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

[2023] SGHC 15

Suit No 282 of 2022 (Registrar's Appeals Nos 305, 309 and 310 of 2022)

Between

Neverland Investment Holdings Pte Ltd

… *Plaintiff*

And

(1) P.T Pte Ltd
(2) Ravinder Paul Singh s/o Akubal Singh
(3) Lim Kok Kuan Daniel

… *Defendants*

JUDGMENT

[Civil Procedure — Judgments and orders — Setting aside of default judgment — Order for setting aside made conditional]

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Neverland Investment Holdings Pte Ltd
v
P.T Pte Ltd and others

[2023] SGHC 15

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Teh Hwee Hwee JC
9 November, 7 December 2022

20 January 2023 Judgment reserved.

Teh Hwee Hwee JC:

1 The Registrars' Appeals before me arise from the learned Assistant Registrar's ("AR") decisions in HC/SUM 2126/2022, HC/SUM 2118/2022 and HC/SUM 2238/2022 in which the learned AR, among other things, set aside default judgments entered against the first, second and third defendants respectively and granted the defendants conditional leave to defend. The condition was for the three defendants to jointly and severally provide security in the sum of S$620,000. Leave to enter an appearance was also granted to the first and third defendants on the same condition. HC/RA 310/2022, HC/RA 309/2022 and HC/RA 305/2022 are the first, second and third defendants' respective appeals against the learned AR's decision to impose the condition. Each of the three defendants seeks unconditional leave to defend or, in the alternative, a lowering of the amount of security ordered.

Background

2 The plaintiff is a Singapore-incorporated company that was in the business of operating a night club (the "night club") at premises in Clarke Quay (the "premises"). The first defendant is a company incorporated in Singapore on or around 19 December 2016.[1] The second defendant, Mr Ravinder Paul Singh s/o Akubal Singh, was a director of the plaintiff from 11 September 2016 to 8 March 2017.[2] He has been a director of the first defendant since its incorporation.[3] The third defendant, Mr Lim Kok Kuan Daniel, was a director of the plaintiff from 23 November 2016 to 8 March 2017.[4] He has also been a director of the first defendant since its incorporation.[5]

3 Sometime around June 2016, the plaintiff's then sole director and shareholder, Mr Lee Wy-Man ("Lee"),[6] approached various potential investors with the idea of running the night club.[7] Lee managed to obtain investment from three individuals, namely, one Mr Tang Chuan Choon ("Tang"), one Mr Jason Ong Weiliang ("Ong") and the second defendant (collectively, the "initial investors").[8] On or around 16 June 2016, a share sale and purchase agreement was executed by Lee and Ong under which Lee agreed to sell 75,000 shares in

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1 Ravinder Paul Singh s/o Akubal Singh's 1st Affidavit dated 6 June 2022 ("Paul's 1st Affidavit") at para 21 (1st Defendant's Bundle of Documents ("1DBOD") at p 59).

2 Paul's 1st Affidavit at para 5 (1DBOD at p 52); Lee Wy-Man's 1st Affidavit dated 1 July 2022 ("Lee's 1st Affidavit") at para 36 (1DBOD at pp 272–273).

3 Paul's 1st Affidavit at para 5 (1DBOD at p 52).

4 Lim Kok Kuan Daniel's 1st Affidavit dated 16 June 2022 ("Daniel's 1st Affidavit") at para 10 (1DBOD at p 205); Lee's 1st Affidavit at para 36 (1DBOD at pp 272–273).

