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

[2024] SGHC 177

Suit No 1006 of 2021

Between

H8 Holdings Pte Ltd

… *Plaintiff*

And

(1) RIC Dormitory (SG) Pte Ltd
(2) POP Holdings Pte Ltd
(3) Lee Boon Leng
(4) Leong Poh Choo

… *Defendants*

Suit No 27 of 2022

Between

POP Holdings Pte Ltd

… *Plaintiff*

And

(1) Ting Cher Lan
(2) Eer Kin Pring
(3) Thia Tiong Siong
(4) Teo Ban Lim
(5) Han Jieling

… *Defendants*

JUDGMENT

[Tort — Misrepresentation — Fraud and deceit]
[Companies — Oppression — Minority shareholders]

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v
RIC Dormitory (SG) Pte Ltd and others and another suit

[2024] SGHC 177

General Division of the High Court — Suit No 1006 of 2021 and Suit No 27 of 2022
Kristy Tan JC
29, 30 November, 1, 5–7, 18–21 December 2023, 2–4 January, 28 February, 16 May 2024

10 July 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 HC/S 1006/2021 ("S 1006") concerns a shareholder oppression action. HC/S 27/2022 ("S 27") concerns claims for misrepresentation and unlawful means conspiracy in connection with an acquisition underlying the joint venture that is the subject of S 1006. Both actions were tried at the same time, with all parties consenting to the evidence led in one suit being relied on in the other.

Facts

The parties in S 1006

2 The plaintiff in S 1006 is H8 Holdings Pte Ltd ("H8"), a private limited company incorporated in Singapore.[1] The shareholders of H8 are Thia Tiong Siong ("William"), Teo Ban Lim ("Terrence") and Han Jieling ("Jieling"). Terrence and Jieling are also the directors of H8.[2]

3 The first defendant in S 1006 is RIC Dormitory (SG) Pte Ltd (the "Company"), a private limited company incorporated in Singapore and formerly known as QFC Investment Pte Ltd.[3] H8 is the minority shareholder in the Company. The majority shareholder is POP Holdings Pte Ltd ("POP").[4] H8 and POP acquired the Company, to be their joint venture vehicle, from Eer Kin Pring ("Eer") and Ting Cher Lan ("Ting") further to a share purchase agreement entered into on 5 March 2015 (the "SPA"); the acquisition was completed in January 2016.[5]

4 The second defendant in S 1006 is POP, a private limited company incorporated in Singapore. The third and fourth defendants in S 1006 are Lee Boon Leng ("Jason") and Leong Poh Choo ("Annie") respectively. They are the

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1 Bundle of AEICs Vol 4 ("4BA") at p 5: Affidavit of Evidence-in-Chief of Thia Tiong Siong dated 28 September 2023 ("William's AEIC") at para 4.

2 4BA at p 4: William's AEIC at para 1; Bundle of AEICs Vol 5 ("5BA") at pp 723–724: Affidavit of Evidence-in-Chief of Han Jieling dated 28 September 2023 ("Jieling's AEIC") at para 17.

3 Bundle of AEICs Vol 3 ("3BA") at p 768: Affidavit of Evidence-in-Chief of Eer Kin Pring dated 28 September 2023 ("Eer's AEIC") at para 7.

4 4BA at pp 5–6: William's AEIC at para 7.

5 4BA at pp 5 and 13: William's AEIC at paras 6 and 26.

only shareholders and directors of POP.[6] In the context of S 1006, I will refer to POP, Jason and Annie collectively as the "S 1006 Defendants".

5 Silvester Legal LLC ("SLL") acts for H8 in S 1006; Sim Chong LLC acts for the Company; and K&L Gates Straits Law LLC ("KLGSL") acts for the S 1006 Defendants.

The parties in S 27

6 The plaintiff in S 27 is POP.

7 The first and second defendants in S 27 are Ting and Eer respectively. They each held 50% of the shares in, and were the directors of, the Company until the Company was acquired by H8 and POP.[7] Ting held her shares as a nominee for William, who is her husband.[8] The third, fourth and fifth defendants in S 27 are William, Terrence and Jieling respectively. In the context of S 27, I will refer to Ting, Eer, William, Terrence and Jieling collectively as the "S 27 Defendants".

8 KLGSL acts for POP in S 27; and SLL acts for the S 27 Defendants.

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6 4BA at p 5: William's AEIC at para 5.

7 3BA at pp 768, 769 and 771: Eer's AEIC at paras 9, 17 and 26; 4BA at p 6: William's AEIC at para 8.

8 4BA at p 6: William's AEIC at para 8; 3BA at p 770: Eer's AEIC at para 19.

Background to the disputes

Background to the joint venture

9 On or around 16 March 2011, the Company was incorporated by Eer and Ting.[9] Each of them held 500,000 shares in the Company,[10] although Ting held her shares as a nominee on behalf of her husband, William.[11]

10 In August 2012, the Company purchased the leasehold property at 34 Kaki Bukit Place, Eunos Techpark, Singapore 416212 ("34KB").[12] The Company operated a foreign worker dormitory at 34KB. The 34KB dormitory was run by William, who was assisted by Terrence and Jieling.[13]

11 On or around 23 February 2013, H8 was incorporated to run a foreign worker dormitory at 8 Enterprise Road, Singapore 629820 ("8ER"). H8 collected the monthly rental from customers at 8ER and, in turn, paid a management fee to RIC Marine Pte Ltd ("RIC Marine"), which at that time held the lease over 8ER from the Jurong Town Corporation ("JTC").[14]

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9 3BA at p 768: Eer's AEIC at para 7.

10 3BA at p 771: Eer's AEIC at para 26.

11 4BA at p 6: William's AEIC at para 8; 3BA at p 770: Eer's AEIC at para 19.

12 3BA at p 771: Eer's AEIC at para 30.

13 3BA at p 772: Eer's AEIC at paras 33–34.

14 4BA at pp 8–9: William's AEIC at paras 14 and 16.

12 In 2013, William contacted Jason and Annie to ask if they were interested in a potential joint venture.[15] The joint venture comprised the following steps:[16]

(a) The Company would acquire all the shares in RIC Marine to gain full control over the JTC lease for 8ER.

(b) H8 and POP would acquire all the shares in the Company from Eer and Ting. As a result, H8 and POP would become the owners of 34KB and (through RIC Marine) 8ER.

The original plan was for H8 and POP to be equal shareholders in the Company, *ie*, to hold a 50% shareholding each.[17]

13 In or around 2013, William also invited Annie to visit 34KB and 8ER. After Annie's visit to the two dormitories, she informed Jason that 34KB was fully occupied with 362 beds, while 8ER was not occupied yet but could house about 1000 beds.[18] In reality, however, the legally approved capacity of the dormitory at 34KB was 130 workers.[19]

14 In January 2014, POP sent H8 a draft shareholders' agreement which reflected (at cl 5.1) the original intent for H8 and POP to be equal shareholders in the Company (the "Draft 50:50 SHA"). However, the Draft 50:50 SHA was

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15 3BA at pp 7–8: Affidavit of Evidence-in-Chief of Lee Boon Leng dated 26 September 2023 ("Jason's AEIC") at paras 13–14; 3BA at p 53: Affidavit of Evidence-in-Chief of Leong Poh Choo dated 26 September 2023 ("Annie's AEIC") at para 17.

16 4BA at p 10: William's AEIC at para 19.

17 4BA at p 13: William's AEIC at para 25; Statement of Claim (Amendment No 1) dated 7 December 2023 filed in S 27 ("S 27 SOC") at para 7.

18 3BA at p 8: Jason's AEIC at paras 14–16; 3BA at pp 53 and 55: Annie's AEIC at paras 17–19 and 26.

19 Certified trial transcript ("Transcript") 1 December 2023 at pp 1:29–2:3.

never executed because H8 subsequently decided to purchase only 30% of the shares in the Company.[20]

15 On 14 May 2014, Jieling sent Annie an e-mail with two attachments. The attachments contained various documents including the following, which I discuss in greater detail at [50]–[52] below:[21]

(a) a list of tenants at 34KB as at 14 May 2014;

(b) a Fire Safety Certificate issued by the Singapore Civil Defence Force ("SCDF") dated 29 November 2012;

(c) a drawing of the floor plan of 34KB that the Company had submitted to SCDF; and

(d) a Grant of Written Permission (Temporary) from the Urban Redevelopment Authority ("URA") dated 5 April 2012 approving the use of the fifth to seventh floors of 34KB as a dormitory for 130 workers from 5 April 2012 to 5 April 2014 (the "2012 URA Written Permission"). Parenthetically, the 2012 URA Written Permission was subsequently renewed on 5 August 2014 and 24 June 2015.[22]

16 On 16 July 2014, CKS Property Consultants Pte Ltd ("CKS") provided a valuation report on 34KB, valuing it at $14m based on, among other things,

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20 4BA at p 13: William's AEIC at para 25; 3BA at p 250.

21 5BA at p 770: Jieling's AEIC at para 98(b); 5BA at pp 375–389; 3BA at pp 56–57: Annie's AEIC at para 31.

22 3BA at pp 73–75: Annie's AEIC at paras 66(a) and 66(d); 3BA at pp 335 and 358.

information that 34KB could house 360 workers ("CKS' 2014 Valuation Report").[23]

17 On 21 August 2014, URA sent a Refusal of Written Permission in respect of 34KB to one Lau Ai Geck, a professional engineer engaged by William on behalf of the Company (the "URA Refusal of Written Permission"). The URA Refusal of Written Permission was issued in response to an application made on 14 August 2014 for "Proposed change of use of 3rd and 4th storey to workers' dormitory (80 workers) at the existing 7-storey intermediate factory with approved temporary secondary workers' dormitory (130 workers) at 5th to 7th storey". URA refused the planning permission applied for.[24]

18 On or around 5 March 2015, the Company (under Eer and Ting's ownership, the latter on William's behalf) acquired RIC Marine for $16.3m.[25]

19 On 5 March 2015, H8 and POP then entered into the SPA[26] to acquire all the shares in the Company from Eer and Ting for $42m.[27] The price of $42m was based on 34KB and 8ER being valued at $14m and $28m respectively.[28]

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23 3BA at pp 59–60: Annie's AEIC at para 39; 3BA at pp 179–181.

24 Core Bundle of Documents of the 2nd to 4th defendants in S 1006 and the plaintiff in S 27 dated 17 November 2023 ("DCB") at p 66; 3BA at p 74: Annie's AEIC at para 66(b).

25 3BA at p 60: Annie's AEIC at para 41; 3BA at pp 205–214; Transcript 29 November 2023 at p 11:9–12 and p 12:27–31.

26 3BA at pp 216–243.

27 4BA at p 13: William's AEIC at para 26; 3BA at p 220: cl 2.2 of the SPA.

28 Agreed Bundle of Documents Vol 3 ("3AB") at p 19.

H8 was to acquire 30%, and POP 70%, of the shares in the Company.[29] POP paid an aggregate sum of $29m for its 70% stake.[30]

20 To facilitate the financing of the purchase price, H8 and POP procured the following loans:[31]

(a) a re-financed loan of around $9.2m from RHB Bank Singapore ("RHB") to the Company with a mortgage over 34KB (the "RHB Loan"); and

(b) a loan of $20m from Hong Leong Finance Limited ("HLF") to the Company with a mortgage over 8ER (the "Hong Leong Loan").

William, Terrence, Jieling, Jason and Annie were personal guarantors for the Hong Leong Loan. William, Terrence, Jason and Annie were personal guarantors for the RHB Loan.[32]

21 On 18 January 2016, the transaction under the SPA was completed.[33] H8 and POP held 30% and 70% of the shares in the Company respectively. Terrence, Jason and Annie were appointed as directors of the Company.[34]

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29 3BA at p 222: cl 4.1(a)(iii) of the SPA.

30 S 27 SOC at para 13(f); 3BA at p 77: Annie's AEIC at para 71.

31 4BA at p 14: William's AEIC at para 27; 3BA at p 62: Annie's AEIC at para 44; Transcript 3 January 2024 at p 74:16–30.

32 3BA at p 98: Annie's AEIC at para 135; Closing Submissions filed on behalf of the plaintiff in S 1006 and the 1st to 5th defendants in S 27 dated 16 February 2024 ("SLL's Closing Submissions") at para 9.

33 4BA at p 13: William's AEIC at para 26.

34 4BA at pp 14–15: William's AEIC at para 29.

Main events in 2018

22 On 23 April 2018, the Company held its 4th Annual General Meeting (the "4th AGM"). It was resolved, based on POP's vote as the majority shareholder with H8 opposing the same, that:[35]

(a) Terrence was not re-elected as a director of the Company (see Resolution 4).

(b) The directors of the Company (*ie*, Jason and Annie) were given the authority to issue shares of the Company (see Resolution 6).

(c) The increase of the Company's paid-up share capital from $1m to $3m was approved (see Resolution 7).

(d) The issuance and allotment of 2m ordinary shares at $1 per share to existing shareholders was approved (see Resolution 8).

(e) H8's shareholding in the Company was to be diluted if it could not pay $600,000 (*ie*, 30% of $2m) for its portion of the new shares, with the first payment of $316,537.47 due on 9 May 2018 and the balance of $283,462.53 due at a later date to be fixed (see Resolution 9).

