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

[2025] SGHC 27

Bankruptcy No 2648 of 2018 (Summonses Nos 4314, 4315 and 4316 of 2022)

In the matter of the Bankruptcy Act (Cap. 20)

And

In the matter of Jannie Chan Siew Lee

Between

SME Care Pte Ltd

… *Plaintiff*

And

Jannie Chan Siew Lee

… *Defendant*

Originating Application No 797 of 2022

In the matter of Rule 198 of the Bankruptcy Rules (Cap. 20)

And

In the matter of The Estate in Bankruptcy of Jannie Chan Siew Lee

Between

Fulcrum Distressed Partners Limited

… *Claimant*

And

Yit Chee Wah
(Private Trustee of the Estate
of Jannie Chan Siew Lee, a
Bankrupt)

… *Respondent*

JUDGMENT

[Insolvency Law — Bankruptcy]
[Companies — Directors — Duties]

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SME Care Pte Ltd
v
Chan Siew Lee Jannie and another matter

[2025] SGHC 27

General Division of the High Court — Bankruptcy No 2648 of 2018 (Summonses Nos 4314, 4315 and 4316 of 2022) and Originating Application No 797 of 2022
Aidan Xu @ Aedit Abdullah J
24 July, 21, 28 August, 26 October 2023, 7 February, 28 August 2024

19 February 2025 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 This judgment relates to three separate applications. As these applications involve the same bankrupt and private trustee, I thought it was convenient and appropriate to deal with them in the same judgment. I was also concerned that an outcome in one application might point to issues in another, particularly as the bankrupt was acting on her own.

2 The first is an application in HC/SUM 4315/2022 ("SUM 4315") by the bankrupt to set aside the private trustee in bankruptcy's (the "PTIB") partial admission of a proof of debt filed by SME Care Pte Ltd ("SME"). While a number of assertions were made by the bankrupt, SME's proof of debt was founded on a consent judgment, flowing from a settlement agreement. I did not

consider it appropriate to go behind the consent judgment in the present case. Accordingly, I dismiss the bankrupt's application in SUM 4315.

3 The second and third applications are in respect of a proof of debt filed by Timor Global Pte Ltd ("TGPL") and pursued by Fulcrum Distressed Partners Limited ("FDPL"), the assignee of TGPL's debt. FDPL seeks to reverse the PTIB's rejection of two sums of the proof filed, while the bankrupt takes issue with two other parts of the proof accepted by the PTIB. The former forms the subject of HC/SUM 4314/2022 ("SUM 4314") and HC/OA 797/2022 ("OA 797"), while the latter forms the subject of HC/SUM 4316/2022 ("SUM 4316"). I have determined that FDPL succeeds in its application, but that the bankrupt fails in hers.

HC/SUM 4315/2022: The bankrupt's application to set aside SME's proof of debt

Facts

4 In 2012, a loan was obtained by JASC Pte Ltd ("JASC") from SME, a licenced money lender (the "Loan").[1] Ms Jannie Chan Siew Lee ("Ms Chan" or "the Bankrupt") was the sole director and shareholder of JASC. The Loan was secured by way of mortgages and a personal guarantee by Ms Chan.[2] The repayment date of the loan was extended thrice.[3] In 2014, JASC applied in OS 850/2014 ("OS 850") to set aside the loan agreement or to revise the interest rate under the Loan. OS 850 was heard on 23 March 2015. Chua Lee Ming JC

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1 1st Affidavit of Jannie Chan Siew Lee in HC/B 2648/2018 (HC/SUM 4315/2022) dated 29 November 2022 ("JC-1") at para 9; 1st Affidavit of Yit Chee Wah in HC/B 2648/2018 dated 10 January 2023 ("YCW-1") at para 8.

2 JC-1 at para 11; 1st Affidavit of Jannie Chan Siew Lee in OS 850/2014 dated 5 September 2014 at paras 5–7.

3 YCW-1 at para 11.

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did not set aside the loan but instead reopened the loan and revised the interest rate to 2.6% per month, the late interest rate to 5.2% per month and the late payment processing fee to $1,000 per month.[4]

5 Thereafter, JASC failed to make full repayment of the disbursed loan amount, outstanding late interest fees, late payment processing fees and extension fees.[5] In or around June 2007, SME sold the mortgaged properties.[6] In September 2016, SME brought a suit (HC/S 995/2016 ("Suit 995")) against Ms Chan to enforce the personal guarantee given by her. On 26 September 2017, a settlement agreement was entered into between SME and Ms Chan in respect of Suit 995 (the "Settlement Agreement").[7] Additionally, Ms Chan also signed a consent judgment, which SME could enter judgment for in the event of Ms Chan's breach of the Settlement Agreement.[8]

6 Ms Chan subsequently defaulted on the Settlement Agreement. SME brought an application for judgment to be entered against Ms Chan based on certain admissions in the Settlement Agreement. The Assistant Registrar (the "AR") dismissed the application and SME appealed. Choo Han Teck J dismissed SME's application, but gave liberty to enter a consent judgment (see *SME Care Pte Ltd v Chan Siew Lee Jannie* [2018] SGHC 96 ("*SME Care*") at [18]). In his decision, Choo J rejected the allegations made by Ms Chan about the settlement agreement being obtained by fraud or misrepresentation (*SME Care* at [16]). On 7 May 2018, consent judgment was entered against Ms Chan,

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4 HC/ORC 2593/2015.

5 Statement of Claim in HC/S 995/2016 dated 19 September 2016 at para 16; YCW-1 at para 19.

6 YCW-1 dated 10 January 2023 at para 21(b).

7 JC-1 at pp 40–55; YCW-1 at pp 624–647.

8 YCW-1 at p 636.

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ordering her to pay SME the sum of $2,150,000 plus interest accruing at 5.2% per month from 26 October 2017 until full payment of the sum of $2,150,000 (the "Consent Judgment").[9]

7 This was followed by a bankruptcy order being made against Ms Chan on 27 May 2019.[10] On 26 July 2019, SME filed its proof of debt claiming the total sum of $5,925,885.51, comprising the principal amount of $2,150,000 and accrued interest amounting to $3,775,885.51.[11] On 9 June 2022, Mr Yit Chee Wah ("Mr Yit" or the "PTIB") was appointed as the private trustee in bankruptcy of the Bankrupt's estate, in place of the Official Assignee.[12] On 28 February 2022, the PTIB invited the Bankrupt to express her position in writing regarding SME's proof of debt, which she provided by way of a letter dated 23 March 2022.[13] Although the PTIB considered the Bankrupt's objections to SME's proof of debt, he took the view that her objections were largely without merit, and admitted $4,274,200 of SME's proof.[14] The remaining sum was rejected on the basis that interest should have been calculated on a simple interest basis as opposed to a compound interest basis.[15] The Bankrupt subsequently brought an application, by way of SUM 4315, asking the court to reverse the PTIB's partial admission of SME's proof of debt.[16]

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9 YCW-1 at para 36.

10 HC/ORC 3909/2019.

11 YCW-1 at para 4(a).

12 YCW-1 at para 43; JC-1 at para 22.

13 YCW-1 at para 46.

14 YCW-1 at paras 4(b) and 46.

15 YCW-1 at para 4(b)(ii).

16 HC/SUM 4315/2022.

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The parties' arguments

8 A number of allegations were raised by the Bankrupt against SME's proof of debt. The Bankrupt took issue with the Loan itself, the Settlement Agreement and the entry of the Consent Judgment. She argued that the interest rate under the Loan was exorbitant and that the moneylending transaction was extortionate.[17] As the PTIB did not reopen the moneylending transaction in respect of the Loan even though the Loan was unconscionable or substantially unfair, the PTIB had not applied his mind to the claim and failed to fully carry out his duties.[18] As for the Settlement Agreement, the Bankrupt claimed that she was put under pressure to sign the agreement, and seemed to allege some form of undue influence or misrepresentation, and possibly fraud.[19] These allegations were made at some length in various documents and orally.

9 SME submits that all the issues raised by the Bankrupt have been dealt with in *SME Care* and in the PTIB's adjudication.[20] SME contends that its proof of debt is premised on the Consent Judgment, and that the PTIB has in fact gone behind the Consent Judgment and provided the Bankrupt an opportunity to elaborate on her objections, but ultimately concluded that the proof of debt should be admitted.[21]

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17 JC-1 at paras 64–80.

18 JC-1 at paras 87–89.

19 JC-1 at paras 55–57 and 61–63.

20 HC/SUM 4315/2022 Plaintiff's Written Submissions dated 17 July 2023 at paras 10 and 18.

21 HC/SUM 4315/2022 Plaintiff's Written Submissions dated 17 July 2023 at para 19.

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10 The PTIB submits that there is no reason to doubt the validity of SME's claim which is based on the Consent Judgment.[22] The PTIB had in fact gone behind the proof of debt, but concluded that there was nothing to suggest that the Settlement Agreement and/or the Consent Judgment should have been invalidated,[23] it was not based on an "extortionate credit transaction" as alleged by the Bankrupt,[24] and the Loan did not have excessive interest rates and was not unconscionable or substantially unfair.[25] Having considered all the background facts, the PTIB found that the Loan, subject to the new interest rate imposed by the court in OS 850, was valid.[26]

The applicable principles regarding the administration of a bankruptcy estate

11 Before I turn to consider the main application in SUM 4315, I briefly outline the applicable principles and procedures in the administration of a bankruptcy estate. This is the appropriate juncture to do so, given that all the applications sit within this context.

12 On the making of a bankruptcy order, the property of the bankrupt vests in the Official Assignee and becomes divisible among his creditors (s 76 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) (the "Bankruptcy Act")). The court may

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22 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at para 4.

23 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at para 40.

24 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at paras 15–32.

25 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at paras 41–45.

26 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at para 59.

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appoint a person other than the Official Assignee to be the trustee of the bankrupt's estate, and such trustee has all the functions and duties of the Official Assignee in relation to the conduct of a bankrupt and the administration of his estate as provided in the Bankruptcy Act, subject to ss 36(3) and 39 (ss 33 and 36(1) of the Bankruptcy Act).

13 Section 87 of the Bankruptcy Act sets out a description of provable debts in a bankruptcy which may be claimed against the bankrupt's estate. Section 87 provides that "[d]emands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy". Rule 174(1) of the Bankruptcy Rules (Cap 20, R1, 2006 Rev Ed) (the "Bankruptcy Rules") then stipulates that every creditor must prove his debt within three months after the making of a bankruptcy order, and details the appropriate procedures for proof. It is uncontroversial that a creditor bears the burden of proving the debt on a balance of probabilities, and that the trustee in bankruptcy (where applicable) is reposed with the duty of examining the proof of debt and determining whether to admit or reject it (*Fustar Chemicals Ltd v Ong Soo Hwa (liquidator of Fustar Chemicals Pte Ltd)* [2009] 1 SLR(R) 844 ("*Fustar (HC)*") at [33]).

14 The relevant principles for a private trustee's adjudication of proofs of debt can be readily transposed from those applied to liquidators. These principles have been articulated in the decision of the Court of Appeal in *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar (CA)*"). In sum, the private trustee must assess every proof of debt lodged and may call for further evidence in support of the claim (*Fustar (CA)* at [13]). The private trustee has to ensure that the assets of the bankrupt's estate are only distributed to creditors who have debts that have been genuinely created and remain legally due, and he has extensive powers to go

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behind documents – including re-evaluating judgments and compromise agreements – to ensure that the debts are genuine. Nonetheless, he must have a reasonable basis to query a debt which appears to be genuine (*Fustar (CA)* at [20]). In summary, the private trustee has a duty to scrutinise all proofs of debt, but the degree of scrutiny required ultimately depends on the circumstances of the case (*Fustar (CA)* at [21]).

