IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 171

Suit No 267 of 2017

Between

Tan Woo Thian

… *Plaintiff*

And

PricewaterhouseCoopers Advisory Services Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Tort] — [Negligence] — [Duty of care]
[Tort] — [Negligence] — [Breach of duty]

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

THE PARTIES 2

BACKGROUND TO THE DISPUTE 3

The Acquisition Transaction *3*

The Disposal Transaction *5*

The defendant's engagement *11*

Summary of the defendant's findings *13*

Subsequent events *16*

UniLegal's investigations and findings *17*

THE PARTIES' CASES **19**

THE PLAINTIFF'S CASE 19

THE DEFENDANT'S CASE 19

ISSUES TO BE DETERMINED **20**

WHETHER THE DEFENDANT OWED A DUTY OF CARE TO THE PLAINTIFF **20**

FACTUAL FORESEEABILITY 21

LEGAL PROXIMITY 24

Voluntary assumption of responsibility *28*

Reliance *29*

POLICY CONSIDERATIONS 31

Potential overlap with the law of defamation *32*

Potential conflict with the defendant's contractual duties *33*

Chilling effect on professional fact finding *33*

CONCLUSION ON THE FIRST ISSUE 34

WHETHER THE DEFENDANT BREACHED ITS DUTY OF CARE TO THE PLAINTIFF 34

THE APPLICABLE STANDARD OF CARE 34

FINDINGS ON THE BACKGROUND FACTS RELATING TO THE NPT TRANSACTIONS 35

FINDINGS ON THE ACQUISITION TRANSACTION 37

Evidence of cash payment *38*

Under-declaration of the acquisition consideration *39*

Validity of the Acquisition Transaction *40*

Discrepancy in recorded cost of the Acquisition Transaction *41*

FINDINGS ON THE DISPOSAL TRANSACTION 42

FINDINGS ON SBI'S POSSIBLE BREACH(ES) OF CHINESE TAX LAW 44

FINDINGS ON SBI'S POSSIBLE BREACH(ES) OF SINGAPORE SECURITIES LAW 46

PROCESS OF INVESTIGATING THE NPT TRANSACTIONS AND PREPARING THE PWC REPORT AND EXECUTIVE SUMMARY 48

CONCLUSION ON THE SECOND ISSUE 50

WHETHER THE PLAINTIFF SUFFERED LOSS AND DAMAGE 51

CONCLUSION 53

COSTS 54

Tan Woo Thian
v
PricewaterhouseCoopers Advisory Services Pte Ltd

[2020] SGHC 171

High Court — Suit No 267 of 2017
See Kee Oon J
7–11 October, 6–8 November 2019, 29–30 January, 6 April 2020, 3 June 2020

13 August 2020

See Kee Oon J:

Introduction

1 The plaintiff, who is a former director and Chief Executive Officer ("CEO") of SBI Offshore Limited ("SBI"), was involved in a series of transactions pertaining to SBI's acquisition and subsequent disposal of shares in a Chinese entity known as Jiangyin Neptune Marine Appliance Co Ltd ("NPT").

2 In June 2016, SBI engaged the defendant to conduct a fact-finding review on these transactions, the results of which were published in a report ("the PwC Report") and summarised in an executive summary ("the Executive Summary"). The Executive Summary was issued to SBI's Board of Directors ("SBI's Board") and shareholders.

3 The plaintiff alleged that the defendant had acted negligently in investigating the NPT-related transactions and/or presenting its findings in the Executive Summary. He argued that the Executive Summary was factually inaccurate and/or misleading, and had caused him to suffer loss including reputational loss, diminution in the value of his SBI shares and loss of influence in SBI.

4 Having reviewed the evidence put forward at trial as well as the parties' respective written submissions, I dismissed the plaintiff's claim in its entirety. The plaintiff has appealed against my decision. I now set out the grounds of my decision in full.

Facts

The parties

5 The plaintiff is the founder of SBI, which was previously known as Seabreeze International Pte Ltd. SBI carries on business in the marketing and distribution of drilling and related equipment, as well as integrated engineering projects.[1] It was listed on the Catalist Board of the Singapore Stock Exchange Securities Trading Limited ("SGX-ST") on 11 November 2009.[2] The plaintiff was SBI's Managing Director from 1997 till November 2009. He was subsequently appointed as an executive director and the CEO of SBI from 17 August 2012 to 18 March 2016.

---

1 Tan Woo Thian's Affidavit of Evidence-in-Chief dated 2 September 2019 ("Plaintiff's AEIC") at para 2

2 Plaintiff's AEIC at para 3

6 The defendant is an international accounting firm which was engaged by SBI to perform an independent fact-finding review on SBI's 2008 acquisition and 2015 sale of shares in NPT. NPT manufactured lifeboats and davits which were distributed by SBI.[3]

Background to the dispute

The Acquisition Transaction

7 Sometime in 2008, SBI acquired a 35% equity interest in NPT ("the Acquisition Transaction").

8 Prior to the Acquisition Transaction, NPT had been 65% owned by Jiangyin Wanjia Yacht Co Ltd ("Wanjia") and 35% owned by a Taiwanese individual, Mr Chen Yen Ting ("Mr Chen"). According to the plaintiff, the Acquisition Transaction was effected by way of a written Equity Transfer Agreement ("ETA") which provided that SBI would acquire Mr Chen's equity interest in NPT for the consideration of US$1.75m ("the First Acquisition ETA").[4]

9 The First Acquisition ETA was signed only by Mr Jonathan Hui ("Jonathan Hui"), who was a director and the CEO of SBI at the material time. It was undated save for a reference to the year 2008.[5]

---

3 Statement of Claim dated 19 August 2019 ("SOC") at para 16

4 Plaintiff's AEIC at paras 15 and 23–29

5 Agreed Bundle of Documents ("ABD") at pp 34–40

10 Subsequently, both Jonathan Hui and the plaintiff signed another ETA relating to the same transaction ("the Second Acquisition ETA").[6] Under the Second Acquisition ETA, which was dated 20 October 2008, Mr Chen agreed to transfer his 35% shareholding in NPT to SBI for US$350,000.[7] The plaintiff claimed that he had signed the Second Acquisition ETA (which he described as a "form") because Ms Hua Huajiang Ollie ("Ollie Hua"), who was a representative of Wanjia, had informed him that this step was necessary for the registration of the share transfer.[8]

11 The key differences between the two Acquisition ETAs may be summarised as follows.[9]

(a) The Second Acquisition ETA stated the acquisition consideration as US$350,000, whereas the First Acquisition ETA stated the acquisition consideration as US$1.75m.

(b) The Second Acquisition ETA was dated 20 October 2008, whereas the First Acquisition ETA merely stated the date as 2008 with no indication of the month or date.

(c) The Second Acquisition ETA was signed by both Jonathan Hui and the plaintiff, whereas the First Acquisition ETA was signed by Jonathan Hui only.

---

6 Plaintiff's AEIC at para 33

7 ABD at pp 60–62

8 Plaintiff's AEIC at para 33

9 ABD at pp 34–40 and pp 60–62

(d) The Second Acquisition ETA bore Wanjia's company seal and Ollie Hua's signature. The First Acquisition ETA was not signed by Ollie Hua and did not bear Wanjia's company seal.

12 On 11 November 2009, SBI was listed on the SGX-ST. The purchase price of SBI's 35% equity interest in NPT was disclosed as US$1.75m in SBI's Offer Document dated 4 November 2009 ("the Prospectus"). However, the acquisition consideration was recorded as US$1.8m in SBI's financial reports for subsequent financial years.[10]

The Disposal Transaction

13 On 18 August 2015, SBI entered into an agreement with Ollie Hua's father, a People's Republic of China ("PRC") national by the name of Mr Hua Hanshou ("Mr Hua"), to dispose of the 35% equity interest in NPT at the price of US$3.5m ("the First Disposal ETA"). The First Disposal ETA was dated 18 August 2015[11] and was announced by SBI on the same day.[12]

14 According to the plaintiff, Mr Hua insisted that one half of the purchase price (US$1.75m) should be paid out of the PRC, and that the other half (US$1.75m) should be paid out of Hong Kong.[13]

15 On 17 September 2015, Ollie Hua sent an e-mail to the plaintiff, copying Ms Amy Soh ("Amy Soh"), who was SBI's then-Chief Financial Officer, and Mr Chan Lai Thong ("John Chan"), who was SBI's then-Executive Chairman.

---

10 ABD at p 2325–2326

11 ABD at p 1428–1444

12 SOC at para 26

13 SOC at para 23

In this e-mail, which was titled "Payment for Equity Transfer USD 1,750,000", Ollie Hua wrote:[14]

> The amount of USD1,750,000.00 according to our agreement has been paid from Jiangyin Vangard Boating Co., Ltd to SBI Offshore Limited on Sept 14. The tax as per PRC tax law shall be deducted in the payment directly and tax amount is calculated by Tax Bureau of Jiangyin City as below: USD1,750,000.00 – USD350,000.00(Registered Investment) = USD1,400,000 @10% = USD140,000.00 …

16 On 22 September 2015, Amy Soh e-mailed Ollie Hua, copying the plaintiff and John Chan, stating that the withholding tax ought to be US$175,000 rather than US$140,000. This sum was calculated on the basis that the original purchase price was US$1.75m (as stated under the First Acquisition ETA) and the stipulated sale price was US$3.5m (as stated under the First Disposal ETA).[15]

17 The plaintiff alleged that subsequently, in early October 2015, Mr Hua proposed to the plaintiff that a second disposal ETA be executed between SBI and Wanjia for the transfer of SBI's 35% equity interest in NPT to Wanjia for the sum of US$1.75m, purportedly because (a) a Chinese national could not own shares in a joint venture company; and (b) Mr Hua wanted SBI to execute an agreement which reflected the sum of money being paid out of PRC and not the sum being paid out of Hong Kong. Mr Hua also claimed that the proposed document was required for Wanjia's internal purposes.[16] The plaintiff thus presented Mr Hua's request to SBI.