23 On 23 May 2018, the Company held an Extraordinary General Meeting (the "2018 EGM") and passed a resolution to increase the monthly directors' remuneration of Jason and Annie. H8 voted against the resolution.[36] In FY 2019, the aggregate directors' remuneration of Jason and Annie was $144,000 and their aggregate directors' fees were $336,000. The level of directors' fees and

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35 4BA at pp 22–23 and 29: William's AEIC at paras 40–41 and 49–50; 4BA at p 222–225.

36 4BA at p 40: William's AEIC at para 69; 5BA at pp 217–219.

remuneration has remained the same from FY 2019 to-date.[37] The Company has not declared any dividends since the start of the joint venture.[38]

24 On or around 26 June 2018, 1m ordinary shares were issued to POP at $1 per share.[39] This diluted the shareholding of H8 from 30% to 15% and increased the shareholding of POP from 70% to 85%.[40]

Revaluation of 34KB

25 On 5 March 2019, CKS provided a revaluation report on 34KB based on its dormitory capacity of 130 workers and revalued the property at $9m ("CKS' 2019 Valuation Report").[41]

S 10

26 On 6 January 2020, POP commenced HC/S 10/2020 ("S 10") against Eer and Ting for misrepresentation in respect of the capacity of the 34KB dormitory.[42] POP discontinued S 10 on 30 November 2020 in exchange for settlement terms agreed with William.[43]

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37 4BA at p 40: William's AEIC at paras 69–70; Statement of Claim (Amendment No 6) dated 9 October 2023 filed in S 1006 ("S 1006 SOC") at para 81A.

38 4BA at p 40: William's AEIC at para 69; 3BA at p 105: Annie's AEIC at para 159.

39 4BA at pp 23–24: William's AEIC at paras 43–44.

40 3BA at p 88: Annie's AEIC at para 100; 4BA at pp 5–6: William's AEIC at para 7.

41 4BA at pp 676–678; DCB at pp 216–218.

42 4BA at pp 61–62: William's AEIC at para 109(a); 3BA at pp 858–863.

43 4BA at p 63: William's AEIC at para 109(a)(v); 5BA at p 637.

Bridging Loan

27 On 3 April 2020, Annie submitted an application on behalf of the Company to RHB for a bridging loan. The bridging loan was part of a programme under which the Singapore Government provided enhanced financial support for small and medium enterprises during the COVID-19 pandemic.[44] RHB granted the Company a bridging loan of $3m, for which Jason and Annie provided a joint and several personal guarantee (the "Bridging Loan").[45] Of the $3m received by the Company, $2m was transferred by the Company to POP as part repayment of certain shareholder's loans that POP had made to the Company.[46]

Commencement of S 1006 and S 27

28 On 8 December 2021, H8 commenced S 1006. On 16 January 2022, POP commenced S 27.

Sale of 34KB

29 On 31 July 2023, with the approval of both H8 and POP, the Company sold 34KB for $9m.[47]

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44 4BA at p 37: William's AEIC at para 66; 5BA at p 194; 3BA at pp 96–97: Annie's AEIC at para 128.

45 3BA at p 97: Annie's AEIC at para 129; 3AB at p 210.

46 3BA at p 97: Annie's AEIC at para 131.

47 3BA at p 107: Annie's AEIC at para 167; 4BA at p 60: William's AEIC at para 105; 3BA at p 679.

Listing of 8ER for sale

30 On 19 September 2023, SLL wrote to KLGSL informing that it had come to H8's attention on 13 September 2023 that 8ER had been put on sale on the CommercialGuru website without the knowledge or consent of H8.[48]

31 On 25 September 2023, KLGSL replied that Jason and Annie had no intention of selling 8ER and that the advertisement on the CommercialGuru website had been put up by a property agent, one Matthew Chan ("Matthew"), without authorisation. KLGSL provided a copy of a handwritten apology issued by Matthew.[49] On 27 September 2023, Matthew further made a statutory declaration explaining that he had put up the advertisement on his own accord, without any authorisation, to "fish for potential buyers".[50]

32 On 28 September 2023, a marketing director at ERA Real Estate Singapore, one Raymond Koh ("Raymond"), made a statutory declaration setting out his communications with Annie in August 2023 regarding 8ER being put up for sale. Annie had sent him a URA Grant of Written Permission and the storey plans for 8ER. According to him, she confirmed in a call on 28 August 2023 that the asking price for 8ER was $20m.[51]

S 27

33 The events underpinning the dispute in S 27 precede those in S 1006 and it is apposite to address S 27 first.

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48 3BA at pp 758–759: Supplemental Affidavit of Evidence-in-Chief of Leong Poh Choo dated 16 October 2023 ("Annie's Supplemental AEIC") at para 8; 5BA at pp 223–224.

49 5BA at pp 225–226.

50 4BA at p 47: William's AEIC at para 81; 5BA at pp 230–232.

51 4BA at p 48: William's AEIC at para 82(a); 5BA at pp 236–250.

The parties' cases

POP's case

34 POP's primary claim in S 27 is in the tort of deceit. POP's case is that, in the course of negotiations leading up to the SPA and the joint venture, William, Terrence and Jieling fraudulently represented to Jason and Annie that the legitimate and legally approved capacity of the dormitory at 34KB was 362 workers or beds. Eer and Ting are bound by the representation made by William, Terrence and Jieling, which was made to secure POP's purchase of the shares in the Company. The representation was false. POP had relied on and was induced by the representation when entering into the SPA. As a result of the misrepresentation, POP suffered damages in the amount of $3.5m.[52] Further and/or alternatively, POP brings claims for negligent misrepresentation and unlawful means conspiracy against the S 27 Defendants based on the same factual matrix.[53]

The S 27 Defendants' case

35 In respect of POP's claim in the tort of deceit, the S 27 Defendants submit that POP was inconsistent on whether the alleged representation that the 34KB dormitory could house 362 workers was a representation that it could factually house that number of workers (which was true) or that it could legally house that number of workers. POP was also inconsistent on what representations Jason and Annie had relied on, and on when Annie discovered the alleged misrepresentation. As such, "little probative weight" should be given

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52 Closing Submissions filed on behalf of the 2nd to 4th defendants in S 1006 and the plaintiff in S 27 dated 16 February 2024 ("KLGSL's Closing Submissions") at paras 94–111 and 115–119.

53 KLGSL's Closing Submissions at paras 112–114 and 120–123.

to Jason and Annie's evidence in relation to the alleged misrepresentations.[54] The S 27 Defendants further submit that Jason and Annie did not rely on the alleged representations of William, Terrence or Jieling when entering into the SPA, and were in any event precluded by clauses in the SPA from doing so.[55] Finally, the S 27 Defendants submit that POP failed to plead or substantiate the loss it suffered as a result of the alleged misrepresentation.[56] In respect of POP's unlawful means conspiracy claim, the S 27 Defendants submit that POP failed to sufficiently plead and particularise the elements of its claim.[57]

Decision on POP's claim in the tort of deceit

36 The essential elements of the tort of deceit are as follows. First, a false representation of fact was made by words or conduct. Second, the representation was made with knowledge that it was false, or without belief in its truth, or recklessly, careless whether it be true or false. Third, the representation was made with the intention that it be acted upon by the plaintiff. Fourth, the plaintiff acted upon the false representation. Fifth, the plaintiff suffered damage by so doing. See *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 ("*Panatron*") at [14].

The Representation meant that the legally approved capacity of the dormitory at 34KB was 362 workers / beds, and the Representation was false

37 Beginning with the first element of the tort, an anterior issue arises as to how the representation in question should be interpreted for the purpose of deciding if it was false:

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54 SLL's Closing Submissions at paras 193–208.

55 SLL's Closing Submissions at paras 209–225.

56 SLL's Closing Submissions at paras 226–243.

57 SLL's Closing Submissions at paras 244–247.

(a) POP pleads that the S 27 Defendants represented that the capacity of the dormitory at 34KB was 362 workers or beds (the "Representation"). POP further pleads that in its natural and/or contextual meaning, "capacity" was the *legitimate and legally approved* number of workers or beds.[58]

(b) In contrast, the S 27 Defendants plead that:[59]

> … Any representation made by the [S 27] Defendants in relation to the capacity of the workers' dormitory at [34KB] of 362 workers or beds referred to the *factual* capacity of said dormitory to house said workers and collect rental income from them which they in fact did from 2012 to 2017. [emphasis added]

38 Here, the court's task is to ascertain the reasonable interpretation of the Representation from the perspective of the representee (*ie*, POP): John Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (Sweet & Maxwell, 6th Ed, 2022) ("*Cartwright*") at para 5-09. In my judgment, the objective and reasonable meaning of the Representation is plainly that the *legally approved* capacity of the dormitory at 34KB was 362 workers / beds. The alleged Representation was made in the context of discussions for POP to acquire a shareholding in the Company, which owned 34KB. A purchaser would usually acquire a property based on the use to which the property could *legally* be put. It makes no sense that POP would have been interested in only the *physical* but not the *legally approved* capacity of 34KB for use as a dormitory. To the contrary, it is only logical and reasonable for POP to have regarded the Representation (if made) as meaning that the *legally approved* capacity of the dormitory at 34KB was 362 workers / beds. Accordingly and henceforth, all

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58 S 27 SOC at para 10.

59 Defence of the 1st, 3rd, 4th and 5th defendants (Amendment No 4) dated 8 December 2023 filed in S 27 ("S 27 D1 & D3–D5 Defence") at para 22.

references to the "Representation" in this judgment should be taken to mean the Representation in the sense pleaded by POP.

39 The Representation is incontrovertibly false. It is undisputed that at the time POP acquired its shareholding in the Company, only the fifth to seventh floors of 34KB could legally be used as a dormitory to house up to 130 workers, as this was the extent of URA's permission.[60] This remained the position even after POP acquired its shareholding in the Company.

40 At this juncture, I note that the figures "362", "360" and "300" were sometimes cited interchangeably in the evidence of the parties. In my view, these differences are not material and do not affect the following analysis concerning the making of and reliance on the Representation.

William, Terrence and Jieling made the Representation, intending it to bear the meaning pleaded by POP, knowing it was false, and intending to induce POP to act on it

41 In deciding whether a representation was fraudulently made, the court assesses whether the representor honestly believed it to be true in the sense in which he intended it to be understood or knew that it would or might be interpreted: *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [40]; *Cartwright* at para 5-18. While this test is subjective, the objective meaning of the representation may be relevant to whether the representor's claim that he did not realise that his words would be so interpreted can be believed: *Cartwright* at para 5-18.

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60 Transcript 29 November 2023 at p 36:13–18 and p 59:11–17; Transcript 1 December 2023 at pp 1:29–2:3.

42 As for the requirement that the representor must have intended to induce the representee to act on the representation, the court may infer this intention from the natural consequences of the representation: *Cartwright* at para 5-19.

43 Bearing these legal principles in mind, it is my finding that each of William, Terrence and Jieling (a) made the Representation; (b) intending it to mean, as pleaded by POP, that the *legally approved* capacity of the dormitory at 34KB was 362 workers / beds; (c) knowing that this meaning was false; and (d) intending to induce POP to act on it by entering into the SPA. I elaborate on my basis for these findings.

(1) William

44 As a preliminary point, I reject William's pleaded defence that any representations he made regarding the capacity of the 34KB dormitory were made as a representative of H8 and not in his personal capacity.[61] It makes no sense that H8, which was *not* the seller of the shares in the Company, would have made any representations regarding the Company's property. Indeed, William conceded in cross-examination that his representations to POP were conveyed on behalf of the sellers of the Company.[62] William was a *de facto* seller of the Company since 50% of the shares in the Company were held by Ting as his nominee at that time. His representations were thus made in his personal capacity and on behalf of Eer and Ting.

45 I reach my findings at [43] above in relation to William for the following reasons.

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61 S 27 D1 & D3–D5 Defence at para 24(g).

62 Transcript 30 November 2023 at p 78:3–12.

46 First, William initially claimed in his Affidavit of Evidence-in-Chief ("AEIC") that he had "never made such a representation to Jason or Annie" that "[34KB's] housing capacity for workers was 362 workers".[63] However, he sang a different tune when he took the stand. He first alleged in cross-examination that from February to April 2014, there were five to six meetings attended by Jason, Annie, Terrence, himself and one Janice Ho from HLF, at which he told the attendees that, in respect of 34KB, "URA's approval was for 130 people. … the first to fourth floor[s] would be the production area, and the fifth to seventh floors would be the dormitory. PUB's approval was for 510 people. SCDF's approval was for 360 people. MOM's approval was for 362 people".[64] In re-examination, he then alleged that Janice Ho was present at only one meeting. He had allegedly explained about the various approvals at that meeting. Even at the meetings attended by only Jason, Annie, Terrence and himself, he allegedly "would give the same explanation" when Jason asked questions.[65] I do not accept William's claim that he had told Jason and Annie that URA's approval for the use of 34KB as a dormitory was for 130 workers only. This claim was material to William's defence. Yet it did not feature in his pleaded defence[66] or AEIC but was advanced only belatedly when he took the stand. This suggests that William made up his evidence on this point. His evolving testimony – which shifted from a blanket denial in his AEIC that he had ever represented that the 34KB dormitory could house 362 workers – also dented his credibility.