15 If the private trustee in bankruptcy rejects a creditor's proof of debt, and the creditor is dissatisfied with this decision, r 198(1) of the Bankruptcy Rules provides that "the court may, on the application of the creditor, reverse or vary the decision of the … trustee". The court, hearing an appeal against the private trustee's rejection of a proof of debt, applies the same rules as those applied to liquidators (*Keay's Insolvency: Personal and Corporate Law and Practice* (Thomson Reuters, 10th Ed, 2018) at pp 602–603). The court is to undertake a *de novo* review of the validity of the proof of debt (*Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 483 at [15]).

The Decision

16 The various complaints made by the Bankrupt generally go towards challenging the basis of the underlying claim (*ie*, the Loan) and the Settlement Agreement. However, the proof of debt was founded on the Consent Judgment, which remained valid and subsisting. A consent order is binding until it is set aside (*Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252 at [23]). Fresh proceedings must be commenced to set aside a consent order, and such a consent order or judgment "cannot be set aside save for exceptional reasons" (*Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [18]). The court will generally not interfere to set aside a

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consent order or judgment otherwise than in a fresh action brought to set aside such a judgment on grounds of fraud or other grounds undermining the agreement (*Bakery Mart Pte Ltd v Ng Wei Teck Michael and others* [2005] 1 SLR(R) 28 at [11]).

17 Nonetheless, in the specific context of the adjudication of proofs of debt, insolvency officeholders who are reposed with the duty of examining the validity of proofs of debt are vested with extensive powers to go behind documents, and even judgments and compromise agreements can be re-evaluated to ensure that the debts are genuine (see above at [14], referring to *Fustar (CA)* at [20]). This view was also adopted in the English High Court decision of *Re Menastar Finance Ltd (in liquidation), Menastar Ltd v Simon* [2003] 1 BCLC 338 ("*Re Menastar*"). In *Re Menastar*, the English High Court held that when considering whether to admit a creditor's proof based on a judgment debt, the court can in appropriate circumstances go behind the judgment to see whether the debt is truly due (*Re Menastar* at [43]). This is justified on the basis that the distribution of the estate should be among its just and proper creditors (*Re Menastar* at [53]). However, the court "will not, as a matter of course, look behind every judgment debt and consider afresh the validity of the debt" (*Re Menastar* at [48]). Generally, what is required for the court to go behind a judgment in order to examine the validity of the creditor's proof is the existence of some fraud, collusion or miscarriage of justice (*Re Menastar* at [49]). Although the decision in *Re Menastar* related specifically to judgment debts, I did not see why the same principles could not be equally applicable to consent judgments.

18 In my view, the PTIB would be justified in not going behind the Consent Judgment. This is because there was nothing raised which would suggest some kind of fraud, collusion or miscarriage of justice with the Consent Judgment.

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The Bankrupt's allegations that she had been fraudulently deceived by SME into signing the Settlement Agreement had already been canvassed before the court in *SME Care*. In that decision, Choo J stated (at [16]):

> The defendant also raised various other grounds. One was that 'the Settlement Agreement was induced by fraud and/or misrepresentation'. This would have been a strong ground to refuse the plaintiff's application, but the defendant has not produce[d] any detail as to what that fraud or misrepresentation was that induced her to sign the agreement. … This is therefore not an argument I can give any consideration to; one cannot expect the court to refuse an application such as this merely by crying 'fraud'. One needs to plead the details of the fraud. …

19 In the present application, the Bankrupt has only further stated in her affidavit that when she was asked to sign the Settlement Agreement and the draft consent judgment, she was "very desperate to raise the sum of $150,000" and that SME had "prevailed on [her]" to sign the documents. She then "signed without reading the contents or having been given a prior explanation of the contents of the document" and that she was "not legally represented at that time".[27] There was nothing in this state of affairs that pointed to any fraud, undue influence and/or misrepresentation.

20 In any event, the PTIB had gone behind the Consent Judgment to consider the validity of SME's claim. There was also nothing to suggest that SME's proof should be invalidated. There was nothing extortionate or illegal about the terms of the Loan. Firstly, although the Bankrupt had relied on s 103(3) of the Bankruptcy Act to support her argument that the Loan was extortionate, s 103 only applies "where a person who is adjudged bankrupt is or has been a party to a transaction for or *involving the provision to him of credit*" [emphasis added]. As the Loan was between SME and JASC, with the Bankrupt

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[27] JC-1 at paras 61–63.

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as a guarantor, s 103(1) does not apply in the present case. In any event, even if s 103(1) was applicable, the Loan would not be extortionate. As submitted by the PTIB, the reasonableness of the interest rate under the Loan had already been considered by the court in OS 850.[28] Secondly, the Bankrupt's submission that there is an "illegality" arising from the imposition of compound interest fails. This is because the PTIB had in fact rejected SME's claim as regards the compound interest calculation, and admitted the claim based on a simple interest calculation instead.[29] If the Bankrupt's position is that it is the computation of interest pursuant to the underlying Loan transaction that is the issue, then this argument can also be dismissed on the basis that s 12(2)(*b*) of the Civil Law Act 1909 (2020 Rev Ed) allows for interest to be made payable as of right pursuant to any agreement (*MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] 2 SLR 837 at [78]), and that s 12(2)(*b*) does not act as a bar against the grant of compound interest *per se* (see, *eg*, *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2009] 2 SLR(R) 385 at [128]). Thirdly, there was also nothing to suggest that the Loan was unconscionable or substantially unfair such that it fell within the meaning of s 37(1) of the Moneylenders Act 2008 (2020 Rev Ed) (the "Moneylenders Act") as suggested by the Bankrupt.

21 SME also did not breach the Bankruptcy Rules in submitting the proof of debt. I agreed with the PTIB's submissions in this regard.[30] SME had either complied with the rules cited by the Bankrupt, or the rules relied upon were

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28 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at para 26.

29 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at para 34(c).

30 HC/SUM 4315/2022 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 17 July 2023 at paras 46–57.

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inapplicable to the present situation where SME's proof is predicated on the Consent Judgment as opposed to the Loan agreement itself.

22 For the foregoing reasons, I considered that it was not necessary for the court to go behind the Consent Judgment, and that even if the court were to do so, there is nothing to suggest that SME's claim (as admitted) is invalid. I hasten to add that ample opportunity was given to the Bankrupt to set aside the Consent Judgment. On numerous occasions, the court told her this was to be done – in fact, it was a point that was raised to the Bankrupt at every appearance by her in this court. The Bankrupt's application in SUM 4315 is thus dismissed and cost orders may be made.

HC/OA 797/2022, HC/SUM 4314/2022 and HC/SUM 4316: TGPL's proof of debt

23 I turn to consider OA 797, SUM 4314 and SUM 4316. These applications gave me more pause, primarily in relation to the characteristics of the claim, and the overlap with the decision of *Re Medora Xerxes Jamshid (in his capacity as the private trustee in bankruptcy of Tan Han Meng) (Planar One & Associates Pte Ltd (in liquidation, non-party)* [2024] 5 SLR 1006 ("*Re Medora Xerxes*").

24 These applications arise from a dispute regarding the proof of debt filed by TGPL against the Bankrupt's estate. On or around 14 October 2019, TGPL filed a proof of debt. Subsequently, on or around 1 April 2022, TGPL filed a revised proof of debt for the sum of S$18,413,260 and US$2,301,767.[31] Although the amounts claimed in the revised proof were different from the

[31] Claimant's Bundle of Documents (Volume I of VIII) dated 14 August 2023 ("CBOD Vol 1") at pp 79–81.

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amounts claimed in the original proof, as the amounts claimed appeared to be based on essentially the same claims, the PTIB considered that there was a variation of the original proof within the meaning of r 199 of the Bankruptcy Rules.[32]

25 On 2 November 2022, the PTIB admitted S$2,632,785.68 of TGPL's proof of debt against the Bankrupt's estate.[33] TGPL has since assigned its claim to FDPL.[34] FDPL brought an application to reverse the PTIB's decision to reject two parts of TGPL's proof of debt, which are referred to as the "TL Sum" and the "Finished Goods Sum". There was some confusion as to whether filing an originating application or a summons was the appropriate procedure for such an application, resulting in FDPL filing both OA 797 and SUM 4314, although they essentially relate to the same application by FDPL to reverse the PTIB's decision to reject the TL Sum and the Finished Goods Sum.[35] The Bankrupt has also filed SUM 4316 to contest the admission of two other portions of TGPL's proof of debt, namely, what is referred to as the "Jannie Sum" and the "Purported Repayment".

Facts

26 TGPL was incorporated in Singapore on 16 February 2005,[36] and was placed into compulsory liquidation on 2 March 2018.[37] The Bankrupt served as a director of TGPL from its incorporation until its entry into liquidation. From

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32 Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 14 August 2023 ("PTIB's WS") at paras 127–129.

33 PTIB's WS at para 1.

34 CBOD Vol 1 at pp 72–73.

35 Claimant's Written Submissions dated 14 August 2023 ("CWS") at paras 19–21.

36 CWS at para 3; CBOD Vol I at p 12 para 10.

37 CWS at para 3.

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the time of TGPL's incorporation until around 15 August 2016, the Bankrupt, Mr Lay Ni Suig Bobby ("Mr Lay") and Mr Tan Tjo Tek ("Mr Tan") were the directors of TGPL. Mr Tan resigned on 15 August 2016 and the Bankrupt and Mr Lay remained TGPL's two directors.[38] The Bankrupt was also TGPL's sole shareholder since its incorporation.[39]

27 The Bankrupt was also a 70% shareholder of Timor Global (TL) Pte Ltd ("TL"), a company registered in Timor Leste.[40] Different names have been used to refer to TL in various documents. Mr Lay is the sole director of TL.[41]

28 In the course of its operations, on 1 July 2007, TGPL entered into a joint venture agreement with TL and another company, Intraco Trading Pte Ltd ("Intraco"), for the trading and processing of coffee beans (the "2007 JV Agreement").[42] Under the terms of the 2007 JV Agreement, Intraco agreed and undertook to procure processed coffee beans from TL.[43] Intraco would make advance payment of the purchase price for the processed coffee beans to TL,[44] which was extended to TL for the purpose of purchasing raw materials. Intraco would then resell the processed coffee beans procured from TL to TGPL (which agreed to purchase the same from Intraco).[45] Thereafter,

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38 CBOD Vol 1 at pp 12–13 para 10.

39 CBOD Vol 1 at pp 12–13 para 10.

40 CBOD Vol 1 at p 13 para 11.

41 CBOD Vol 1 at p 13 para 11.

42 CBOD Vol 1 at p 13 para 12.

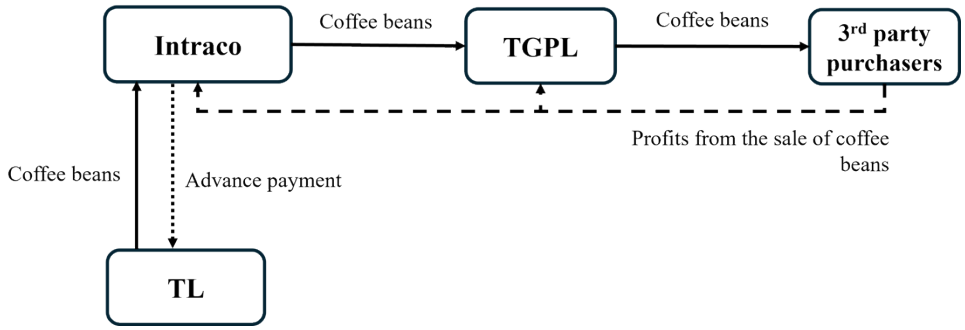
43 Claimant's Bundle of Documents (Volume IV of VIII) dated 14 August 2023 ("CBOD Vol 4") at p 181 cl 1.3.1.