---

14 ABD at p 1459

15 ABD at p 1481

16 SOC at para 31; Notes of Evidence ("NE"), 7 October 2019, 134-147

18 On 10 October 2015, Wanjia wrote a letter to SBI stating that Wanjia's payment of US$1.75m to SBI for SBI's 35% equity interest in NPT had been made from within China, and that Wanjia was therefore required to pay 10% withholding tax on behalf of SBI. The withholding tax amount was calculated by Wanjia to be US$140,000. Wanjia claimed that it had already made payment on behalf of SBI to the local tax bureau at Jiangyin for the amount of US$140,000. It also stated that it "guarantee[d]" that SBI's liability to pay withholding tax would not exceed US$175,000, and that any excess would be paid by Wanjia.[17]

19 On 30 October 2015, Amy Soh produced a report to SBI's Audit and Risk Management Committee ("Audit Committee") addressing the withholding tax issues surrounding SBI's disposal of the NPT shares ("Amy Soh's Report").[18] In this report, Amy Soh referred to the fact that there were two ETAs with different prices, and stated her opinion that the PRC tax authority would insist on the tax payable being US$315,000 even though the correct amount ought (in her view) to be US$175,000 instead. She also noted that SBI had been asked to enter into a new ETA with Wanjia for the purchase price of US$1.75m, and that Wanjia's legal representative had provided SBI with a letter of assurance on SBI's tax liability.

20 On 11 November 2015, SBI's Board had a meeting, during which it rejected the plaintiff's proposal to execute a second disposal ETA.[19]

---

17 ABD at pp 1482–1483

18 ABD at pp 1490–1492

19 ABD at p 1521

21 According to the plaintiff, John Chan subsequently approached him towards the end of November 2015 to inform him that he (the plaintiff) would be given a power of attorney authorising him to sign a novation agreement so that Mr Hua's requests could be met. John Chan also allegedly told the plaintiff that he (the plaintiff) would be given a general power of attorney to do all that was necessary to complete the transfer of SBI's 35% equity interest in NPT.[20] The defendant's position was that this conversation never took place.[21]

22 On 1 December 2015, SBI's Board met again to consider the possibility that a novation agreement be entered into between SBI, Wanjia and Mr Hua. The intended purpose of this novation agreement was to transfer the First Disposal ETA from Mr Hua to Wanjia, such that Wanjia would take Mr Hua's place as purchaser. The Board resolved, *inter alia*:[22]

> (a) that it approved and accepted the terms of the draft novation agreement ("the Novation Agreement") that had been presented to it;
>
> (b) that the plaintiff be authorised to sign the Novation Agreement to novate the First Disposal ETA;
>
> (c) that a power of attorney allowing the plaintiff to execute the Novation Agreement and other ancillary documents be approved and executed under seal in accordance with the Articles of Association of SBI.

---

20 SOC at para 35

21 Defence at para 48

22 ABD at pp 1562–1563

23 The Novation Agreement was signed on 1 December 2015.[23]

24 On 8 December 2015, John Chan and the plaintiff attended at the Notary Public's office to execute a power of attorney authorising the plaintiff to execute the Novation Agreement. It was subsequently discovered that John Chan and the plaintiff had apparently signed *two* versions of the power of attorney – one in Chinese with an English translation ("the English/Chinese POA")[24] and one in Chinese only ("the Chinese-Only POA").[25] The two POAs shared the exact same Chinese text, but were different in the following respects.[26]

(a) Clause 1 of the English/Chinese POA authorised the plaintiff to sign a "转让协议" which was expressly translated as "Novation Agreement". However, Clause 1 of the Chinese-Only POA did not contain the English translation of "转让协议" and could be interpreted as authorising the plaintiff to sign a "share transfer agreement".

(b) The English text of Clause 2 of the English/Chinese POA authorised the plaintiff to sign "any documents ancillary to the transfer of 35% equity in [NPT] to [Wanjia]". However, Clause 2 of the Chinese-Only POA did not make any reference to Wanjia and could be interpreted as authorising the plaintiff to sign any document relating to the transfer of SBI's 35% equity interest in NPT.

---

23 ABD at p 1571–1574

24 ABD at p 1584

25 ABD at p 1608

26 ABD at pp 1584 and 1608

25 On the same day (8 December 2015), the plaintiff signed a second disposal ETA ("the Second Disposal ETA") on behalf of SBI, which provided for the transfer of SBI's 35% equity interest in NPT to Wanjia for the sum of US$1.75m.[27] The Second Disposal ETA was later lodged with the PRC registration authorities.[28]

26 The defendant's position was that SBI's Board had only resolved and authorised the plaintiff to enter into the First Disposal ETA on behalf of SBI. It was thus averred that the Second Disposal ETA had been signed without SBI's authority.

27 The Second Disposal ETA was different from the First Disposal ETA in the following respects.[29]

(a) The First Disposal ETA stated the consideration as US$3.5m, whereas the Second Disposal ETA stated the consideration as US$1.75m.

(b) The First Disposal ETA named the purchaser as Mr Hua, whereas the Second Disposal ETA named the purchaser as Wanjia.

(c) The First Disposal ETA was signed by Mr Hua, whereas the Second Disposal ETA was signed by Ollie Hua on behalf of Wanjia, with the company seal of Wanjia affixed.

---

27 ABD at pp 1585–1592

28 Plaintiff's AEIC at para 71

29 ABD at pp 1428–1444; ABD at pp 1585–1592

(d) Unlike the First Disposal ETA, the Second Disposal ETA was additionally signed by one "Hua Haibo" as the legal representative of NPT, with the company seal of NPT affixed.

28 The Acquisition and Disposal Transactions are hereinafter collectively referred to as "the NPT Transactions".

The defendant's engagement

29 On 18 July 2016, requisition notices were served on SBI's Board, requesting that the Board convene an extraordinary general meeting ("the EGM") to pass resolutions for the removal of John Chan as a director of SBI and his replacement by Jonathan Hui, as well as the appointment of several other persons as directors of SBI. The plaintiff was one of the signatories for these resolutions.[30] As at this date, the directors of SBI were John Chan, Mr Basil Chan ("Basil Chan"), Mr Mirzan Bin Mahathir ("Mirzan"), Mr Mathani Bhagawandas and Mr Ahmad Subri Bin Abdullah. Basil Chan, Mr Mathani Bhagawandas and Mr Ahmad Subri Bin Abdullah were also members of SBI's Audit Committee.

30 On the same day that the requisition notices were served, the plaintiff ceased employment as the Commercial Manager of SBI.[31] It is disputed as to whether the plaintiff's employment was terminated by John Chan, or whether he had voluntarily resigned.

---

30 SOC at para 5

31 ABD at p 1815

31 On 20 July 2016, Mr Goh Thien Phong ("Mr Goh"), a partner in the defendant firm, met with Basil Chan and Amy Soh to discuss SBI's potential appointment of the defendant. The defendant was subsequently engaged by SBI on or around 21 July 2016 pursuant to the terms set out in an engagement letter with the same date ("the Engagement Letter").[32] According to the Engagement Letter, the purpose of the defendant's engagement was twofold: (a) first, to undertake a fact-finding review on the circumstances surrounding SBI's acquisition and disposal of the 35% equity interest in NPT; and (b) second, to address certain allegations against John Chan (the facts of which are not material to the present case).

32 On 8 August 2016, SBI gave notice that the EGM would be held on 16 September 2016.[33]

33 On 27 August 2016, the defendant sent the plaintiff an e-mail, attaching the draft document "SBI Offshore Limited Findings to date (as at 25 August 2016)" ("the Draft Executive Summary") and a questionnaire seeking clarifications on the facts and circumstances relating to the NPT Transactions.[34] The defendant requested for the plaintiff to provide his comment and inputs on the draft report and questionnaire by 31 August 2016, and to attend an interview with one of the defendant's managers by the same date. The same letter was sent to Jonathan Hui on that day.[35] Jonathan Hui provided his responses to the questionnaire on the same day.[36]

---

32 ABD at pp 1819–1829

33 ABD at pp 2080–2081

34 ABD at pp 2152–2170

35 ABD at pp 2161 –2169

36 ABD at p 2172

34 As the plaintiff did not respond to the defendant, the defendant sent a follow-up letter to the plaintiff on 29 August 2016.[37] However, the plaintiff did not reply to the defendant's e-mail or letter by the stipulated deadline of 31 August 2016.