47 Second, on 15 January 2014, Janice Ho (who was from the Property Financing Team at HLF, which was going to provide financing for the

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63 4BA at pp 51–52: William's AEIC at para 90 read with para 88.

64 Transcript 29 November 2023 at p 38:15–22.

65 Transcript 1 December 2023 at pp 17:18–18:13.

66 Transcript 30 November 2023 at p 73:15–18.

acquisition of the Company) sent an e-mail to CKS asking for the market valuation of 34KB based on 362 beds.[67] On 16 January 2014, CKS replied that based on the information Janice Ho had furnished, the indicative market value of 34KB was between $14–14.5m.[68] On the same day, Janice Ho forwarded her aforesaid e-mail exchange with CKS to William, Terrence and Jason.[69] The capacity of 362 beds was information that must have originated from William and Terrence.[70] William and Terrence must also have appreciated that (a) as a financial institution, HLF would expect to proceed based on the legally approved capacity for the 34KB dormitory, and (b) HLF had understood 362 beds to be the legally approved capacity. Yet, William and Terrence made no effort to correct Janice Ho's misunderstanding. The irresistible inference is that they had similarly made only the Representation (and not any representation that the URA-approved capacity for the 34KB dormitory was limited to 130 workers) to Jason and Annie, intending Jason and Annie to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds. This coheres with Jason's evidence, which I accept, that William and Terrence told him, when persuading him to participate in the joint venture, that the 34KB dormitory could host 362 beds.[71]

48 Third, William accepted that he told Jason and Annie that the Company's revenue from 34KB came from 362 beds.[72] William must have meant them to understand that the revenue was earned based on the legally

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67 3BA at p 174.

68 3BA at p 172.

69 3BA at p 172.

70 3BA at pp 57–58: Annie's AEIC at paras 34–35.

71 3BA at p 9: Jason's AEIC at para 20(a).

72 Transcript 1 December 2023 at p 2:22–24.

approved capacity of the 34KB dormitory. In my view, this was an instance of William impliedly conveying the Representation to Jason and Annie, intending them to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

49 Fourth, I accept Annie's evidence that William and Terrence told her that the capacity of the dormitory was 362 beds when showing her around the 34KB premises in or around April 2013. This was consistent with what she saw as 34KB was occupied from the second to seventh floors and all the rooms had double-decker beds.[73] Jieling conceded in cross-examination that Annie would have seen 362 beds when Annie visited.[74] Jieling further conceded that anyone walking into 34KB would assume that what they saw used as a dormitory had been approved for such use.[75] In my view, on this occasion of Annie's visit to 34KB, William and Terrence made the Representation to Annie orally, intending her to understand (through her visual confirmation that the second to seventh floors of 34KB were filled with beds) that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

50 Fifth, on 14 May 2014, on William's instructions, Jieling sent a suite of documents to Annie.[76] These documents included:

(a) a list of tenants at 34KB as at 14 May 2014 which showed that a total of 362 of their workers were being housed at 34KB;[77]

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73 3BA at pp 53–54: Annie's AEIC at paras 19–22.

74 Transcript 7 December 2023 at p 67:24–31.

75 Transcript 7 December 2023 at p 10:11–23.

76 Transcript 7 December 2023 at p 93:5–11; 5BA at p 770: Jieling's AEIC at para 98(b).

77 5BA at p 770: Jieling's AEIC at para 98(b)(i); 5BA at p 376.

(b) a Fire Safety Certificate issued by SCDF dated 29 November 2012 approving the Company's safety plans for the evacuation of a total of 359 workers from what were stated to be dormitories across the third to seventh floors of 34KB;[78] and

(c) a drawing of the floor plan of 34KB which the Company had submitted to SCDF.[79] This drawing showed the second to seventh floors of 34KB being used as a dormitory with a total capacity in excess of 300 workers. Jieling admitted that this was what the drawing showed and that it would have given the impression that the second to fourth floors were also (in addition to the fifth to seventh floors) approved for dormitory use.[80] Terrence, too, admitted that the drawing showed the use of the second to fourth floors as a dormitory.[81]

51 By sending the documents at [50] above to Annie, William and Jieling impliedly made the Representation to Annie and intended her to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

52 While Jieling had also, via her 14 May 2014 email, sent Annie the 2012 URA Written Permission (see [15(d)] above),[82] this was an *outdated* document since the period to which it applied had already lapsed. In any event, this document would not on its own have indicated to Annie that the second to fourth

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78 5BA at p 770: Jieling's AEIC at para 98(b)(iv); 5BA at pp 382–387.

79 5BA at p 389; DCB at p 65.

80 Transcript 7 December 2023 at p 92:22–29.

81 Transcript 5 December 2023 at p 46:1–8.

82 5BA at p 770: Jieling's AEIC at para 98(b)(vi) read with Transcript 7 December 2023 at pp 2:25–3:3; 5BA at p 388.

floors were not approved for dormitory use, given that the document only addressed the fifth to seventh floors of 34KB.

53 Sixth, the evidence in fact shows that the URA Refusal of Written Permission, a separate letter from URA *refusing* permission for the use of the third and fourth floors of 34KB as a workers' dormitory (see [17] above),[83] was not provided to Jason and Annie. Jieling testified that William had engaged a consultant to apply to URA for this permission.[84] Logically, William must have been contemporaneously aware of the URA Refusal of Written Permission. Yet, as Jieling testified, she was never instructed by William or Terrence to send the URA Refusal of Written Permission to Annie.[85] It is also not the S 27 Defendants' case that the URA Refusal of Written Permission was sent to Annie. I accept Annie's evidence that she only found out about the URA Refusal of Written Permission when she checked the Company's records after an interview with the Ministry of Manpower ("MOM") in November 2018 when MOM was investigating the Company for the number of workers housed at 34KB (see [115(f)] below), and that a copy of this document was never given to POP, Jason or her prior to the execution of the SPA.[86] I find it more likely than not that William withheld the URA Refusal of Written Permission from Jason and Annie to maintain the false impression deliberately given to them that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

54 Seventh, while William passed Annie a copy of URA's Grant of Written Permission dated 24 June 2015 for the use of the fifth to seventh floors of 34KB

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83 DCB at p 66.

84 Transcript 7 December 2023 at p 63:5–8.

85 Transcript 7 December 2023 at p 70:21–22.

86 3BA at pp 73–74: Annie's AEIC at paras 65 and 66(b).

as a workers' dormitory for 130 workers from 5 April 2015 to 5 April 2017,[87] this does not undermine my findings at [43] above. William only provided this document to Annie in June or July 2015,[88] *after* the Representation had been made in 2013 and 2014 and the SPA had been entered into on 5 March 2015. Further, this document only addressed the fifth to seventh floors of 34KB; the URA Refusal of Written Permission was still not provided to Annie (see [53] above). Further yet, on 16 January 2016, Jieling sent Annie an e-mail attaching a record of the dormitory customers' deposits for 34KB as at 6 January 2016, which showed that deposits were collected for 285 workers.[89] These matters reinforce that William's intention was and remained to conceal from POP the full picture regarding URA's position and to give POP the false impression that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

55 Eighth, the record of Jason and Annie's meetings with Terrence later in March and November 2017 and April 2018 supports the view that William (and Terrence) had made the Representation in 2013 and 2014, intending Jason and Annie to understand (as they did) that the legally approved capacity of the workers' dormitory at 34KB was 362 workers / beds (see [65]–[72] below).

56 Ninth, William admitted that before POP acquired the Company, the second to fourth floors of 34KB were being illegally used as a dormitory in breach of URA regulations and he was aware of this at that time.[90] He conceded that URA was the relevant authority where approval for the use of 34KB as a

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87 4BA at pp 57–58: William's AEIC at para 99(f) read with Transcript 29 November 2023 at p 5:22–27; 5BA at p 556.

88 4BA at pp 57–58: William's AEIC at para 99(f).

89 5BA at p 772: Jieling's AEIC at para 98(g); 5BA at pp 560–562.

90 Transcript 29 November 2023 at p 36:19–29, p 59:8–17 and p 60:10–12; Transcript 1 December 2023 at pp 1:29–2:3.

dormitory was concerned and that URA had only approved the use of the fifth to seventh floors of 34KB as a dormitory for 130 workers.[91] In other words, it is incontrovertible that William knew that the Representation was false at all material times.

57 Finally, the natural and logical inference is that William made the Representation with the intention of inducing POP to acquire a shareholding in the Company, which would thereafter be the joint venture vehicle for H8 and POP. There is no other reason for William to have made the Representation.

58 For completeness, the S 27 Defendants also suggest that William (and Terrence) did not make the Representation because in an earlier action, S 10, commenced (but discontinued) by POP against Eer and Ting for a similar misrepresentation, POP did not plead the alleged misrepresentation in the same manner as the Representation is pleaded in S 27 and did not aver that William and Terrence made representations.[92] I decline to speculate or place weight on the alleged differences between POP's claims in S 10 and S 27. The S 27 Defendants' suggestion is in any event contradicted by the weight of the evidence based on which I find that William (and Terrence) made the Representation, intending it to bear the meaning pleaded by POP, knowing it was false, and intending to induce POP to act on it.

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91 Transcript 29 November 2023 at p 59:8–17; Transcript 1 December 2023 at pp 1:29–2:3.

92 SLL's Closing Submissions at paras 198(a) and 199.

(2) Terrence

59 William's evidence was that when Terrence took Annie to see the 34KB dormitory and gave her information during the negotiations, Terrence was doing so on his own behalf as well as on behalf of William and Jieling.[93]

60 I reach my findings at [43] above in relation to Terrence for the following reasons.

61 First, the reasons set out at [47] and [49] above similarly apply to my findings regarding Terrence.

62 Second, Terrence initially claimed in his AEIC that he had "never made such a representation to Jason or Annie" that "[34KB's] housing capacity for workers was 362 workers".[94] However, after certain shifts in his evidence when he took the stand, he eventually contradicted his claim in his AEIC. I elaborate.

63 On Terrence's first day on the stand, he gave evidence that during the negotiations with Jason and Annie in 2014, he told them that he housed workers on the second to fourth floors of 34KB and that that was illegal.[95] However, as he was compelled to accept, he had not referred to this supposed conversation(s) in his pleaded defence or AEIC.[96] I do not accept Terrence's incredible and self-serving allegation that he had told Jason and Annie back in 2014 that it was illegal to house workers on the second to fourth floors of 34KB and that the Company was doing so illegally.

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93 Transcript 29 November 2023 at p 29:6–17.

94 5BA at pp 703–704: Affidavit of Evidence-in-Chief of Teo Ban Lim dated 28 September 2023 ("Terrence's AEIC") at para 89 read with para 87.

95 Transcript 1 December 2023 at p 58:31–32, pp 59:29–60:2 and p 60:10-13.

96 Transcript 1 December 2023 at p 60:14–18.

64 Compounding the dent in his credibility, on Terrence's second day on the stand, his position shifted. He said that during the negotiations, he showed Jason and Annie the approvals from MOM, URA, SCDF and other government agencies. The URA-approved capacity was 130 workers. The SCDF-approved capacity was 360 persons. The MOM-approved capacity was 362 persons. Jason and Annie were also shown the floor plans, which showed that the second to fourth floors were for production use and the fifth to seventh floors were for dormitory use.[97] However, Terrence repeatedly evaded directly answering POP's counsel's questions about whether William and Terrence had meant that the 34KB dormitory could legally house 362 workers when they told Jason and Annie that the dormitory capacity was 362 workers.[98] Terrence eventually admitted that he had represented to POP, Jason and Annie that the dormitory at 34KB had a capacity of 362 workers and this was so "according to the approved papers given by the respective authorities":[99]

> Q … Now, do you agree that you represented to POP Holdings, Jason and Annie, that the dormitory at 34 Kaki Bukit had a capacity of 362 workers?
>
> A I agree.
>
> Q And at the time the representation was made, the capacity referred to what was legal and approved.
>
> A It was according to the approved papers given by the respective authorities, and I let them see.

In my view, this was an implicit concession that Terrence had made the Representation to Jason and Annie intending them to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

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97 Transcript 5 December 2023 at p 25:13–24.

98 Transcript 5 December 2023 at pp 26:10–27:20.

99 Transcript 5 December 2023 at p 45:13–20.

65 Third, the exchanges between Annie and Terrence at their meeting on 16 March 2017 are consistent with William and Terrence having made the Representation back in 2013 and 2014. The meeting between Annie and Terrence on 16 March 2017 took place at 8ER. Annie made an audio recording of the meeting. This was her habit for her business meetings to avoid having to take handwritten notes.[100] According to the transcript of the recording, Terrence stated that he would be moving workers out of the third and fourth floors of 34KB in anticipation of MOM and URA inspections and moving them back after the inspections.[101] Annie asked him to send an e-mail on what was discussed so that she could in turn discuss the matter with Jason.[102] Terrence stated: "After this, I will send an email and say that we had a meeting and we decided to do it this way". The English translation of Annie's response was: "Ok".[103] Terrence went on to state that he "did the same thing", *ie*, moved workers out of 34KB ahead of a URA inspection, "two years ago", before POP bought into the Company.[104] Annie responded: "That means the capacity there is 130-la".[105] In response to Annie pressing to know why there was a need to move the workers, Terrence explained:[106]

> … What MOM gave us followed SCDF's, and SCDF gave us more than 300. *If you can have more than 300, why don't you get more*

100 3BA at p 67: Annie's AEIC at para 58.

