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

[2026] SGHC 76

Originating Claim No 34 of 2024 (Registrar's Appeals Nos 191, 192 and 193 of 2025)

Between

Ever Strategy Consultants Limited

… *Claimant*

And

(1) PSA International Pte. Ltd.
(2) PSA Americas Pte. Ltd.
(3) PSA Panama Pte. Ltd.
(4) PSA Pacific Pte. Ltd.
(5) Yang David Antonius
(6) Tan Chong Meng
(7) PSA Panama International Terminal, S.A.
(8) Corporación Crambo, S.A.
(9) Balboa Hospitality Services Ltd.
(10) Harder Road Inc.
(11) Guillermo Liberman (also known as Guillermo Javier Liberman Gadda)
(12) Victor Diamond (also known as Victor Diamond Rodriguez)

… *Defendants*

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GROUNDS OF DECISION

[Civil Procedure — Striking Out]
[Contract — Collateral Contracts]

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Ever Strategy Consultants Ltd
v
PSA International Pte Ltd and others

[2026] SGHC 76

General Division of the High Court — Originating Claim No 34 of 2024
(Registrar's Appeals Nos 191, 192 and 193 of 2025)
Chua Lee Ming J
26 January, 30 January 2026

9 April 2026

Chua Lee Ming J:

Introduction

1 The first to sixth defendants, seventh defendant and eighth to 12th defendants filed HC/SUM 783/2025 ("SUM 783"), HC/SUM 781/2025 ("SUM 781") and HC/SUM 782/2025 ("SUM 782"), respectively, to strike out the claimant's claims against them. The Assistant Registrar ("AR") dismissed the applications and gave the claimant permission to amend its statement of claim. The three appeals before me, HC/RA 192/2025 ("RA 192"), HC/RA 193/2025 ("RA 193") and HC/RA 191/2025 ("RA 191"), were appeals against the decisions of the AR by the first to sixth defendants, the seventh defendant and the eighth to 12th defendants, respectively.

2 I allowed all three appeals, set aside the AR's orders and struck out the claims against the defendants. The claimant has appealed against my decisions.

Facts

The parties

3 The claimant, Ever Strategy Consultants Limited ("Ever Strategy"), is an investment holding company incorporated in the British Virgin Islands. At all material times, Ever Strategy was represented by Mr Chang George ("Chang").

4 The first, second, third and fourth defendants are PSA International Pte. Ltd. ("PSA International"), PSA Americas Pte. Ltd. ("PSA Americas"), PSA Panama Pte. Ltd. ("PSA Panama") and PSA Pacific Pte. Ltd. ("PSA Pacific") respectively. They are all companies incorporated in Singapore and form part of the PSA group of companies ("PSA Group"). The PSA Group is involved in the operation of ports worldwide.

5 At all material times, the fifth defendant, Mr Yang David Antonius ("Yang"), and the sixth defendant, Mr Tan Choon Meng ("Tan"), were the directors of PSA Americas, PSA Panama and PSA Pacific. Tan was also the director and group CEO of PSA International.

6 The seventh defendant, PSA Panama International Terminal S.A. ("PPITSA"), is a company incorporated in Panama. It manages and operates the PSA Panama International Terminal ("PPIT").

7 The eighth defendant, Corporación Crambo, S.A. ("CCSA"), is a company incorporated in Panama. It is a shareholder of the ninth defendant, Balboa Hospitality Services Ltd. ("Balboa"), a company incorporated in the British Virgin Islands. The tenth defendant, Harder Road Inc. ("Harder Road"), is a company incorporated in Panama.

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8 The 11th defendant, Mr Guillermo Liberman ("Liberman"), was the beneficial owner and a director and President of CCSA and Harder Road at all material times; he was also a director of PPITSA from around 18 June 2009 to around 25 August 2016. He was a director of Balboa from 16 April 2013 until at least 25 July 2017.

9 The 12th defendant, Mr Victor Diamond ("Diamond"), was a director of Harber Road from 27 January 2016 to around 28 February 2023. He was also a director of Balboa from at least 16 April 2013 to 16 August 2024.

Background to the dispute

10 Events from 2006 to 2009In 2006, Chang, Liberman and the then Chief Executive Officer of PSA International began discussing the potential development of a container terminal in Panama.

11 On 20 November 2006, PSA International and Petroamerica Corp ("Petroamerica") entered into a Memorandum of Understanding ("MOU") to cooperate to jointly develop a port container terminal in Panama ("PPIT Project") through a joint venture company.[1] The PPIT Project involved the development of one or more container berths in an area known as the Arraijan Tank Farm and the former Rodman Naval Base in Panama ("Area"). The MOU provided that PSA International would hold 70% of the shares in the joint venture company while Petroamerica would hold 30%. It also provided that the parties may use offshore entities to hold their respective shareholding interests in the joint venture company.

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[1] Joint Bundle of Documents for HC/SUM 781/2025, HC/SUM 782/2025 and HC/SUM 783/2025 dated 19 August 2025 ("JBOD"), at pp 492–503.

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12 Petroamerica was the parent company of Pargue Industrial Marítimo De Panamá, S.A. ("PIMPSA"), a Panamanian company which held the concession rights to the Area. Liberman controlled both Petroamerica and PIMPSA.

13 Liberman subsequently decided to hold his interest in the PPIT Project through Balboa instead of Petroamerica. PSA International decided to hold its interest through PSA Panama. On 24 January 2007, PSA Panama and Balboa entered into a shareholder agreement ("2007 Shareholders' Agreement").[2] The 2007 Shareholders' Agreement provided that (among other things):

(a) the PPIT Project would comprise two phases. Phase 1 referred to the area for a first container-roro berth and Phase 2 referred to an area for a further container-roro berth; and

(b) PSA Panama and Balboa would subscribe for 700 shares and 300 shares respectively in a project company to be established.

14 On 20 June 2007, PSA Panama and Balboa entered into a Supplemental Shareholders' Agreement to amend the 2007 Shareholders' Agreement.[3] The amendments related to PSA Panama's shares in PIMPSA and are not relevant for present purposes.

15 On 25 June 2007, PPITSA was incorporated as the project company.[4] As of 11 July 2007, PSA Panama was the sole shareholder of PPITSA.[5]

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2 JBOD, at pp 505–529.

3 JBOD, at pp 531–534.

4 7th Defendant's Defence dated 18 July 2024 ("7D Defence"), at paras 13(a) and 23(a) (JBOD, at pp 3477–3478 and 3487–3488).

5 1st Affidavit of Enrique Piqueras Bertie ("Bertie's Affidavit"), at para 12 (JBOD, at pp 204–205).

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16 On 23 July 2008, PSA Panama, Balboa and PPITSA entered into a Second Supplemental Shareholders' Agreement to supplement the 2007 Shareholders' Agreement.[6] Clause 1.1 of this agreement confirmed that the newly incorporated PPITSA was a party to the 2007 Shareholders' Agreement. Clause 1.3 provided that the 2007 Shareholders' Agreement, as amended by the two supplemental agreements, would be restated in its entirety. Thereafter, PSA Panama, Balboa and PPITSA signed an Amended and Restated Shareholders' Agreement.[7]

17 The Amended and Restated Shareholders' Agreement stated that PSA and Balboa were to cooperate in jointly developing the container-roro berths at the Area through PPITSA. The project was to be divided into two phases ("Phase 1" and "Phase 2"). Phase 1 referred to the area for the first container-roro berth as defined in schedule 3. Phase 2 referred to the area for a further container-roro berth and its location was to be either at the location currently identified in "schedule 3" of the Amended and Restated Shareholders' Agreement or one subsequently agreed between the parties.[8]

18 On 18 June 2009, PSA Panama and Balboa became holders of 700 shares (representing 70%) and 300 shares (representing 30%) respectively in PPITSA.[9]

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6 JBOD, at pp 535–540.