35 On 1 September 2016, SBI's Board wrote a letter to the shareholders of SBI ("the 1 September 2016 Letter"), recommending that the shareholders vote against the removal of John Chan as a director of SBI. In this letter, reference was made to a summary of the "salient 'findings'" of the defendant in the Draft Executive Summary, and how the Board was of the view that certain lapses by John Chan did not warrant his removal as a director. The letter also referred to the NPT Transactions and stated that the Board would update SBI's shareholders on the defendant's findings on or prior to the EGM.[38]

36 On 6 September 2016, the defendant issued the PwC Report and Executive Summary, both dated 6 September 2016, to SBI.[39] SBI then issued a supplemental letter to its shareholders dated 10 September 2016, annexing the Executive Summary and summarising certain findings which the defendant had made on the NPT Transactions.[40]

Summary of the defendant's findings

37 In relation to the Acquisition Transaction, the defendant's findings (as set out in the PwC Report and the Executive Summary) were as follows.

---

37 Defendant's Bundle of Documents ("DBOD") at pp 36–37

38 ABD at pp 2209–2248

39 ABD at pp 2289–2320, 2321–2330

40 ABD at pp 2350–2375

(a) The existence of two acquisition ETAs with different contractual acquisition considerations "raise[d] serious concerns" as to whether the First Acquisition ETA or the Second Acquisition ETA was valid.[41]

(b) If the First Acquisition ETA was valid and the acquisition consideration was US$1.75m and not US$350,000, this "raise[d] questions" as to whether SBI had under-declared the acquisition consideration with the PRC tax authority and whether there might have been a breach of PRC tax laws.[42]

(c) If the Second Acquisition ETA was valid, the Prospectus may have been misstated. This "raise[d] questions" as to whether there might have been a breach of the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA") and the SGX-ST Catalist Rules ("CR").[43]

38 In relation to the Disposal Transaction, the defendant's findings were as follows.

(a) The existence of a First and Second Disposal ETA with different contractual prices also "raise[d] serious concern" as to whether the First or Second Disposal ETA was valid.[44]

(b) The Second Disposal ETA had been signed even though SBI's Board had "expressly disapproved" of this during the Board meeting on 11 November 2015. This "raise[d] the question" as to whether the

41 ABD at p 2328, para 21

42 ABD at p 2328, para 22

43 ABD at p 2328, para 23

44 ABD at p 2328, para 24

plaintiff had been duly authorised to sign the Second Disposal ETA on SBI's behalf.[45]

(c) If the First Disposal ETA was valid, this "raise[d] questions" as to whether SBI had breached PRC tax laws by under-declaring the disposal price with the PRC tax authority.[46]

(d) On the other hand, if the Second Disposal ETA was valid, this "raise[d] questions" as to whether SBI breached the SFA and the CR by announcing the disposal consideration as US$3.5m instead of US$1.75m on 18 August 2015.[47]

(e) There were two different POAs, each of which could be interpreted differently from the other. This raised the question as to whether the plaintiff had relied on the Chinese-Only POA as the basis for signing the Second Disposal ETA.[48]

39 In view of the perceived legal implications arising from the existence of two sets each of the Acquisition ETAs and the Disposal ETAs, the defendant recommended that SBI's Board consider instructing legal counsel to review its factual findings and to provide advice to the Board.[49]

---

45 ABD at p 2328, para 24

46 ABD at p 2328, para 25

47 ABD at p 2329, para 26

48 ABD at pp 2327–2328, para 20

49 ABD at p 2331, para 36

Subsequent events

40 On 15 September 2016, SBI lodged a report with the Commercial Affairs Division of the Singapore Police Force ("CAD") based on the Executive Summary.[50] On the same day, SBI's Board announced the appointment of four new independent non-executive directors of the company to a Special Investigation Committee to lead investigations into the defendant's findings in relation to the NPT Transactions.[51] These decisions were made by SBI's Board and did not involve the defendant.

41 The EGM was held on 16 September 2016. It was adjourned with no vote called, as a number of shareholders were of the view that the agenda for the EGM should only be considered and voted upon after obtaining clear outcomes from the investigations arising from the PwC Report and the report to the CAD.[52]

42 On 16 September 2016, Jonathan Hui sent an e-mail to the defendant requesting for a copy of the PwC Report and Executive Summary so that he could address the issues raised in these documents.[53]

43 On 18 September 2016, the plaintiff e-mailed the defendant and apologised for his delayed response to the defendant's e-mail of 27 August 2016. He further stated that he did not have "full and current access to [SBI's]

---

50 ABD at p 2401

51 ABD at pp 2402–2405

52 ABD at pp 2413–2427

53 ABD at p 2460

records" and requested for the documents referred to in the defendant's "draft report" so that he could "respond fully".[54]

44 On 20 September 2016, the defendant replied to both the plaintiff and Jonathan Hui, informing them that it would not be appropriate for it to respond to their requests given that its engagement had already been completed with the issuance of the PwC Report and Executive Summary on 6 September 2016. The defendant also informed them that it had forwarded their e-mails to SBI's Board.[55]

45 The CAD eventually completed its investigations into the NPT Transactions and informed SBI that it would not be taking further action against the parties involved in the NPT Transactions, including the plaintiff.[56]

UniLegal's investigations and findings

46 On 21 November 2016, SBI announced that it had appointed UniLegal LLC ("UniLegal"), an independent law firm, to further investigate the NPT Transactions based on the findings set out in the Executive Summary.[57]

47 On 10 March 2017, SBI released an announcement summarising UniLegal's interim findings as follows.

---

54 ABD at pp 2457–2458

55 ABD at pp 2468, 2471–2472

56 SOC at para 59

57 Goh Thien Pong's Affidavit of Evidence-in-Chief dated 29 August 2019 ("Goh Thien Pong's AEIC") at para 56

(a) SBI might face a potential tax levy risk due to the existence of two sets each of the Acquisition and Disposal ETAs. However, this risk had not yet crystallised.[58]

(b) Based on the available information, the plaintiff and Jonathan Hui had committed several breaches and/or possible breaches of duties and obligations to SBI, as well as breaches of statutory obligations.[59]

48 On 13 March 2017, the defendant received a letter of demand from the plaintiff's solicitors, alleging that it had acted negligently in preparing the Executive Summary. The plaintiff subsequently filed a writ of summons against the defendant on 27 March 2017.

49 On 30 September 2017, SBI released an announcement summarising UniLegal's final findings, which were consistent with both UniLegal's interim findings as well as the defendant's findings in the Executive Summary. According to SBI's announcement, although it could not be said that all PRC tax issues arising from the NPT Transactions had been completely resolved, it appeared that the PRC tax authorities had already investigated the matter and imposed penalties (which did not affect SBI). Accordingly, there was "no indication" that SBI would be taxed or penalised for its role in the NPT Transactions.[60]

---

58 ABD at p 2509, para 3

59 ABD at p 2510, para 4

60 DBOD at p 50

The parties' cases

The plaintiff's case

50 The plaintiff's pleaded cause of action was negligence. He submitted that the defendant owed him a duty of care because (a) the defendant knew and/or foresaw that the PwC Summary would cause the plaintiff to suffer reputational and economic damage; (b) the plaintiff and the defendant shared a legally proximate relationship; and (c) policy considerations favoured the imposition of a duty of care.

51 The plaintiff further averred that the defendant had breached its duty of care by failing to exercise due care in investigating the events surrounding the NPT Transactions and presenting its findings in the Executive Summary.

52 Finally, the plaintiff argued that he had suffered damage as a result of the defendant's breach, in the form of (a) loss of the ability to resume employment with and participate in the operations of SBI; (b) loss of business reputation; (c) deterioration of the value of his shares in SBI; and (d) emotional and psychological trauma and hardship.

The defendant's case

53 The defendant countered that it did not owe the plaintiff a duty of care because (a) it could not be reasonably foreseen that the plaintiff would suffer damage if the defendant were careless; (b) there was insufficient legal proximity between the plaintiff and the defendant; and (c) there were cogent policy considerations that ought to bar the imposition of a duty of care in this case.

54 The defendant also argued that, even if it had owed the plaintiff a duty of care, it had not breached this duty of care because (a) its findings on the NPT

Transactions were unimpeachable; and (b) it had exercised due care in the preparation and investigation of the Executive Summary. Furthermore and in any event, the plaintiff could not claim damages as he had not suffered any losses arising from the defendant's alleged breaches.

Issues to be determined

55 It was common ground that there were three main issues which were in dispute in this trial:

(a) whether the defendant owed the plaintiff a duty of care;

(b) whether the defendant had breached its duty of care (if any) to the plaintiff; and

(c) whether the plaintiff had suffered loss as a result of the defendant's breach (if any).

56 These areas of dispute hinged on the primary issue of whether the defendant owed the plaintiff a duty of care.

Whether the defendant owed a duty of care to the plaintiff

57 It was undisputed that the applicable test for determining the existence of a duty of care is the three-stage framework set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). According to the *Spandeck* framework, a duty of care will only arise if all three conditions below are satisfied.

(a) The defendant ought to have foreseen that the claimant would suffer damage due to the defendant's carelessness (*Spandeck* at [75]). This has been described as a "threshold question which the court must

be satisfied is fulfilled, failing which the claim does not even take off" (*Spandeck* at [76]).

(b) There must be sufficient legal proximity between the defendant and the claimant (*Spandeck* at [77]).