101 3BA at pp 294–295.

102 3BA at pp 296–297; 3BA at p 68: Annie's AEIC at para 59.

103 3BA at p 297.

104 3BA at p 298; see also 3BA at p 294.

105 3BA at p 298.

106 3BA at p 299.

> *than 300? Do you understand? Can you understand? You don't understand?* [emphasis added]

Terrence then stated that it was "[b]ecause of URA" that he had to move workers around. Annie then replied: "So must follow URA-la"; and Terrence said: "Yes, on paper, because URA is fixed one".[107] Terrence then tried to persuade Annie that "*at the same time I also want to tell you, that actually, our No. 34 is 360*" and *"[c]an have 360 headcount, which means it can accommodate 360 people*" [emphasis added].[108]

66 In my view, the totality of this conversation shows that, as at March 2017, Terrence was still not forthright with Annie that housing more than 130 workers at the 34KB dormitory was a breach of URA regulations. He was still trying to sell her the proposition that it was legally permissible to house 360 workers at 34KB. I accept Annie's evidence that she was confused about the need to move workers around for the purpose of the inspections.[109] Her responses during the conversation show that she did not have a clear picture of what was going on. In fact, Terrence repeatedly asked her if she could "understand" his explanations. It was odd for him to ask this, if he and/or William had *already* explained the URA restriction to Annie back in 2014. The inference is that William and Terrence had *not* explained the URA restriction in 2014, but rather, had made the Representation to Jason and Annie intending them to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

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107 3BA at p 299.

108 3BA at pp 299–300.

109 3BA at p 68: Annie's AEIC at para 59.

67 The S 27 Defendants' counsel put to Annie that her comment – "That means the capacity there is 130-la"[110] – meant that she knew even before this conversation that the URA-approved capacity was 130 workers. Annie disagreed, explaining that she was aware of the URA letter stating 130 workers for the fifth to seventh floors of 34KB, but that when she went to view the premises, the second to seventh floors were filled with dormitory beds; she was given a tenant list showing 362 workers; and she was shown deposits collected for around 362 workers.[111] I accept Annie's evidence. She may have started to suspect, given what Terrence was telling her on 16 March 2017, that URA's Grant of Written Permission for 130 workers to be housed on the fifth to seventh floors of 34KB restricted the capacity for the *entire* 34KB premises to only 130 workers, contrary to what William and Terrence had previously represented to her. But that does not mean that she already knew this beforehand. If she in fact *already* knew that the legally approved capacity of the 34KB dormitory was only 130 workers, she would not have said "That means the capacity there is 130-la" and "So must follow URA-la", which are remarks in the nature of seeking clarification of the position.

68 The S 27 Defendants' counsel also put that Annie's "Ok" in response to Terrence saying "After this, I will send an email and say that we had a meeting and we decided to do it this way"[112] meant that she had agreed to Terrence's plan to move the workers out of the second to fourth floors of 34KB for the URA inspection. Annie disagreed, explaining that she had not agreed to Terrence moving the workers and all she meant was that Terrence was to write an e-mail to explain the matter to the Company's board as she was not in a

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110 3BA at p 298.

111 Transcript 20 December 2023 at pp 90:7–91:16.

112 3BA at p 297.

position to decide.[113] I find that Annie was simply acknowledging that Terrence intended to write an e-mail. The Chinese word used in Annie's response was "嗯", which could fairly indicate a non-committal acknowledgment of what was being said. The wider conversation shows that Annie was still trying to fathom why there was a need to move the workers, and I do not think she would have agreed on the spot to doing so. Even if she had assented, she would merely have been going along with Terrence on the basis that he had more experience in running dormitory operations and presumably knew what he was doing. It does not in any way indicate that Annie knew all along that the legally approved capacity of the 34KB dormitory was only 130 workers or that she was knowingly acquiescing to any wrongdoing on Terrence's part.

69 Fourth, on 22 March 2017, Terrence sent Annie an e-mail. In this e-mail, Terrence stated that the Company's consultant had submitted an application to URA, MOM and other authorities for renewal of the dormitory licence for 34KB. Terrence added that "due to renewal inspection", he and Annie had agreed to vacate the second to fourth floors of 34KB. He ended his e-mail stating: "As mentioned during our discussion, the capacity load for the dormitory depend on the final decision from the relevant authorities agency [*sic*]".[114] I accept Annie's explanation that Terrence's e-mail was misleading in making it sound as though they had both reached an agreement on what needed to be done.[115] More critically, Terrence was still not candid in this e-mail that it was a breach of URA regulations to house more than 130 workers at the 34KB dormitory. That he remained coy about this fact is very likely because he and

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113 Transcript 20 December 2023 at pp 82:32–83:31 and pp 87:29–88:15.

114 3BA at p 303.

115 3BA at p 70: Annie's AEIC at para 61.

William had previously made the Representation to Jason and Annie intending them to understand (and knowing that they understood) that the legally approved capacity of the 34KB dormitory was 362 workers / beds.

70 Fifth, on 29 November 2017, Jason, Annie and Terrence held a meeting of the directors of the Company. At this meeting, Terrence continued to purport that housing over 300 workers at 34KB was legal because MOM had allowed that number of workers to be keyed into their system.[116] That he continued to put up this front before Jason and Annie in 2017 is more consistent with William and Terrence having taken a similar position (*ie*, having made the Representation) back in 2013 and 2014. Throughout this meeting, Jason and Annie repeatedly maintained that William and Terrence had never told them that the legally approved capacity of the 34KB dormitory was only 130 workers.[117] Terrence did not deny that. In fact, when Jason stated that "William told us it's 300 from Day 1 until now", Terrence agreed that "Yes, he said that. I heard it" and added that "If you think that you have been cheated by him, then, it's the same for me".[118] In cross-examination, Terrence claimed that because Jason and Annie were recording the conversation, Jason had "deliberately sa[id] that he didn't know" even though "ever since the beginning, up until 2017, they knew it all along".[119] However, if Terrence truly thought that Jason was feigning ignorance, the natural thing for him to have done would be to confront Jason at the meeting. Yet, Terrence did not do so. When pressed on why he had not done so, Terrence could only offer the vague excuse that he did not see a need to

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116 3BA at pp 310–311.

117 3BA at pp 309–310.

118 3BA at p 312.

119 Transcript 1 December 2023 at p 65:20–23 and p 67:15–17.

argue with Jason and Annie because "they knew everything".[120] I do not find this excuse credible.

71 Sixth, at a directors' meeting between Jason, Annie and Terrence on 5 April 2018, the capacity of the 34KB dormitory and the practice of shifting workers in and out of the dormitory during URA inspections were discussed.[121] The minutes of the meeting record that the "ex-directors" of the Company had misrepresented in 2014 that the capacity of the 34KB dormitory was 300 workers when the capacity approved by URA was only 130 workers (at item 16):[122]

> **It was noted** that when negotiation to invest in the [Company] started in April 2014, the information pertaining to the capacity of dormitory provided to the current shareholders, our financial institution and even our appointed valuers by the ex-directors was 300 paxs. However the approved capacity by URA was only 130 paxs at 34 Kaki Bukit Place as at July 2014. The investment by the current shareholders was concluded in 2016. From the period from July 2014 to date of conclusion of the deal, ex-directors and shareholders either omit or misrepresent to the current shareholders that the capacity was still 300 paxs instead of approved capacity of 130 paxs.
>
> **It was also noted** that from the records kept, it is known that during the renewal of licence, by their usual practice, the ex directors would shift out the workers from the dormitory at issue to another dormitory and back to the dormitory at issue again after the inspection of URA. However based on URA approval, the capacity is only for 130 paxs. The ex-directors did not produce the URA approval letter to the current shareholders. The ex-directors have misled the current

120 Transcript 1 December 2023 at pp 65:24–66:4.

121 3BA at p 90: Annie's AEIC at para 107.

122 3BA at p 489.

> shareholders, bankers and valuers that approved capacity was 300 paxs.
>
> That the directors to seek legal action against the ex-directors for omission and misrepresentation be and is hereby approved by all the directors.
>
> [emphasis in original]

72 Jason, Annie and Terrence approved the resolution to seek legal advice and consider potential legal action against the ex-directors of the Company for misrepresentation.[123] While the minutes referred to the "ex-directors" of the Company (*ie*, Eer and Ting[124]) having made the misrepresentation, it is undisputed that Jason and Annie never had any discussions with Eer or Ting at the material time. The Representation came from William, Terrence and Jieling. By approving this item at the meeting, Terrence implicitly admitted that he (along with William and Jieling) had falsely made the Representation to Jason and Annie prior to POP's entry into the SPA.

73 Seventh, Terrence was aware all along that the Representation was false. Terrence admitted to housing workers on the second to fourth floors of 34KB in breach of URA regulations, even prior to H8 and POP's joint venture.[125] Terrence admitted that from 2012 to 2017, he had housed some 362 workers at 34KB, and that this was illegal and a breach of URA regulations.[126]

74 Finally, for the same reason at [57] above, I find that Terrence made the Representation with the intention of inducing POP to acquire a shareholding in

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123 3BA at p 90: Annie's AEIC at para 107.

124 3BA at p 372: S 10 Statement of Claim at para 4; 3BA at p 377: S 10 Defence at para 1; 3BA at p 768: Eer's AEIC at para 9.

125 Transcript 1 December 2023 at p 55:10–12 and p 55:19–21.

126 Transcript 1 December 2023 at pp 63:4–64:12.

the Company, which would thereafter be the joint venture vehicle for H8 and POP.

(3) Jieling

75 I reach my findings at [43] above in relation to Jieling for the following reasons.

76 First, although Jieling stated in her AEIC that she had "never made such a representation to Jason or Annie" that "[34KB's] housing capacity for workers was 362 workers",[127] she later admitted that she had represented to Annie that the capacity of the 34KB dormitory was 362 workers.[128] Jieling further admitted that she did not point out to Annie that the capacity of 362 workers was not approved by URA.[129] I find that Jieling's initial denial in her AEIC that any representations were made is not credible. I accept her later admissions in cross-examination to the effect that she had made the Representation to Annie. I further infer, from Jieling's admission that she did not tell Annie that the capacity of 362 workers was not approved by URA, that Jieling intended for Annie to understand the Representation as meaning that the legally approved capacity of the 34KB dormitory was 362 workers / beds.

77 Second, as I have found at [50]–[51] above, through certain documents that Jieling sent Annie on 14 May 2014, Jieling impliedly made the Representation to Annie, intending Annie to understand that the legally approved capacity of the dormitory at 34KB was 362 workers / beds.

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127 5BA at pp 765–766: Jieling's AEIC at para 89 read with para 87.

128 Transcript 7 December 2023 at p 91:24–26.

129 Transcript 7 December 2023 at p 92:9–13.

78 Third, Jieling knew at all material times that the Representation was false. This is evident from her admission that the 34KB dormitory was never legally approved to house 362 workers because URA had approved only the fifth to seventh floors for use as a workers' dormitory.[130]

79 Finally, Jieling conceded that it was important to let Jason and Annie know if URA did not approve the use of the second to fourth floors for use as a workers' dormitory.[131] This reflects that Jieling was aware that POP, Jason and Annie were relying on the legally approved capacity of the 34KB dormitory being 362 workers / beds when POP entered into the SPA. She intended to induce POP to act on the false Representation.

POP (through Jason and Annie) understood the Representation in the sense pleaded by POP, and relied on it in agreeing to purchase shares in the Company based on 34KB valued at $14m

80 I find that Jason and Annie in fact understood the Representation to mean, as pleaded by POP, that the *legally approved* capacity of the dormitory at 34KB was 362 workers / beds. I accept Jason's evidence that what he understood from what William and Terrence told him was that it was legal for the 34KB dormitory to house 362 workers.[132] I also accept Annie's evidence that the impression she received from William, Terrence and Jieling was that the approved capacity of the 34KB dormitory was 362 workers.[133] William and Terrence may not have used the specific words "legal" or "legally" in their discussions about the capacity of the 34KB dormitory, but this does not preclude the Representation from being understood as referring to the legally

130 Transcript 7 December 2023 at p 92:19–21.

131 Transcript 7 December 2023 at p 69:10–25.

132 Transcript 4 January 2024 at p 4:29-31.

133 3BA at pp 56–57: Annie's AEIC at paras 30–32.

approved capacity. It is absurd that William and Terrence would have meant prospective buyers of the Company to understand that the capacity conveyed was not a legally approved capacity. It is thus natural that Jason and Annie understood the Representation to mean that the legally approved capacity of the 34KB dormitory was 362 workers / beds.