5 Daniel's 1st Affidavit at p 54 (1DBOD at p 255).

6 Lee's 1st Affidavit at para 12 (1DBOD at p 264).

7 Lee's 1st Affidavit at para 13 (1DBOD at p 264).

8 Paul's 1st Affidavit at paras 11–14 (1DBOD at pp 54–55); Lee's 1st Affidavit at para 24 (1DBOD at pp 268–269).

the plaintiff to Ong for S$150,000 (the "16 June 2016 SPA").[9] On or around 30 August 2016, a share sale and purchase agreement was executed by Lee and the second defendant under which Lee agreed to sell 330,000 shares in the plaintiff to the second defendant for S$804,500 (the "30 August 2016 SPA").[10] There is no dispute that the 16 June 2016 SPA and the 30 August 2016 SPA (collectively, the "SPAs") were executed. However, the parties disagree on the purpose of the SPAs. The first and second defendants submit that: (a) the moneys the initial investors transferred to Lee (the "initial investment sum") were for their investment in the night club, with the breakdown as follows:[11] Tang contributed around S$400,000 to S$500,000; the second defendant contributed around S$350,000 to S$400,000; and Ong contributed around S$150,000; and (b) the initial investment sum was transferred to Lee's personal account and subsequently used for leasing the premises and acquiring assets for the operation of the night club (the "night club assets").[12] According to the first defendant, the SPAs were entered into to "account for the contribution/investment" made by the second defendant and Tang, and it "remained parties' understanding that the transfer of [the initial investment sum] to [Lee] was not as consideration for purchase of shares from [Lee]".[13] On the other hand, the plaintiff contends that the SPAs show that the initial investment sum was for the purchase of shares in the plaintiff.[14]

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9 Lee's 1st Affidavit at pp 33–38 (1DBOD at pp 291–296).

10 Lee's 1st Affidavit at pp 101–120 (1DBOD at pp 359–378).

11 Paul's 1st Affidavit at para 14 (1DBOD at p 55); First Defendant's Written Submissions dated 4 November 2022 ("1DWS") at para 6; Second Defendant's Written Submissions dated 4 November 2022 ("2DWS") at para 17.

12 Paul's 1st Affidavit at paras 9, 15 and 17 (1DBOD at pp 53, 55–56).

13 1DWS at para 10.

14 Plaintiff's Written Submissions dated 4 November 2022 ("PWS") at para 50.

4 Regardless of the purpose of the SPAs and the form of the investment, it is common ground that the plaintiff accepted a tenancy agreement for the premises on 3 August 2016 (the "tenancy agreement").[15] Pursuant to the tenancy agreement, the plaintiff furnished S$361,552.20 (the "deposit moneys") to the landlord for rental of the premises. This sum comprised S$351,552.20 as a security deposit and S$10,000 as a tenant's works deposit.[16] Additional sums were also expended to acquire the night club assets. The night club subsequently opened for business in or around September 2016.[17]

5 On 27 October 2016, Lee resigned as a director of the plaintiff.[18] On or about 1 November 2016, Lee transferred all his shares in the plaintiff to the second defendant.[19] The reason for Lee's resignation is disputed. According to the defendants, Lee had caused the plaintiff to incur liability to a non-party company, Home Interior Décor Pte Ltd ("HID"), by affixing the plaintiff's company stamp on a renovation contract which pertained to a different club operated by Twodash29 Pte Ltd, another company of which Lee was a director.[20] This was discovered by the second defendant sometime in or around early October 2016.[21] The defendants alleged that thereupon, it was agreed between the plaintiff's then directors, shareholders and people concerned with the investment in the night club, including Lee, that Lee be removed as director and shareholder of the plaintiff, and that he be tasked with the responsibility of

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15 Lee's 1st Affidavit at para 20 (1DBOD at p 267).

16 Paul's 1st Affidavit at para 9 (1DBOD at p 53).

17 Lee's 1st Affidavit at para 26 (1DBOD at p 269).

18 Lee's 1st Affidavit at para 28 (1DBOD at p 270).

19 Lee's 1st Affidavit at para 28 (1DBOD at p 270).

20 Paul's 1st Affidavit at para 18 (1DBOD at p 57); Lee's 1st Affidavit at paras 33–34 (1DBOD at pp 271–272).

21 Paul's 1st Affidavit at para 18 (1DBOD at p 57).

resolving HID's claim (the "first restructuring agreement").[22] This was said to be in the hope that if Lee was removed as a director and shareholder of the plaintiff, HID might be dissuaded from making a claim against the plaintiff. However, according to the plaintiff, Lee's removal as a director and shareholder of the plaintiff was not related to HID. Instead, it was a temporary arrangement because of an issue Lee had with a bank, which allegedly affected the plaintiff's ability to apply for a credit card machine.[23]

6 In or around November 2016, the second defendant got wind of potential proceedings by HID against the plaintiff.[24] According to the defendants, the plaintiff's then directors, shareholders and people concerned with the investment in the night club, including Lee, agreed to incorporate the first defendant as an "alternate corporate vehicle" to continue the business and operations of the night club and for the agreed profit-sharing arrangements to continue, among other things (the "second restructuring agreement").[25] Ong, who is not a party to this action, filed an affidavit to affirm that there was such an agreement.[26] The plaintiff's position is that there was no such agreement, and Lee had instead objected to the plan to transfer the night club's business to an alternate corporate vehicle.[27]

7 By way of a novation agreement executed between the landlord, the plaintiff and the first defendant on or around 26 January 2017 (the "novation

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22 Paul's 1st Affidavit at para 19 (1DBOD at pp 57–58).