(c) The imposition of the duty of care should not be negated by countervailing policy considerations (*Spandeck* at [83]).

58 For brevity, I will refer to these three requirements as "factual foreseeability", "legal proximity" and "policy considerations" respectively.

Factual foreseeability

59 The plaintiff asserted that factual foreseeability was satisfied in the present case because the defendant was well aware that its findings would be published to SBI's shareholders at the EGM which would be held on 16 September 2016. Accordingly, it was reasonably foreseeable that a finding by the defendant that there had been improper conduct on the part of certain officer(s) of the company would have led to actions being taken against the named person(s). It was also reasonably foreseeable that any negligence on the defendant's part would have resulted in harm to the plaintiff's reputation and his ability to participate in and exert control over SBI's affairs.

60 Conversely, the defendant argued that it had been given a broad mandate to conduct a fact-finding exercise on the NPT Transactions in general. This mandate was not specifically targeted at investigating the plaintiff's conduct, as he was not the only individual involved in these transactions. By extension, there were "any number of actions" which SBI could have taken in response to the defendant's findings. It was not, and could not have been within the

defendant's reasonable contemplation that SBI would take action against the plaintiff in particular.

61 In my view, the threshold requirement of factual foreseeability was satisfied in the present case.

62 In arriving at this conclusion, I was mindful of the Court of Appeal's observation in *Spandeck* (at [75], quoting *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 1 SLR(R) 853 at [55]) that the criterion of factual foreseeability "will *almost always be satisfied*, simply because of its very nature and the very wide nature of the 'net' it necessarily casts" [emphasis in original].

63 A fairly exceptional case in which factual foreseeability was not found to be satisfied is *Ngiam Kong Seng and another v Lim Chiew Hock* [2008] 3 SLR(R) 674. In that case, the first and second appellants – who were husband and wife – sued the respondent for negligence in causing a traffic accident which left the first appellant severely injured. The second appellant alleged that the respondent had failed to inform her of the severity of the first appellant's injuries and of the respondent's involvement in the accident; the respondent had allegedly represented himself to be a helpful bystander who had rendered assistance to the first appellant, thereby causing the second appellant to develop feelings of gratitude towards the respondent. After the second appellant found out that the respondent had allegedly been responsible for the accident, she claimed to have suffered from major depression and suicidal tendencies due to the respondent's "betrayal". The Court of Appeal rejected the second appellant's claim and held (at [132]) that, notwithstanding the "naturally wide ambit" of the requirement of factual foreseeability, that requirement was not satisfied because it "boggle[d] the imagination and stretche[d] the realms of

reality" that "the mere communication of the information in question without more could result in harm to" the second appellant.

64 In the present case, the prospect that the defendant's negligence could cause harm to the plaintiff was plainly not an extreme fanciful possibility. I agreed with the plaintiff that the defendant's reliance on the broad scope of its mandate did not assist its case. From its own investigations, the defendant must have been aware that the plaintiff was one of the key parties involved in the NPT Transactions. The defendant also expressly admitted to having knowledge that its findings would be made known to SBI's shareholders during the EGM.[61] Therefore, it ought to have been within the defendant's contemplation that any negligence on its part in investigating the NPT Transactions and preparing the Executive Summary might potentially cause harm to the plaintiff. It could also be reasonably foreseen that the plaintiff would suffer harm, including reputational harm, if the PwC Report and/or Executive Summary contained factually inaccurate or misleading information pertaining to the plaintiff's conduct or involvement in the NPT Transactions.

65 Moreover, the defendant's argument that SBI could have taken "any number of actions" against the plaintiff was unpersuasive. In *Spandeck*, the Court of Appeal clarified (at [89]) that the plaintiff need not establish that the defendant ought to have foreseen the specific kind of harm which was eventually caused to the plaintiff, and that proof of factual foreseeability of harm in general would suffice. The threshold criterion of factual foreseeability was thus clearly made out in the present case.

---

61 NE, 7 November 2019, 119/13-16

Legal proximity

66 The requirement of legal proximity focuses on the court's assessment of the closeness of the relationship between the parties. In making this assessment, the court can consider the concepts of physical, circumstantial and causal proximity, as well as the "twin criteria of voluntary assumption of responsibility and reliance". As far as possible, these concepts should be applied by first "analogising the facts of the case for decision with those of decided cases, if such exist" (*Spandeck* at [81]–[82]).

67 It was therefore necessary to determine, as a preliminary matter, whether the facts of the present case were analogous to those of any relevant previously-decided authorities. In this regard, the parties referred me to three distinct groups of cases.

(a) The plaintiff submitted that the present case was factually similar to the Canadian cases of *Correia et al v Canac Kitchens et al* (2008) 91 O.R. (3d) 353 ("*Correia*") and *Hill v Hamilton-Wentworth Regional Police Services Board* [2007] 3 S.C.R. 129 ("*Hill*"), both of which involved investigators who were held to owe a duty of care to the suspects under investigation. I will refer to these cases collectively as the "Negligent Investigation Cases".

(b) Alternatively, the plaintiff asserted that the present case was analogous to *Spring v Guardian Assurance Plc* [1995] 2 AC 296 ("*Spring*") and *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2015] 4 SLR 1 ("*Ramesh (HC)*"), in which the High Court held that an employer who was providing a reference for an existing or former employee to another potential employer owed a duty of care to

the employee being referred. I will refer to these cases collectively as the "Negligent Employer Referral Cases".

(c) Conversely, the defendant contended that the present case was analogous to cases involving auditors who were found not to owe a duty of care to shareholders and/or potential investors who relied upon their audited statements to make investments. These included cases such as *Caparo Industries Plc. v Dickman and Others* [1990] 2 AC 605 ("*Caparo*"), *Anthony and Others v Wright and Others* [1995] 1 BCLC 236 ("*Anthony*") and *Ikumene Singapore Pte Ltd and another v Leong Chee Leng (trading as Elizabeth Leong & Co)* [1993] 2 SLR(R) 480. Reliance was also placed on *Resource Piling Pte Ltd v Geospecs Pte Ltd* [2014] 1 SLR 485 ("*Resource Piling*"), where a soil investigator who was engaged by a developer to produce borehole logs was held not to owe a duty of care to a contractor who subsequently used the logs to price a tender. I will refer to these cases collectively as the "Negligent Advice Affecting Third Party Cases".

68 In my view, the two lines of cases relied upon by the plaintiff were inapplicable to the present context.

69 In relation to the Negligent Investigation Cases, it was pertinent to note that, as the defendant rightly pointed out, these cases established a new tort – *viz*., the tort of negligent investigation – which presently appears to exist only in Canada and, at any rate, has not been accepted as law in Singapore. In *Hill*, the Supreme Court of Canada accepted for the first time that police officers owe a duty of care to their suspects being investigated, and in *Correia*, the Ontario Court of Appeal extended that established duty to private investigators.

70 Secondly, both *Correia* and *Hill* emphasised the particularised nature of the relationship between the investigator and the suspect in those cases. In *Hill*, the plaintiff had been identified as a "particularised" suspect in a series of robberies. In other words, he had been "singled out" as an *individual* for investigation and "was no longer merely one person in a pool of potential suspects" (at [33]). Similarly, in *Correia*, the private investigation firm in question had been tasked to investigate a few specific individuals, and had wrongly identified the plaintiff as one of these suspects. In contrast, the defendant's investigations in the present case were targeted at a series of *transactions*, namely SBI's acquisition and subsequent disposal of NPT shares. They were not targeted at any particular individual.

71 Thirdly, the plaintiffs in *Correia* and *Hill* had extremely high personal interests at stake. This was explicitly identified as a consideration which supported the existence of a proximate relationship (see *Hill* at [34]; *Correia* at [29]). In *Hill*, it was noted that the plaintiff had a "critical personal interest" in the conduct of the investigation as "his freedom, his reputation and how he may spend a good portion of his life" were at stake (at [34]). Likewise, in *Correia*, the private investigators were assumed to have carried out a "complete investigation", and the identified employees were to be dismissed and *immediately* handed over to the police for arrest (at [25]). In my assessment, the personal interests at stake in this case were not as "critical" or extreme as those highlighted in *Hill* and *Correia*. While it was admittedly foreseeable that the defendant's negligence might cause the plaintiff to suffer reputational harm, the defendant's findings could not result in the immediate deprivation of the plaintiff's liberty or ineluctably give rise to criminal liability on the plaintiff's part. *Hill* and *Correia* were thus distinguishable on their facts and context.

72 The Negligent Employer Referral Cases were likewise inapplicable to the present case. In *Ramesh (HC)*, George Wei JC (as he then was) stressed (at [253]) that an employer who provides an employment reference for an ex-employee does so "having *special knowledge* of the ex-employee, for the assistance and in the service of the ex-employee, and with the *express or implied authority* of the ex-employee" [emphasis added]. This analysis was subsequently endorsed on appeal in *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2016] 4 SLR 1124 at [58]. Likewise, in *Spring*, Lord Goff stressed that "[t]he employer is possessed of special knowledge, derived from his experience of the employee's character, skill and diligence in the performance of his duties while working for the employer" (at 319E). In the present case, the defendant cannot be said to have had "special knowledge" of the plaintiff's involvement in the NPT Transactions as it was ultimately dependent on SBI and its employees for such information. It would also be disingenuous to suggest that the defendant had acted "in the service of" or "with the express or implied authority" of the plaintiff. As such, I found that the Negligent Employer Referral Cases were of limited relevance here.