7 JBOD, pp 549–571.

8 JBOD, at p 552.

9 Bertie's Affidavit, at para 12 (JBOD, at pp 204–205).

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Ever Strategy's 10% indirect interest in PPITSA

19 On 12 April 2011, Balboa issued 166.65 shares (representing 16.665% of the issued shares) to Ever Strategy.[10] As Balboa held 30% of the shares in PPITSA, this gave Ever Strategy an indirect 5% interest in PPITSA.

20 On 10 June 2011, Ever Strategy, PSA Americas and PSA Panama signed a written consultancy agreement ("Consultancy Agreement").[11] The Consultancy Agreement provided as follows:

(a) PSA Panama appointed Ever Strategy as its consultant in respect of procuring government approvals and local liaison for the PPIT Project.[12] In consideration, PSA Panama would allot 7.14% of its total issued share capital to Ever Strategy and these shares would be registered in the name of PSA Americas, which would hold the same as Ever Strategy's nominee.[13]

(b) Ever Strategy was entitled to receive dividends declared and distributed by PSA Panama corresponding to its shareholding in PSA Panama.[14] Besides the right to dividends, Ever Strategy would not have any voting rights in respect of PSA Panama's management and/or decision-making or any other attached rights in respect of the shares in PSA Panama.[15]

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10 3rd Affidavit of Chang George dated 13 May 2025 ("Chang's 3rd Affidavit"), at para 37 (JBOD, at p 1067).

11 JBOD, at pp 107–113.

12 JBOD, at p 108, Clause 1.

13 JBOD, at p 108, Clauses 2(a) and 2(b)(ii).

14 JBOD at p 108, Clause 2(b)(vi).

15 JBOD at p 108, Clause 2(b)(vii).

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21 On 28 June 2011, PSA Panama issued 71 shares (representing 7.14% of the issued shares) to PSA Americas which held the shares as Ever Strategy's nominee. As PSA Panama held 70% of the shares in PPITSA (see [18] above), this gave Ever Strategy another indirect 5% interest in PPITSA. Thus, in total, Ever Strategy had a 10% indirect interest in PPITSA.

Phase 2 discussions

22 Phase 1 of the PPIT Project took place from 2008 to 2012. According to the PSA Group, the costs of Phase 1 were higher than estimated and were fully funded by PSA Panama.[16] In 2012, discussions began regarding Phase 2.[17] PPITSA needed additional funds for Phase 2.

23 In October 2013, Yang informed Chang that there was a possibility that Balboa's shareholding in PPITSA might be diluted if there were other investors who were willing to contribute money for Phase 2.[18] In response, on 29 October 2013, Chang's assistant, Ms Carrie Wong ("Carrie"), sent an email to Yang ("29 October 2013 Email")[19] informing Yang that Ever Strategy's consent was needed for any dilution in Balboa's 30% stake in PPIT.

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16 1st Affidavit of Enno Koll dated 19 March 2025, at para 18 (JBOD, at p 24).

17 Chang's 3rd Affidavit, at para 42 (JBOD at p 1069); 1st Affidavit of Guillermo Liberman dated 21 March 2025 ("Liberman's Affidavit"), at para 18 (JBOD, at p 453).

18 Statement of Claim (Amendment No.1) dated 3 October 2025 ("ASOC"), at para 19A; Chang's 3rd Affidavit, at para 43(a) (JBOD, at p 1069).

19 JBOD, at p 1182.

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24 On 21 May 2014, Yang had a lunch meeting with Chang where he invited Ever Strategy to participate in Phase 2.[20] On 23 May 2014, Chang sent Yang an email summarising the discussion as follows:[21]

(a) Yang suggested that Ever Strategy's 5% interest in PPITSA (held through PSA Panama) be held directly by Ever Strategy and Chang said that he would ask Liberman to do the same for the other 5% held through Balboa.

(b) Yang indicated that Phase 2 would cost US$400m and additional investment was needed. To maintain its 10% interest in Phase 2, Ever Strategy would have to provide US$2m for each 1% of its shares in PPITSA.

(c) Chang commented that the project cost was high and that he had expected the investment would be financed by way of loans.

25 On 27 May 2014, Yang replied, stating the following, among other things:[22]

(a) Balboa's 30% shareholding in PPITSA would be reduced to 25% because of the significant equity contributions required for Phase 2. How the 25% shareholding was to be split was a matter to be agreed between Ever Strategy and Global SLI Management Inc ("SLI"), another shareholder of Balboa.

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20 1st Defendant to 6th Defendants' Defence dated 20 February 2024 ("1D to 6D Defence"), at para 57 (JBOD, at p 3424); Chang's 3rd Affidavit, at para 45 (JBOD, at p 1070).

21 JBOD, at pp 1188–1189.

22 JBOD, at pp 1187–1188.

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(b) Ever Strategy's indirect shareholding in PPITSA held through PSA Panama would be reduced from 5% to 1.5%, which the PSA Group was willing to increase to 3% without any additional equity contribution (in view of Ever Strategy's significant contributions and their relationship). However, Ever Strategy could maintain its 5% shareholding if it was willing to make an equity contribution of US$4m.

(c) The project could not be completely funded by debt and the current plan was for a "50/50 debt equity structure".

26 On 28 May 2014, Chang replied that he "decided to maintain [his] status quo" because of a lack of proposal information on Phase 2, and that without the information, he could not "step further, but to keep [his] status quo".[23]

27 On 19 April 2015, Mr Enno Koll ("Koll"), who was at that time a director of PPITSA and Head of Latin America at PSA International, sent Chang details on Phase 2, including photos of the expansion area for Phase 2, and invited Chang to a meeting to discuss Phase 2.[24] Koll also informed Chang that the total funding required for Phase 2 was US$466m, which would be financed by bank loans (US$225m), shareholder injections (US$196m) and cash from operations of Phase 1 (US$45m).

28 On 21 April 2015, Chang complained to Koll that he had not received the Phase 2 capital expenditure figures that he had requested a few months

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23 JBOD, at p 1187.

24 JBOD, at p 119.

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before that. Chang asked Koll to send the requested information.[25] On 22 April 2015, Koll sent information on the capital expenditure of Phase 2 to Chang.[26]

First Dilution

29 The pursuit of Phase 2 led to an increase in PPITSA's authorised share capital. On 16 December 2015, additional shares of PPITSA were allotted to PSA Pacific and Fincacorp S.A. ("Fincacorp").[27] Fincacorp was an entity wholly owned and controlled by Liberman.[28] This resulted in the following dilutions ("First Dilution"):

(a) PSA Panama's initial 70% shareholding in PPITSA was diluted to 27.6%. Consequently, Ever Strategy's indirect 5% shareholding in PPITSA held through PSA Panama was diluted to 1.97%.

(b) Balboa's initial 30% shareholding in PPITSA was diluted to 11.8%. Consequently, Ever Strategy's indirect 5% shareholding in PPITSA held through Balboa was diluted to 1.97%.

30 On 26 February 2016, Fincacorp transferred its shares in PPITSA to Harder Road.[29]

31 On 27 September 2016, Carrie wrote to Mr Vincent Ng ("Vincent") of PSA Group seeking clarification as to why the annual report of PSA Panama

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25 JBOD, at p 118.