44 CBOD Vol 4 at p 181 cls 3.1 and 3.2A.

45 CBOD Vol 4 at p 182 cl 4.1.

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TGPL would market and sell the coffee beans to third-party buyers,[46] and the gross profit from the sale of coffee beans would be split according to a pre-arranged formula of either: (a) 60:40 between TGPL and Intraco respectively for a gross profit of up to US$770,040; or (b) 70:30 between TGPL and Intraco respectively for a gross profit above US$770,040.[47] An illustration of the arrangement under the 2007 JV Agreement is set out below:



29 In 2008, TGPL defaulted on a payment of S$2,818,589 due to Intraco under the 2007 JV Agreement.[48] On or around 23 September 2009, Intraco commenced arbitration proceedings against both TGPL and TL (the "Arbitration"). On 21 September 2010, Intraco reached a settlement with TL, but continued to pursue its claims against TGPL.[49] Intraco subsequently obtained two arbitration awards of S$6,635,566.93 and S$3,630,001.74 against TGPL on 10 March 2015 and 26 November 2015 respectively.[50] In April 2015, Intraco obtained leave from the General Division of the High Court to enforce one of the awards as an order of court and took out examination of judgment

46 CBOD Vol 4 at p 182 cl 5.2.

47 CBOD Vol 4 at pp 182–183 cl 5.3; PTIB's WS at para 72.

48 CBOD Vol 1 at p 14 para 13.

49 CBOD Vol 1 at p 14 para 13.

50 CBOD Vol 1 at p 14 para 14.

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debtor proceedings against TGPL (the "EJD Proceedings"). During the EJD Proceedings, the Bankrupt was personally examined in court.[51] Subsequently, Intraco brought winding up proceedings against TGPL for the total sum of S$9,803,960.66.[52] TGPL was wound up on 2 March 2018.[53]

30 On 27 May 2019, a bankruptcy order was made against the Bankrupt. TGPL subsequently filed a proof of debt for the sum of S$18,413,260 and US$2,301,767 against the Bankrupt's estate. Four sums, arising from TGPL's proof of debt, are in dispute. These are: (a) the TL Sum; (b) the Finished Goods Sum; (c) the Jannie Sum; and (d) the Purported Repayment. A summary of the nature of these claims is as follows.

31 The TL Sum refers to a sum of S$15,766,459.98, which was recorded as the total receivables due from TL to TGPL as of 31 December 2014.[54] This sum arises from various transfers from TGPL to TL and payments made by TGPL on TL's behalf which constitute a purported breach of the Bankrupt's fiduciary duties. There are three main components of the TL Sum:[55]

(a) First, the sum of S$8,142,398.70, which arises from transfers made by TGPL to TL in 2007 (the "2007 Payments"). FDPL argues that these transfers were loans extended by TGPL to TL for no commercial benefit, and that in allowing TGPL to extend these loans to TL, not pursuing repayment of them and subsequently writing down the amount due in 2015, the Bankrupt had breached her fiduciary duties owed to

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51 CWS at para 11.

52 CBOD Vol 1 at p 14 para 14.

53 CBOD Vol 1 at p 70.

54 CWS at para 5.

55 PTIB's WS at para 67.

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TGPL. On the other hand, the PTIB argues that these payments were made pursuant to the 2007 JV Agreement and were, therefore, for a legitimate commercial purpose. Further, the claim for the 2007 Payments was rightly rejected as the claim was time-barred.

(b) Second, the sum of S$6,662,009.44, which is the amount due from TL to TGPL as of 31 December 2006 (the "Opening Balance"). FDPL submits that this sum is also a loan extended by TGPL to TL for no commercial benefit, and that the Bankrupt had also breached her fiduciary duties in respect of this sum. The PTIB instead contends that FDPL failed to prove any wrongdoing by the Bankrupt and that a claim for the Opening Balance is time-barred.

(c) Third, the sum of S$962,051.84, which relates to payments made by TGPL for TL's operating expenses (the "Operating Expenses"). FDPL similarly contends that this sum was disbursed to TL in breach of the Bankrupt's fiduciary duties. The PTIB's main contention is that any claims for these expenses are time-barred.

Although there appears to be some minor discrepancies in the figures used by the PTIB and FDPL in relation to each of the specific components,[56] I adopt the figures used by FDPL for the present purposes.

32 The Finished Goods Sum refers to S$3,161,247.39 in sales proceeds from coffee beans sold by TGPL in 2008, which were transferred directly by TGPL's end-buyers to TL between 19 June 2008 and 14 November 2008, which FDPL says is a breach of the Bankrupt's fiduciary duties. These transfers were

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[56] In the PTIB's calculations, the Opening Balance sum is estimated as S$6,662,000 and the Operating Expenses sum is estimated as S$962,061.30; PTIB's WS at para 67.

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in contravention of the terms of the 2007 JV Agreement, which provided for the sales proceeds of coffee beans to be paid to TGPL.[57] The PTIB rejected the claim for the Finished Goods Sum on the basis that FDPL had failed to demonstrate that the Bankrupt had knowledge of the diversion of the funds and that the claim was time-barred.[58] Instead, FDPL argues that the Bankrupt, as the director of TGPL and a majority shareholder of TL, must have been aware of the fund diversion.[59]

33 The Jannie Sum pertains to a claim of S$1,355,985.68, which relates to receivables from third parties recorded in TGPL's books and records that were allegedly "assumed" or "taken over" by the Bankrupt without justification.[60] The Purported Repayment refers to a sum of S$1,276,800 paid from TGPL's bank account to the Bankrupt in August 2007. The PTIB admitted both the Jannie Sum and the Purported Repayment, finding sufficient evidence that the Bankrupt had breached her custodial duties to TGPL. The Bankrupt contests the admission of these claims and argues that the assumption of the receivables and the repayment of the purported loan were not wrongful.

Issues

34 The issues arising for this court's determination are:

(a) Whether the claims for the TL Sum and the Finished Goods Sum should be admitted. Three sub-issues arise from this:

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57 PTIB's WS at para 96.

58 PTIB's WS at paras 99 and 105.

59 CWS at para 67.

60 CWS at para 70; PTIB's WS at para 23.

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(i) First, in so far as the TL Sum and the Finished Goods Sum are claims predicated on the Bankrupt's purported breaches of fiduciary duties, whether they are provable debts.

(ii) Second, whether FDPL has satisfied its burden of proving the claims for the TL Sum and the Finished Goods Sum.

(iii) Third, whether the claims for the TL Sum and the Finished Goods Sum are time-barred.

(b) Whether the PTIB had rightly admitted the claims for the Jannie Sum and the Purported Repayment.

Whether the claims for the TL Sum and the Finished Goods Sum should be admitted

Whether the TL Sum and the Finished Goods Sum are provable debts

35 The basis of both the TL Sum and the Finished Goods Sum is the Bankrupt's purported breaches of fiduciary duties. The PTIB argues that only custodial breaches of fiduciary duty, which give rise to an obligation to make restitution, are provable debts.[61] Accordingly, the PTIB submits that the TL Sum and the Finished Goods Sum do not give rise to debts which are provable in bankruptcy.[62] FDPL takes the converse position that non-custodial breaches of fiduciary duty are also provable.[63]

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61 PTIB's WS at para 21.

62 PTIB's WS at para 65.

63 CWS at para 58.

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36 Following my decision in *Re Medora Xerxes*, I invited both parties to file further submissions on the implications of that decision for the present case. It is common ground between FDPL and the PTIB that, given the decision in *Re Medora Xerxes*, a claim for breach of fiduciary duty is provable as an unliquidated claim arising by breach of trust.[64] I do not propose to repeat what was examined in *Re Medora Xerxes*. It suffices for me to summarise the main points as follows:

(a) A plain reading of s 87 of the Bankruptcy Act provides that in order for a claim against a bankrupt to be provable, it must be in the nature of: (i) a liquidated claim under s 87(1); or (ii) an unliquidated claim arising by reason of one of the following categories of legal events stated in s 87(3): (A) contract; (B) promise; (C) breach of trust; (D) tort; (E) bailment; or (F) an obligation to make restitution (*Re Medora Xerxes* at [33]).

(b) The Australian authorities are generally in concurrence that a claim for breach of fiduciary duty is a provable debt in bankruptcy, but differ in their characterisation of the nature of such a claim (*Re Medora Xerxes* at [35]).

(c) A claim for breach of fiduciary duty is a provable claim in bankruptcy as an unliquidated claim arising by reason of a breach of trust under s 87(3) of the Bankruptcy Act (*Re Medora Xerxes* at [38]). There is a well-established analogy between fiduciary and trust relationships (*Re Medora Xerxes* at [38]–[44]). The *raison d'être* of the bankruptcy regime of enabling a bankrupt to obtain a fresh start warrants

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64 Supplemental Written Submissions of the Private Trustee in Bankruptcy of the Defendant dated 21 August 2024 at paras 9–11.

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an expansive reading of the scope of provable debts in bankruptcy, and accordingly, an expansive reading of a "breach of trust" under s 87(3) of the Bankruptcy Act (*Re Medora Xerxes* at [45]–[48]).

(d) A claim for breach of fiduciary duty is not a provable claim in bankruptcy as a liquidated claim under s 87(1) of the Bankruptcy Act because a claim for breach of fiduciary duty remains an unascertained quantum until liquidated by, and on the date of, the court's judgment (*Re Medora Xerxes* at [54]–[61]). A claim for breach of fiduciary duty is also not provable as an unliquidated claim arising by reason of contract or as an obligation to make restitution (*Re Medora Xerxes* at [65] and [72]–[75]).

(e) There is no general prohibition against resolving a claim for breach of fiduciary duty through the proof of debt regime (*Re Medora Xerxes* at [78]–[80]). Whether such a claim can or should be resolved through the proof of debt regime is ultimately a matter to be decided based on the specific case and claim at hand. In so determining, an important consideration would be the complexity of the claim. Other relevant considerations are the principles governing applications for leave to commence an action against a bankrupt or a company in insolvent liquidation (*Re Medora Xerxes* at [81]–[85]).

37 Applying the principles in *Re Medora Xerxes*, the TL Sum and the Finished Goods Sum are provable debts. Additionally, both FDPL and the PTIB did not take the view that it was inappropriate for the claims to be resolved under the proof of debt regime. Therefore, I turn to consider whether the claims were sufficiently proven by FDPL.