73 In my view, the Negligent Advice Affecting Third Party Cases referred to by the plaintiff bore much closer resemblance to the facts of this case. All of these cases involved third-party professionals who, like the defendant in the present case, were engaged by entities *other than the claimants* to advise on issues which affected various parties*, including (but not limited to) the claimants.* I did not see any reason why the principles in these cases could not be extended beyond the auditor-investor context. Indeed, the High Court in *Resource Piling* had applied the principles in *Caparo* to a case involving a contractor and a soil investigator.

74 Correspondingly, I agreed with the defendant's submission that, per *Caparo*, *Anthony* and *Resource Piling*, the burden lay on the plaintiff to prove the existence of a "special relationship" between himself and the defendant in order to establish that the requisite legal proximity was made out (see *Caparo* at 649; *Anthony* at 239; *Resource Piling* at [38]). In ascertaining whether such a "special relationship" exists, courts have traditionally focused on the following factors:

(a) the defendant in rendering professional advice to his client assumed a responsibility to a third party, *ie* the claimant, for the rendering of that advice (*Anthony* at 239; *Resource Piling* at [26]); and

(b) the defendant knew or intended that the claimant would rely on that advice (*Caparo* at 620–621; *Anthony* at 239).

75 These factors, which I shall refer to as "voluntary assumption of responsibility" and "reliance" respectively, have been subsumed under (and are thus wholly compatible with) the *Spandeck* framework (see [66] above). Both factors were evidently absent on the facts of this case. I elaborate further on my reasoning below.

Voluntary assumption of responsibility

76 In my view, the defendant could not be said to have voluntarily assumed responsibility to the plaintiff. The factual contractual matrix was of critical importance. To state what was perhaps obvious, the defendant was not engaged by the plaintiff but by SBI's Audit Committee. It was thus difficult to see how the defendant could have voluntarily assumed responsibility to the plaintiff, who was a third party to the contract between SBI and the defendant.

77 Furthermore and in any event, the law is clear that "an express disclaimer of responsibility [can] prevent a tortious duty of care from arising, by negating the proximity sought to be established by the concept of an 'assumption of responsibility'" (see *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 at [38]).

78 In the present case, the defendant expressly disclaimed responsibility for its investigation and report to any person *except* SBI's Audit Committee. The relevant provision is Clause 4.6 of the Engagement Letter, which stated:[62]

> Our Report is intended for, and only for, the benefit of the Audit Committee and the Sponsor and for no other purpose. *We do not accept or assume responsibility for our work, and our Report thereof, to anyone except the Audit Committee.* Our work will not be planned or conducted in contemplation of reliance by any third party. Therefore, items of possible interest to a third party will not be specifically addressed and matters may exist that would be assessed differently by a third party. [emphasis added]

79 The plaintiff pointed out, quite correctly, that it was not bound by Clause 4.6 since it was not privy to the contract between SBI and the defendant. Be that as it may, I found that Clause 4.6 was nevertheless relevant to the extent that it demonstrated that the defendant did not, factually speaking, voluntarily assume any responsibility to the plaintiff. The existence of this clause thus weighed heavily against a finding that the plaintiff and the defendant shared a "special relationship".

Reliance

80 As for the criterion of reliance, the plaintiff submitted that, although he did not "rely" on the defendant's report in the same way that a commissioning

---

62 ABD at p 1823

party would have, he nevertheless "depended" upon the defendant's exercise of care in the compilation and presentation of the report. With respect, the distinction that the plaintiff sought to draw between the concepts of "reliance" and "dependence" was not made clear. It appeared that the plaintiff may have been alluding to Lord Browne-Wilkinson's observation in *White and another v Jones and another* [1995] 2 AC 207 ("*White*") at 271H–272A that "[i]f B is unaware of the fact that A has assumed to act in B's affairs … B cannot possibly have relied on A. What is important is not that A knows that B is consciously relying on A, but A knows that B's economic well-being is *dependent* upon A's careful conduct of B's affairs" [emphasis added]. However, local courts have not endorsed this concept of "dependence" as a relevant factor in the proximity analysis. The extent to which the concept of "dependence" featured in the outcome of the decision in *White* is also uncertain – indeed, the Singapore Court of Appeal in *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761 at [160] analysed *White* as a case which "treat[ed] the concept of assumption of responsibility as a legal test, in and of itself" [emphasis in original omitted]. For these reasons, I declined to accord any significance to the defendant's submissions on this point.

81 Viewing the circumstances of the case in the round, I was not satisfied that the plaintiff had reasonably relied on the Executive Summary. As the defendant pointed out, the plaintiff's pleaded case was not that he would rely on the Executive Summary, but that SBI's shareholders would rely on the Executive Summary in making a decision as to whether to support him. There was no direct relationship between the plaintiff and the defendant, much less a relationship of *reliance*. Furthermore, the plaintiff had clearly chosen to play no part in the preparation of the PwC Report or Executive Summary despite having been invited to give his input on the same. As I shall further explain at [135]

below, the plaintiff was unable to provide a credible explanation for his professed inability to respond to the defendant's inquiries. He did not even attempt to ask for more time, if indeed he felt that he had been given insufficient time to respond. The plain inference was that he had simply refused to respond, and he had to be responsible for the consequences of his own choice.

82 For the aforementioned reasons, I found that the requirement of legal proximity was not satisfied.

Policy considerations

83 The plaintiff asserted that policy considerations favoured the imposition of a duty of care in the present case. In particular, there was a "pressing public interest" to ensure that corporate investigators such as the defendant were not negligent in conducting investigations.

84 The defendant argued in turn that the following policy considerations militated against the imposition of a duty of care.

(a) Firstly, actions for reputational loss ordinarily fall within the realm of the law of defamation. Imposing a duty of care in this class of cases would cut across related areas of tort law, and deprive defendants of the protection that those laws specifically provide.

(b) Secondly, the imposition of a duty of care might lead to a potential conflict between the defendant's contractual duties towards its principal (*ie*, SBI) and its alleged duty towards the plaintiff.

(c) Thirdly, the imposition of a duty of care might cause a chilling effect by disincentivising professional firms from reviewing matters fully and reporting conclusions forthrightly and frankly.

(d) Fourthly, part of the plaintiff's case appeared to be founded on the tort of conspiracy, which was not pleaded by the plaintiff.

85 I was unable to see the relevance of argument (d) above. Even if I took the defendant's case at its highest and accepted that the plaintiff was relying on an unpleaded cause of action, this did not *ipso facto* amount to a policy consideration militating against the imposition of a duty of care. I also accepted that there was a public interest in ensuring that private investigators such as the defendant carried out their duties with reasonable care. This public interest had to be balanced against the countervailing policy considerations, which I examine in further detail below.

Potential overlap with the law of defamation

86 I agreed with Wei JC's observation in *Ramesh (HC)* at [273] that the tort of defamation was not fundamentally inconsistent with the imposition of a duty of care in negligence. For example, while it might not be defamatory *per se* to tell an unpleasant truth about someone, there might still be negligence if the defendant failed to qualify or explain circumstances and other facts which put a different colour on the unpleasant truth (see *Ramesh (HC)* at [272]).

87 However, I was of the view that there was a clear overlap between the tort of defamation and the imposition of a duty of care in this particular instance. This was because the present action was premised on reputational loss, which fell squarely within the realm of defamation. As such, imposing a duty of care in this case would, as the defendant contended, unfairly deprive the defendant of certain defences (*eg*, qualified privilege) which may only be available under the defamation regime.

Potential conflict with the defendant's contractual duties

88 There was also an obvious conflict between the defendant's contractual duties towards SBI and its alleged duty of care to the plaintiff. This was because the defendant had expressly disclaimed liability for its investigation and report to any person except SBI's Audit Committee. In these circumstances, exposing the defendant to a duty of care would "drastically chang[e] the commercial parameters under which the work was first contracted for and performed". This would be detrimental to both contractual freedom as well as commercial certainty.

Chilling effect on professional fact finding

89 Finally, putting professional firms like the defendant which are engaged for forensic investigation and fact-finding purposes under a duty of care to *any* person who is named in their reports might potentially encourage defensive and excessively circumspect reporting, which would not be in the public interest.

90 To counter this argument, counsel for the plaintiff referred me to the Canadian case of *Correia*, in which the Ontario Court of Appeal held (at [43]) that any potential disadvantages which might arise from the so-called "chilling effect" would be "substantially outweighed by the advantage of encouraging greater care". However, the Canadian context differs significantly from the local context. In *Correia*, emphasis was placed on the fact that "there [was] little effective public oversight of private policing" and that "injured persons [had] limited avenues of redress" (at [46]). The plaintiff did not put forth any grounds to show that similar considerations applied to the present context.

91 For the above reasons, I found that policy considerations weighed against the imposition of a duty of care.

Conclusion on the first issue

92 In summary, while the requirement of factual foreseeability was satisfied, the requirement of legal proximity was not made out and there were cogent policy considerations which militated against the imposition of a duty of care in the present case. Accordingly, I found that the defendant did not owe the plaintiff a duty of care.