23 Lee's 1st Affidavit at paras 27–28 (1DBOD at pp 269–270).

24 Paul's 1st Affidavit at para 20 (1DBOD at p 58).

25 Paul's 1st Affidavit at para 20 (1DBOD at p 58).

26 Jason Ong Weiliang's 1st Affidavit dated 7 June 2022 ("Ong's 1st Affidavit") at para 8 (1DBOD at pp 85–86).

27 Lee's 1st Affidavit at para 34 (1DBOD at p 272).

agreement"),[28] the tenancy agreement was novated from the plaintiff to the first defendant with effect from 1 February 2017 (the "novation").[29] At this time, the second and third defendants were directors of both the plaintiff and the first defendant. The second defendant executed the novation agreement on behalf of both the plaintiff and the first defendant, in his capacity as director of each company.[30]

8 Under clause 5 of the novation agreement, the deposit moneys amounting to S$361,552.20 (see [4] above) were to be credited to the account of the first defendant, and the landlord was released from all obligations to refund the deposit moneys to the plaintiff.[31] In addition, the night club assets were said to have been transferred to the first defendant in or around December 2016 to January 2017 (the "transfers").[32] The defendants' position is that the novation and the transfers were conducted pursuant to the second restructuring agreement. The plaintiff, however, says that Lee was not aware of the novation and transfers until about a month after the novation, and alleges that no consideration was provided by the first defendant for the novation and the transfers.[33]

9 After the business and operations of the plaintiff were taken over by the first defendant, on or around 8 March 2017, the second and third defendants resigned as directors of the plaintiff and transferred ownership and control of

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28 Paul's 1st Affidavit at pp 29–32 (1DBOD at pp 78–81).

29 Paul's 1st Affidavit at p 30 (1DBOD at p 79).

30 Paul's 1st Affidavit at p 32 (1DBOD at p 81).

31 Paul's 1st Affidavit at p 31 (1DBOD at p 80).

32 Lee's 1st Affidavit at paras 35–36 (1DBOD at pp 272–273).

33 Lee's 1st Affidavit at para 35 (1DBOD at p 272); PWS at paras 15–16.

the plaintiff to Lee.[34] The share transfer form between the second defendant and Lee indicates that the shares in the name of the second defendant were transferred to Lee for nominal consideration of S$1.[35] According to Mr Wong Lip Wing, a former security consultant for the plaintiff from August 2016 to November 2016 and for the first defendant from December 2016 to August 2019, the second defendant transferred the ownership of the plaintiff back to Lee for Lee to deal with the legal proceedings with HID.[36] It appears that Lee took over the directorship and shares of the plaintiff from the second and third defendants without raising any objections. It should be noted that at that point, Lee was aware of the transfers and novation.

10 HID eventually commenced legal proceedings ("Suit 171") against the plaintiff on or around 15 February 2018, for moneys due and owing under a renovation contract. HID obtained judgment in default of appearance for the sum of S$375,631.76 on 2 March 2018, upon which debt HID later applied for and obtained an order to wind up the plaintiff. A liquidator was appointed, who commenced proceedings against the first and second defendants to recover the deposit moneys. Shortly after being served with the writ of summons and statement of claim, the first and second defendants applied to and successfully intervened in Suit 171 to set aside the default judgment and winding up order.[37] The default judgment was set aside on 10 June 2021,[38] on the basis that the

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34 Lee's 1st Affidavit at para 36 (1DBOD at pp 272–273).

35 Wong Lip Wing's 1st Affidavit dated 15 June 2022 ("Wong's 1st Affidavit") at p 96 (1DBOD at p 189).

36 Wong's 1st Affidavit at paras 1 and 36 (1DBOD at pp 94 and 103).

37 Lee's 1st Affidavit at paras 37–40 (1DBOD at pp 273–274).

38 Lee's 1st Affidavit at pp 140–141 (1DBOD at pp 398–399).

plaintiff had a triable or arguable defence to HID's claim. The winding up order was also set aside, since it was premised on the default judgment.