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Whether the claim for the TL Sum should be admitted

38 The PTIB submits that the claim for the TL Sum was rightly rejected. The PTIB disagreed with FDPL's characterisation of the entire TL Sum as "loans" from TGPL to TL. Instead, the PTIB contends that some of the payments were in the nature of "fund transfers", made pursuant to a legitimate commercial purpose.[65] The PTIB's main contentions against the TL Sum are as follows:

(a) First, the 2007 Payments were likely to have been made for a legitimate commercial purpose, namely, for TGPL and TL to give effect to the terms of the 2007 JV Agreement.[66] Thus, the Bankrupt had not breached her duties to TGPL in facilitating the payments.[67] In any event, the claim for the 2007 Payments was time-barred.[68]

(b) Second, FDPL has not proven that the Bankrupt had breached her fiduciary duties in respect of the Opening Balance.[69] There was no evidence to suggest anything improper about the Opening Balance payments, and it was probable that "at least some of the transfers could have been explained on the basis of a contractual agreement between Intraco, TGPL and TL which was similar to the 2007 JV Agreement", such as a possible 2006 joint venture agreement ("2006 JV

65 PTIB's WS at para 69.

66 PTIB's WS at paras 71 and 74.

67 PTIB's WS at para 75.

68 PTIB's WS at para 77.

69 PTIB's WS at para 78.

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Agreement").[70] The claim in respect of the Opening Balance was also time-barred.[71]

(c) Third, a claim for the Operating Expenses was time-barred.[72]

39 FDPL submits that the claim for the TL Sum should be admitted. The TL Sum represents genuine debts owed by TL to TGPL, as evidenced by the Bankrupt's own admissions and TGPL's financial statements.[73] The Bankrupt had breached her fiduciary duties by causing TGPL to loan large sums of money to TL with little or no benefit to TGPL, did nothing to recover the same, and subsequently wrote down the receivables due from TL to TGPL.[74] According to FDPL, the Bankrupt had breached her duty to act *bona fide* in the interest of the company, as well as the no-conflict rule, the no-profit rule and the rule against self-dealing.[75] Specific to the Opening Balance, there is no evidence of a purported 2006 JV Agreement. Furthermore, as the receivables due from TL stood at around S$3,111,473.32 as at 31 December 2005, an alleged 2006 JV Agreement does not sufficiently explain the Opening Balance sum.[76] Finally, FDPL submits that the claims were not time-barred because in a claim for a breach of director's duties, the cause of action accrues for limitation purposes only when the breach crystallises.[77] Alternatively, the exceptions to limitation

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70 PTIB's WS at para 81; Claimant's Bundle of Documents (Volume VIII of VIII) dated 14 August 2023 ("CBOD Vol 8") at pp 242–243 at para 83.

71 PTIB's WS at para 85.

72 PTIB's WS at paras 91–94.

73 CWS at paras 30–32.

74 CWS at para 43; Notes of Evidence dated 21 August 2023 at page 6 lines 1 to 17.

75 CWS at paras 38–48.

76 CWS at para 15.

77 CWS at para 16.

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under ss 22(1)(*a*) and 29(1)(*a*) of the Limitation Act 1959 (2020 Rev Ed) (the "Limitation Act") are applicable.[78]

(1) The 2007 Payments

40 The PTIB's position is that the 2007 Payments were possibly made pursuant to a variation of the 2007 JV Agreement. This is because between 31 July 2007 and 17 October 2007, Intraco had made payments to TGPL totalling S$8,638,389.92.[79] Around the time the incoming payments were received, TGPL made outgoing payments of S$8,142,398.70 (*ie*, the 2007 Payments) to TL.[80] The PTIB takes the view that TL had directed Intraco to make the advance raw payments under the 2007 JV Agreement to TGPL (instead of TL), which TGPL then paid out to TL in the form of the 2007 Payments. Accordingly, TL was legally entitled to receive the 2007 Payments under the 2007 JV Agreement, and the transactions were not loans extended by TGPL to TL that TL would have to repay.[81] The Bankrupt therefore did not breach her fiduciary duties in disbursing the 2007 Payments to TL. If this was so, then there was also no "debt" due and owing from TL to TGPL, and the Bankrupt did not breach her fiduciary duties in not seeking repayment of the 2007 Payments and subsequently writing down the amount.

41 FDPL instead submits that the entire TL Sum, including the 2007 Payments, was recorded as a "receivable" owed by TL.[82] This is further supported by the Bankrupt's own admissions in the EJD Proceedings that the

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78 CWS at paras 61–66.

79 CBOD Vol 1 at p 126 para 84.

80 CBOD Vol 1 at p 128 para 86.

81 PTIB's WS at para 69(a).

82 CWS at para 5.

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TL Sum was a genuine debt owed by TL to TGPL.[83] As the Bankrupt caused TGPL to loan large amounts to TL with little or no benefit to TGPL, and did nothing to recover the loan amounts even as TGPL fell into insolvency, the Bankrupt was in breach of her fiduciary duties.[84] In any event, the commercial *bona fides* of how the TL Sum came to be incurred are immaterial as FDPL's claim was for a director's breach of fiduciary duties in relation to the Bankrupt's subsequent failure to recover the debts arising from the business transactions.[85]

(A) WHETHER THE 2007 PAYMENTS CAN BE EXPLAINED BY THE 2007 JV AGREEMENT

42 At the outset, it is crucial to determine if the 2007 Payments can be attributed to the 2007 JV Agreement. This is because if the 2007 Payments were simply a manner of routing the advance raw material payments due from Intraco to TL through TGPL, and thus paid to TL pursuant to the 2007 JV Agreement, then there would be no debt due and owing from TL to TGPL. In that scenario, the Bankrupt will not have breached any of her fiduciary duties in either extending the payments or failing to seek repayment for them.

43 In my view, there is sufficient evidence that the 2007 Payments are debts due and owing from TL to TGPL. Firstly, the 2007 Payments were recorded as "related party receivables" or "amounts due from related parties" in TGPL's management accounts and financial statements.[86] The PTIB alleges that this is inconclusive because "[f]rom an accounting perspective, transfers by TGPL to TL could be recorded as 'receivables' even if the payments were not actually

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83 CWS at para 31.

84 CWS at paras 43–48.

85 CWS at para 42.

86 CBOD Vol 1 at p 112 para 47.

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loans".[87] It may be that such "receivables" may not exactly be in the nature of loans, but what is clear is that the very definition of a receivable necessarily connotes a debt due and owing to the company. For example, *Black's Law Dictionary* (Bryan A. Garner ed) (Thomson Reuters, 11th Ed, 2019) ("*Black's Law Dictionary*") defines a "receivable" as "[a]n amount owed, esp. by a business's customer" (at p 1522), and an "account receivable" as "[a]n account reflecting *a balance owed by a debtor*; a debt owed by a customer to an enterprise for goods or services" [emphasis added] (at p 21). The PTIB has not provided any justification for why a recorded "receivable" should not be interpreted in its ordinary meaning in an accounting context.[88] If the 2007 Payments were indeed made pursuant to the 2007 JV Agreement and TGPL was legally obliged to pay TL those sums, it would be inconsistent for TGPL to record the 2007 Payments as "receivables" on TGPL's books. It may be that amounts are recorded as a receivable when no money is due from the company, but that would be the result of some kind of fraud or error, instead of what one would expect to occur in proper accounting records. Thus, the fact that the 2007 Payments were recorded as receivables in TGPL's financial records indicates that they are debts due and owing from TL to TGPL.

44 Secondly, during the EJD Proceedings, the Bankrupt testified on affidavit that "in 2013, [TGPL] had *lent* [TL] various monies over the years" and that the "total amount *owing* [*from* TL] is [S$]15,343,006.93" [emphasis added].[89] The amount of S$15,343,006.93 corresponds to the amount of receivables due from TL as recorded in TGPL's books as of 2013,[90] and is

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87 PTIB's WS at para 69.

88 CBOD Vol 8 at p 237 para 67.

89 CBOD Vol 1 at p 346; Claimant's Bundle of Documents (Volume II of VIII) dated 14 August 2023 ("CBOD Vol 2") at p 559.

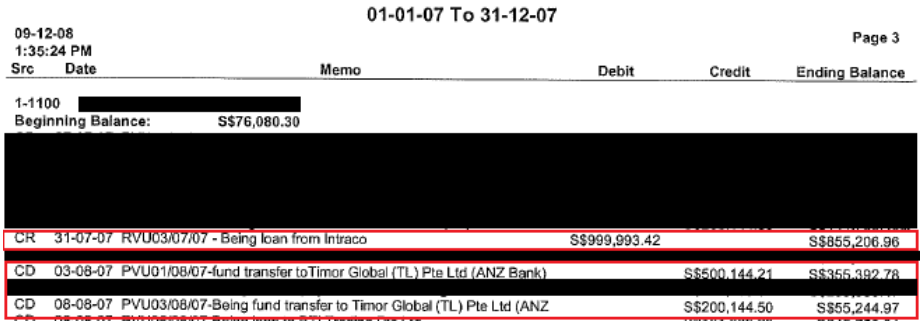
90 CBOD Vol 1 at p 112 para 47.

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inclusive of the 2007 Payments. The Bankrupt had also provided specific details about the nature of the purported loans, namely, that it was a "cash loan" as opposed to a lump-sum loan,[91] "secured by a director, interest free and repayable on demand".[92] The Bankrupt had therefore accepted that the TL Sum, and the 2007 Payments, was a loan or amount owed from TL to TGPL. This is consistent with TGPL's financial records.

45 Third, the 2007 JV Agreement does not satisfactorily account for the 2007 Payments. It is worth considering each of the transactions in detail.

(a) On 31 July 2007, Intraco transferred S$999,993.42 to TL. Thereafter, on 3 August 2007, TGPL made a transfer of S$500,144.21 to TL. On 8 August 2007, TGPL made an additional transfer of S$200,144.50 to TL.[93]



01-01-07 To 31-12-07

09-12-08 1:35:24 PM — Page 3

Src	Date	Memo	Debit	Credit	Ending Balance
1-1100 [redacted] Beginning Balance:			S$76,080.30		
[redacted]					
CR	31-07-07	RVU03/07/07 - Being loan from Intraco	S$999,993.42		S$855,206.96
CD	03-08-07	PVU01/08/07-fund transfer toTimor Global (TL) Pte Ltd (ANZ Bank)		S$500,144.21	S$355,392.78
CD	08-08-07	PVU03/08/07-Being fund transfer to Timor Global (TL) Pte Ltd (ANZ		S$200,144.50	S$55,244.97

(b) On 14 August 2007, Intraco transferred a total of S$3,051,000 to TGPL. Subsequently, on 15 August 2007, 22 August 2007 and

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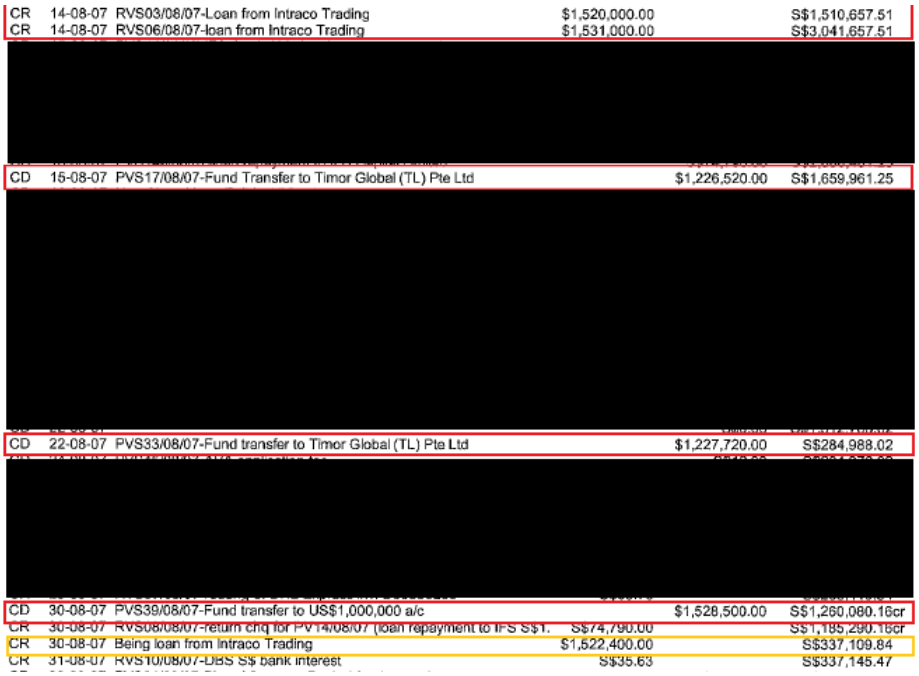
91 CBOD Vol 1 at p 351.