26 JBOD, at p 118.

27 Bertie's Affidavit, at para 12 (JBOD, at pp 204–205).

28 Liberman's Affidavit, at para 20 (JBOD, at p 454).

29 1D to 6D Defence, at para 72 (JBOD, at p 3429); 7D Defence, at paras 26(r) – 26(s) (JBOD, at p 3503); Liberman's Affidavit, at para 22 (JBOD, at p 455); ASOC, at para 35(d).

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for 2015 showed that PSA Panama's shareholding in PPITSA had decreased from 70% to 27.6%.[30]

32 On 3 October 2016, Vincent replied stating that PSA Panama's reduced equity stake in PPITSA was due to significant investments for the Phase 2 expansion of PPIT and reiterated that Ever Strategy could obtain a 5% beneficial interest in Phase 2 by contributing US$15m.[31]

33 On 6 October 2016, Carrie sent a reply email in which she conveyed, amongst other matters, that Chang:[32]

(a) had expected that there would be formal notification of the Phase 2 project proposal;

(b) did not recall any formal discussion on "process and raising the additional equity via his stake in PSA Panama" and "would like the opportunity to discuss this further with his professional financial and legal advisors"; and

(c) continued to expect that PPIT, as Phase 1 of the project, would be kept distinct and separate from Phase 2 and that he still owned a 5% indirect stake in PPIT via his shares in PSA Panama.

34 On 14 October 2016, Vincent reminded Carrie that:[33]

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30 JBOD, at p 756.

31 JBOD, at p 756.

32 JBOD, at p 755.

33 JBOD, at pp 754–755.

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(a) on 19 April 2015, Koll had sent Chang all the required information and invited Chang to meet (see [27] above) but there was no reply from Chang;

(b) even if the capital injection for the Phase 2 injection had been made through PSA Panama (instead of a separate vehicle), Ever Strategy's equity stake in PPIT would have been diluted to the same extent because Ever Strategy was not entitled to subscribe to further shares issued by PSA Panama; and

(c) nevertheless, in his email dated 3 October 2016 (see [32] above), PSA Group had, at its sole discretion, invited Ever Strategy to inject US$15m to maintain its 5% beneficial interest in PPIT (held through PSA Panama).

Vincent asked Ever Strategy to confirm whether it was willing to make the US$15m investment.

35 On 17 October 2016, Carrie replied that:[34]

(a) the 3 October 2016 invitation to Ever Strategy to inject its pro-rata share of equity was irrelevant as Phase 2 was a separate and distinct project; and

(b) Ever Strategy owned an indirect 5% stake in PPIT through PSA Panama but they could not recall a capital call notice from PSA Panama to subscribe for additional shares for Phase 2 to maintain its shareholding of 70% in PPIT; Vincent should clarify further.

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[34] JBOD, at p 754.

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36 On 24 October 2016, PSA Group's Regional Legal Counsel (EuroMed & Americas), Mr Vaën Vercruysse ("Vercruysse"), replied that:[35]

(a) Ever Strategy owned restricted shares in PSA Panama and the sole right associated with these shares was the receipt of dividends;

(b) Ever Strategy had no right to participate in board or shareholders' meetings and would not receive notices for such meetings; and

(c) since Ever Strategy had no rights in respect of management and decision-making, PSA Group was not obliged to involve Ever Strategy in its decisions on how to manage its subsidiaries, including its expansion plans for PPIT and the capital structure pertaining to investments.

37 On 24 February 2017, Chang wrote a letter to Mr Fock Siew Wah ("Fock"), the then Group Chairman of PSA International, about the dilution of Ever Strategy's interests in PPIT.[36] Chang complained that:

(a) he "was asked (more like being told!) to participate [in Phase 2], and that [his] beneficial interest in PPIT will be diluted which [he] strongly objected and disagreed with";

(b) he found out in 2016 that his beneficial interest in PPIT had been substantially diluted; and

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35 JBOD, at pp 753–754.

36 JBOD, at pp 1200–1201.

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(c) he was disappointed with the "insidious way" the dilution had been carried out and expressed the view that "surely, as a minimum there would be a formal process for [him] to say [he] cannot / do not want to be a part of the new investment? Like a capital call through the special purpose corporate structure?".

Fock did not reply to Chang's letter.

38 On 25 February 2017, Vercruysse wrote to Carrie, stating that PPIT's Phase 1 and Phase 2 areas were part of the same concession agreements entered into with the Panama Maritime Authority and the Panama Canal Authority, and that the Phase 2 expansion of PPIT could not be regarded as separate and distinct from the Phase 1 project.[37]

39 On 1 March 2017, Carrie replied to Vercruysse, stating that Ever Strategy had not received any capital call notice from PSA Panama to subscribe for additional shares for Phase 2 and "hence we cannot understand nor accept the dilution [of PSA Panama's share in PPITSA] down from 70% to 27.6%, and effectively Ever Strategy's stake in PPIT via PSA Panama down to 1.97%".[38] The email again questioned how PSA Panama's stake in PPITSA could be diluted without a capital call from PPITSA to PSA Panama.

40 In his reply on 3 March 2017, Vercruysse reiterated that the Consultancy Agreement expressly stated that Ever Strategy was not entitled to any further

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37 JBOD, at p 752.

38 JBOD, at pp 751–752.

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allotment of shares in PSA Panama unless expressly agreed by the parties and Ever Strategy did not have the right to attend shareholders' meetings.[39]

41 On 9 March 2017, Carrie replied to Vercruysse, attaching a letter dated the same date.[40] Carrie pointed out that PSA Panama and Balboa were special purpose entities formed to own PPITSA, which should make a formal capital call to its two shareholders if it needed to enlarge its equity capital, and "[w]hether you consider it legally and/or morally necessary to inform/invite Ever Strategy to the process rests with PSA's conscience and integrity".

Second Dilution

42 In August 2017, Terminal Investment Limited S.A.R.L ("TiL"), a terminal operator incorporated in Switzerland, was approached to participate in PPIT. TiL agreed to buy a 42.5% stake in PPIT.[41]

43 On 29 November 2017, PSA Panama, PSA Pacific, Balboa, Harder Road, TiL and PPITSA entered into a shareholders' agreement ("TiL SHA").[42] Under the terms of the TiL SHA:

(a) PPITSA's authorised capital was to be restructured to three classes of shares comprising 2,540 Class A shares, 40 Class B Shares and 1,907 Class C Shares;

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39 JBOD, at pp 750–751.

40 JBOD, at pp 750, 758–759.

41 1D to 6D Defence, at para 95 (JBOD, at p 3441); 8th Defendant to 12th Defendants' Defence dated 16 August 2024, at paras 90(b)–90(c) (JBOD, at pp 3593–3594).

42 JBOD, at pp 156–198.

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(b) PSA Panama was to hold 15.6% of the issued share capital of PPITSA;

(c) PSA Pacific was to hold 26.9% of the issued share capital of PPITSA;

(d) Balboa was to hold 7.1% of the issued share capital of PPITSA;

(e) Harder Road was to hold 7.9% of the issued share capital of PPITSA; and

(f) TiL was to hold 42.5% of the issued share capital of PPITSA.

44 On 2 April 2018, the shareholders of PPITSA unanimously passed a resolution to amend PPITSA's Articles of Incorporation to reflect the terms of the TiL SHA. Consequently, the following further dilutions occurred ("Second Dilution"):

(a) PSA Panama's shareholding in PPITSA (which had been reduced from 70% to 27.6% as a result of the First Dilution) was further reduced to 15.6%. Consequently, Ever Strategy's indirect shareholding in PPITSA (which had been reduced from 5% to 1.97% as a result of the First Dilution) was further reduced to 1.11%.[43]

(b) Balboa's shareholding in PPITSA (which had been reduced from 30% to 11.8% as a result of the First Dilution) was further reduced to 7.1%. Consequently, Ever Strategy's indirect shareholding in PPITSA

[43] 0.0714 x 15.6% = 1.11%.