81 Turning to the element of reliance, in law, the misrepresentation need not be the sole inducement, so long as it played a real and substantial part and operated in the representee's mind, no matter how strong or how many the other matters were which played their part in inducing the representee to act: *Panatron* at [23].

82 In the present case, I find that the Representation played a real and substantial part in inducing POP to purchase shares in the Company based on 34KB valued at $14m.

83 First, I accept Jason and Annie's evidence that POP agreed to the purchase price of $42m for all the shares in the Company based on a $14m valuation for 34KB and a $28m valuation for 8ER. In turn, the $14m valuation of 34KB was based on Jason and Annie's understanding of the Representation, *viz*, that the legally approved capacity of the 34KB dormitory was 362 workers / beds, as that directly related to the revenue that the Company could generate from 34KB. It was thus in reliance on the truth of the Representation that POP agreed to purchase shares in the Company based on 34KB valued at $14m.[134] POP ultimately purchased 70% of the shareholding in the Company.

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134 3BA at pp 9–11: Jason's AEIC at paras 20(a) and 21–23; 3BA at p 57: Annie's AEIC at para 33.

84 Second, this reliance is further evidenced by POP's letter to the Company dated 23 May 2014. In this letter, POP referred to its in-principle agreement to acquire shares in the Company. POP referred to the total value of the Company being $42m "subject to" 34KB being valued at $14m and 8ER being valued at $28m "comprised with the current business entity of dormitory". Annie, on behalf of POP, and Ting, on behalf of the Company, signed the letter in acknowledgment of and agreement with its contents.[135] At around that time, Annie instructed CKS to perform a full valuation of 34KB based on information from Terrence, including that the number of workers housed at 34KB was 360 workers. CKS valued 34KB at $14m in CKS' 2014 Valuation Report.[136] These matters reinforce that the Representation operated in POP's mind when it decided to acquire shares in the Company based on 34KB valued at $14m.

85 Third, William agreed in cross-examination that there was a significant difference in value between a dormitory that could accommodate 130 workers and one that could accommodate 362 workers.[137] This is precisely the logic underlying the reliance placed by POP on the Representation in deciding to acquire shares in the Company based on 34KB valued at $14m.

86 The S 27 Defendants allege that POP did not rely on the Representation because: (a) Annie had visited the 34KB dormitory between March and April 2014; (b) she had engaged CKS to value 34KB; (c) POP had engaged the services of a law firm to oversee its purchase of the Company; and (d) Annie had engaged an accounting firm to perform due diligence checks.[138] If the S 27

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135 3AB at p 19; 3BA at p 177.

136 3BA at pp 59–60: Annie's AEIC at para 39; 3BA at pp 179–189.

137 Transcript 29 November 2023 at p 56:19–30.

138 S 27 D1 & D3–D5 Defence at paras 24(f)(i), (ii), (iii) and (v).

Defendants' suggestion is that POP did not rely on the Representation because POP in fact somehow found out at the material time that the Representation was false, this is not borne out on the evidence. If the S 27 Defendants' argument is that POP had relied on other matters in deciding to enter into the SPA, this is legally irrelevant since the misrepresentation need not be the sole inducement (see [81] above), and I have found that the false Representation did play a real and substantial part in inducing POP to purchase shares in the Company based on 34KB valued at $14m (see [82]–[85] above). If the S 27 Defendants' point is that POP could or should have made its own assessment, through POP's own checks, of whether the Representation was false before entering into the SPA, this is not a legally tenable defence. In *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283, a contractor (WSL) submitted that because the developer (JTC) had gotten its consultant (JCPL) to evaluate WSL's representations in WSL's tender, JTC had not relied on the representations but had instead relied on JCPL's evaluation in awarding the contract to WSL (at [107]). The Court of Appeal roundly rejected this proposition (at [112]–[114]):

> 112 If the proposition advocated by WSL were correct, it means that a fraudster can be as deceitful as he wishes in his representations and yet escape the consequences of his deceit if the innocent party chooses to make his own inquiry or due diligence on his representations. However, if the innocent party chooses not to make his own inquiry or due diligence, he can rely on the misrepresentations to avoid the contract.
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> 113 We see no logic, firstly, in penalising a party who has chosen to act carefully but failed, whether due to negligence or otherwise, to discover the fraud. Put in another way, such a proposition would encourage the indolent. Secondly, such a proposition would also encourage fraud.
>
> 114 It is our view that such a proposition cannot be valid. *A person who has made a false representation cannot escape its consequences just because the innocent party has made his own inquiry or due diligence, unless the innocent party has come to learn of the misrepresentation before entering into the contract or does not rely on the misrepresentation when entering into the*

> *contract. This is all the more so when the representation is made fraudulently.* We would add that *it matters not whether the inquiry or due diligence is conducted by the innocent party or his agents or both.* The principle is the same.
>
> [emphasis added]

87 In the present case, it is even more churlish of the S 27 Defendants to suggest that POP could and should have ascertained through its own means whether the Representation was true or false, because William's own evidence was that he, Terrence and Jieling were experienced in running workers' dormitories as compared to Jason and Annie who had no prior experience in this line.[139] It is understandable that POP would have relied on the truth of the Representation, coming as it did from William, Terrence and Jieling, self-professed experienced hands in running workers' dormitories.

Eer and Ting are liable for the fraudulent misrepresentation made by William as their agent

88 POP pleads that the Representation was made by William, Terrence and Jieling in their personal capacities and "on behalf of [Eer] and Ting as their agents", and that Eer "as the principal, is bound by his agents' acts and/or omissions".[140]

89 I find that the evidence bears out that William was acting not only on his own behalf (see [44] above), but also as an agent for Eer and Ting, when he made the Representation to POP (through Jason and Annie). First, William testified that he represented Eer and negotiated on Eer's behalf in the transaction

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139 4BA at p 15: William's AEIC at para 30.

140 Reply to Defence of the 2nd defendant (Amendment No 1) dated 5 June 2023 filed in S 27 at paras 6 and 7.

for them to sell the Company to H8 and POP.[141] William also conceded in cross-examination that everything that was told to Jason and Annie regarding the acquisition of the Company was told to them on behalf of the sellers of the Company.[142] Second, Eer accepted that he did not negotiate directly with POP for the sale of the Company to H8 and POP, and that he had made William "fully responsible" as his (*ie*, Eer's) representative in the sale and purchase transaction.[143] Although Eer attempted to backtrack and assert that William was only negotiating the sale price on his (*ie*, Eer's) behalf when POP's counsel suggested that Eer had to take responsibility for any misrepresentations made by William,[144] I do not accept Eer's belated attempt to downplay William's role. The evidence shows that Eer was not involved in any discussions with Jason and Annie at the material time. It is clear that Eer had left all negotiations and discussions for the sale of the Company to be conducted by William on his (*ie*, Eer's) behalf. Third, as for Ting, she was, at the material time, merely a nominee shareholder for William of 50% of the shareholding in the Company.[145] For that reason, Ting chose not to give any evidence.[146] This indicates that she accepts that William's representations in the negotiations and discussions for the sale of the Company were made on her behalf; she thus had nothing to add by way of evidence.

90 Next, I find that the Representation was made by William within the scope of his actual authority as the agent of Eer and Ting. In respect of Eer, it

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141 Transcript 29 November 2023 at pp 13:32–14:9.

142 Transcript 30 November 2023 at p 78:3–12.

143 Transcript 6 December 2023 at p 3:20–29 and pp 36:31–37:4.

144 Transcript 6 December 2023 at p 32:3–14.

145 4BA at p 6: William's AEIC at para 8.

146 Transcript 29 November 2023 at p 13:10–24.

was Eer's express evidence that he knew from William, before selling his shares in the Company, that the second to fourth floors of 34KB were not approved for use as a dormitory.[147] Indeed, Eer was named as the "Developer" in the 14 August 2014 application to URA for permission to use the third and fourth floors of 34KB as a workers' dormitory, which was refused pursuant to the URA Refusal of Written Permission dated 21 August 2014 (see [17] above).[148] I find incredible, and do not accept, Eer's suggestion that he signed the application without knowing what it was about[149] and his assertion that he did not receive the URA Refusal of Written Permission.[150] He was the owner of 50% of the shares in the Company at that time and was named in the application: he must have known of the contents and significance of the application and the subsequent URA Refusal of Written Permission. In short, Eer would have known that selling the Company to POP on the basis that the 34KB dormitory could legally house 360 workers would be a false basis. And, Eer's evidence was precisely that he knew that the sale of the Company to POP was based on the 34KB dormitory housing 360 workers.[151] He was evidently content for the sale to proceed on that false basis. When asked by POP's counsel whether the URA Refusal of Written Permission should have been provided to Jason and Annie during the negotiations, Eer's response was that "William was handling this".[152] Eer's deference to William on this particular matter was consistent with his general position that he had left William "fully responsible" for coordinating the sale and purchase transaction (see [89] above). In other words, Eer gave

147 Transcript 6 December 2023 at p 34:24–31.

148 DCB at p 66.

149 Transcript 6 December 2023 at p 29:12–16.

150 Transcript 6 December 2023 at p 38:3–8.

151 Transcript 6 December 2023 at p 20:28–31 and p 29:1–5.

152 Transcript 6 December 2023 at p 28:14–18.

William free rein to decide what to communicate to POP about the capacity of the 34KB dormitory. Eer is thus bound by the Representation made by William.

91 As for Ting, she was aware that the Company was being sold on the basis of 34KB valued at $14m (and 8ER valued at $28m), as evidenced by the fact that she signed (on the Company's behalf) the 23 May 2014 letter[153] recording this basis (see [84] above). As she held 50% of the shares in the Company merely as William's nominee, and in the absence of her giving any evidence to defend against POP's claim, the irresistible inference is that she was prepared for William (as the beneficial owner of the shares) to make any representation he saw fit (true or false) in furtherance of achieving a $14m valuation of 34KB. Ting is thus bound by the Representation made by William.

92 Further and/or alternatively, William had apparent authority to make the Representation. Under the apparent authority analysis, the question is what the principal had represented or held out as the agent's scope of authority and whether that encompasses the agent's tortious act: *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 at [215]. Annie learned, on or about 24 May 2014, that the Company was owned by Eer and Ting.[154] The SPA with Eer and Ting was eventually executed on 5 March 2015. I find that, by their conduct of leaving the negotiations for the sale of the Company (including the making of any representations to POP) entirely to William and then leaving uncorrected the Representation that William had made to Jason and Annie such that the Representation continued to operate on POP's mind as at the execution of the SPA, Eer and Ting had impliedly held out to POP that William had apparent authority to make the Representation.

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153 3AB at p 19; 3BA at p 177.

154 3BA at p 59: Annie's AEIC at para 38.

93 On either of the above bases, Eer and Ting are liable for the fraudulent misrepresentation made by William.

The S 27 Defendants' contractual defences fail

94 The SPA was entered into between (a) Eer and Ting as the "Vendors", (b) H8 and POP as the "Purchasers", and (c) the Company. The S 27 Defendants rely on the following clauses in the SPA in their defence.

95 Clause 5.2 of the SPA provides that:[155]

> Save as set out in Clause 5.1 and Schedule 2, the Vendors make no representations and give no warranties whatsoever. Without prejudice to the generality of the foregoing, the Purchasers acknowledge that they have entered into this Agreement with full knowledge and notice of the state and condition of the property [*ie*, 34KB, as defined in cl 1.1] … and their permitted use under any applicable law as at the date of this Agreement.

96 The S 27 Defendants argue that the list of representations and warranties set out in cl 5.1 and sch 2 of the SPA "does not include the capacity of beds at [34KB] and/or whether [34KB] would be able to generate sufficient revenue to sustain the financing for the purchase of the shareholding in [the Company]".[156]

97 Clause 9.6 of the SPA provides that:[157]

> Entire Agreement. This Agreement and the documents and agreements referred to in it, constitute the entire agreement between the parties with respect to the Contemplated Transactions in this Agreement and supersedes all prior oral and written agreements, memoranda, understandings and

155 3BA at p 226.

156 SLL's Closing Submissions at para 213.

157 3BA at p 234.

> undertakings between the parties relating to the subject matter of this Agreement.

98 Clause 3.1(a) of the SPA provides that:[158]

> The obligation of the parties to complete the Closing is subject to the fulfilment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by the Purchasers:-
>
> (a) the Purchasers and its professional advisers, having completed their technical, financial and legal due diligence investigations in relation to the Company, its Affiliates and the property and the results of such due diligence being satisfactory to the Purchasers[.]

99 The S 27 Defendants submit that these clauses in the SPA "constitute no representation and/or non-reliance clauses" which "give rise to a contractual and/or evidential estoppel that prevents [POP] from asserting misrepresentation".[159] This submission is misconceived.

100 First, cl 3.1(a) of the SPA is not a "no representation" or a "non-reliance" clause. It simply provides that POP's satisfaction with the due diligence conducted is a condition precedent to the completion of the sale and purchase transaction under the SPA. This is a separate matter from whether any of the S 27 Defendants made representations to POP or whether POP relied on such representations. The clause says nothing about the latter matters and cannot conceivably be construed as a "no representation" or a "non-reliance" clause.