11 The plaintiff commenced the present suit, HC/S 282/2022, against the defendants on 29 March 2022, claiming that (a) the second and third defendants had breached their fiduciary and/or statutory duties owed to the plaintiff by virtue of their positions as directors of the plaintiff; (b) the first defendant had knowingly received, retained and/or used the deposit moneys and the night club assets without consideration to the plaintiff, without accounting to the plaintiff, and to the detriment of the plaintiff; and (c) all three defendants had wrongfully and with the intent to injure and/or cause loss to the plaintiff by unlawful means, conspired and combined to transfer the operations of the plaintiff, the deposit moneys and the night club assets to the first defendant.[39]

12 Although the writ of summons and statement of claim in respect of the present suit were personally served on the first defendant on 30 March 2022 and substituted service was effected on the second and third defendants on 7 April 2022, the first and third defendants failed to enter an appearance within the time limited for doing so. The second defendant entered an appearance on 18 April 2022 but failed to file a defence within the time limited for doing so. The plaintiff thus applied for and obtained default judgments against the defendants on 10 May 2022.

The learned AR's decision

13 The learned AR was satisfied that there was a *prima facie* defence, in particular, in relation to the basis on which the initial investment sum was paid

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[39] Statement of Claim ("SOC") at paras 13–15, 18 and 20 (1DBOD at pp 608–609 and 611–612).

to Lee and/or the plaintiff and whether there were oral restructuring agreements in the manner alleged by the defendants.[40] The learned AR had specifically considered an email from the plaintiff's then company secretary, Ms Yeoh Wei Nee ("Yeoh"), dated 14 July 2022, in which she explained that the plaintiff had booked moneys which appear to correlate to moneys paid by the initial investors to Lee as "amount due to director – Paul [*ie*, the second defendant]". There was therefore an issue as to the nature of the booked moneys.[41] The learned AR also noted the circumstantial evidence in the form of the second and third defendants' resignation letters (as directors of the plaintiff) and the plaintiff's resolution appointing Lee as director, which pointed to fulfilment of the obligations under the alleged oral restructuring agreements.[42]

14 The learned AR noted, however, that there was no documentary evidence to support the defendants' defences and that the defendants were unclear on their exact defences.[43] For these reasons, the learned AR found that the defendants ought to give some demonstration of commitment to their claimed defences. He thus ordered the defendants to jointly and severally provide security of S$620,000.[44]

Issues on appeal and decision

15 On appeal, the defendants argued that unconditional leave to defend should be allowed. In the alternative, the defendants contended that the amount of security ordered against the defendants was excessive. The plaintiff did not

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40 5 Oct Notes of Evidence ("NE") at p 18, lines 9–13 (1DBOD at p 662).

41 5 Oct NE at p 18, lines 14–20 (1DBOD at p 662).

42 5 Oct NE at p 18, lines 20–24 (1DBOD at p 662).

43 5 Oct NE at p 18, lines 25–30 (1DBOD at p 662).

44 5 Oct NE at p 19, lines 4–7 (1DBOD at p 663).

file an appeal against the learned AR's decision. The only issues before me are therefore as follows:

(a) whether the orders setting aside the default judgments should be made conditional; and

(b) if so, whether the quantum of security ordered should be lowered.

Whether any condition should be imposed

16 The principles on whether a condition should be imposed in granting a defendant leave to defend are settled. These principles remain relevant when considering whether an order setting aside a default judgment should be made conditional (*City Harvest Church v AMAC Capital Partners and another* [2015] SGHC 299 at [30]). A condition is appropriate when the court has the sense that although it cannot be said that the claimed defence is so hopeless that, in truth, there is no defence, the overall impression is such that some demonstration of commitment on the part of the defendant to the claimed defence is called for (*Abdul Salam Asanaru Pillai (trading as South Kerala Cashew Exporters) v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [44]).