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(which had been reduced from 5% to 1.97% as a result of the First Dilution) was further reduced to 1.18%.[44]

Criminal complaint

45 On 8 August 2024, Ever Strategy lodged a criminal complaint with the Panamanian authorities ("Criminal Complaint").[45] Ever Strategy complained, among other things, that the defendants orchestrated a fraudulent scheme that diluted its shares in PPITSA without its consent.

Ever Strategy's case

46 In its Statement of Claim (Amendment No 1) ("ASOC"), Ever Strategy pleaded the following facts/assertions:

(a) In around late 2006 to early 2007, Ever Strategy, PSA International and Liberman agreed to enter into a joint venture to develop PPIT ("2006/2007 Agreement"). One of terms of this 2006/2007 Agreement was that a corporate vehicle would be set up for the operation of PPIT and Ever Strategy, PSA International and Liberman would hold 10%, 65% and 25% of the shares in the corporate vehicle respectively ("Shareholding Structure").[46]

(b) PPITSA was incorporated on 25 June 2007 pursuant to the 2006/2007 Agreement.[47]

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44 0.16667 x 7.1% = 1.18%.

45 JBOD, at pp 2241–2262.

46 ASOC, at para 15.

47 ASOC, at para 17(b).

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(c) In the second half of March 2011, Ever Strategy, PSA International and Liberman verbally agreed that in consideration of Ever Strategy agreeing to hold its 10% in PPITSA indirectly through PSA Panama and Balboa, prior consent of Ever Strategy would be required for any change in the Shareholding Structure ("Collateral Agreement").[48] This term meant that the parties to the Collateral Agreement had a continuing obligation to maintain the Outworked Shareholding Structure (as defined below) unless Ever Strategy agreed otherwise. Further and/or in the alternative, it was an implied term of the Collateral Agreement that the parties had a continuing obligation to maintain the Outworked Shareholding Structure unless Ever Strategy agreed otherwise.

(d) The Outworked Shareholding Structure referred to Ever Strategy holding its 10% interest in PPITSA indirectly through PSA Panama and Balboa as follows:[49]

(i) 5% would be held through Ever Strategy's 16.667% shareholding in Balboa (see [19] above); and

(ii) 5% would be held through Ever Strategy's 7.14% shareholding in PSA Panama (which was held by PSA Americas as Ever Strategy's nominee) (see [20]–[21] above).

(e) The nature of the relationships between Ever Strategy and PSA International and Liberman, and the understanding as to the manner in which Ever Strategy's 10% interest would be held indirectly under the

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48 ASOC, at para 17(e).

49 ASOC, at paras 17(c)–(e) and 18.

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Outworked Shareholding Structure, gave rise to a legitimate expectation that PSA International and Liberman would not utilise their positions to adversely affect Ever Strategy's 10% interest. As a consequence, PSA International and Liberman undertook and owed fiduciary obligations to Ever Strategy, in particular, not to take or cause any action that would cause Ever Strategy's 10% interest to be diluted without Ever Strategy's consent.[50]

47 Ever Strategy pleaded the following causes of action:

(a) PSA International and Liberman breached and/or continued to breach the Collateral Agreement by causing the First and Second Dilutions without Ever Strategy's consent.[51] The First and Second Dilutions meant that the Shareholding Structure and the Outworked Shareholding Structure were not maintained.

(b) The defendants (except PSA International and Liberman) induced, procured or facilitated the breach and/or continuous breach of the Collateral Agreement on the part of PSA International and Liberman.[52]

(c) PSA International and Liberman breached their fiduciary obligations by causing the First and Second Dilutions.[53]

(d) Each of the defendants (except PSA International, CCSA, Harder Road and Liberman) dishonestly assisted PSA International and

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50 ASOC, at paras 37A–37B.

51 ASOC, at paras 27 and 30.

52 ASOC, at para 35.

53 ASOC, at para 37C.

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Liberman in breaching their fiduciary obligations to Ever Strategy.[54] In the event that either PSA International or Liberman is found not to be a fiduciary of Ever Strategy, that defendant also dishonestly assisted the other in breaching the latter's fiduciary obligations.[55]

(e) The defendants (or any two or more together) conspired to injure Ever Strategy by the following unlawful means:[56]

(i) breach and/or continuing breach of the Collateral Agreement on the part of PSA International and Liberman;

(ii) inducement, procurement or facilitation by the defendants (except PSA International and Liberman) of the breach and/or continuing breach of the Collateral Agreement on the part of PSA International and Liberman;

(iii) breaches of the fiduciary obligations by PSA International and Liberman, and dishonest assistance of such breaches by the defendants (except PSA International, CCSA, Harder Road and Liberman);

(iv) breaches of fiduciary duties owed to PSA Panama by Yang and Tan as directors, including by causing PSA Americas and PSA Panama to grant security over the only asset of PSA Panama to secure debts of PPITSA;

(v) breaches of fiduciary duties owed to Balboa by Liberman and Diamond, including by procuring Balboa to enter into

54 ASOC, at para 37E.

55 ASOC, at para 37F.

56 ASOC, at para 38.

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certain security documents to secure obligations of PPITSA in respect of a credit facility to be made available by Clifford Capital Pte. Ltd. ("Clifford Capital"), under which Balboa would provide security to Clifford Capital; and

(vi) breach of rules of law in Panama, including by accepting Liberman's use of the concession land held via PIMPSA as payment for additional shares of PPITSA allotted to Harder Road.

The law on striking out

48 Under O 9 r 16(1) of the Rules of Court 2021, the court may order a pleading to be struck out on three grounds:

(a) it discloses no reasonable cause of action;

(b) it is an abuse of process of the court; or

(c) it is in the interests of justice to do so.

49 With respect to ground (a), the test is whether the cause of action has "some chance of success" when only the allegations in the pleadings are considered: *Iskandar bin Rahmat v Attorney-General* [2022] 2 SLR 1018 ("*Iskandar*") at [17]. A statement of claim discloses no reasonable cause of action if it does not contain the facts relevant to each essential element of a known cause of action: *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34].

50 With respect to ground (b), the inquiry is whether the process of the court has been used as a means of vexation and oppression: *Iskandar* at [18]. It

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is an abuse of process to bring an action for a collateral purpose or to knowingly pursue a case that is doomed to fail: *Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 at [27]–[28].

51 With respect to ground (c), the court will strike out pleadings to prevent injustice, such as where a claim is legally or factually unsustainable: *Iskandar* at [19].

The AR's decision

52 Ever Strategy tendered a draft amended statement of claim in the proceedings below. The parties agreed to proceed with the striking-out applications in SUM 781, SUM 782 and SUM 783 on the basis of Ever Strategy's case as pleaded in its draft amended statement of claim.[57] As stated earlier, the AR dismissed the applications and gave Ever Strategy permission to file the amended statement of claim.

53 Amongst other arguments, the defendants submitted before the AR that:

(a) Ever Strategy's claims, which were based on the existence of the Collateral Agreement, were factually unsustainable as the evidence contradicted the existence of the Collateral Agreement.[58]

(b) The claim for breach of the Collateral Agreement in respect to the First Dilution was time-barred under s 6(1)(a) of the Limitation Act

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57 Claimant's Written Submissions dated 20 August 2025, at para 2.

58 1st to 6th Defendants' Written Submissions dated 20 August 2025 in SUM 783 ("SUM 783 DWS"), at paras 30–34; 8th–12th Defendants' Written Submissions dated 20 August 2025 in SUM 782 ("SUM 782 DWS"), at paras 194–209.