101 Second, cl 9.6 of the SPA, properly construed, is an entire agreement clause and not a "no representation" or "non-reliance" clause. The effect of an entire agreement clause is to deny contractual force to statements which are not

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158 3BA at p 221.

159 SLL's Closing Submissions at paras 213–215.

contained in the contract and thereby preclude any claim based on a side agreement or collateral warranty; it does not purport to affect the status of any statement as a (pre-contractual) misrepresentation, and thus does not preclude a claim for misrepresentation: *Cartwright* at para 9-06; *AXA Sun Life Services plc v Campbell Martin Ltd and others and other appeals* [2012] 1 All ER (Comm) 268 at [34]–[36], [81] and [91]–[92]; *BSkyB Ltd and another v HP Enterprise Services UK Ltd (formerly Electronic Data Systems Ltd) and another* (2010) 129 Con LR 147 at [385]; *Government of Zanzibar v British Aerospace (Lancaster House) Ltd and others* [2000] 1 WLR 2333 at 2344; *FoodCo UK LLP (t/a Muffin Break) and others v Henry Boot Developments Ltd* [2010] EWHC 358 (Ch) ("*FoodCo*") at [165].

102 Third, I am prepared to accept that the first sentence of cl 5.2 of the SPA constitutes a "no representation" clause insofar as representations falling *outside* of cl 5.1 and sch 2 of the SPA are concerned, *ie*, the parties agreed that no representations other than those contained in cl 5.1 and sch 2 of the SPA were made (whether that reflected the real state of affairs or not). A "no representation" clause, as well as a "non-reliance" clause, may give rise to a contractual estoppel where the parties bind themselves by contract to a fictional state of affairs in which no representations have been made (pursuant to the "no representation" clause) or, if made, have not been relied on (pursuant to the "non-reliance" clause): *First Tower Trustees Ltd and another v CDS (Superstores International) Ltd* [2019] 1 WLR 637 ("*First Tower Trustees*") at [47]. Alternatively, such clauses may be capable of operating as an evidential estoppel provided that the three requirements in *Lowe v Lombank Ltd* [1960] 1 WLR 196 are satisfied, *ie*, (a) the statement of "no representation" or "non-reliance" in the clauses is clear and unequivocal; (b) the party providing this statement had intended that the counterparty should act on this statement; and (c) the counterparty had believed the statement of "no representation" or "non-

reliance" to be true and had acted upon it: *Orient Centre Investments Ltd and another v Société Générale* [2007] 3 SLR(R) 566 at [44].

103 In the present case, however, neither a contractual nor an evidential estoppel arises in relation to the Representation. This is because para 4.2 in sch 2 of the SPA contains a widely framed warranty by the Vendors as to the truth of all information provided on their behalf to POP, which is wide enough to cover the Representation:[160]

> All information contained in this Agreement and *all information which has been* given in writing or *provided* by or, *for and on behalf of the Vendors* or the Company *to the Purchasers or any of its agents*, employees or professional advisers (including the Vendors' and the Company's responses to written queries raised by the Purchasers or any of its agents, employees or professional advisers) in the course of due diligence *was when given true, complete and accurate in all material respects and not misleading* and the Vendors are not aware of any fact or matter or circumstances not disclosed in writing to the Purchasers which renders any such information untrue, inaccurate or misleading in any material respect.
>
> [emphasis added]

104 In other words, the "no representation" clause in the first sentence of cl 5.2 of the SPA does not apply to the Representation because the truth of the Representation *was* warranted under para 4.2 in sch 2 of the SPA. Neither a contractual nor an evidential estoppel in relation to POP's claim that the false Representation was made can arise in these circumstances.

105 Fourth, a "no representation" clause is in effect a term which excludes liability for misrepresentation; the position is the same with "non-reliance" clauses: *First Tower Trustees* at [52]–[53], [60]–[63], [67], [97]–[98] and [109]. The established position at law is that a principal cannot exclude his own

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160 3BA at p 240.

liability for fraudulent misrepresentation: *HIH Casualty and General Insurance Ltd and others v Chase Manhattan Bank and others* [2003] 2 Lloyd's Rep 61 ("*HIH*") at [16] and [76]; *First Tower Trustees* at [74]; *FoodCo* at [166]. Therefore, I would not construe the "no representation" clause in the first sentence of cl 5.2 of the SPA as extending to fraudulent misrepresentations; if construed widely to cover fraud, it would be ineffective at common law and pursuant to s 3 of the Misrepresentation Act 1967 (2020 Rev Ed), which cannot have been the contracting parties' intention (see, generally, *Cartwright* at para 9-13). Further, if a principal intends to exclude his liability for his agent's misrepresentation, that must be expressed clearly by the clause: *HIH* at [16]; there is no such clear expression in cl 5.2 of the SPA (or any of the other clauses cited by the S 27 Defendants). The first sentence of cl 5.2 of the SPA thus does not serve to exclude the Vendors' liability for the false Representation made by William on their behalf.

106 Fifth, in my judgment, the second sentence of cl 5.2 of the SPA, properly construed, is *not* a "non-reliance" clause. The Purchasers simply asserted by that sentence their awareness of the state, condition and permitted use of 34KB. The sentence does not go so far as to assert that POP did not rely on the Representation made as to the legally approved *capacity* of the 34KB dormitory. Even if I am wrong and the sentence amounts to a "non-reliance" clause, it still would not apply to exclude liability for fraudulent misrepresentation, for reasons similar to those at [105] above.

107 Sixth, William, Terrence and Jieling are personally liable for the fraudulent misrepresentation they each made. They are not parties to the SPA and cannot invoke any of the SPA clauses in the absence of privity of contract. No attempt, whether by joining them as parties to the SPA or in any other way, was made to relieve them of any liability for misrepresentation (see *HIH* at [6]).

Further and in any event, even if they could invoke the SPA clauses, the clauses would not avail of any defence, as explained at [100]–[106] above.

108 I therefore conclude that the S 27 Defendants' defence based on the SPA terms fails.

POP suffered damage as a result of its reliance on the false Representation

109 Damages for the tort of deceit include all loss that flowed directly as a result of the entry by the representee (in reliance on the fraudulent misrepresentation) into the transaction in question, regardless of whether or not such loss was foreseeable, as well as all consequential loss: *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 ("*Wishing Star*") at [21]. If the representee was induced by the fraud to enter into a transaction for the purchase of property, the normal method of calculating the loss caused by the fraud is the price paid less the real value of the property: *Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 ("*Smith New Court*") at 284A; *Cartwright* at para 5-37. This is commonly referred to as the valuation method of measuring loss.

110 In the present case, POP claims damages in the amount of $3.5m, calculated based on the valuation method, as follows: (a) POP had purchased its shareholding in the Company on the premise that the value of 34KB was $14m based on a capacity of 360 workers for the 34KB dormitory (see CKS' 2014 Valuation Report[161]); (b) however, the value of 34KB based on the actual legally approved dormitory capacity of 130 workers was $9m, as seen from CKS' 2019 Valuation Report[162] and the fact that 34KB was eventually sold for $9m on

161 3BA at pp 59–60: Annie's AEIC at para 39; 3BA at pp 179–189.

162 DCB at pp 216–218.

31 July 2023[163] (see [25] and [29] above); (c) the difference in the values is $5m; and (d) POP's loss, as a purchaser of 70% of the shareholding in the Company, is 70% of that $5m difference, *ie*, $3.5m.[164]

111 The S 27 Defendants do not dispute that the valuation method is, in principle, an appropriate method of measuring loss in the present case. Instead, their objections are that:

(a) POP's reliance on CKS' 2019 Valuation Report was arbitrary and there was no evidence of "the actual market value of [34KB] in 2014 should the capacity of 130 workers have been taken into account".[165]

(b) The $9m valuation in CKS' 2019 Valuation Report could be due to other factors besides the capacity of the 34KB dormitory, such as the shortening of the leasehold for 34KB and the condition of the workers' dormitory.[166]

(c) POP's particularisation of its loss was not pleaded and was set out for the first time only in KLGSL's Opening Statement at para 86.[167]

112 I find that POP has proven that it suffered actual loss in reliance on the false Representation and I assess such loss to be $3.5m. I explain how I arrive at these findings, addressing as I do so the S 27 Defendants' objections in turn.

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163 Transcript 3 January 2024 at p 45:9; 3BA at p 107: Annie's AEIC at para 167.

164 KLGSL's Opening Statement dated 17 November 2023 ("KLGSL's Opening Statement") at para 86; KLGSL's Closing Submissions at para 116.

165 SLL's Closing Submissions at paras 240(c) and (d).

166 SLL's Closing Submissions at para 240(a).

167 SLL's Closing Submissions at paras 234–239.

113 It is undisputed that, at the time of H8 and POP's acquisition of the Company, the Company's two main assets were the properties at 34KB and 8ER, which were used for foreign worker dormitories. William agreed in cross-examination that there was a significant difference in value between a dormitory that could accommodate 130 workers and one that could accommodate 362 workers.[168] Thus, it cannot be gainsaid that POP suffered a loss by acquiring 34KB (through its acquisition of the Company) on the basis of the 34KB dormitory having a capacity of 362 workers when the actual value of 34KB was less, since the dormitory had a (legally approved) capacity of only 130 workers.

114 The first question to then determine is the appropriate date on which to assess the actual value of 34KB. It is not an inflexible rule that the plaintiff must bring into account the value as at the transaction date of the asset acquired; the date of transaction rule will not apply where either (a) the misrepresentation has continued to operate after the date of the acquisition of the asset so as to induce the plaintiff to retain the asset or (b) the circumstances of the case are such that the plaintiff is, by reason of the fraud, locked into the property: *Smith New Court* at 265A–B and 267C. In *4Eng Ltd v Harper and another* [2007] EWHC 1568 (Ch) ("*4Eng*"), the claimant was induced by the defendants' fraudulent misrepresentations to purchase shares from the defendants. Summary judgment was entered against the defendants, with damages to be assessed. The court accepted that the valuation of what the claimant received under the transaction should not be carried out as at the date of the agreement for the transaction because, among other reasons, the true nature and full extent of the fraud took some considerable time to emerge after the acquisition, even though aspects of it started to manifest themselves immediately (at [53]). This finding was

168 Transcript 29 November 2023 at p 56:19–30.

expressly affirmed in the subsequent judgment on the assessment of damages in *4 Eng Ltd v Harper and another* [2008] 3 WLR 892 (at [17]–[18]).

115 In my judgment, the evidence in the present case shows that POP (through Jason and Annie) formed the view in April 2018 that the Representation was false and that the legally approved capacity of the 34KB dormitory was only 130 workers, and POP received official confirmation of this position only in November 2018. Therefore, applying the principles in *Smith New Court* and *4Eng* above, the appropriate date for assessing the actual value of 34KB would be November 2018, or at the earliest, April 2018. Prior to that, the true nature and full extent of the fraud were still emerging:

(a) At Annie's meeting with Terrence on 16 March 2017, Terrence was still trying to sell her the proposition that it was legally permissible to house 360 workers at the 34KB dormitory, and Annie was noticeably confused about why Terrence wanted to move workers out of the 34KB dormitory ahead of the URA inspection (see [65]–[68] above).

(b) In Terrence's 22 March 2017 e-mail to Annie, he was still not candid about the fact that it was a breach of URA regulations to house more than 130 workers at the 34KB dormitory, and he further obfuscated the matter by stating that "the capacity load for the dormitory depend on the final decision from the relevant authorities agency [*sic*]"[169] (see [69] above).

(c) Annie's evidence is that after her March 2017 meeting with Terrence, she grew suspicious of the true capacity of the 34KB dormitory. Between March and November 2017, she and Jason had

169 3BA at p 303.

various discussions with William, Terrence and Jieling on this issue, but at no point in time did any of them confirm what the approved capacity of the 34KB dormitory was.[170] Terrence kept giving them the explanation that "follow MOM, follow SCDF".[171] I accept Annie's evidence, which is consistent with the records of the 16 March 2017 and 29 November 2017 meetings with Terrence.

(d) At the meeting between Jason, Annie and Terrence on 29 November 2017, Terrence continued to purport that housing over 300 workers at 34KB was legal because MOM had allowed that number of workers to be keyed into their system (see [70] above). Jason and Annie may have had a strong suspicion of the true position by then, but Terrence still did not come clean.

(e) It was only at the directors' meeting between Jason, Annie and Terrence on 5 April 2018 that Terrence expressly admitted that the URA-approved capacity for the 34KB dormitory was only 130 workers as at July 2014 and that the capacity had been misrepresented in April 2014 to be 300 workers (see [71] above). I accept that by April 2018, Jason and Annie had formed the view that the Representation was false.

(f) Even so, POP did not receive official confirmation of the true position until November 2018. As POP's counsel put it, "it's not a single point in time where [POP] had some sort of sudden enlightenment. In fact, [POP] only really knew the extent of the problem in November 2018 when Annie got all the documents from MOM".[172] In this regard,

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170 3BA at p 71: Annie's AEIC at para 62.