17 The issue is whether the learned AR erred in calling for the show of some commitment on the part of the defendants to their claimed defences. I first examine the claimed defences. In essence, the defendants argued that (a) the deposit moneys and the night club assets did not belong to the plaintiff but belonged to the initial investors; and (b) there was no breach of fiduciary duties owed to the plaintiff, no knowing receipt of the deposit moneys and the night club assets, and no unlawful means conspiracy by the defendants, because the relevant stakeholders were aware of the second and third defendants' interest in

the first defendant and had agreed to the transfers and the novation, pursuant to the second restructuring agreement.[45]

18 In my view, it is appropriate for the orders setting aside the default judgments to be made conditional. First, it is unclear how the defendants seek to demonstrate that the deposit moneys and the night club assets belonged to them, and that they were dealing with assets that belonged to the initial investors, rather than the plaintiff. Not only is the defendants' case largely unsubstantiated by evidence, but it is also contradicted by the available documentary evidence. On the face of the SPAs, the initial investment sum went towards the purchase of shares in the plaintiff. Further, in respect of the investment by the second defendant and Tang, the second defendant has admitted that the 30 August 2016 SPA is the "only written agreement [which] document[s] the Initial Investment".[46] Counsel for the second defendant has clarified at the hearing before the learned AR that the second defendant does not seek to set aside the SPAs.[47] The 16 June 2016 SPA provided at clause 1.1:[48]

> The Purchaser [Ong] agrees to purchase and the Vendor [Lee] agrees to sell 75,000 Ordinary shares (the "**Shares**") in the Company at the price per share of S$2.00 and aggregate price of S$150,000.00 (the "**Price**") on the Closing Date (as defined hereinafter), provided that the Closing Requirements (as defined hereinafter) are fulfilled on the Closing Date.
>
> [emphasis in original]

Similarly, the 30 August 2016 SPA provided:[49]

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45 1DWS at paras 32 and 43 to 47; 2DWS at paras 49 and 62.

46 Ravinder Paul Singh s/o Akubal Singh's 2nd Affidavit dated 20 July 2022 ("Paul's 2nd Affidavit") at para 7 (1DBOD at pp 417–418).

47 19 Sept NE at p 5, line 9 (1DBOD at p 626).

48 Lee's 1st Affidavit at p 33 (1DBOD at p 291).

49 Lee's 1st Affidavit at p 103 (1DBOD at p 361).

> The Seller [Lee] has agreed to sell and the Buyer [the second defendant] has agreed to buy the Sale Shares subject to the terms and conditions of this Agreement.
>
> The Seller [Lee] is the legal owner of 500,000 ordinary shares in the Company.

The 30 August 2016 SPA goes on to define "Sale Shares" as "330,000 ordinary shares" in the plaintiff, and the purchase price was stated to be S$804,500.[50] I also note that the second defendant was represented by solicitors at the time that he entered into the 30 August 2016 SPA.[51]

19 I pause to note that the defendants, as among themselves, do not seem to take a uniform position on why the deposit moneys and the night club assets allegedly belong to them. At the hearing before the AR, after the first defendant had taken the position that the initial investment sum was a loan, counsel for the second defendant submitted that it was "one possible position",[52] while counsel for the third defendant indicated that he would "not go so far as to say that it was a loan because the [third defendant] does not know".[53] In this regard, I note that Yeoh's email reflected that she had recorded in the plaintiff's accounting book the payments made by Lee in cash for "Furniture & Fittings and Renovation cost" on behalf of the plaintiff as "amount due to director – Paul [*ie*, the second defendant]".[54] In my view, even if the defendants succeed in establishing, contrary to the SPAs, that the initial investment sum was a loan, it would merely mean that the plaintiff had an obligation to repay the loan, but does not show that the deposit moneys and the night club assets belong to the

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50 Lee's 1st Affidavit at pp 104–105 (1DBOD at pp 362-363).

51 Paul's 2nd Affidavit at para 7 (1DBOD at pp 417–418).

52 5 Oct NE at p 16, lines 26–33 (1DBOD at p 660).

53 5 Oct NE at p 16, lines 17–20 (1DBOD at p 660).

54 Paul's 2nd Affidavit at p 19 (1DBOD at p 433).

initial investors rather than the plaintiff. Ultimately, the tenancy agreement was entered into by the plaintiff, and the night club assets were acquired by the plaintiff.