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1959 (2020 Rev Ed) ("Limitation Act") as OC 34 was commenced more than six years after the date on which the First Dilution occurred.[59]

(c) Ever Strategy failed to plead the material facts underlying its claim for conspiracy by unlawful means.[60]

54 The AR was of the view that while the evidence suggested that the existence of the Collateral Agreement was not very probable, it was not possible to say with confidence that it was entirely without substance and factually unsustainable.[61] The AR found that the 29 October 2013 Email (see [23] above), which stated that Ever Strategy's consent was needed before any dilution of Balboa's 30% stake in PPIT, was consistent with the existence of the Collateral Agreement.[62]

55 With respect to the defendants' submission that the claim based on the First Dilution was time-barred, the AR commented that he would have been inclined to agree with the defendants because the obligation that was breached was an obligation to do a definite act (*ie*, seek Ever Strategy's consent before changing the shareholding) and hence there was no continuing obligation under the Collateral Agreement. However, the AR reasoned that as the existence of the Collateral Agreement was a matter for trial, the *nature* of any obligations

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59 SUM 783 DWS, at paras 35–38; SUM 782 DWS, at para 28.

60 7th Defendants' Written Submissions dated 20 August 2025 in SUM 781, at paras 50–63; SUM 783 DWS, at paras 75–77; SUM 782 DWS, at paras 181–193.

61 JBOD Vol 2 dated 12 January 2026 ("JBOD Vol 2"), at pp 48 (lines 31–33) and 49 (lines 1–2).

62 JBOD Vol 2, at p 48 (lines 28–31).

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under the agreement (continuous or otherwise) was also a matter to be determined at trial.[63]

56 With respect to the claim for conspiracy, the AR rejected the defendants' submissions that Ever Strategy inadequately pleaded the combination and acts done in furtherance of the agreement to injure Ever Strategy.[64]

Issues in this appeal

57 It was not disputed that Ever Strategy's claims for breach of contract, inducement of breach of contract, breach of fiduciary duty and dishonest assistance (see [47(a)]–[47(d)] above) were dependent on the existence of the Collateral Agreement. As for Ever Strategy's claim for conspiracy to injure, not all of the pleaded unlawful means were dependent on the existence of the Collateral Agreement. Thus, if Ever Strategy's case that the Collateral Agreement existed was unsustainable, all of Ever Strategy's claims would be unsustainable save for its claim for conspiracy to injure (to the extent that it relied on unlawful means that were independent of the Collateral Agreement).

58 The issues in this appeal were:

(a) Whether Ever Strategy's claim that the Collateral Agreement existed was factually sustainable?

(b) Whether Ever Strategy's claims, based on the First Dilution, were time-barred?

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63 JBOD Vol 2, p 52 (lines 5–11).

64 JBOD Vol 2, at p 51 (lines 16–19).

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(c) Whether Ever Strategy's claims against all the defendants for conspiracy to injure were factually and legally sustainable?

Whether the claim that the Collateral Agreement existed was factually sustainable

59 I agreed with the defendants that Ever Strategy's claim that the Collateral Agreement existed was factually unsustainable. In my judgment, the contemporaneous objective documentary evidence overwhelmingly proved that the Collateral Agreement was a fiction.

The Consultancy Agreement

60 The Consultancy Agreement[65] (which Ever Strategy had signed) contained provisions that were clearly inconsistent with the Collateral Agreement. Clause 2(b) provided that Ever Strategy's indirect shareholding of 7.14% in PSA Panama (held through PSA Americas) was subject to the following conditions:

> …
>
> (iii) PSA Americas shall have absolute operational and management control of PSA Panama;
>
> (iv) Ever Strategy shall have no rights (voting or otherwise) in respect of the management or and/or decision-making in respect of PSA Panama;
>
> (v) Unless expressly agreed to by the Parties in writing, Ever Strategy shall not be entitled to any further allotment of shares in PSA Panama;
>
> (vi) Ever Strategy shall be entitled to receive dividends declared and distributed by PSA Panama corresponding to its shareholding in PSA Panama (the **Sole Right**) …

[65] JBOD, at pp 106–113.

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> (vii) … Ever Strategy shall, save for the Sole Right only, have no attached rights whatsoever whether express or implied in respect of the Shares allotted to Ever Strategy …

61 The above conditions meant that PSA Americas could:

(a) dilute Ever Strategy's shareholding in PSA Panama by procuring PSA Panama to allot additional shares; Ever Strategy would have no say in this decision and, more importantly, would not have been entitled to be allotted any of the additional shares; and

(b) procure PSA Panama to reduce its shareholding in PPITSA or allow PSA Panama's shareholding in PPITSA to be diluted; Ever Strategy would have no say in this decision.

Such actions would cause Ever Strategy's indirect shareholding in PPITSA to be diluted. Yet, under the Consultancy Agreement, Ever Strategy had agreed that they could be taken without its consent.

62 Ever Strategy's case was that the Collateral Agreement was entered into in the second half of March 2011 (see [46(c)] above). The Consultancy Agreement was signed in June 2011 (see [20] above). The fact that Ever Strategy agreed to the above conditions in the Consultancy Agreement was clear proof that the Collateral Agreement could not have existed.

63 Ever Strategy argued that the Consultancy Agreement did not need to address its 10% indirect interest in PPITSA as it was drawn up at the request of PSA Group only to clarify that Ever Strategy did not have voting rights associated with its shareholding in PSA Panama.[66] I rejected this argument. It

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66 Claimant's Written Submissions dated 12 January 2026 ("CWS 12 Jan"), at para 54.

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was inconsistent with the terms of the Consultancy Agreement. As explained above, the conditions applicable to Ever Strategy's indirect shareholding in PSA Panama meant that Ever Strategy's shareholding in PSA Panama (and consequently, Ever Strategy's indirect interest in PPITSA) could be diluted without Ever Strategy's consent.

64 In his affidavit, Chang asserted that he did not pay special attention to the Consultancy Agreement because it was a document generated by PSA Group after the fact (*ie*, after the 2006/2007 Agreement read with the Collateral Agreement) and that he was not concerned so long as it showed that Ever Strategy had an indirect 5% interest in PPITSA (held indirectly through PSA Panama).[67] I rejected Chang's assertion. The conditions attached to Ever Strategy's indirect shareholding in PSA Panama had a material impact on Ever Strategy's interest in PPITSA. Chang's alleged lack of concern as to the conditions was too incredible to be believable.

Balboa's Memorandum and Articles of Association

65 Ever Strategy became a shareholder in Balboa on 12 April 2011 (see [19] above), *subsequent to* the Collateral Agreement. Balboa's Memorandum and Articles of Association[68] contained nothing to protect Ever Strategy's indirect 5% interest in PPITSA held through Balboa from being diluted without Ever Strategy's consent. Yet Ever Strategy did not enter into any shareholders' agreement to protect itself.

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67 Chang's 3rd Affidavit, at para 64 (JBOD, at p 1081).

68 JBOD, at pp 954–981.

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Emails and letters from 2014 to 2017

66 At a meeting in May 2014, Yang told Chang that to maintain its 10% shareholding in PPITSA, Ever Strategy would have to provide US$2m for each 1% of its shares in PPITSA. In his email summarising the discussion at the meeting, Chang did not refer to the Collateral Agreement or assert Ever Strategy's right for its indirect shareholding in PPITSA to not be diluted without its consent. Chang also did not object to having to provide additional funding to maintain its 10% shareholding. Chang's complaint was only that the project cost was too high (see [24] above).