171 Transcript 20 December 2023 at p 95:28–31.

172 Transcript 28 February 2024 at p 126:6–9.

Annie's evidence was that in late 2017 or early 2018, MOM conducted an inspection of 34KB. That led to an investigation by MOM that took about a year, and an interview that Annie had to attend with MOM in November 2018.[173] Annie explained to the MOM officer that Terrence had informed her that MOM followed SCDF's approval and not URA's.[174] The MOM officer made it clear to her that the approved dormitory capacity for 34KB was and had always been 130 workers.[175] That was the "very confirmed date" that Annie knew that "it's really illegal" to house workers on the second to fourth floors of 34KB.[176] At a second meeting with MOM in January 2019, MOM confirmed that the approval previously given by URA and SCDF for the dormitory was all the while only for 130 workers, and that the fifth to seventh floors of 34KB were the only approved floors for use as a dormitory. MOM imposed a $5,000 fine on the Company.[177] I accept Annie's evidence as her account of these events was textured and had a ring of verisimilitude. She also produced an e-mail from MOM dated 5 November 2018 regarding the scheduling of a meeting on 8 November 2018,[178] which goes towards corroborating her account of events. The S 27 Defendants cavil that POP did not produce a "paper trail" of the fine imposed by MOM and that the November 2018 e-mail from MOM did not state the purpose of the meeting.[179] I reject these as weak premises for inferring

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173 Transcript 20 December 2023 at pp 95:31–96:27.

174 Transcript 20 December 2023 at p 104:16–22.

175 Transcript 20 December 2023 at pp 95:31–96:18; 3BA at p 73: Annie's AEIC at para 65.

176 Transcript 20 December 2023 at p 92:1–6.

177 3BA at p 75: Annie's AEIC at para 68; Transcript 20 December 2023 at p 97:17–29.

178 3BA at p 361.

179 SLL's Closing Submissions at para 207.

> that Annie was untruthful about her meetings with MOM in November 2018 and January 2019. Further, Annie readily affirmed that there was a letter from MOM on the fine; I accept her explanation that she had provided the correspondence to her previous solicitors and was not aware why the correspondence had not been included in her AEIC.[180]

116 The appropriate date for the assessment of the actual value of 34KB should thus be November 2018, or at the earliest, April 2018; I reject the S 27 Defendants' argument that the actual market value of 34KB should be assessed as at 2014 (see [111(a)] above). While there is no direct evidence of the value of 34KB as at April or November 2018, I consider that CKS' 2019 Valuation Report issued on 5 March 2019 (valuing 34KB at $9m based on a dormitory capacity of 130 workers) is sufficiently proximate in time such that it is appropriate to rely on this valuation for the actual value of 34KB as at April or November 2018. The law does not demand that a plaintiff prove with complete certainty the exact amount of damage that he has suffered: *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*") at [28]. The court has to adopt a flexible approach with regard to the proof of damage; different occasions may call for different evidence with regard to certainty of proof, depending on the circumstances of the case and the nature of the damages claimed: *Robertson Quay* at [30].

117 There are further reasons why I consider it appropriate to rely on the $9m valuation in CKS' 2019 Valuation Report. First, there is no challenge that the valuation itself was properly done. In fact, H8's expert witness, Mr Farooq Ahmad Mann, had relied on the valuation in CKS' 2019 Valuation Report (albeit for another purpose), and averred that he did so as the valuation was

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180 Transcript 20 December 2023 at pp 98:1–99:19.

prepared by a reputable firm.[181] The $9m valuation based on 130 workers in CKS' 2019 Valuation Report[182] was also performed using the same method of valuation (*ie*, the market comparison method) as that used in CKS' 2014 Valuation Report which valued 34KB at $14m based on 360 workers.[183]

118 Second, I accept, in principle, that the lower valuation in CKS' 2019 Valuation Report (as compared to the $14m valuation in CKS' 2014 Valuation Report) may be due to other factors such as depreciation and the shorter remaining lease of the property, in addition to the lower capacity of the 34KB dormitory. However, contrary to the S 27 Defendants' suggestion (see [111(b)] above), that is not a basis in law to reject the use of the valuation. In *ZONG and another v Wang* (2022) 401 ALR 698, the representor submitted that the date of acquisition ought to have been adopted as the comparator given the subsequent deterioration in the value of the company (whose shares were acquired) (at [57]). The court did not accept this submission, finding that the deterioration in the value of the company was, to a very substantial extent, "inherent"; part of it was attributable to the depreciation of the company's principal asset, a yacht (at [58]). In the present case, the valuation of the actual value of 34KB is taken at a later point in time (as opposed to the date of the transaction) because the fraud was uncovered only later. In these circumstances, the S 27 Defendants have to bear the consequences of any inherent depreciation in the value of 34KB with that passage of time. Put another way, the causative influence of the S 27 Defendants' fraud resulting in the lower valuation of 34KB (based on a dormitory capacity of 130 workers) is "not significantly attenuated or diluted

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181 Transcript 19 December 2023 at p 70:24–29.

182 DCB at pp 216–218.

183 3BA at pp 179–189.

by other causative factors acting simultaneously with or subsequent to the fraud" (*Smith New Court* at 285F).

119 I therefore assess POP's loss to be $3.5m, calculated on the basis of 70% of the difference between the $14m valuation of 34KB in 2014 less the $9m valuation of 34KB in 2019.

120 I am mindful that a plaintiff "must give credit for any benefits which he has received as a result of the transaction": *Smith New Court* at 267A–B; *Wishing Star* at [21]. However, the S 27 Defendants ultimately led no evidence and made no submission to such effect, despite having had ample opportunity to consider the issue. In the course of the S 27 Defendants' counsel's cross-examination of Annie, he put to her that $1.8m in rent was collected from 210 to 300 workers at 34KB from January 2016 to August 2017 and that these revenues should be deducted from the damages that POP was claiming. Annie disagreed.[184] The legal and evidential premises for the S 27 Defendants' counsel's proposition to Annie are unclear. For example, legally, it is unclear why *all* the revenue from January 2016 to August 2017 should be considered a credit to be deducted from damages, and why that timeframe was selected; and evidentially, the statistics cited were not even proven with reference to source material despite this court raising a query in this regard.[185] Ultimately, the S 27 Defendants did not take this point up in their closing submissions, despite this court asking to be addressed in the parties' closing submissions on whether any "excess rent" collected by the Company based on 360 workers should be taken into account when considering the loss suffered by POP as a result of the

184 Transcript 3 January 2024 at pp 46:7–48:12.

185 Transcript 3 January 2024 at pp 46:27–47:12.

misrepresentation.[186] POP disagreed that any deductions should be made because, among other reasons, "these sums have been expended in the operations of the [C]ompany and have not added to the value of the [C]ompany".[187] The S 27 Defendants simply did not address the issue. Ultimately, in the absence of argument and, more significantly, cogent evidence on any benefits to be deducted from the loss assessed, I am not in a position to make any deductions. The S 27 Defendants cannot, however, assert any prejudice in this regard: they were alive to but chose not to pursue this issue.

121 The S 27 Defendants further argue that POP "failed to show any steps it has taken to mitigate its losses" and that its "failure to mitigate its loss should impact the quantum of damages".[188] However, this general assertion turns the S 27 Defendants' obligations of pleading and proof on their head. The burden lies on the defaulting party (here, the S 27 Defendants) to properly plead and prove that the aggrieved party (here, POP) had failed to mitigate its loss: *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [23]–[24]; *The "Asia Star"* [2010] 2 SLR 1154 at [24]; *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 at [250]. The S 27 Defendants have wholly failed to plead or prove the steps that POP should allegedly have taken to mitigate its loss.

122 I turn next to address the S 27 Defendants' argument that POP had not pleaded its calculation of damages (see [111(c)] above). I do not think there is merit in this objection.

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186 KLGSL's Closing Submissions at para 117.

187 KLGSL's Closing Submissions at paras 118–119.

188 SLL's Further Submissions dated 16 May 2024 ("SLL's Further Submissions") at heading IV and para 8.

123 First, POP had pleaded that it "suffered loss and damage" and one of the particulars of such loss and damage pleaded was:[189]

> Alternatively, if [POP] had known that [34KB] could only legitimately, or was only approved by the URA to, host 130 workers or beds instead of 362 workers or beds but nevertheless agreed to purchase 70% of the shareholding in [the Company], it would not have agreed to a [sale and purchase price for the shareholding in the Company ("Purchase Price")] of S$42 million and would not have agreed to pay S$29 million for that 70% stake. It would have negotiated and/or agreed to a significantly reduced Purchase Price and paid significantly less than S$29 million for the said 70% stake.

In my view, by this pleading, POP was alluding to the use of the valuation method (*ie*, taking the price paid for an asset based on a misrepresentation less the real value of the asset in the absence of the misrepresentation) to assess POP's loss.

124 In KLGSL's Opening Statement, POP then explained its quantification of its loss, stating:[190]

> [34KB] was valued at S$14 million on the basis of it having 362 beds. It was valued at S$9 million on the basis of it having 130 beds in March 2019. The loss suffered by [POP] is therefore 70% of the difference, which is S$3.5 million. [emphasis in original; footnotes in original omitted]

KLGSL's Opening Statement referenced CKS' 2014 Valuation Report for the $14m valuation and CKS' 2019 Valuation Report for the $9m valuation, both of which had already been previously disclosed in the proceedings.

125 Under O 18 r 7(1) of the Rules of Court 2014, a claimant's pleadings must contain the material facts on which the party relies for his claim, "but not

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189 S 27 SOC at paras 17 and 17(c).

190 KLGSL's Opening Statement at para 86.

the evidence by which those facts are to be proved". Equally, the relevant propositions of law need not be pleaded: *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*") at [19]. The court in *Hii Yii Ann and another v Tiong Thai King and another and another matter* [2024] SGHC(I) 16 also held that it is "sufficient for a party to plead heads of damage without descending to precise quantification. The latter matter can be dealt with in the evidence" (at [34]).

126 In my view, POP had sufficiently pleaded (a) that it suffered loss and damage, and (b) the valuation method by which it intended for such damage to be assessed. While POP's precise calculation of its loss and the specific values (and evidential sources for those values) it intended to use were not pleaded, I do not think these had to be pleaded, being in the nature of legal submission and evidence (of which the S 27 Defendants had adequate notice).

127 Second, even if I am wrong regarding the sufficiency of POP's pleadings, there was no prejudice occasioned to the S 27 Defendants. The court may permit an unpleaded point to be raised (and determined) where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so: *How Weng Fan* at [20]. There will be no prejudice occasioned where it was clear to the opposing party that the unpleaded issue was a case it had to meet and both sides engaged with the issue at trial: *How Weng Fan* at [28] and [29(b)]. In the present case, the S 27 Defendants squarely engaged with POP's use of the $9m valuation at trial and in their closing submissions (see [111(a)] and [111(b)] above). They had adequate notice of and opportunity to engage with the issue.

128 I add that both parties had initially proceeded in their respective closing submissions on the basis that the date at which to determine the actual value of 34KB under the valuation method was the date of entry into the SPA. However, the court is not bound to accept the legal analysis of the parties where relevant legal principles may not have been considered. I therefore brought the legal principles in *Smith New Court* (at 265A–B and 267C: see [114] above) to the parties' attention and invited further submissions on the applicability of those principles to the present case.

129 In its further submissions, POP submits that the *Smith New Court* principles should be applied. On the facts of the present case: (a) the misrepresentation continued to operate after the date of acquisition by POP until the middle of 2017; (b) even after the middle of 2017, POP was locked into the property; (c) 34KB was sold at the earliest possible opportunity; and (d) the eventual value realised on its sale was $9m, which was in line with the best evidence (*viz*, the $9m valuation in CKS' 2019 Valuation Report) of the actual value of 34KB at the time of completion of the SPA. There is no difference in the quantum of damages using the best evidence of valuation as of the date of the transaction or upon application of the *Smith New Court* principles; in both cases, the amount of damages payable is $3.5m.[191]

130 In their further submissions, the S 27 Defendants submit that the *Smith New Court* principles are inapplicable to the present case because: (a) POP "failed to adduce evidence of a continuing misrepresentation that impaired its decision with respect to 34KB";[192] (b) POP failed to show that it was locked into

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191 KLGSL's Further Submissions dated 16 May 2024 at paras 5, 12 and 13.

192 SLL's Further Submissions at paras 2 and 7.

retaining 34KB after April 2018 or November 2018;[193] and (c) there are supposedly "difficulties" (which they do not articulate) with "separating intrinsic and extrinsic factors" (which they do not identify) that supposedly "influenced the loss suffered".[194]

131 I have found that the appropriate date for the assessment of the actual value of 34KB is November 2018, or at the earliest, April 2018, and that it is appropriate to assess that actual value to be $9m based on CKS' 2019 Valuation Report, for reasons explained at [115]–[118] above. This means that I reject the S 27 Defendants' position that the *Smith New Court* principles are inapplicable, while also not adopting POP's analysis entirely. There is no prejudice to either party in this. The appropriate date for the assessment of the actual value of 34KB is a matter of legal submission, and both parties were given and took the opportunity to address this court on the point. Further and crucially, the evidence I have relied on in coming to my findings (*viz*, evidence relating to when Jason and Annie discovered the fraud and whether it is appropriate to rely on CKS' 2019 Valuation Report) was already canvassed at length by both parties at trial. Not only is there no prejudice to the S 27 Defendants, it would in fact be unjust to POP if, despite being deceived and suffering actual loss of a significant quantum as assessed based on the relevant legal principles, POP is denied an award of damages for that loss.