20 Second, the defendants have not provided a reasoned basis for their argument that there was no breach of fiduciary duties owed to the plaintiff. It is well established that a director of a company owes the company fiduciary obligations, including a duty to act honestly in the discharge of his duties as a director, to act *bona fide* in the interests of the company, to act for a proper purpose in relation to the company's affairs, and to act as a trustee of the company's assets (*Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd)(in judicial management) and another v Gong Ruizhong and others* [2021] SGHC 80 ("*Tendcare*") at [142]). A director must exercise the director's discretion *bona fide* in what the director considers is in the interests of the company, the test being whether an honest and intelligent man in the position of the director, taking an objective view, could reasonably have concluded that the transactions were in the interests of the company (*Halsbury's Laws of Singapore* vol 6 (LexisNexis, 2022) at para 70.247). Where a director causes value or business operations to be transferred out of the company without a proper basis for doing so, the director is in breach of fiduciary duties owed to the company (*Tendcare* at [147]; see also *Swiss Butchery Pte Ltd v Huber Ernst and others and another suit* [2010] 3 SLR 813 at [170]–[173]). Applying these tests, it is questionable how the transfers and the novation were, objectively from the perspective of an honest and intelligent man in the position of the directors, in the plaintiff's best interests, given that the plaintiff received nothing in exchange (except, as argued by the first and second defendants, an exemption from liabilities that flow from

the tenancy agreement and the novation agreement)[55] and had the plaintiff's business operations taken away.

21 Further, there is some evidence to suggest that the plaintiff was in a precarious financial position in late 2016 to early 2017, one reason for this being the impending claim by HID. Tang had described the plaintiff as being "in an extremely dire financial state".[56] In this regard, it is settled law that when a company is insolvent, or in a parlous financial situation, directors have a fiduciary duty to take into account the interests of the company's creditors when making decisions for the company; this fiduciary duty requires directors to ensure that the company's assets are not dissipated or exploited for their own benefit to the prejudice of the creditors' interests (*Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [48]). It appears, from the defendants' version of events, that the impetus for the second restructuring agreement was the impending claim by HID. I reproduce the following from the third defendant's affidavit dated 16 June 2022:[57]

> … [the second defendant] and me were directors of [the plaintiff] at the material time and I trust that all actions taken were in the best interests of [the plaintiff] … I only recall that the [first defendant] was incorporated because [the plaintiff] ran into financial issues and had likely exposures to liability and lawsuits it had to deal with. A decision was then made to incorporate the [first defendant]. I suppose that led to the novation as mentioned above.

This account of events would, in fact, go towards suggesting that the second restructuring agreement was entered into to the prejudice of the plaintiff's

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55 1DWS at para 38; Paul 1st Affidavit at para 28 (1DBOD at p 61).

56 Tang Chuan Choon's 1st Affidavit dated 5 September 2022 at para 15 (1DBOD at pp 449–450).

57 Daniel's 1st Affidavit at para 12 (1DBOD at p 206).

creditors, and that the plaintiff's creditors were not among the relevant stakeholders who allegedly agreed to the second restructuring agreement.

22 Where a defendant cannot state with conviction the defence it is running, and where it lacks evidence to show its purported defence, it is appropriate for a condition to be imposed on leave to defend (*Akfel Commodities Turkey Holding Anonim Sirketi v Townsend, Adam* [2019] 2 SLR 412 at [57]–[58]). In light of the reasons as set out above, this is one such case, and in my judgment, the learned AR was correct in requiring the defendants to furnish security to show some commitment to their claimed defences.

Whether the quantum of security ordered should be lowered

23 The Court of Appeal explained in *Mohd Zain bin Abdullah v Chimbusco International Petroleum (Singapore) Pte Ltd and another appeal* [2014] 2 SLR 446 at [40] that:

> … in so far as the amount of security should be determined with reference to the demonstration of commitment on the defendant's part, it should be noted that the *degree* of commitment which is appropriate will naturally vary with the circumstances. In the final analysis, the court will have to mediate between various competing concerns in deciding what conditions ought to be imposed, including, *inter alia*, protecting the pecuniary interests of the plaintiff/creditor, the size of the debt, avoiding the stifling of triable issues and responding to different degrees of shadowiness. [emphasis in the original]

Further, the Court of Appeal also took the view that in terms of the amount of security to be ordered, "the court's discretion … is … widely framed" and the court "ought not to begin with any starting point in mind [*eg*, the full sum claimed by the plaintiff] … and should instead exercise its discretion flexibly to meet the needs of the case before it" (at [39]).