Whether the defendant breached its duty of care to the plaintiff

93 While my conclusion on the first issue is sufficient to dispose of this case in its entirety, I shall also address the second issue, *ie* whether the defendant had breached its duty of care, given that the evidence at trial was heavily focused on this issue.

The applicable standard of care

94 According to the plaintiff, the standard of care expected of the defendant extended to the following duties:

(a) exercising due diligence in its review of the evidence it had gathered;

(b) upholding the principles of natural justice; and

(c) exercising reasonable care to ensure that (i) the facts stated in the PwC Report and Executive Summary were true; and that (ii) any opinions expressed therein were based on and supported by facts that were true.

95 The plaintiff's allegations of the defendant's breaches of duty went towards the following undertakings by the defendant:

(a) findings on the background facts relating to the NPT transactions;

(b) findings on the Acquisition Transaction;

(c) findings on the Disposal Transaction;

(d) findings on SBI's possible breach(es) of Chinese tax law;

(e) findings on SBI's possible breach(es) of Singapore securities law; and

(f) the process of investigating the NPT Transactions and preparing the PwC Report and Executive Summary.

96 I will address each of these areas in turn.

Findings on the background facts relating to the NPT Transactions

97 The plaintiff's submissions on this point were highly fact-specific. As such, references will be made to the relevant paragraph(s) of the Executive Summary, which are reproduced in full below:[63]

63 ABD at pp 2324–2325

> 6. On 6 July 2016, the Audit Committee of the Company ("AC") received an email from [Jonathan Hui] which commented, amongst other issues, on the transactions relating to the Company's acquisition and disposal of the 35% equity interest in NPT.
>
> 7. On 21 July 2016, the AC appointed [the defendant] to review the facts and circumstances regarding [the NPT Transactions].
>
> 8. NPT is a company incorporated in the PRC and engaged in the manufacturing of marine equipment, fittings and boats. At the point of acquisition of the 35% equity interest in NPT by the Company in 2008 or 2009, NPT was 65% owned by [Wanjia], a company incorporated in the PRC, and 35% owned by [Mr Chen].

98 In my view, the defendant's findings on the background facts relating to the NPT Transactions were not misleading or inaccurate.

99 Firstly, the plaintiff argued that paragraph 6 of the Executive Summary was factually inaccurate for three reasons: (a) Jonathan Hui's complaint related to John Chan's performance, and *not* the NPT Transactions; (b) Jonathan Hui's e-mail had been sent only to Mirzan and not to the Audit Committee as a whole; and (c) Jonathan Hui was not the only shareholder who had complaints about John Chan's performance. In my view, the alleged inaccuracies, *even if* they were true, were immaterial as they did not affect the defendant's mandate and/or its substantive findings on the NPT Transactions.

100 Next, the plaintiff asserted that paragraph 7 of the Executive Summary was incorrect as it was Basil Chan, and not the Audit Committee, who had appointed the defendant. Again, I did not see the relevance of this contention. Further and in any case, Basil Chan was the Chairman of the Audit Committee at the material time and the defendant was entitled to take the position that he was representing the Audit Committee when he appointed them.

101 The plaintiff further contended that paragraph 8 of the Executive Summary was significantly misleading because "[i]t [gave] the impression that NPT was wholly owned by entities residing in China", even though Mr Chen (who was one of NPT's shareholders) was in fact a Taiwanese individual. With respect, I was unable to see how paragraph 8 as drafted led to the inference that Mr Chen was a Chinese citizen. Moreover, I was of the view that Mr Chen's nationality was not relevant to the subject-matter of the defendant's inquiry.

Findings on the Acquisition Transaction

102 In relation to the defendant's findings on the Acquisition Transaction, the plaintiff contended that the defendant had breached its duty of care by:

(a) wrongly stating that there was no evidence of cash payment for the acquisition of NPT shares;

(b) erroneously suggesting that SBI may have under-declared the acquisition consideration;

(c) mistakenly concluding that there was a possible issue as to the validity of the Acquisition Transaction; and

(d) failing to investigate the circumstances surrounding a US$50,000 discrepancy in the recorded cost of the Acquisition Transaction.

103 I address each of these points in turn.

Evidence of cash payment

104 Firstly, the plaintiff objected to paragraph 10 of the Executive Summary, which stated:[64]

> In relation to the acquisition consideration of US$ 1.75 million, we note… that NPT had paid the acquisition consideration of US$ 1.75 million to Chen yen-ting. As the Undated Acquisition ETA was an acquisition by the Company of existing shares of Chen yen-ting in NPT, the acquisition consideration ought to have been paid by the Company, instead of NPT. It appears from the Company's records that subsequent to this, NPT recovered from the Company the amount which NPT paid to Chen yen-ting for the shares acquired by the Company. This appears to have been done by way of a journal entry in the Company's books passed on 31 May 2009, in which the acquisition consideration of US$ 1.75 million appears to have been accounted for by way of reclassifying an amount that was due from NPT to the Company to an investment by the Company in NPT. ***On this basis****, it appears that there was no evidence of any cash payment by the Company for the acquisition of the 35% equity interest in NPT.*" [emphasis added in italics and bold italics]

105 The plaintiff asserted that SBI had in fact sent monies totalling US$1.75m to one Mr Zhao Yu Xing (purportedly an agent for Mr Chen) via telegraphic transfer on 7 August 2008. These transfers were recorded by way of two telegraphic transfer forms,[65] and the defendant's conclusion that "there was no evidence of any cash payment"[66] was thus incorrect.

106 While Mr Goh acknowledged during cross-examination that he did not address the telegraphic transfer forms in his findings,[67] this omission was not, in

---

64 ABD at p 2325

65 ABD at pp 50 and 59

66 ABD at p 2325, para 10

67 NE, 7 November 2019, 1/20-25

my view, sufficiently serious to constitute a breach of the defendant's alleged duty of care to the plaintiff. Firstly, I note that the defendant had qualified its findings in paragraph 10 with the phrase "on this basis", which indicated that its conclusions were premised on the evidence which had been available to it at the material time. The two telegraphic transfer forms were only disclosed as evidence in these proceedings and had not been reviewed by PwC prior to the commencement of the Suit. Secondly, even if the contents of the two telegraphic transfer forms were taken into consideration, the evidence as a whole did not support the finding that any direct *cash* payments had been made for the acquisition of the 35% equity interest in NPT. Crucially, the plaintiff himself had admitted during cross-examination that payment of the shares had been made by way of set-off.[68] The two forensic accounting expert witnesses engaged respectively by the plaintiff and the defendant, Mr Tee Wey Lih ("Mr Tee") and Mr Tam Chee Chong ("Mr Tam"), concurred that there was no evidence of direct cash payment.[69] I was satisfied that the defendant's findings at paragraph 10 of the Executive Summary were reasonable and did not constitute a breach of the defendant's alleged duty of care to the plaintiff.

Under-declaration of the acquisition consideration

107 Next, the plaintiff argued that the defendant had wrongly concluded that SBI may have under-declared the consideration for the Acquisition Transaction because it had failed to consider the (allegedly commonplace) Chinese practice of registering share transfer documents with reference to the registered paid-up share capital of the company under transfer.

---

68 NE, 7 October 2019, 61/1-10

69 NE, 9 October 2019, 10/19-11/1; Tam Chee Chong's Affidavit of Evidence in Chief dated 30 September 2019 ("Tam Chee Chong's AEIC") at p 49, para 134(e)

108 However, as the defendant pointed out, the plaintiff's Chinese tax law expert, Mr Michael Meng Gong Yan ("Mr Meng"), acknowledged during cross-examination that "from a legal perspective", SBI ought to have recorded the actual transfer price instead of the paid-up value of the relevant shares.[70] His evidence in this regard was corroborated by the defendant's Chinese tax law expert, Mr Ye Yongqing ("Mr Ye").[71] The defendant was thus fully entitled to find that the acquisition consideration may have been incorrectly stated.

Validity of the Acquisition Transaction

109 The plaintiff further contended that it was "absurd" for the defendant to suggest that the Acquisition Transaction may have been invalid because (a) the defendant had not consulted any Chinese tax experts before arriving at this conclusion; and (b) its findings were premised on the (erroneous) assumption that no cash payments had been made in consideration for the acquisition.

110 I found that these submissions were wholly without merit. Firstly, Mr Goh testified during cross-examination that he had sought the advice of a Chinese tax expert in his firm,[72] and I saw no reason to disbelieve his evidence in this regard. Secondly, and as explained at [106] above, the defendant's conclusion that no cash payments had been made was reasonable and amply supported by the available evidence on record.

111 Viewing the circumstances of the Acquisition Transaction in their totality, it was incontrovertibly clear that there were two different sets of

---

70 NE, 10 October 2019, 153/1-18

71 Ye Yongqing's Affidavit of Evidence-in-Chief dated 4 September 2019 at p 6, para 11(a)

72 NE, 6 November 2019, 108/17-20 and 7 November 2019, 37/17-19

Acquisition ETAs, both of which appeared (on their face) to be contracts relating to the *same* transaction, yet containing *different* terms and signatories. In light of these inconsistencies, it was eminently reasonable for the defendant to arrive at the conclusion that there was a *potential* issue as to the validity of the two Acquisition ETAs.