92 CBOD Vol 1 at p 349.

93 CBOD Vol 1 at p 127 para 85.1.

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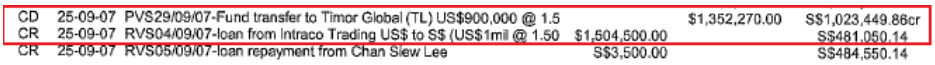
30 August 2007, TGPL transferred S$1,226,520, S$1,227,720 and S$1,528,500 to TL respectively.[94]



(c) On 11 September 2007, Intraco transferred S$1,526,000 to TGPL. TGPL transferred S$1,373,580 to TL on the same day.[95]



(d) On 25 September 2007, Intraco transferred S$1,504,500 to TGPL. TGPL transferred S$1,352,270 to TL on the same day.[96]



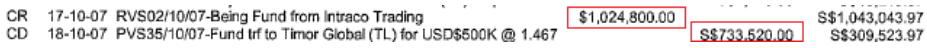
94 CBOD Vol 1 at p 128 para 85.2; CBOD Vol 4 at p 609.

95 CBOD Vol 1 at p 128 para 85.3; CBOD Vol 4 at p 609.

96 CBOD Vol 1 at p 129 para 85.4; CBOD Vol 4 at p 609.

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(e) On 17 October 2007, Intraco transferred S$1,024,800 to TGPL.[97] On 18 October 2007, TGPL transferred S$733,520 to TL.[98]


CR 17-10-07 RVS02/10/07-Being Fund from Intraco Trading $1,024,800.00 S$1,043,043.97
CD 18-10-07 PVS35/10/07-Fund trf to Timor Global (TL) for USD$500K @ 1.467 S$733,520.00 S$309,523.97

46 A survey of the above transactions reveals that while most of the incoming payments from Intraco and the outgoing payments to TL occurred close in time, not all of them were temporally proximate. For instance, the outgoing payments from TGPL to TL in August 2007 took place over three separate dates, with the last outgoing payment occurring 16 days after the incoming payment from Intraco. Additionally, none of the incoming sums and outgoing sums were identical. For most of the transactions, there was a shortfall in the outgoing sums paid to TL, save for a notable excess of outgoing payments for the month of August 2007. Pertinently, not all of the incoming payments from Intraco to TGPL, made pursuant to payment instructions from TL, are accounted for. For example, Intraco made a payment of S$1,522,400 to TGPL on 30 August 2007 (see above at [45(b)]), which corresponds to a payment instruction dated 28 August 2007 directing Intraco to make payment of that amount to TGPL for raw materials.[99] However, there is no record of any subsequent related outgoing payment from TGPL to TL.

47 For the foregoing reasons, the link between the outgoing payments to TL and the 2007 JV Agreement is tenuous. TL may have instructed Intraco to make the raw material payments to TGPL, but there is insufficient evidence to conclude that TGPL's subsequent outgoing payments to TL were made in

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97 CBOD Vol 4 at p 586; this was erroneously recorded in the TGPL Investigation Report at CBOD Vol 1 at p 129 para 85.5.

98 CBOD Vol 1 at p 129 para 85.5.

99 CBOD Vol 4 at p 558.

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accordance with the 2007 JV Agreement. It is entirely conceivable that TGPL had disbursed the sums to TL shortly after receiving payment from Intraco simply because it had an added means to do so, and not because it was acting as a conduit for Intraco to pay TL under the 2007 JV Agreement. This is consistent with the findings of TGPL's liquidators that "the affairs of TGPL and TL have been operated together without apparent reference to their separate legal status".[100] It may also have been the case that TL used some of the funds received from TGPL to purchase the raw materials for the processing of coffee beans (*ie*, USD6,680,435),[101] but that does not conclusively show that TGPL disbursed the 2007 Payments to TL for the purpose of fulfilling the 2007 JV Agreement.

48 Seen in this light, there can be no connection between the 2007 Payments and the 2007 JV Agreement. This interpretation is consistent with the clear evidence on TGPL's records that this sum was a "receivable" and the Bankrupt's evidence that the payments were loans. I therefore turn to the analysis of whether FDPL has proven its claim for a breach of fiduciary duties in respect of the 2007 Payments.

(B) WHETHER FDPL HAS PROVEN ITS CLAIM FOR A BREACH OF FIDUCIARY DUTIES

49 FDPL's submissions regarding the Bankrupt's purported breach of her fiduciary duties by way of the 2007 Payments could benefit from further development. FDPL simply sets out four general categories of fiduciary obligations owed by directors to their companies, namely, (a) the duty to act *bona fide* in the best interests of the company; (b) the duty not to place himself

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100 CBOD Vol 1 at p 96 para 12.1.

101 CBOD Vol 1 at p 131 para 89.3.

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in a position of conflict; (c) the duty not to make a profit out of his position without the company's consent; and (d) the duty not to enter into any self-dealing transaction,[102] and asserts that the Bankrupt had breached each of these four duties because she caused TGPL to loan "massive sums to TL over many years with little or no benefit to TGPL" and did nothing to recover the sums loaned, preserving TL's and her own personal interests at the expense of TGPL and its creditors.[103] In its submissions, FDPL also briefly alludes to the fact that TGPL was at all material times either nearing or actually in insolvency.[104]

50 In assessing whether there has been a breach of the duty to act *bona fide* in the interests of the company, the court asks whether a director had exercised his discretion *bona fide* in what he considered (and not what the court considers) is in the interests of the company. However, there is also an objective element to the test – the court has to also assess whether an intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company (*Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 ("*Goh Chan Peng*") at [35]–[36]).

51 FDPL has not expressly asserted that the Bankrupt has breached her duty to consider the interests of the creditors (the "Creditor Duty"). However, FDPL has alluded to the imminent or actual insolvency of TGPL at the time of the alleged breaches. It is well established that the Creditor Duty is, in fact, *part* of a director's duty to act in the best interests of the company and not a distinct

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102 CWS at para 38.

103 CWS at paras 43, 45, 47 and 48.

104 CWS at para 47.

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duty that directors owe to creditors (*Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 ("*Progen*") at [52]; *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 ("*Foo Kian Beng*") at [4]). This is because the Creditor Duty simply encapsulates the principle that when a company is insolvent, the creditors displace the shareholders as the primary bearers of the risk of loss arising from the manner in which the directors exercise their powers because "an insolvent company effectively trades and conducts its business with its creditors' money" (*Foo Kian Beng* at [72]). Therefore, FDPL's omission here does not limit this court from considering whether there has been a breach of the more specific Creditor Duty. However, I hasten to add that in so far as the burden is on FDPL to prove the debt, its submissions in this respect are not entirely satisfactory.

52 The appropriate approach for determining a claim for a breach of the Creditor Duty has been comprehensively set out by the Court of Appeal in its recent decision of *Foo Kian Beng*. Although the present application arose before the decision in *Foo Kian Beng* was issued, I take the view that the Court of Appeal did not effect any substantive change in the legal position adopted in earlier authorities regarding the Creditor Duty (see *Inter-Pacific Petroleum Pte Ltd (in liquidation) v Goh Jin Hian* [2024] SGHC 178 ("*Inter-Pacific Petroleum*") at [185]). It is therefore appropriate to analyse the present case with reference to the framework in *Foo Kian Beng*. There are two stages of the analysis, which are ascertaining whether the Creditor Duty has arisen and whether there was a breach. At the first stage, the court should objectively determine the financial stage of the company at the time the transaction was

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entered into or that was likely to arise as a result of the company entering into the said transaction. The three categories are (*Foo Kian Beng* at [105]):

> (a) **Category one**: Where all things, including the contemplated transaction, having been considered, the company is solvent and able to discharge its debts.
>
> (b) **Category two**: Where a company is imminently likely to be unable to discharge its debts. This category encompasses cases where a director ought reasonably to apprehend that the contemplated transaction is going to render it imminently likely that the company will not be able to discharge its debts. …
>
> (c) **Category three**: Where corporate insolvency proceedings are inevitable. …

53 At the second stage of the analysis, the court should examine the subjective intentions of the director and determine whether he acted in what he considered to be the best interests of the company (*Foo Kian Beng* at [106]). The financial state of the company is a useful yardstick against which the subjective *bona fides* of the director may be tested (*Foo Kian Beng* at [106]):

> (a) **Category one**: Where a company is, all things considered, financially solvent and able to discharge its debts, a director typically does not need to do anything more than act in the best interests of the shareholders to comply with his fiduciary duty to act in the best interests of the company. … In short, the Creditor Duty does not arise as a discrete consideration in these circumstances. …
>
> (b) **Category two**: In this intermediate zone, the court will scrutinise the subjective *bona fides* of the director with reference to the potential benefits and risks that the relevant transaction might bring to the company. The court will be slow to second-guess the honest, good faith commercial decisions made by a director to afford the company the best possible chances of revitalising its fortunes. …
>
> Conversely, transactions undertaken at this time which appear to exclusively benefit shareholders or directors will attract heightened scrutiny. …
>
> (c) **Category three**: Lastly, where corporate insolvency proceedings are inevitable, there is a clear shift in the economic interests in the company (from the shareholders to the creditors as the main economic stakeholders of the company) because

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> the assets of the company at this stage would be insufficient to satisfy the claims of creditors. … the Creditor Duty operates during this interval to prohibit directors from authorising corporate transactions that have the exclusive effect of benefitting shareholders or themselves at the expense of the company's creditors, such as the payment of dividends.

54 Finally, although the framework in *Foo Kian Beng* referred to the court's scrutiny of the "subjective *bona fides* of the director", I do not read the Court of Appeal's decision as contradicting or departing from its earlier decisions regarding the appropriate test for determining whether a director had breached his general duty to act *bona fide* in the best interests of the company, which adopted a part-subjective and part-objective test (see *Goh Chan Peng* at [35]–[36]). The reasons for this view have been canvassed in full in the earlier decision of *Inter-Pacific Petroleum* (at [193]–[199]). In other words, the question of whether there has been a breach of the Creditor Duty is wholly consistent with the prior authorities which set out the applicable test for determining whether there has been a breach of the more general duty to act *bona fide* in the interests of the company.

55 According to TGPL's liquidators, TGPL would at least have been in a state of insolvency since 2008.[105] TGPL's balance sheet reflects a net deficit of S$667,000 in 2008, and that its liabilities exceeded its assets from 2008 onwards.[106] Although TGPL's balance sheet reflects net assets of S$89,000 in 2006 and S$190,000 in 2007, TGPL's liquidators take the view that "even for the prior period of 2005–2007, TGPL should be considered to be balance sheet and/or cashflow insolvent or at the very least as being in parlous financial straits".[107] This is because the largest asset reflected on TGPL's balance sheet is

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105 CBOD Vol 1 at p 16 para 22.

106 CBOD Vol 1 at p 108.

107 CBOD Vol 1 at p 17 para 23.

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the receivables due from TL, which TGPL never sought to recover and were ultimately never recovered. Thus, the TL receivables should be discounted in any assessment of the real financial circumstances of TGPL.[108]

56 In *Foo Kian Beng*, the Court of Appeal affirmed its holding in *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 ("*Dynasty Line*") that while the going concern test and the balance sheet tests provide useful indicia of a company's financial health, "a strict and technical application of these tests should be eschewed" (at [104]). In determining the company's financial stage, the court should adopt a broader consideration of the surrounding circumstances, including all claims, debts, liabilities and obligations of a company (*Foo Kian Beng* at [104]).