24 The first defendant argued that the S$620,000 ordered is "excessive".[58] The second defendant argued that the sum is "crushing and/or unfair" and would essentially shut the defence out.[59] The third defendant similarly argued that the sum of security ordered is "crippling".[60] Yet, counsel for all three defendants accepted, at the hearing before me, that they have placed no evidence before the court that the defendants are unable to afford the sum of the security ordered. The Court in *Wee Cheng Swee Henry v Jo Baby Kartika Polim* [2015] 4 SLR 250 ("*Wee Cheng Swee*") held (at [118]) that while it would be "wrong in principle to impose a condition … which the defendant would find impossible – as opposed to merely difficult – to comply with", the "defendant bears the burden … of showing that it would be impossible – as opposed to merely difficult – to comply with a condition which the court proposes to impose on the leave to defend".

25 Nonetheless, I note that, as pronounced by the Court in *Wee Cheng Swee* (at [112]), the quantum of the security to be required of a defendant must be fixed with the following two factors in mind: (a) doing justice to the plaintiff in light of the strength of the plaintiff's case and the uncertainties attached to the defendant's defences; and (b) doing justice to the defendant in light of the defendant's financial means.

26 As already explained, there is no evidence before me as to the latter factor. As regards the uncertainties attached to the defendant's defences, they have been examined in the discussion above.

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58 1DWS at para 70.

59 2DWS at paras 68–69.

60 Third Defendant's Written Submissions dated 4 November 2022 at para 2.2.

27 In terms of the plaintiff's case, I find that there are troubling aspects in the plaintiff's narrative that should be considered in assessing the extent of the demonstration of commitment to be required from the defendants. In my view, in balancing the competing concerns when deciding what conditions ought to be imposed, equivocal or dubious aspects of a claim may be considered together with any deficiencies in the defence, given that such aspects go towards the strength of the claim and defence as well as the degree to which a claimant's interest should be protected. Indeed, the court in *PT Selecta Bestama v Sin Huat Huat Marine Transportation Pte Ltd* [2016] 1 SLR 729 ("*PT Selecta*") considered the nature of the claim in that case when determining whether any condition should be imposed when granting leave to defend. The Court observed that the circumstances in that case were "highly unusual" (at [21]), which lent some credibility to the defendant's case, or at the very least, demonstrated that the "plaintiff's contractual claim was far from straightforward" (at [23]). There, despite the fact that there had been no payment received from the defendant and there was no input, whether financial or technical, from the party who had purportedly ordered certain barges, the plaintiff (among other things) proceeded with the building of barges, and there was no negative reaction on the part of the plaintiff for a period of six months. Given that "many features of [the case] called for further examination" and were to be "probed further at a full trial", the Court ordered that the defendant be given unconditional leave to defend (at [25]).

28 I find that in the present case, there are also features that could merit further inquiry and examination, and that affect the degree of commitment that is appropriate although, given the state of the defendants' defences, these features do not warrant the setting aside of the default judgments without conditions. I elaborate.

29 The first restructuring agreement allegedly took place sometime in late October 2016.[61] At that time, it appears that Lee and the second defendant were directors of the plaintiff (see [2], [3] and [5] above). According to the second defendant, discussions on the first restructuring agreement took place between the plaintiff's then directors, shareholders and people concerned with the investment in the plaintiff. These people included Lee and the second defendant.[62] Lee resigned as a director of the plaintiff on or around 27 October 2016 and transferred all his shares in the plaintiff to the second defendant on or around 1 November 2016 (see [5] above). The second restructuring agreement allegedly took place sometime in November 2016. According to the second defendant, discussions, once again, took place between the plaintiff's then "directors, shareholders and people concerned with the investment [in the plaintiff]", and more specifically, the arrangements for the novation and the transfers were agreed between Lee, Ong, Tang and the second defendant.[63] That was followed by Lee resuming sole directorship of the plaintiff and taking over its shareholdings a few months later in March 2017 (see [9] above). In this regard, I refer to four documents: (a) the share transfer form dated 8 March 2017 signed by the second defendant and Lee;[64] (b) the plaintiff's directors' resolution dated 8 March 2017 appointing Lee as director of the plaintiff;[65] (c) the second and third defendants' resignation letters dated 8 March 2017;[66] and (d) the plaintiff's directors' resolution dated 8 March 2017 accepting the second and

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61 Paul's 1st Affidavit at para 19 (1DBOD at pp 57–58).