67 On 27 May 2014, Yang told Chang that:

(a) Balboa's shareholding in PPITSA would be diluted and it was for Ever Strategy to agree with SLI how that 25% shareholding was to be split between them; and

(b) Ever Strategy's indirect shareholding in PPITSA held through PSA Panama would be diluted but Ever Strategy could maintain its 5% shareholding if it was willing to pay US$4m.

(See [25] above).

68 In his reply on 28 May 2014, Chang merely said that he decided to maintain status quo because of a lack of information regarding Phase 2 (see [26] above). Again, there was no mention of the Collateral Agreement or any protest against Ever Strategy's indirect shareholding in PPITSA being diluted without its consent.

69 Chang tried to explain that his reference to "status quo" in his 28 May 2014 email was a reference to Ever Strategy's 10% shareholding in PPITSA,

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which could not change due to the Collateral Agreement and that if PSA International wanted to pursue Phase 2 without Ever Strategy, it should not do so by changing the shareholding structure of PPITSA.[69]

70 In my view, Chang's explanation was disingenuous. In his 27 May 2014 email, Yang told Chang that Ever Strategy's 5% shareholding (held through PSA Panama) would be diluted unless Ever Strategy decided to make an equity contribution of US$4m. Chang's 28 May 2014 email was in reply to Yang's email and stated as follows:

> I decided to maintain my status quo because there is a *lack of Phase 2 proposal information* provided to me right now. Without the investment details, information such as the value of land, who will be the buyer and seller of land, *I cannot step further, but to keep my status quo*. In this regards, please send me … the business case for phase 2 project … *in order for me to make my investment decision*.
>
> [emphasis added]

71 It was clear that Chang's reference to maintaining status quo meant that Ever Strategy would not make any further equity contribution without reviewing the relevant information first. This was also consistent with Chang's 24 February 2017 letter to Fock (see [37] above). In that letter, Chang referred to having been approached in 2014 on Phase 2 and being asked/told to participate in Phase 2. His complaint to Fock was that the dilution of Ever Strategy's interest had been done without a "formal process" for him to say whether Ever Strategy could not or did not want to be part of Phase 2 (which Chang referred to as the "new investment"). There was no complaint in his letter to Fock that the dilution was in breach of the Collateral Agreement.

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[69] Chang's 3rd Affidavit, at para 49(b) (JBOD, at pp 1072–1073).

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72 Chang also argued that "Clause 7.2 [of the 2007 Shareholders' Agreement] envisage[d] that if the original partners (including Ever Strategy) of the joint venture cannot agree to pursue Phase 2 together, then any partner(s) who wish to pursue Phase 2 themselves may do so with a separate project company."[70] This was a reference to the proviso in clause 7.2(c) of the 2007 Shareholders' Agreement which stated as follows:

> PROVIDED THAT if a Shareholder does not wish to participate in Phase 2, the other Shareholder may pursue Phase 2 through a separate entity from the [joint venture company] …

Chang argued that this meant that the Shareholding Structure of PPITSA should be left untouched if not all of the "original partners" agreed to pursue Phase 2, and that this "accord[ed] with the Collateral Agreement".

73 In my view, clause 7.2 of the 2007 Shareholders' Agreement[71] (which remained in the Amended and Restated Shareholders' Agreement[72]) did not assist Ever Strategy. First, Ever Strategy was not a party to the 2007 Shareholders' Agreement and the term "Shareholder" meant "a registered holder of [s]hares in the [joint venture company]", which therefore excluded Ever Strategy. Second, the proviso to clause 7.2(c) merely gave the participating shareholder an *option* to pursue Phase 2 through a separate entity. Third, Chang omitted to point out that clause 7.2(c) also provided that if a shareholder failed to meet the required funding, the other shareholder had the option to contribute the funding attributable to the non-funding shareholder by way of a bridging loan to the non-funding shareholder. If the bridging loan was not repaid within one month, the funding shareholder could dilute the non-funding shareholder

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70 Chang's 3rd Affidavit, at para 49(b) (JBOD, at pp 1072–1073).

71 JBOD, at p 513 (clause 7.2(c)).

72 JBOD, at p 558.

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by converting the bridging loan into equity or shareholder loan. This was clearly inconsistent with the Collateral Agreement.

74 Chang's 28 May 2014 email was followed by numerous emails and a few letters over a period of almost three years from May 2014 to March 2017 (see [26]–[28] and [31]–[41] above). The questions of dilution of Ever Strategy's indirect 10% shareholding in PPITSA and whether Ever Strategy was prepared to inject funds to maintain its 10% shareholding continued to be raised and discussed in these emails and letters. Yet, most tellingly, not once did Ever Strategy ever mention the Collateral Agreement or assert that its 10% shareholding in PPITSA could not be changed without its consent or that it was not obliged to inject any further funds to maintain its 10% shareholding.

75 Even after Ever Strategy learned that PSA Panama's shareholding in PPITSA had been reduced from 70% to 27.6% (pursuant to the First Dilution), Carrie's email to Vincent on 27 September 2016 (see [31] above) made no mention of the Collateral Agreement.[73]

76 Vincent's reply on 3 October 2016 explained that the reduced equity stake was due to the significant investments required for Phase 2 and stated that Ever Strategy would need to contribute US$15m to obtain a 5% beneficial interest in Phase 2.[74] Carrie's reply dated 6 October 2016 again made no mention of the Collateral Agreement and did not object to being asked to contribute US$15m to maintain its 5% beneficial interest.[75] Instead, she said that Chang wanted to discuss with his advisers and that Chang continued "to expect that

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73 JBOD, at p 756.

74 JBOD, at p 756.

75 JBOD, at pp 755–756.

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PPIT which is 'Phase 1' is kept distinct and separate from 'Phase 2' and that he still owns 5% indirect stake in PPIT via his shares in [PSA Panama]".

77 Chang's complaints (in his and Carrie's emails/letters) were not that Ever Strategy's indirect shareholding in PPITSA was being or had been diluted without its consent. Instead, his complaints were that the costs for Phase 2 were high, that he was not getting enough information on Phase 2, that Phase 2 was a separate and distinct project and that there was no capital call notice relating to the reduction of PSA Panama's shareholding in PPITSA (see [24], [26], [28], [33], [35], [36] and [39] above).

78 Chang's complaints were inconsistent with the Collateral Agreement. Under the Collateral Agreement, Chang would have been entitled to state that whatever PSA Panama or Balboa wanted to do, Ever Strategy's indirect 10% shareholding in PPITSA could not be diluted without its consent. There was no need for him to even try to siphon Phase 2 off as a separate and distinct project. Under the Collateral Agreement, Ever Strategy would simply maintain its 10% interest in PPITSA without having to contribute any funds, and Ever Strategy would be entitled to benefit from Phase 2 as well. The fact that Chang made all these complaints, instead of complaining that the dilution of Ever Strategy's indirect shareholding in PPITSA breached the Collateral Agreement, was clear proof that the Collateral Agreement did not exist.

79 Ever Strategy submitted that the lack of reference to the Collateral Agreement in the emails and letters was insufficient to strike out its claim. Ever Strategy relied on *Lipkin International Ltd v Swiber Holdings Ltd* [2015] 5 SLR 962 ("*Lipkin*") at [79] where the court said:

> 79 I observe in passing that it is highly unusual for a party to pursue a claim for breach of contract when neither the

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> existence of the contract nor its breach was ever raised in correspondence prior to the institution of the proceedings. This in itself would be insufficient to strike out the claim. However, when taken together with the other difficulties plaguing the plaintiff's case, I find that this is a clear instance where striking out is appropriate. …

80 In my view, *Lipkin* did not assist Ever Strategy. As was the case in *Lipkin*, there were other difficulties plaguing Ever Strategy's case. The fact that the Collateral Agreement was never raised in the emails and letters has to be taken together with all the evidence that contradicted Ever Strategy's case.