57 In my view, in 2007, TGPL was imminently likely to be unable to discharge its debts and falls within "Category two". Although TGPL was balance sheet solvent from 2005–2007, its largest asset was the TL receivables. For example, in 2006, although TGPL's balance sheet reflects net assets of S$89,000, around S$6,662,000 out of S$9,063,000 of its total assets were the TL receivables. Similarly, in 2007, although TGPL's balance sheet shows net assets of S$190,000, S$6,297,000 out of S$9,175,000 of its net assets can be attributed to the TL receivables. There was no repayment schedule for these debts and TGPL had never made a demand for the repayments of the debts.[109] Thus, it can be concluded that TGPL had never intended to obtain the repayment of the TL receivables.

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108 CBOD Vol 1 at p 17 para 23.

109 CBOD Vol 1 at p 352.

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58 Nonetheless, I did not think that the TL receivables could be discounted entirely in considering TGPL's financial state such that it could be concluded that TGPL was in "Category three" situation as of 2007. There is nothing to suggest that the TL receivables were fictitious such that they could be disregarded in determining TGPL's financial condition. Further, given that there had been an increase in TGPL's net assets from 2006 to 2007, it would be incorrect to conclude that corporate insolvency proceedings were inevitable at that time.

59 Moving to the second stage, I find that the disbursement of the 2007 Payments to TL constitutes a breach of the Bankrupt's fiduciary duties. At the outset, the Bankrupt cannot claim that she was ignorant of the 2007 Payments given that she was a director of TGPL and had signed off on the financial statements of TGPL for every year from FY 2005 and FY 2017. As the TL receivables were consistently TGPL's largest asset, the Bankrupt, in signing off on TGPL's financial statements, should have known of their existence.[110] Indeed, the Bankrupt's knowledge of the 2007 Payments can also be implied from her acknowledgment of the TL Sum during the EJD Proceedings. The Bankrupt herself does not claim that the 2007 Payments were made *bona fide* in the interests of the company or that the 2007 Payments were made in TGPL's interests. As reasoned above (at [43]–[47]), the 2007 Payments were not made for the purposes of the 2007 JV Agreement. No other possible legitimate commercial reason for the 2007 Payments has been placed before this court. TL is not a subsidiary of TGPL.[111] The Bankrupt herself stated that there was no consideration received in respect of the amounts

110 CBOD Vol 1 at p 20 para 32.

111 PTIB's WS at paras 89–90.

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disbursed to TL (inclusive of the 2007 Payments),[112] and that there was no repayment schedule in respect of these amounts.[113] Thus, the Bankrupt does not, and cannot have, reasonably believed that the 2007 Payments were made in TGPL's interests.

60 The Bankrupt's failure to pursue repayment of the 2007 Payments took place from 2007 until 2014. I agree with TGPL's liquidators that from 2008 onwards, corporate insolvency proceedings would have been inevitable; TGPL was thus appropriately in "Category three". Not only does TGPL's balance sheet reflect a net deficit of S$667,000 in 2008, but it also shows a generally increasing deficit over the years. At this point, the interests of TGPL's creditors would have taken centre stage. For similar reasons to those discussed above (at [59]), the Bankrupt cannot claim to be ignorant of TGPL's failure to pursue repayment from TL. The Bankrupt herself testified during the EJD Proceedings that there was "no repayment schedule" for the debts due from TL, and that TGPL had never made a demand for TL to repay the debts owed.[114] The Bankrupt has not suggested that she had refrained from causing TGPL to pursue the debts from TL because of some potential benefit to TGPL. Indeed, it would be objectively difficult for her to do so, given that the non-pursuit of repayment only served to deprive TGPL of its due assets, further entrenching TGPL's poor financial situation at the expense of TGPL's creditors.

61 A similar situation was contemplated in *Ho Pak Kim Realty Co Pte Ltd (in liquidation) v Ho Soo Fong and another* [2020] SGHC 193 ("*Ho Soo Fong*

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112 CBOD Vol 1 at p 351.

113 CBOD Vol 1 at p 352.

114 CBOD Vol 1 at p 352.

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(HC)").[115] In that case, the plaintiff company ("HPK") had commenced a suit against Revitech Pte Ltd ("Revitech") in relation to a construction dispute, and Revitech filed a counterclaim. Revitech's counterclaim was however assessed to be larger than HPK's claim, resulting in a net effect of HPK owing Revitech around $1,585,723.08 (*Ho Soo Fong (HC)* at [3]). Revitech subsequently served a statutory demand on HPK and commenced winding up proceedings against HPK (*Ho Soo Fong (HC)* at [3]). HPK's liquidator then brought an action against the defendants in relation to a sum of around $3.59m recorded in HPK's 2012 financial statement as a debt owing from related parties to HPK (*Ho Soo Fong (HC)* at [9]). The court found that "by refusing to collect the $3.59m [s]um for HPK, the defendants had breached the duty to act honestly and *bona fide* in HPK's interests" (*Ho Soo Fong (HC)* at [78]). Similarly, in failing to collect the 2007 Payments from TL, the Bankrupt has therefore breached her fiduciary duty to act *bona fide* in TGPL's interests.

62 It is also clear that the Bankrupt had breached the duty to act *bona fide* in the interests of the company in writing down the TL receivables (including the 2007 Payments) in 2015. In 2014, TGPL's balance sheet records a net deficit of around S$6,512,000.[116] It would have been clear that corporate insolvency proceedings were inevitable. Despite TGPL's inevitable insolvency, the Bankrupt had intended to, and gave instructions to, write off the profit and loss accounts. The Bankrupt stated that the sum of S$15,343,005.93 (*ie*, the TL receivables as of 2013, inclusive of the 2007 Payments) did not show in the March 2015 accounts as "[t]he directors of [TGPL] had intended to strike off [TGPL] by March 2015 and were advised by the auditors / accountants to write

115 CWS at para 41.

116 CBOD Vol 1 at p 108.

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off the profit and loss accounts".[117] It is clear that the Bankrupt had directed and approved the write-downs as she expressly indicated that:[118]

> [t]he directors (i.e. Jannie Chan Siew Lee and Bobby Lay Ni Sing) gave instructions to [TGPL's] internal accountants to prepare [TGPL] for striking off. The external auditors / accountants then advised [TGPL's] internal accountants to write off all assets and liabilities on [TGPL's] balance sheet to prepare for striking off. [TGPL's] internal accountants therefore proceeded to write off all assets and liabilities on [TGPL's] balance sheet. This was done with the approval of Jannie Chan Siew Lee and Bobby Lay Ni Sing. Approval was given orally.

63 The Bankrupt has not suggested that the write-downs can be justified by way of a perceived interest accruing to TGPL. Instead, the Bankrupt's explanation appears to simply be that she had ordered all the assets and liabilities to be written off considering the company's imminent winding up. This was clearly at the expense of TGPL's creditors and constitutes a breach of the Bankrupt's fiduciary duty to act *bona fide* in the best interests of the company.

64 Accordingly, FDPL has proven that the Bankrupt had breached her fiduciary duty to act *bona fide* in the best interests of the company, by way of the 2007 Payments to TL, failure to collect repayment of the 2007 Payments and the 2015 write-downs.

65 FDPL has also alleged other forms of breaches by the Bankrupt in respect of the same actions of extending the 2007 Payments, failing to collect the 2007 Payments and authorising the 2015 write-downs. However, in so far as I have concluded that the Bankrupt had breached her fiduciary duty to act

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117 CBOD Vol 1 at p 352.

118 CBOD Vol 1 at p 22 para 36.

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bona fide in TGPL's interests, I do not think it is necessary or worthwhile for me to consider the entire extensive list of alleged breaches in the present context.

(2) The Opening Balance

66 The Opening Balance is an amount of approximately S$6,662,009.44 purportedly due from TL to TGPL as of 31 December 2006.[119] According to FDPL, there was no basis for this loan, and it was not made for any commercial purpose.[120] The PTIB's position is instead that FDPL has not established the lack of commercial purpose for the transfers, and that the Opening Balance can potentially be explained on the basis of a putative 2006 JV Agreement or some other alternative commercial purpose.[121]

67 There is no basis for the PTIB's views in this regard. Recital (A) of the 2007 JV Agreement refers to an earlier agreement between Intraco, TGPL and TL on 27 March 2006 for the trading and processing of coffee beans.[122] However, there is no evidence of the 2006 JV Agreement or any of the terms thereunder.[123] Even if I accept that there was such a 2006 JV Agreement, for the same reasons as the 2007 Payments (see above at [43]–[44]), it is difficult to conclude that the Opening Balance was paid to TL in performance of such an agreement. The PTIB's speculation also runs contrary to the other evidence. The "related party receivables" due from TL have accrued since 2006 (*ie*, S$3,111,000 as of 2005). Thus, a 2006 JV Agreement cannot fully explain how the TL receivables had accrued. The PTIB's assertion that "it is probable

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119 PTIB's WS at para 78; CBOD Vol 1 at p 112.

120 CWS at para 7; CBOD Vol 1 at pp 43–44 paras 66–68.

121 PTIB's WS at para 81; CBOD Vol 8 at pp 242–244 paras 83–86.

122 CBOD Vol 4 at p 179.

123 PTIB's WS at para 81.

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that the parties performed the 2006 JV Agreement in a similar manner to the 2007 JV Agreement i.e. that … in reality TGPL served as the conduit for payments"[124] is purely the PTIB's conjecture and is wholly unsubstantiated.

68 The Opening Balance was disbursed in or before 2006. For generally the same reasons above (at [57]), TGPL was in a "Category two" stage in 2006. In allowing the payment of the Opening Balance to TL for no commercial benefit, failing to pursue repayment of the Opening Balance from 2006 until 2014, and writing-down the receivables owed, the Bankrupt had breached her fiduciary duty to act *bona fide* in the best interests of the company. The analysis in this regard mirrors that of the 2007 Payments (see above at [59]–[64]).

(3) The Operating Expenses

69 The Operating Expenses pertain to certain business-related expenses paid by TGPL on behalf of TL to TL's directors, employees, auditors and trade creditors, which amount to a total sum of S$962,051.84.[125] The PTIB initially took the position in the adjudication notice that the Operating Expenses could be said to have a commercial purpose given that TL was the wholly-owned subsidiary of TGPL, and thus any profits generated by TL would also benefit TGPL.[126] However, FDPL has since provided evidence that TL was not a wholly-owned subsidiary of TGPL, but instead owned by three individuals, including the Bankrupt as a 70% shareholder.[127] This includes evidence of the Bankrupt's own testimony during the EJD Proceedings that TL was "100%

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124 PTIB's WS at para 81(d).

125 PTIB's WS at para 86; CBOD Vol 1 at p 120.

126 PTIB's WS at para 89.

127 PTIB's WS at para 90.

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no[t]" a subsidiary of TGPL.[128] Given the fresh evidence, the PTIB does not appear to seriously dispute that the Operating Expenses lacked commercial purpose. Instead, the PTIB's main contention is that the Operating Expenses claim was rightly rejected as it was time-barred. I address the limitation issue below.

(4) Limitation issues

70 The PTIB argues that the claims for the 2007 Payments, the Opening Balance and the Operating Expenses were time-barred.

(a) The 2007 Payments were made between 31 July 2007 and 17 October 2007. As s 6 of the Limitation Act provides that claims for directors' breaches of duty shall not be brought after the expiration of six years from the date on which the cause of action accrued, the claim for the 2007 Payments was time-barred.[129] Further, as the 2007 Payments were *bona fide* transactions done for the benefit of TGPL, no fraud or fraudulent breach of trust has been established, and none of the exceptions in s 22(1) of the Limitation Act applies.[130]

(b) The PTIB similarly submits that the claims for the Opening Balance and Operating Expenses were time-barred as more than six years have passed since the purported breaches.[131] The exceptions to limitation also do not apply to either of these claims.[132]

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128 CBOD Vol 1 at p 20 para 31.