62 Paul's 1st Affidavit at para 19 (1DBOD at pp 57–58).

63 Paul's 1st Affidavit at para 20 (1DBOD at p 58).

64 Wong's 1st Affidavit at p 96 (1DBOD at p 189).

65 Wong's 1st Affidavit at p 100 (1DBOD at p 193).

66 Wong's 1st Affidavit at pp 102–103 (1DBOD at pp 195–196).

third defendants' resignations.[67] These documents show that on or around 8 March 2017, ownership and control of the plaintiff was transferred from the second and third defendants to Lee. The timing is noteworthy. These were done after the novation agreement, which was dated 26 January 2017 (see [7] above). Lee was aware of the transfers and the novation,[68] and took over directorship and shares of the plaintiff from the second and third defendants, apparently without raising any objections. According to Lee, "[there] was nothing much [Lee] could do at the point in time]". He was cash strapped and was also engaged in another dispute, and therefore had to put the matter involving the plaintiff on hold to deal with the separate dispute.[69]

30 The facts summarised in the preceding paragraph raise several questions.

31 First, despite Lee being aware of the transfers and the novation, he took over directorship and shares of the plaintiff from the second and third defendants in March 2017, apparently without raising any objections until he caused the plaintiff to commence the present action. It is odd that Lee did not issue a single protest about the alleged wrongdoings of the defendants that form the basis of the plaintiff's claim in this action. The lack of objection on Lee's part, and the protracted inaction on the part of the plaintiff concerning the transfers and the novation, raise questions as to Lee's role and give some credence to the defendants' allegations of Lee's involvement in the discussions that led to the second restructuring agreement and the stripping of the plaintiff's

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67 Wong's 1st Affidavit at p 98 (1DBOD at p 191).

68 Lee's 1st Affidavit at para 35 (1DBOD at p 272).

69 Lee's 1st Affidavit at para 36 (1DBOD at pp 272–273).

business operations and assets. A potential issue therefore arises as to whether the knowledge and/or actions of the past and present directors and shareholders of the company would have an impact on the strength of the plaintiff's claim against its past directors for breach of fiduciary duties in the factual context of this case.

32 Second, if the second restructuring agreement, and Lee's involvement in the second restructuring, are established, questions may be raised as to whether Lee is using the plaintiff as a nominee to pursue this claim, when it appears that Lee at least acquiesced in the alleged wrongful acts, and this calls into question the plaintiff's *bona fides* in bringing and maintaining the present action. In this regard, one further consideration is that Lee is presently the sole director and a majority shareholder of the plaintiff such that, in practical terms, he will be the beneficiary should the plaintiff succeed in its action.

33 I find that these aspects of the plaintiff's claim, as in *PT Selecta,* go towards showing, at the very least, that its claim is not as straightforward as it argues.

34 According to the plaintiff, besides the amount of S$361,552.20, which was the deposit moneys that the plaintiff paid to its landlord for the rental of its premises that was credited to the account of the first defendant under clause 5 of the novation agreement,[70] the estimated value of the night club assets that were transferred to the first defendant was S$519,312.12.[71] However, the basis for this estimate, as well as how the night club assets included in the estimate were transferred, is not clear. Balancing the strength of the plaintiff's claim with

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70 SOC at para 6 (1DBOD at p 605).

71 SOC at para 12 (1DBOD at p 608).

the troubling aspects in mind against the uncertainties in the defendant's defences, and taking into account the likely value of the plaintiff's claim, I am of the view that the provision of security by the defendants in the amount of S$361,552.20, which represents a key component of the plaintiff's claim, would be fair and would demonstrate a sufficient degree of commitment on the part of the defendants to their defences.

Conclusion and orders made

35 Accordingly, I reduce the amount of security ordered by the learned AR, and order the defendants to jointly and severally furnish security in the amount of S$361,552.20 by way of solicitors' undertaking or bankers' guarantee within 21 days from the date of this order. The learned AR's decisions in HC/SUM 2126/2022, HC/SUM 2118/2022 and HC/SUM 2238/2022 are otherwise upheld.

36 I will hear parties on the issue of costs separately.

Teh Hwee Hwee
Judicial Commissioner

Tan Ky Won Terence and Sandra Lye Hui Wen (Genesis Law Corporation) for the plaintiff;
Arthur Yap and Ong Hui Jing (CHP Law LLC) for the first defendant;
Darrell Low Kim Boon, Koh Zhen Yang and Ng Rui Wen (Bih Li & Lee LLP) for the second defendant;
Ong Kai Min Kelvin and Tan Yong Yuen Jordan (Contigo Law LLC) for the third defendant.