81 Ever Strategy sought to rely on Yang's email dated 27 May 2014.[76] In that email, Yang had explained why Balboa's 30% shareholding would be reduced to 25% and why Ever Strategy's 5% shareholding in PPITSA held through PSA Panama would be reduced to 1.5%. Yang had also told Chang that PSA was willing to double Ever Strategy's shareholding to 3% without additional equity contribution but Ever Strategy could maintain its 5% shareholding if it was willing to make an equity contribution of US$4m. Yang had ended his email with the following statement: "I hope the above clarifies, and we can move ahead quickly to an agreement with all parties." Chang claimed that this statement confirmed that any Phase 2 expansion of PPIT through or using PPITSA required an agreement of all parties.[77]

82 In my view, Chang's claim was not borne out by Yang's email. A proper reading of Yang's email showed that he was referring to an agreement regarding (a) how Balboa's reduced 25% shareholding would be split with Ever Strategy; and (b) Ever Strategy's beneficial interest in PPITSA. With respect to the former, Yang had said in his email that how Balboa's 25% shareholding "should

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76 JBOD, at p 1184.

77 Chang's 3rd Affidavit, at para 47 (JBOD, at p 1071).

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be split can only be settled and agreed amongst yourselves". As for the latter, Yang had made the point that Ever Strategy could maintain its 5% shareholding held through PSA Panama if it was willing to make an equity contribution of US$4m.

Carrie's 29 October 2013 email

83 As stated in [54] above, the AR found that the 29 October 2013 Email which stated that Ever Strategy's consent was needed before any dilution of Balboa's 30% stake in PPIT was consistent with the existence of the Collateral Agreement. However, in my view, the 29 October 2013 Email carried little weight when viewed against the *subsequent* numerous emails and letters discussed above. The 29 October 2013 Email merely stated that Ever Strategy's agreement was required for any dilution in Balboa's 30% stake in PPIT. It did not refer to the Collateral Agreement or assert that Ever Strategy's 10% interest in PPIT could not be changed without its consent. More importantly, the subsequent emails and letters constituted overwhelming evidence that there was no Collateral Agreement. The 29 October 2013 Email was not sufficient to raise any triable issues.

The Amended and Restated Shareholders' Agreement

84 PSA Panama, Balboa and PPITSA signed the Amended and Restated Shareholders' Agreement.[78] Clause 7.1 provided for the initial equity investment to be funded by PSA Panama. Clause 7.2 provided that any subsequent renewal or replacement capital expenditure and start-up capital for Phase 2 would be met by (in order of priority) retained cash, external financing

[78] JBOD, at pp 549–571.

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and shareholder's funding by way of equity or shareholder loan in proportion to their then shareholding in PPITSA.

85 Clause 7.2(c) (which had existed in the 2007 Shareholders' Agreement) provided that if one shareholder failed to meet its funding requirement, the other shareholder had the option to provide a bridging loan to the non-funding shareholder and if the bridging loan was not repaid within one month, the funding shareholder could dilute the non-funding shareholder by converting the bridging loan to into equity or shareholder loan (as the case may be).

86 Under the Collateral Agreement, Ever Strategy's 10% shareholding in the joint venture company could not be diluted without Ever Strategy's consent and had to be maintained without Ever Strategy being required to contribute any funds. I agreed with the defendants that the Collateral Agreement was inconsistent with clause 7.2(c). I also agreed with the defendants that, in the light of clause 7.2(c), it would not have made any commercial sense for PSA Panama or Balboa to agree to the Collateral Agreement.

The Criminal Complaint

87 In the Criminal Complaint, Ever Strategy stated that:

> (a) it was under the belief that Balboa would continue to hold a 30% ownership stake in PPITSA and, trusting the representations by PPITSA's agents, it accepted its 16.667% shareholding in Balboa on this understanding;[79]

[79] JBOD, at p 2244 (paras 10–11).

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(b) the understanding reached between Ever Strategy and PPITSA was that the former would receive, through Balboa, all economic benefits and dividends corresponding to the shares issued in its favour;[80]

(c) PSA Group granted Ever Strategy 714 shares in PSA Americas, which was in turn a shareholder of PSA Panama, on the understanding (which was conveyed to Ever Strategy) that PSA Panama would continue to hold 70% of the shares in PPITSA;[81]

(d) PSA Group and "Liberman Group" deceived Ever Strategy by means of tricks, schemes and misrepresentations, leading Ever Strategy to believe that through its indirect holdings, it would have an effective 10% shareholding in PPITSA at all relevant times;[82]

(e) Ever Strategy was deceived into believing that it would hold a 10% stake in the "Rodman Port project" but PSA Group and Liberman Group conspired and executed two actions to ensure that Ever Strategy ended up with a 0% share;[83] and

(f) "… this is not a breach of contract; rather, it involves a fraudulent network structure designed to deceive and mislead [Ever Strategy] into believing it was receiving compensation when, in fact, it was not."[84]

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80 JBOD, at p 2245 (para 12).

81 JBOD, at p 2245 (para 16).

82 JBOD, at p 2245 (para 17).

83 JBOD, at p 2247 (para 28).

84 JBOD, at p 2249 (para 34).

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88 The defendants argued that the Criminal Complaint was inconsistent with the Collateral Agreement because:[85]

(a) it made no reference to the Collateral Agreement or to the fact that Ever Strategy's consent had to be sought for any changes to PPITSA's shareholding structure;

(b) Ever Strategy stated in the Criminal Complaint that "this is not a breach of contract …"; and

(c) it referred to an alleged agreement between *only* PPITSA and Ever Strategy that Balboa would continue to have a 30% shareholding in PPITSA, instead of the tripartite Collateral Agreement between PSA International, Liberman and Ever Strategy.

89 In my view, the Criminal Complaint was equivocal. It was true that the Criminal Complaint (a) did not refer to the Collateral Agreement or to the fact that Ever Strategy's consent had to be sought for any changes to PPITSA's shareholding structure; and (b) referred to an alleged agreement between PPITSA and Ever Strategy instead of the tripartite Collateral Agreement. This was arguably inconsistent with the Collateral Agreement.

90 However, in the Criminal Complaint, Ever Strategy also alleged that (a) PPITSA's agents represented that Balboa would *continue to be* the owner of a 30% equity interest in PPITSA; (b) it was understood that PSA Panama would *continue to hold* 70% of the shares in PSA Panama; and (c) Ever Strategy was deceived into believing that through its indirect holdings, it would be, in effect,

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[85] 1st Defendant to 6th Defendants' Written Submissions dated 12 January 2026, at para 36; 8th to 12th Defendants' Written Submissions dated 12 January 2026, at paras 32–35.

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an indirect shareholder of PPITSA, with an effective shareholding of 10% *at all relevant times*. It was at least arguable that these allegations were consistent with the allegation that under the Collateral Agreement, Ever Strategy's indirect 10% shareholding in PPITSA could not be changed without its consent. The inclusion of these allegations in the Criminal Complaint did not strengthen Ever Strategy's case; these allegations were self-serving as the Criminal Complaint was made *after* the present action was commenced. However, they were sufficient to raise a triable issue as to whether the Criminal Complaint was inconsistent with the Collateral Agreement.

91 As for the statement in the Criminal Complaint that "this is not a breach of contract", I agreed with Ever Strategy that this could be interpreted to mean that the complaint was not just about a breach of contract but was a complaint about fraud.