129 PTIB's WS at para 77.

130 PTIB's WS at para 77(b).

131 PTIB's WS at paras 85 and 91.

132 PTIB's WS at paras 85 and 94.

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71 A limitation period of six years is generally applicable to claims for a breach of a director's fiduciary duty (s 6 of the Limitation Act; *Dynasty Line* at [53]; *Foo Kian Beng* at [118]). For claims regarding a breach of directors' duties, the date on which the cause of action accrues for limitation purposes is when the breach of duty can be said to have crystallised (*Ho Soo Fong (HC)* at [109]). There is, however, some uncertainty as to when a breach of duty can be said to have crystallised when the duty in question is the director's Creditor Duty. In *Foo Kian Beng* (at [119]), a view was advanced that in a case involving a company in liquidation proceedings, the cause of action for a breach of the creditor duty crystallises upon the making of a winding-up order rather than the date of breach. The Court of Appeal held that it was not necessary to decide this issue in that case, but observed that there were cases which suggested that the limitation period for a claim for breach of the Creditor Duty began to run from the point of breach (*Foo Kian Beng* at [119]). In *Ho Soo Fong (HC)*, the court found that the date when the breach crystallised was in October 2013, when it became apparent, because of the conclusion of the assessment of damages in the suit between HPK and Revitech, that in the absence of collecting the $3.59m sum, HPK would be totally insolvent in light of its liability to Revitech.

72 In the absence of a binding higher authority on the matter, I adopt the approach in the previous High Court decision of *Ho Soo Fong (HC)* (which was upheld in *Ho Soo Fong and another v Ho Pak Kim Realty Co Pte Ltd (in liquidation)* [2021] SGCA 35) that the limitation period runs from the point of breach. As FDPL has based its claim of breach on three separate actions by the Bankrupt (*ie*, the payment of the TL Sum to TGPL, the failure to pursue repayment of the TL Sum and the 2015 write-downs), as well as different components of the TL Sum, separate analyses for each allegation are required.

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In any event, the exception in s 22(1)(*a*) of the Limitation Act is applicable. Section 22 of the Limitation Act states that:

> **Limitation of actions in respect of trust property**
>
> **22.**—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> (*a*) *in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy*; or
>
> (*b*) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
>
> (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.
>
> …
>
> [emphasis added]

73 Under s 22(1)(*a*) of the Limitation Act, a breach of trust is fraudulent if it is dishonest. Such dishonesty "connotes at the minimum an intention on the part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the company or being recklessly indifferent whether it is contrary to their interests or not". Further, if a trustee "acts in a way which he does not honestly believe is in the interests of the beneficiaries then he is acting dishonestly" (*Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld*") at [52]–[53], citing *Gwembe Valley Development Co Ltd v Koshy (No 3)* [2004] 1 BCLC 131 ("*Gwembe Valley*") at [131]). In determining whether there is dishonesty, the court considers whether "the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by

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those standards his conduct was dishonest" (*Panweld* at [52]–[53], citing *Gwembe Valley* at [132]).

74 It is well-established that the statutory provisions on limitation regarding a breach of trust apply to claims for a director's breach of fiduciary duty (*Re Medora Xerxes* at [45]). This is illustrated by the decision of *Panweld*, where the court held that "[a] director who disposes of company property in breach of his fiduciary duties is treated as having acted in breach of trust" (at [44]). In *Panweld*, a company, Panweld Trading Pte Ltd ("Panweld"), brought a claim for a breach of fiduciary duty against one of its two directors for placing his wife on the company's payroll and paying her salaries even though she was not an employee. The court held that the director had a "trustee-like responsibility" for the company's assets, as he was lawfully able to deal with Panweld's assets by virtue of his directorship. Thus, he was considered a "Class 1 constructive trustee" and the limitation regime that applied to claims against express trustees (*ie*, s 22 of the Limitation Act) also applied to him (*Panweld* at [48]–[49]). The court held that the exception in s 22(1)(*a*) of the Limitation Act applied. Applying the principles set out above (at [73]), the court found that the director could not have been said to have acted honestly in authorising the wrongful payments to his wife. Such payments "would not be countenanced by the ordinary standards of reasonable and honest people" and the director himself "could not possibly have believed that he was acting in the interests of the company by making these payments to his wife" (*Panweld* at [53]).

75 Similarly, in *Dynasty Line*, the court found that the defendants Sukamto Sia ("Sia") and Lee Howe Yong ("Lee") had dealt with Dynasty Line Limited's ("Dynasty") property in breach of their fiduciary duties owed as directors (*Dynasty Line* at [71]). Sia had taken out loans on the security of Dynasty's shares, which were the company's only assets, for the benefit of himself and his

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related entities even though the shares had not been fully paid for and a substantial amount was still outstanding on the purchase price of the shares. The court found that Sia "must have realised that he was acting in a manner that was contrary to the interests of Dynasty's creditors" (*Dynasty Line* at [55]). As Dynasty was insolvent at the material time, Sia was not entitled to equate his personal interests with that of Dynasty and ignore the interests of the creditors. The court held that Sia's actions "would not have been countenanced by the ordinary standards of reasonable and honest people" and fell within s 22(1)(*a*) of the Limitation Act (*Dynasty Line* at [56]).

76 In the present case, the Bankrupt cannot be said to have acted honestly in extending the TL Sum to TL for no commercial benefit, making no effort to seek repayment of the loans and writing down the receivables owed despite TGPL's imminent or inevitable insolvency. For this reason, s 22(1)(*a*) of the Limitation Act applies. FDPL's claim for the TL Sum is hence not time-barred and should be admitted. For completeness, given that the exception in s 22(1)(*a*) of the Limitation Act is dispositive of the time-bar issue, it is not necessary to go further and consider FDPL's alternative argument under s 29 of the Limitation Act.

Whether the claim for the Finished Goods Sum should be admitted

77 The Finished Goods Sum pertains to a sum of S$3,161,247.39, which relates to sales proceeds from third-party end-buyers that were transferred directly to TL instead of TGPL, in contravention of the 2007 JV Agreement.[133] The sales proceeds were paid directly to TL between 19 June 2008 and 14 November 2008.[134] The primary reason for the PTIB's rejection of the claim

133 CWS at para 9; CBOD Vol 1 at p 132 para 90.2; CBOD Vol 1 at p 225.

134 CBOD Vol 1 at p 225.

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for the Finished Goods Sum was that there is no evidence to show that the Bankrupt instructed or had knowledge of the payments from the end-buyers to TL.[135]

78 FDPL submits that such knowledge can and ought to have been inferred from the surrounding circumstances. This is especially because the Finished Goods Sum is a substantial sum clearly recorded in TL's management accounts since at least 13 May 2009, and it was unbelievable that the Bankrupt did not enquire as to the status of the Finished Goods Sum.[136]

79 The PTIB however contends that for a director to be found liable for breach of duties in causing a company to enter into a transaction, there must be evidence that the director was aware of the transaction to begin with, such as evidence that the director signed off on and had direct knowledge of the transaction.[137]

80 The PTIB submits, relying on *Dynasty Line*, that "a director may only be held liable for breach of his fiduciary duties in causing the company to enter into certain transactions, if there is evidence that he signed off on and thus had direct knowledge of the same".[138] I do not read *Dynasty Line* as standing for such a broad proposition. In *Dynasty Line*, the court had adopted a different analysis for Sia, who was "undoubtedly the moving force of Dynasty", and Lee (see *Dynasty Line* at [38]). The court found that Sia had an "intimate knowledge of Dynasty's commercial affairs and had signed the documents" for the loan transactions secured by Dynasty's shares. Sia knew that the shares were not

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135 CWS at para 66.

136 CWS at para 67.

137 PTIB's WS at paras 100–101.

138 PTIB's WS at para 101.

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fully paid for, that there were significant amounts owing to the vendors who transferred their shares to Dynasty, that the shares were Dynasty's only asset, and that Dynasty would not receive any part of the loans secured by the shares (*Dynasty Line* at [38]). Given these circumstances, Sia knew or must have known that he had directly jeopardised or prejudiced Dynasty's ability to repay the liabilities that it owed to its creditors by pledging the shares as collateral for loans to himself and third parties (*Dynasty Line* at [39]). Accordingly, Sia had disregarded the interests of Dynasty's creditors and breached his fiduciary duty to act *bona fide* in the company's interests (*Dynasty Line* at [41] and [43]). In comparison, Lee argued that he was completely unaware of Dynasty's affairs. The court found that Lee could not be completely ignorant of Dynasty's affairs as he was an experienced businessman, was involved in the management of publicly listed companies for a number of years and had a 20% share in the profits of Dynasty (*Dynasty Line* at [45]). Lee would likely have made enquiries about the value of the shares given his sizable financial interest in Dynasty, upon which he would have found out the value of the shares and that the shares had not been fully paid for (*Dynasty Line* at [46]). As Lee had signed the documents relating to the first pledge, he must have made the necessary enquiries as a director of Dynasty and found that Dynasty was pledging a significant portion of the shares as security for a loan facility to Sia. Therefore, he had breached his fiduciary duties in signing the first pledge (*Dynasty Line* at [48]). However, the court did not find that Lee had breached his fiduciary duties in relation to the later pledges as his signature was not found on them and there was no evidence to suggest that he had any knowledge of them (*Dynasty Line* at [49]).

81 Another relevant case is the High Court's decision in *Ho Soo Fong (HC)*. The material facts of *Ho Soo Fong (HC)* are set out above (at [61]). The second defendant raised the defence that he was a "sleeping" director of HPK and did not know that the related parties owed monies to HPK. Thus, he was not in

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breach of his fiduciary duties in failing to pursue the $3.59m sum. The court rejected this argument. The court held that there were many occasions when the second defendant could have made enquiries that would have led him to discover HPK's parlous financial position and its failure to collect the $3.59m sum from the related parties. As he was a director of HPK since its incorporation and a shareholder of HPK, as well as a shareholder and director of the related parties, it was unbelievable that he had remained consistently ignorant of HPK's parlous financial position and failure to collect the $3.59m sum (*Ho Soo Fong (HC)* at [89]). Thus, he had breached his fiduciary duty to consider the interests of HPK's creditors by failing to pursue the $3.59m sum (*Ho Soo Fong (HC)* at [90]). The decision in *Ho Soo Fong (HC)* was upheld by the Court of Appeal on appeal (see *Ho Soo Fong and another v Ho Pak Kim Realty Co Pte Ltd (in liquidation)* [2021] SGCA 35).

82 The present case can be distinguished from Lee's case in *Dynasty Line*. Unlike Lee, there is evidence that the Bankrupt had knowledge or should have knowledge of the Finished Goods Sum. The Bankrupt had management and control of the TGPL. As observed by TGPL's liquidators, "the books and records available to the Liquidators show that the Company had operated under the management and control of Jannie Chan from the date of incorporation of the Company, up until the winding up of the Company".[139] The Bankrupt had also signed off on the financial statements of TGPL for every year from FY 2005 and FY 2017 and was an authorised bank signatory of TGPL.[140] The Bankrupt would therefore have known that TGPL was not recovering all of its receivables from third-party buyers. It was unlikely that the Bankrupt would not have made enquiries as to the lack of sale proceeds when she had signed off on

139 CBOD Vol 1 at p 240 para 23.

140 PTIB's WS at para 102.

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TGPL's financial statements. This is especially since the Finished Goods Sum was for a substantial amount of S$3,161,247.39 which would have been particularly significant in 2008 when TGPL had a net deficit of S$667,000 on its balance sheet.[141] The Finished Goods Sum was approximately 32% of TGPL's total revenue in 2008.[142] It is difficult to believe that the Bankrupt, as the director of TGPL and its sole shareholder, was ignorant of the diversion of the Finished Goods Sum to TL and would not have made inquiries as to the presence of the funds. I am satisfied that the Bankrupt either knew or should have known of the diversion of funds.