Discrepancy in recorded cost of the Acquisition Transaction

112 Paragraph 11 of the Executive Summary stated that there was a discrepancy of US$50,000 between (a) the sum of US$1.75m which had been recorded in SBI's Prospectus as the cost of the Acquisition Transaction, and (b) the sum of US$1.8m which had been recorded as the acquisition cost in SBI's subsequent annual reports.[73]

113 The plaintiff acknowledged the existence of this US$50,000 discrepancy but maintained that it was incumbent on the defendant to "investigate and find out why and how this increase … came about". He also took issue with the "innuendo of a causal link" between the US$50,000 increase and the plaintiff's subsequent appointment as a director of NPT.

114 I formed the view, however, that the defendant *had* made the necessary efforts to investigate and review the circumstances surrounding the US$50,000 discrepancy. This could be inferred from its statement that "[it] ha[d] not seen any Directors' resolution which approved an increase of US$50,000 in the investment cost or any supplementary acquisition agreement which evidenced such increase".[74] Moreover, I agreed with the defendant's expert, Mr Tam, that

---

73 ABD at p 2325

74 ABD at p 2325, para 11

the plain wording of the Executive Summary did not give rise to the "innuendo of a causal link" suggested by the defendant, and that a reasonable and objective reader of the Executive Summary would not have interpreted it as such.[75] I did not see any basis for finding that the defendant had breached its alleged duty of care in making its findings on the Acquisition Transaction.

Findings on the Disposal Transaction

115 In relation to the Disposal Transaction, the plaintiff's key contention was that the defendant had erroneously raised an issue as to the validity of the Second Disposal ETA. According to the plaintiff, the Second Disposal ETA had been validly executed in reliance on the Chinese-Only POA, which expressly authorised the plaintiff to sign a "share transfer" agreement.

116 The defendant's response was that the Chinese-Only POA was invalid as John Chan unequivocally denied signing the Chinese-Only POA, and SBI's Board had never approved its execution.[76]

117 Admittedly, the defendant did not carry out a detailed investigation into the provenance of the Chinese-Only POA, and there was no other evidence corroborating John Chan's assertion that his signature on the Chinese-Only POA was (as he alleged[77]) a forgery or a "cut-and-paste" of his signature on the English/Chinese POA. However, the question which I had to address was not whether the Chinese-Only POA was authentic, but whether the defendant had acted reasonably in *questioning* the validity of the Chinese-Only POA (and,

---

75 Tam Chee Chong's AEIC at p 50, paras 134(i) and (j)

76 NE, 30 January 2020, 123/6-24

77 NE, 30 January 2020, 124/1-4

correspondingly, the Second Disposal ETA). In my view, the answer to this question was a resounding "yes". The defendant had justifiable grounds for scepticism in relation to both documents and had drawn fair and defensible conclusions based on the evidence which had been available to it at the material time.

118 Firstly, five of the six directors on SBI's Board had voted to disapprove the execution of a second disposal ETA on 11 November 2015. This decision was reiterated in a subsequent Board meeting which took place on 25 February 2016.[78] As there was no evidence to suggest that the Board had ever approved the Second Disposal ETA, the existence and purpose of the Chinese-Only POA was undoubtedly dubious.

119 Secondly, the contemporaneous evidence did not support a finding that the Chinese-Only POA had been seen or approved by the Board. In particular, it was noteworthy that an e-mail which Amy Soh had sent to SBI's Board on 30 November 2015 with the subject "SBI DRIW & Announcement – NPT Novation" only enclosed the English/Chinese POA – and *not* the Chinese-Only POA – for the Board's consideration and approval.[79] Moreover, as the plaintiff had acknowledged during cross-examination,[80] three of the six members of SBI's then-Board did not read Chinese and it was thus highly implausible that the Board would have approved a Chinese-Only POA.

---

78 Chan Lai Thong's Affidavit of Evidence-in-Chief dated 2 September 2019 at p 85, para 2.4.2

79 ABD at pp 1556–1558

80 NE, 8 October 2019, 35/25-36/3

120 In these premises, the defendant had ample reason to question the validity of both the Chinese-Only POA as well as the Second Disposal ETA. Its findings on the Disposal Transaction therefore did not constitute a breach of its duty of care.

Findings on SBI's possible breach(es) of Chinese tax law

121 Next, the plaintiff argued that the defendant had erred in finding that the NPT Transactions may have resulted in a breach of Chinese tax law.

122 In relation to the Acquisition Transaction, the plaintiff asserted that:

(a) the Acquisition Transaction could not have been subject to withholding tax since the relevant taxation laws were only promulgated in December 2009; and

(b) even if withholding tax was applicable to the Acquisition Transaction, it was not SBI but NPT which bore the obligation of withholding tax.

123 In relation to both the Acquisition and the Disposal Transactions, the plaintiff contended that:

(a) the defendant had not sought the assistance of a Chinese tax expert in the preparation of its report;

(b) the evidence of the defendant's expert witness, Mr Ye, was not credible and should not be given any weight; and

(c) in any case, the only party who was competent to give a conclusive and definitive answer as to whether there had been an under-declaration or avoidance of tax was the Jiangyin State Administration of

Taxation, and the defendant should not have given its comments on the same.

124 In my assessment, the plaintiff's submissions did not withstand scrutiny.

125 In relation to the Acquisition Transaction, I noted from Mr Meng's evidence that, although the relevant taxation laws were only promulgated on 10 December 2009, they applied retroactively to all transfers from 1 January 2008 onwards.[81] I was unable to find any evidence to support the plaintiff's assertion that "the obligation to withhold tax cannot possibly become retrospective". Further, Mr Meng expressly acknowledged that SBI was obliged, as a withholding tax *agent*, to "come up [with] cash [in] the taxable amount and pay that amount to the tax authorities".[82] It was thus incorrect to suggest that the onus of withholding tax lay with NPT alone.

126 The plaintiff's objections to the defendant's and/or Mr Ye's expertise were also unwarranted. Firstly, the plaintiff's suggestion that the defendant did not have the relevant tax expertise was speculative and unsubstantiated. As stated at [110] above, I saw no reason to doubt Mr Goh's evidence that he had sought the advice of a Chinese tax expert in his firm. Secondly, I disagreed with the plaintiff's argument that "[Mr] Ye's opinions [were] fundamentally flawed because he did not check with the relevant tax authority whether any prosecution was raised against the parties". The issue of enforcement was distinct from the issue of whether there had been a possible breach of Chinese tax law. Where the *legality* of the NPT Transactions was concerned, Mr Ye's

---

81 Michael Meng Gong Yan's Affidavit of Evidence-in-Chief dated 24 September 2019 at p 15, para 10

82 NE, 11 October 2019, 79/9-17

evidence was corroborated by both Mr Meng and UniLegal in all material respects. Finally, I did not accept that the Jiangyin State Administration of Taxation was the only entity which was competent to address the issue of whether there had been any under-declaration of tax. As the defendant pointed out, tax liability was a question of Chinese tax law and was thus amenable to expert opinion. Indeed, the plaintiff himself had called Mr Meng, a practising lawyer and not an officer with the Jiangyin State Administration of Taxation, as an expert witness to testify on the Chinese tax law issues in this Suit.

127 Thus, I agreed with the defendant that the facts and circumstances of the NPT Transactions provided sufficient basis for the defendant to form the presumptive view that both the Acquisition and the Disposal Transactions may have led to a breach of Chinese tax law.

Findings on SBI's possible breach(es) of Singapore securities law

128 In relation to the defendant's findings that the NPT Transactions may have led to a possible breach of Singapore securities law, the plaintiff made the following contentions.

(a) The defendant did not analyse the requirements and consequences of a s 254 SFA breach in sufficient detail.

(b) The defendant had presented its findings as if what had occurred amounted to a criminal offence. However, ss 119 and 254 SFA only dealt with civil liability. Moreover, the CAD had investigated and closed the case, and this made clear that there were no criminal offences arising from the NPT Transactions.

(c) The defendant should have advised SBI that it had, by its actions, waived or acquiesced in any impropriety which was associated with the NPT Transactions.

129 Once again, I found these arguments unpersuasive.

130 Firstly, it was not necessary for the defendant to engage in an in-depth analysis of the requirements of s 254 SFA and/or the consequences of a breach of that provision. Nor was it necessary for the defendant to advise SBI on the concepts of waiver and acquiescence. These were legal issues and doctrines which lay beyond the scope of the defendant's mandate.

131 Secondly, the defendant was not appointed to identify specific criminal conduct on the plaintiff's (or any other SBI employee's) part, and the PwC Report and Executive Summary were deliberately worded to avoid making any accusations to that effect. The defendant was careful to state that it was only "raising the question" as to whether there had been a breach of the relevant securities laws. Furthermore, at no point did the defendant state, whether expressly or impliedly, that SBI's potential liability was of a criminal nature. The fact that the CAD eventually took no action to prosecute any individual or entity did not, without more, mean that the defendant must have erred or been negligent in its findings.

132 For these reasons, the defendant's findings on SBI's possible breaches of Singapore securities law also did not constitute a breach of its duty of care.

Process of investigating the NPT Transactions and preparing the PwC Report and Executive Summary

133 Finally, the plaintiff contended that the defendant's investigative *process* was also flawed for the following reasons.

(a) The defendant had not given the plaintiff sufficient time to respond to the Draft Executive Summary and the questionnaire which had been e-mailed to him on 27 August 2016.