Whether the claims based on the First Dilution were time-barred

92 Section 6(1)(a) of the Limitation Act states as follows:

> 6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (a) actions founded on a contract…

93 OC 34 was commenced on 18 January 2024, more than six years after the First Dilution, which occurred in December 2015. However, Ever Strategy's pleaded case was that the requirement for Ever Strategy's consent to any change in the Shareholding Structure meant that PSA International and Liberman had a continuing obligation to maintain the Outworked Shareholding Structure unless Ever Strategy agreed otherwise; further and/or in the alternative this continuing

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obligation was an implied term in the Collateral Agreement.[86] Under the Shareholding Structure, Ever Strategy was to hold 10% of the shares in the vehicle set up to develop PPIT (see [46(a)] above). Under the Outworked Shareholding Structure, Ever Strategy was to hold its 10% interest in PPITSA indirectly through Balboa (5%) and PSA Panama (5%) (see [46(d)] above).

94 Ever Strategy argued that its claims that were based on the First Dilution were not time-barred as the First Dilution amounted to a continuing failure to maintain Ever Strategy's 10% shareholding and was a continuing breach of the Collateral Agreement.[87]

95 I agreed with the defendants that Ever Strategy's case was unsustainable. Ever Strategy's interpretation of the term of the Collateral Agreement was not a reasonable interpretation. The term requiring Ever Strategy's consent to any change in the Shareholding Structure meant nothing more than that. This term imposed an obligation to do a definite act, *ie*, seek Ever Strategy's prior consent before making any change to the Shareholding Structure. It did not impose any continuing obligation to maintain the Outworked Shareholding Structure.

96 The alleged continuing obligation to maintain the Outworked Shareholding Structure could arise (if at all) only as an implied term. However, I agreed with the defendants that there was no room to imply such a term. The threshold for implying a term is a high one and a term will not be implied unless:

(a) the gap in the contract arose because the parties did not contemplate the gap;

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86 ASOC, at para 17(e).

87 CWS 12 Jan, at para 82.

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(b) it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy; and

(c) the specific term to be implied must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at the time of the contract.

See *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [100]–[101].

97 The proposed implied term was not at all necessary in the business or commercial to give the Collateral Agreement efficacy. The Collateral Agreement could work without the implied term.

98 Further, the proposed implied term did not pass the "Oh, of course!" test. As explained in [84] above, under clause 7.2(c) of the Amended and Restated Shareholders' Agreement, if either PSA Panama or Balboa failed to meet a funding requirement, its shareholding in PPITSA might end up being diluted. Any such dilution would result in Ever Strategy's indirect shareholding in PPITSA being diluted as well.

99 The Amended and Restated Shareholders' Agreement was in existence before the alleged Collateral Agreement. It was inconceivable that PSA Panama and Balboa would have responded "Oh, of course!" had the proposed implied term been put to them at the time of the Collateral Agreement. The proposed implied term would have required PSA Panama or Balboa to maintain Ever Strategy's indirect shareholding in PPITSA (by injecting funds) even though

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PSA Panama's or Balboa's shareholding in PPITSA was being diluted because PSA Panama or Balboa was unable to meet a funding requirement.

Claims against all the defendants for conspiracy by unlawful means

100 Ever Strategy's claim for conspiracy to injure relied on various unlawful acts by the defendants (see [47(e)] above). To the extent that Ever Strategy's conspiracy claim relied on unlawful acts that depended on the existence of the Collateral Claim, the conspiracy claim was unsustainable. Of the unlawful acts pleaded, only those set out above in [47(e)(iv)] relating to the grant of security to secure debts of PPITSA, [47(e)(v)] relating to the securing of obligations of PPITSA in respect of the credit facility from Clifford Capital and [47(e)(vi)] relating to the breaches of Panamanian laws were independent of the Collateral Agreement, and therefore not affected by my conclusion that the claim that the Collateral Agreement existed was unsustainable.[88]

101 To succeed in a claim for conspiracy by unlawful means, a claimant must show that:

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the claimant by those acts;

(c) the acts were unlawful; and

(d) the claimant suffered loss as a result of the conspiracy.

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88 NE 26 January 2026, p 2 (lines 31–35).

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See *EFT Holdings, Inc v Marinteknic Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 ("*EFT Holdings*") at [112].

102 To satisfy the element of a combination, Ever Strategy had to show that there was an agreement between the defendants (or any two or more of them) to pursue a particular course of conduct and that concerted action was taken pursuant to that agreement: *EFT Holdings* at [113].

103 All that Ever Strategy pleaded was as follows:[89]

> 38. Further or alternatively, by reason of the matters pleaded in paragraphs 14 to 37 above, in 2015 and 2016, the Defendants (or any two or more together), conspired and combined together wrongfully and with the sole or predominant intention of injuring Ever Strategy and/or of causing loss to Ever Strategy by unlawful means …

104 I agreed with the defendants that the claims for conspiracy failed to disclose a reasonable cause of action as the pleadings were defective. Ever Strategy failed to plead *how* the alleged conspirators combined together to take some form of concerted action in pursuit of a common object or design. Paragraphs 14 to 37 of the ASOC covered a wide range of factual matters from 2006 to 2014 as well as Ever Strategy's claims for breach and/or continuous breach of the Collateral Agreement, inducement of breach and/or continuous breach, breach of trust and fiduciary duties, and dishonest assistance. It was impossible to make out from Ever Strategy's pleadings what its case was as to how the combination was formed.

105 Ever Strategy relied on *Bank of China Ltd, Singapore Branch v BP Singapore Pte Ltd* [2021] 5 SLR 738 ("*Bank of China*"). In that case, the

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89 ASOC, at para 38.

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claimant ("BOC") pleaded that the first defendant ("BP"), together with two other named entities and the second to fourth defendants (or any of them), conspired to injure it. BP argued that the claim should be struck out because BOC had not identified the individuals in BP who allegedly engaged in the conspiracy. The court refused to strike out the claim, finding that BOC's pleadings sufficiently informed BP what case it had to meet. In particular, the court found that although BOC had not named individuals within BP, BP itself would know which individuals within BP were involved in the matters BOC was complaining of (at [100]).

106 In my view, *Bank of China* was distinguishable. There the court found that the pleadings were sufficient to inform BP which individuals within BP were involved. In the present case, as stated earlier, it was impossible to make out from Ever Strategy's pleadings what its case was as to how the combination was formed.

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Conclusion

107 For the above reasons, I allowed all three appeals and struck out Ever Strategy's claims against the defendants. I ordered Ever Strategy to pay:

(a) the first to sixth defendants $20,000 for SUM 783 and $20,000 for RA 192;

(b) the seventh defendant $12,000 for SUM 781 and $12,000 for RA 193; and

(c) the eighth to 12th defendants $20,000 for SUM 782 and $20,000 for RA 191.

Disbursements were to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Jordan Tan, Victor Leong and Lim Jun Heng (Audent Chambers LLC) (instructed);
Nicholas Poon and Michael Chan (Breakpoint LLC) (instructing) for the claimant;
Lee Eng Beng SC, Vellayappan Balasubramaniyam, Jeremy Gan, Wayne Yeo, Shawn Tien and Tessa Teo (Rajah & Tann Singapore LLP) for the first to sixth defendants;
Jason Chan SC, Melissa Mak, Ong Ken Wei and Stanley Woo (Allen & Gledhill LLP) for the seventh defendant;
Danny Ong SC, Teo Jason and Lee Jin Loong (Setia Law LLC) for the eighth to twelfth defendants.

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