83 In 2008, TGPL would have been in a "Category three" stage (see above at [60]). The Bankrupt's failure to seek repayment of the Finished Goods Sum to TL, which were disbursed in contravention of the 2007 JV Agreement, even when TGPL was in a state of insolvency, was in blatant disregard of the interests of TGPL's creditors. The Bankrupt had therefore breached her duty to act *bona fide* in the best interests of the company.

84 As for limitation, the Finished Goods Sum was paid to TL in 2008. Regardless of whether the Bankrupt's breach is found to be continuing (*ie*, in failing to pursue repayment of the Finished Goods Sum from TL up until TGPL's liquidation), s 22(1)(*a*) of the Limitation Act applies such that the six-year limitation period is inapplicable. The Bankrupt cannot be said to have honestly believed that her act of allowing payments rightly due to TGPL to be paid to TL and/or failing to seek repayment of the sum was in the best interests of the company. Therefore, she has committed a "fraudulent breach of trust" for

141 CBOD Vol 1 at p 108.

142 CBOD Vol 1 at p 59 para 93(1).

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the purposes of s 22(1)(*a*) of the Limitation Act. The claim for the Finished Goods Sum should be admitted.

Whether the claims for the Jannie Sum and the Purported Repayment should be rejected

85 Finally, I consider the Bankrupt's application to challenge the PTIB's decision to admit the claims for the Jannie Sum and the Purported Repayment. The Jannie Sum is a sum of S$1,355,985.68, comprising the receivables (owed by third parties to TGPL) which were purportedly assigned to the Bankrupt for no consideration, in breach of her director's duties owed to TGPL. The Purported Repayment is a sum of S$1,276,800 transferred from TGPL to the Bankrupt in August 2007.[143] This was recorded as a "loan repayment" to the Bankrupt.

86 The Bankrupt submits that the assumption of the receivables and the repayment of the purported loan were not wrongful. According to the Bankrupt, the PTIB did not adequately show that the third parties owed money to TGPL. Instead, the Bankrupt asserts that the debts from the third parties were owed directly to her.[144] As for the Purported Repayment, the Bankrupt insists that FDPL needs to first show that she did not make a loan of US$800,000 to TGPL,[145] and that the Purported Repayment was thus wrongful. The Bankrupt also alleges that the claims for the Jannie Sum and the Purported Repayment are

143 CBOD Vol 1 at p 124 paras 77–78.

144 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at paras 59–60.

145 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at paras 71–74.

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time-barred as the relevant transactions took place in 2009 and 2007, which was more than six years before TGPL filed its proof of debt on 10 October 2019.[146]

87 The PTIB defends his acceptance of the proof of debt regarding the claim for the Jannie Sum. There is sufficient evidence that the Bankrupt had breached her custodial duties by misapplying TGPL's assets, which were receivables owed by third parties to TGPL.[147] There is evidence of the Bankrupt assuming the benefit of the receivables, in the form of journal entries and contemporaneous documents by way of letters signed by the Bankrupt.[148] Although the Bankrupt asserted that the third parties in fact owed the sums to her and not TGPL, the PTIB submits that the Bankrupt's assertions are not credible and are mere afterthoughts.[149] This is because this is the first time the Bankrupt alleged that the third-party debtors owed the sums to her directly – even in the Bankrupt's note setting out her objections to the proof of debt, she made no mention that the third-party debtors had owed the Jannie Sum to her instead of TGPL.[150] Further, the claim for the Jannie Sum is not time-barred as the exceptions under s 22(1)(*a*) or s 22(1)(*b*) of the Limitation Act apply.[151]

88 In relation to the Purported Repayment, the PTIB argues that there is evidence that the Bankrupt had breached her fiduciary duties by diverting TGPL's cash to herself without justification.[152] The Bankrupt did not deny

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146 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at para 82.

147 PTIB's WS at para 26.

148 PTIB's WS at para 26(b).

149 PTIB's WS at para 27.

150 PTIB's WS at para 27(a).

151 PTIB's WS at paras 31–40.

152 PTIB's WS at para 45.

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receiving the sum of S$1,276,800 from TGPL. Although the Bankrupt seeks to justify the Purported Repayment by way of an alleged loan of S$800,000 that she had extended to TGPL, the Bankrupt has not provided any evidence of such a loan.[153] Finally, the PTIB submits that the claim for the Purported Repayment is not time-barred because the exceptions to the time bar in ss 22(1)(*a*) and/or 22(1)(*b*) of the Limitation Act are applicable.[154]

89 The evidence strongly points to and supports the conclusion that the PTIB was correct in finding that the Bankrupt had, in breach of her duties, taken the benefit of these payments without justification. For the Jannie Sum, there is ample evidence that the Bankrupt had assumed the debts owed by third parties to TGPL. There is a letter dated 31 December 2008 plainly stating that the Bankrupt "confirm[ed] that [she was] assuming the debts of US$16,422.09 owned by 'David G. Brice' to 'Timor Global Pte Ltd' as at December 31st, 2008", with the Bankrupt's signature.[155] This is corroborated by an entry in TGPL's general journal stating "[b]eing Mrs Tay [(*ie*, the Bankrupt)] to assume outstanding of US$16,442.09 Amt due from David G. Brice to TGS as".[156] Similar letters confirming the Bankrupt's assumption of debts owed by debtors of TGPL and records in TGPL's general journal have also been adduced.[157] Although the Bankrupt challenges the authenticity of the letters by alleging that the signature affixed on the letters appears to be a digital signature,[158] this can

153 PTIB's WS at para 46.

154 PTIB's WS at paras 54–57.

155 CBOD Vol 8 at p 79.

156 CBOD Vol 8 at pp 80–81.

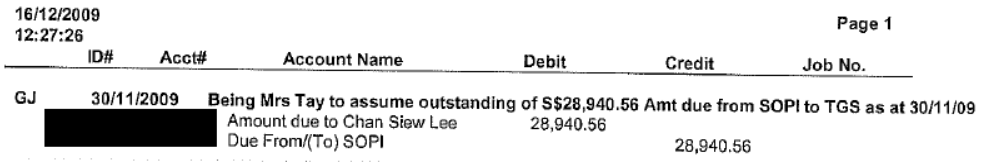
157 CBOD Vol 8 at pp 83–137; PTIB's WS at para 26.

158 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at para 64.

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be readily rejected on the basis that each of the signatures are different and thus, appear to be wet-ink signatures signed by the Bankrupt herself.[159]

90 The fact that TGPL's general ledgers had also indicated that there was "[a]mount due to Chan Siew Lee" for certain entries is immaterial.[160]



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	ID#	Acct#	Account Name	Debit	Credit	Job No.
GJ	30/11/2009		Being Mrs Tay to assume outstanding of S$28,940.56 Amt due from SOPI to TGS as at 30/11/09			
		[redacted]	Amount due to Chan Siew Lee	28,940.56		
			Due From/(To) SOPI		28,940.56	

There is no other evidence of any such amounts due to the Bankrupt from TGPL.[161] In any event, it would have been clear that as of 2008, TGPL was in a state where corporate insolvency proceedings were inevitable. The Bankrupt's disbursement of the company's assets to herself would amount to a dissipation of the company's assets to the prejudice of the interests of TGPL's creditors. As noted by the PTIB, even if the objective of the Bankrupt was to recover money owed by TGPL to her, such payment would be prejudicial since TGPL was insolvent at the time.

91 Although the Bankrupt asserts that the third parties had in fact owed the sums to her instead of TGPL,[162] this was only raised in her affidavit dated 29 November 2022, months after she had provided a comprehensive note setting out her objections to the proof of debt on 14 July 2022.[163] There was also no

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159 PTIB's WS at para 64(b). See, *eg*, CBOD Vol 8 at pp 89, 93 and 97

160 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at paras 63–65.

161 PTIB's WS at para 26(c).

162 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at para 60.

163 PTIB's WS at para 27(a).

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evidence in support of the Bankrupt's assertion. The Bankrupt's allegation that the moneys were in fact owed to her was not supported by the evidence, and was not, as the PTIB rightly found, credible, given that it was late in the day and there was no supporting evidence provided.

92 Other allegations were also made by the Bankrupt. These were largely issues with the PTIB's acceptance of the proof of debt without sufficient evidence.[164] As this is a *de novo* review, fresh evidence could be adduced for the court's determination. However, no further evidence was put forward by the Bankrupt in support of her assertions. In the absence of such evidence, I find that the weight of the evidence before me lay in support of finding that the Bankrupt had indeed committed a breach of her fiduciary duties in respect of the Jannie Sum. In other words, FDPL had sufficiently proven its claim for the Jannie Sum. The claim for the Jannie Sum is also not time-barred. Although the Jannie Sum involved breaches by the Bankrupt in December 2008 and August 2009,[165] the exception under s 22(1)(*a*) of the Limitation Act applies.

93 The Bankrupt seeks to justify the Purported Repayment by way of an alleged US$800,000 loan that she had given to TGPL.[166] This is supported by certain entries in TGPL's general ledger which are recorded as loans from the Bankrupt to TGPL.[167] However, there is a noticeable lack of contemporaneous documents that support the Bankrupt's purported loan to TGPL. The PTIB has also attempted to independently verify whether there are any records of the

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164 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at paras 67–69.

165 PTIB's WS at para 31.

166 1st Affidavit of Jannie Chan Siew Lee dated 29 November 2022 (HC/SUM 4316/2022) at para 71.

167 CBOD Vol 4 at pp 656–657.

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US$800,000 loan in TGPL's bank accounts, but there are no such records of the inflow of funds from the Bankrupt to TGPL.[168] I find that FDPL has raised sufficient suspicion about the veracity of the purported loan. As acknowledged by the PTIB, TGPL's financial records from 2006–2008 showed that loans for directors were in the range of S$12,000 to S$38,000. The purported US$800,000 loan was therefore unusual and extraordinary for the company.[169] There is no indication that the Purported Repayment was incidental to the carrying on of TGPL's business.[170] In fact, the Purported Repayment appears to be paid out from incoming payments from Intraco, presumably in contravention of the 2007 JV Agreement.[171] The necessary inference is that the transaction was not conducted *bona fide* in the interests of TGPL. For the same reasons above (at [92]), the Purported Repayment was not time-barred.

94 For all the foregoing reasons, I dismiss the Bankrupt's application in SUM 4316.

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168 PTIB's WS at para 49.

169 PTIB's WS at para 48.

170 PTIB's WS at para 53.

171 CBOD Vol 1 at p 124 para 78.

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Conclusion

95 In the circumstances, I dismiss the Bankrupt's applications in SUM 4315 and SUM 4316. I find that FDPL's claim in respect of the TL Sum and the Finished Goods Sum should be admitted and allow SUM 4314 and OA 797.

Aidan Xu
Judge of the High Court

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The defendant in HC/B 2648/2018 unrepresented;
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Hing Shan Shan Blossom SC, Claire Neoh Kai Xin and Lu En Hui Sarah (Drew & Napier LLC) for the respondent in HC/OA 797/2022.

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