(b) The defendant had failed to conduct the requisite due diligence. In particular, it did not procure a statement from the plaintiff or Jonathan Hui. Nor did it interview or even contact the relevant Chinese parties (*eg*, Mr Chen, Mr Hua and Ollie Hua) who had been involved in the NPT Transactions. Instead, the defendant had merely "repeated" what it had heard or gathered from Amy Soh.

(c) The defendant had been prejudiced against the plaintiff all along. This was evident from its "unfair and unprofessional" attitude in handling the allegations against John Chan which, when juxtaposed against its treatment of the NPT Transactions, demonstrated that it favoured John Chan over the plaintiff.

134 I found that the defendant had conducted a thorough fact-finding review and hence I was not persuaded by any of these allegations.

135 Firstly, I was of the view that the defendant had given the plaintiff a reasonable and adequate opportunity to respond to the Draft Executive Summary and the accompanying questionnaire. Notably, the Draft Executive Summary (as well as the final Executive Summary) did not contain any specific allegations against the plaintiff. While these documents did refer to the

plaintiff's involvement in the NPT Transactions, they did not suggest that he was necessarily responsible for any liability arising therefrom. Moreover, while I acknowledged that the plaintiff had only been given four days (two of which were non-business days) to respond to the defendant's e-mail of 27 August 2016, the plaintiff could easily have replied to the defendant's e-mail before the stipulated deadline in order to request for an extension of time, if indeed he had felt that such an extension was required. The plaintiff's explanation[83] that he had not done so because he felt that it was "patently absurd to expect anyone to be able to meaningfully respond to queries on transactions that had occurred 8 years ago, with no access to any documents" was thoroughly unconvincing. As noted at [81] above, the plaintiff had refused to respond to the e-mail on or before the stipulated deadline of 31 August 2016. He did not even attempt to respond until after the EGM on 16 September 2016.

136 Secondly, I disagreed that the defendant had not exercised the due diligence that was required of it, or that it had merely regurgitated the information which it had gathered from Amy Soh without verifying its accuracy. The defendant had conducted its own investigations and had in fact made a number of new discoveries which were previously unknown to SBI's Board, chief of which was the existence of the signed version of the Second Disposal ETA.[84] I accepted the evidence of the defendant's expert, Mr Tam, that it would not have been necessary for the defendant to reach out to the relevant PRC individuals since the PRC tax law issues had already been discussed at length in SBI's Committee and Board meetings.[85] The plaintiff and Jonathan

---

83 Plaintiff's AEIC at para 122

84 NE, 7 November 2019, 106/10-107/18

85 Tam Chee Chong's AEIC at p 35, para 97

Hui were the most relevant persons to obtain responses and clarification from, and the defendant had made the necessary efforts to engage them. Jonathan Hui's immediate responses were duly noted and reflected in the contents of the Executive Summary.

137 Finally, the plaintiff's suggestion that the defendant was merely being used as a vehicle by John Chan and the other members of SBI's Board was, with respect, entirely speculative and unsubstantiated. To buttress his allegations in this regard, the plaintiff pointed to several incidents, namely (a) the execution of an (allegedly fictitious) contract by John Chan, and (b) John Chan's purported wrongdoings in relation to a solar energy project in South Africa to show that John Chan's misdeeds were not picked up by the defendant even though his performance was undeniably "bad". I declined to give any weight to these bare allegations as they were not pleaded, and there was a clear paucity of evidence in relation to each of the aforementioned incidents. Furthermore, it was untrue that the defendant had simply ignored all of John Chan's supposed wrongdoings. The defendant had found that two of Jonathan Hui's allegations against John Chan were made out, and had gone so far as to suggest that John Chan's conduct did not accord with SBI's standard of governance.[86] These findings were fully reported to SBI's Board and were subsequently disclosed to SBI's shareholders in the 1 September 2016 Letter.

Conclusion on the second issue

138 I was of the view that the defendant's findings and the means by which it had arrived at these findings were reasonable, fair and objective. Legitimate concerns were raised pertaining to the existence of two sets each of the

---

86 DBOD at pp 42–44, paras 10 and 23

Acquisition ETAs and the Disposal ETAs which required further investigation, explanation and clarification. These concerns were properly flagged out to SBI's Board for consideration in the interests of good governance.

139 I found that the explanations for these concerns that the plaintiff had placed before the court were largely self-serving. Even if he had put forward the same explanations from the outset (*ie* before or at the EGM on 16 September 2016), it was difficult to see how SBI's Board would have been persuaded to disregard the defendant's recommendation to consider instructing legal counsel to review its factual findings and to provide advice to the Board. In all likelihood, the Board would still have deemed it necessary to seek legal advice and undertake further enquiry in any event.

140 I was satisfied that, even if the defendant had owed a duty of care to the plaintiff, its conduct had not fallen below the requisite standard of care. As such, the plaintiff's case also failed on this basis.

141 For completeness, I turn finally to briefly address the third issue – *ie*, whether the plaintiff suffered loss and damage as a result of the defendant's alleged negligence.

Whether the plaintiff suffered loss and damage

142 The plaintiff claimed that he had suffered the following heads of damage arising from the defendant's conduct:[87]

87 SOC at para 63

(a) loss of ability to resume employment with and participate in the operation of SBI, because the EGM was adjourned due to the publication of the Executive Summary;

(b) substantial deterioration/diminution in the value of the plaintiff's shares in SBI;

(c) loss of business reputation in Singapore and abroad with consequential diminution in business opportunities and income; and

(d) emotional and psychological trauma and hardship.

143 In my view, the plaintiff was not able to discharge his burden of proving that he had suffered any of the losses above.

(a) Firstly, as the defendant pointed out, there was no evidence of any causal connection between the publication of the Executive Summary and the plaintiff's inability to continue participating in SBI's operations. The plaintiff did not call any witnesses to testify that they would have supported the plaintiff if the Executive Summary had not been published.

(b) Secondly, the valuation of shares was a matter of expert opinion and no such evidence had been adduced in the present case. Nor was there any evidence to show that the financial performance of SBI would have improved if the plaintiff had been successful in installing his nominees as directors of SBI during the EGM. In any event, this was pure conjecture. A bare assertion that John Chan's record as CEO was "quite dismal" was clearly of no assistance.

(c) Thirdly, the plaintiff did not lead any evidence to show that he had suffered reputational harm or psychological trauma as a result of the publication of the Executive Summary. His claims in this regard were unsupported and entirely speculative.

(d) Finally, the plaintiff's expert, Mr Tee, also conceded during cross-examination[88] that he had not pointed to any evidence of loss or damage in his expert report.

144 There was thus no basis whatsoever for me to find that the plaintiff had suffered any loss or damage arising from the defendant's alleged negligence.

Conclusion

145 Over the course of the proceedings, it became apparent that the present action was driven by the plaintiff's personal grievances and his acute dissatisfaction over many things. Among these were the perceived prejudice by the defendant against the plaintiff and the defendant's ostensible failure to hold John Chan to account in spite of the allegations which had been raised against him. This constituted part of the plaintiff's conspiracy theory that the defendant had set out to ensure that John Chan was absolved of blame and had been determined to "fix" the plaintiff instead. I was unable to see any proper basis for this theory which, in any event, was not part of the plaintiff's pleaded case.

146 I found that the plaintiff had not adduced credible evidence in support of his claim and had failed to establish his claim on all three issues in contention. I therefore dismissed the plaintiff's claim in its entirety.

---

88 NE, 10 October 2019, 110/22-112/2

Costs

147 Having perused the parties' written submissions on costs, I determined that the plaintiff should bear the defendant's costs fixed at $240,000. In coming to this assessment, I applied an appropriate uplift to the baseline figure of $180,000. I derived this baseline by applying 100% of the recommended daily tariff of $20,000 for each of the first five days of trial, and 80% of $20,000 for each of the remaining five days. This was in line with Appendix G of the Supreme Court Practice Directions.

148 The uplift of $60,000 to the baseline of $180,000 was justified mainly on account of the plaintiff's conduct of the matter. The trial was prolonged over 10 days mainly because of the plaintiff's election to venture into examining issues which were not part of his pleaded case and which turned out to be irrelevant to the issues in dispute. Furthermore, the plaintiff chose to call expert witnesses on Chinese tax law and forensic accounting, necessitating the defendant taking corresponding measures by calling their own expert witnesses to address the plaintiff's expert evidence. In addition, there were considerable factual disputes in the claim which threw up a mixture of fairly complex legal issues spanning tort, defamation, as well as corporate and tax law.

149 Over and above the fixed costs, I allowed the defendant's full disbursements of $277,141.09 as claimed. A large proportion of these disbursements (78%) comprised expenses incurred in engaging their two expert witnesses. These expenses were substantial but I was satisfied that they were reasonably and properly incurred in defending the claim. I therefore saw no reason in principle to disallow the defendant's disbursements as claimed.

See Kee Oon
Judge

Narayanan Vijya Kumar (M/s Vijay & Co) and Malcolm Tan Ban Hoe (City Law LLC) for the plaintiff;
Ang Peng Koon Patrick, Chew Xiang, Chow Jie Ying, and Cheong Tian Ci Torsten (Rajah & Tann Singapore LLP) for the defendant.