POP's loss was caused by the false Representation

132 Finally, and for completeness, I address a throwaway argument made by the S 27 Defendants that under URA's revised guidelines issued in September 2016, URA would not allow an increase in the approved number of workers

193 SLL's Further Submissions at paras 2 and 6.

194 SLL's Further Submissions at para 5.

housed in the 34KB dormitory, and therefore, "[a]ny subsequent refusal of permission from URA to house more workers, as well as any loss that flows from it, is attributable to these revised guidelines rather than any alleged misrepresentation made in 2013 or 2014".[195] I reject this argument. Taking (without accepting, given the equivocal state of the evidence where Appendix A of the guidelines referred to 8ER and not 34KB[196]) the S 27 Defendants' characterisation of the URA revised guidelines at face value, it simply means that the 34KB dormitory was not, and would not in the foreseeable future be, legally approved to house more than 130 workers. In other words, the true state of the legally approved capacity of the 34KB dormitory as at the time of POP's entry into the SPA would prevail in the following years. This hardly breaks the causal connection between the false Representation (which induced POP to enter into the SPA) and the loss suffered by POP.

Conclusion on POP's claim in the tort of deceit

133 In conclusion, I find the S 27 Defendants jointly and severally liable (a) in the tort of deceit as claimed by POP, and consequently, (b) to pay damages to POP assessed at $3.5m. POP additionally prayed for interest to be awarded,[197] but neither party has addressed me on this. I will hear the parties further on the interest to be awarded.

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195 SLL's Closing Submissions at paras 232–233.

196 Agreed Bundle of Documents Vol 2 ("2AB") at pp 151–156; Transcript 28 February 2024 at pp 129:6–17.

197 S 27 SOC at prayer (2).

POP's negligent misrepresentation and conspiracy claims

134 In light of my decision at [133] above, it is unnecessary to address POP's claims for negligent misrepresentation and conspiracy,[198] which were advanced further or alternatively to POP's primary claim in the tort of deceit.

S 1006

135 I now address S 1006.

The parties' cases

H8's case

136 H8 commenced S 1006 as a minority oppression action under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("s 216") primarily against POP, Jason and Annie (*ie*, the S 1006 Defendants).

137 H8 claims that (a) the Company was managed as a quasi-partnership from its inception till April 2018 (*ie*, when the 4th AGM took place), so the court should apply a stricter yardstick of scrutiny;[199] and (b) H8 and POP had an informal oral agreement, formed over the course of multiple meetings between William, Terrence, Jason and Annie from February 2014 to April 2014, regarding the terms of H8 and POP's association in the Company.[200] The informal understanding gave rise to legitimate expectations that the court can take into account even if it were to find that the Company was not a quasi-partnership.[201]

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198 S 27 SOC at paras 18–24.

199 SLL's Closing Submissions at paras 13 and 20.

200 S 1006 SOC at para 20; SLL's Closing Submissions at para 8.

201 SLL's Closing Submissions at paras 22–23 and 28.

138 H8 raised a panoply of alleged acts of oppression, which by the time of its closing submissions, were reduced to five main claims of oppression.

139 The first alleged act of oppression is the removal of Terrence from the Company's board. This defeated H8's expectations that it would be involved in the management of the Company by having a representative on the board and that unanimous consent was required for major decisions.[202] Further, the exclusion of H8 from the management of the Company without a reasonable buyout offer "locked" H8 in the Company and was oppressive.[203]

140 The second alleged act of oppression is the dilution of H8's shareholding in the Company, which breached H8's legitimate expectations arising from the informal understanding that it would hold a 30% shareholding in the Company and that unanimous consent was required for major decisions.[204] Even in the absence of the informal understanding, the act of diluting H8's shareholding was oppressive as shareholders have a legitimate expectation that their shareholding will not be unfairly diluted, and this expectation was breached because: (a) there was no commercial justification for the rights issue in the present case; and (b) the manner in which the rights issue was conducted indicates that its dominant purpose was to dilute the shareholding of H8: for example, POP failed to provide requested financial information that was material for H8 to make a considered decision on whether to subscribe for more shares in the Company.[205]

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202 SLL's Closing Submissions at paras 68–88, 97 and 102.

203 SLL's Closing Submissions at paras 89–102.

204 SLL's Closing Submissions at para 34; S 1006 SOC at para 33.

205 SLL's Closing Submissions at paras 35–67.

141 The third alleged act of oppression is the excessive increase in the directors' fees and remuneration of Jason and Annie (approved at the 2018 EGM) without commercial justification, coupled with the failure to declare dividends.[206]

142 The fourth alleged act of oppression is the transfer, of $2m of the Bridging Loan, from the Company to POP as repayment of loans extended by POP. The transfer constituted a breach of fiduciary duty by Jason and Annie as they had placed themselves in a position of conflict and failed to disclose the transfer.[207] The transfer was inconsistent with the purpose of the Bridging Loan, which was to finance the Company's working capital.[208] The amount transferred could have been used to repay the Hong Leong Loan and the RHB Loan, for which the representatives of H8 were personal guarantors. As the transfer resulted in the Company retaining less capital, it also adversely impacted the ability of the Company to pay out dividends.[209]

143 The fifth alleged act of oppression is the alleged attempt by Jason and Annie to sell 8ER without the knowledge and consent of H8.[210]

144 H8 made the Company a defendant to S 1006 because H8 had prayed for (a) an independent financial audit of the Company "to ascertain if it is a going concern"; and (b) the winding up of the Company if it is found not to be a going concern.[211] In oral closing submissions, H8's counsel confirmed that H8

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206 SLL's Closing Submissions at paras 125–144.

207 SLL's Closing Submissions at paras 109–115.

208 SLL's Closing Submissions at paras 103–105.

209 SLL's Closing Submissions at paras 108(c)–(d).

210 SLL's Closing Submissions at paras 145–154.

211 S 1006 SOC at prayers (1), (2) and (5).

is no longer pursuing the winding-up remedy.[212] H8 continues to seek an audit to ascertain the financial health of the Company.[213] H8 also seeks an order for the S 1006 Defendants to buy out its shares in the Company.[214]

The Company's case

145 The Company points out that H8 has admitted that the Company is a going concern and should not be wound up. Further, given that H8 had prayed for an independent financial audit of the Company "to ascertain if [the Company] is a going concern" but has since admitted that the Company is a going concern, there is no basis for the audit sought.[215]

The S 1006 Defendants' case

146 The S 1006 Defendants contend that the Company was neither a quasi-partnership nor operated based on an informal understanding.[216] In the absence of a quasi-partnership and the alleged informal understanding, H8's oppression action fails as the alleged acts of oppression were decisions that POP was entitled to make under the constitution of the Company.[217]

147 In response to the first alleged act of oppression, POP did not renew Terrence's directorship because: (a) he failed to perform some of his duties in relation to the management of 34KB, including the carrying out of rectification

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212 Transcript 28 February 2024 at p 50:24–25.

213 SLL's Closing Submissions at paras 162–175.

214 SLL's Closing Submissions at paras 176–192; S 1006 SOC at prayers (3) and (4).

215 Closing Submissions filed on behalf of the 1st defendant in S 1006 dated 16 February 2024 at paras 11–23.

216 KLGSL's Closing Submissions at paras 41–52.

217 KLGSL's Closing Submissions at para 55.

works; and (b) he procured the Company's breach of URA regulations and had taken steps to cover up the breaches.[218]

148 In response to the second alleged act of oppression, there were commercial reasons for the rights issue that diluted H8's shareholding, specifically, that the Company needed funds for payments of tax, audit, renewal of licence and other maintenance costs and had to strengthen its balance sheet.[219] In addition, the dominant purpose of the rights issue was not to dilute H8's shareholding. Both parties' expert witnesses acknowledged that it was common for private companies to issue new shares at $1. Shares were offered to H8 and POP at the same price, so they had an equal opportunity to prevent the dilution of their shareholding.[220] As for the financial information sought by H8, this could be accessed by Terrence *qua* director.[221]

149 In response to the third alleged act of oppression, the Company did not declare dividends because its business was not generating sufficient cash.[222] The increase in directors' remuneration of Jason and Annie was justified by the increase in their responsibilities following the departure of Terrence from the Company's board and during the COVID-19 pandemic.[223] Even if the remuneration was excessive, the appropriate relief would be to reverse the relevant transactions since the directors' fees and remuneration have not been paid out.[224]

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218 KLGSL's Closing Submissions at paras 58–61.

219 KLGSL's Closing Submissions at para 63.

220 KLGSL's Closing Submissions at paras 67–73.

221 KLGSL's Closing Submissions at para 75.

222 KLGSL's Closing Submissions at paras 84–87.

223 KLGSL's Closing Submissions at para 88.

224 KLGSL's Closing Submissions at paras 89 and 93.

150 In response to the fourth alleged act of oppression, the diversion of funds from the Bridging Loan, even if successfully proved, was a wrong against the Company rather than H8. Further, it is not disputed that at the material time, the Company owed POP monies. These loans were repayable on demand. When the Company received the Bridging Loan for its working capital needs, it was entitled to apply the monies towards the repayment of debts, which would include the repayment of shareholder's loans from POP.[225]

151 In response to the fifth alleged act of oppression, the claim that the S 1006 Defendants attempted to sell 8ER is baseless. Approval at a general meeting would have been required for any sale of 8ER, but no general meeting was convened because Jason and Annie had no intention of selling 8ER.[226]

Decision on H8's oppression claims

152 I will examine whether the Company was operated as a quasi-partnership between H8 and POP, and whether the informal understanding pleaded by H8 existed, before examining the alleged acts of oppression in turn.

The Company was not operated as a quasi-partnership between H8 and POP

153 The key characteristic of a quasi-partnership is that the shareholders agree to associate on the basis of a personal relationship involving mutual trust and confidence: *Ting Shwu Ping (administrator of the estate of Chng Koon Seng, deceased) v Scanone Pte Ltd and another appeal* [2017] 1 SLR 95 at [85].

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225 KLGSL's Closing Submissions at paras 79–83.

226 KLGSL's Closing Submissions at paras 90–91.

154 In my judgment, the matters ultimately relied on by H8 in its closing submissions do not establish that the Company was operated as a quasi-partnership. The matters relied on by H8 fall into five broad areas.

155 First, H8 argues that it had been running the dormitories at 34KB and 8ER since 1 April 2013, before the joint venture commenced, and was knowledgeable and experienced in this area as compared to POP. POP entrusted H8 (particularly Terrence) to handle the running of the dormitories, while Annie managed the financial affairs of the Company. William supplied workers to carry out maintenance at the dormitories, and Jieling assisted with customer queries, feedback and other administrative tasks.[227] H8 relies on *Chong Kok Ming and another v Richinn Technology Pte Ltd and others* [2020] SGHC 224 ("*Chong Kok Ming*") to argue that the assignment of roles between persons embarking on a joint venture is indicative of a quasi-partnership.[228]

156 In my judgment, H8's reliance on *Chong Kok Ming* is inapposite. In *Chong Kok Ming*, the plaintiffs were the minority shareholders and the defendants were the majority shareholders in the joint venture company, which was in the business of laser cutting. The defendants agreed to inject the initial capital for the joint venture (at [6] and [103]). In turn, the plaintiffs agreed to devote all their efforts to the setting up of the laser cutting operations and to run the business on a day-to-day basis (at [103]). The court found that this agreement as to the parties' respective responsibilities in the setting up of the business was "the very core of the understanding and arrangements between the parties" and "the foundation of their willingness to associate with each other for this business enterprise" (at [103]). That such an important understanding was

227 SLL's Closing Submissions at paras 20(a)–(e).

228 SLL's Closing Submissions at para 17.

not recorded in writing (at [103]) showed that the parties were prepared to place some trust in each other and to work together on the basis of an unwritten understanding as to each other's responsibilities in the setting up and operation of the joint venture; the joint venture was thus a quasi-partnership (at [105]).

157 It is unsurprising, given that the joint venture in *Chong Kok Ming* was financed by one party in exchange for the other party undertaking the day-to-day running of the joint venture's business, that the court in that case found the parties' respective responsibilities to be entrenched by (an unwritten) agreement. The present case, however, involves a different factual matrix. I find that the initial allocation of roles between the H8 and POP representatives simply reflected that H8's representatives had prior experience in the dormitory business. Further, according to Jieling, William was paid by the Company to supply his workers to work at the dormitories:[229] this was a commercial arrangement from which William benefited. On balance, the evidence does not bear out that the initial work arrangements between H8 and POP representatives at the Company were meant or agreed to be immutable. Correspondingly, the absence in the present case of any record of allocation of the parties' roles in any formal documentation (such as the Company's Articles of Association[230]) does not mean that the parties associated on the basis of mutual trust and confidence; rather, it reflects the reality that there was in fact no agreement between H8 and POP delimiting the respective roles they would play in the joint venture.

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229 Transcript 7 December 2023 at p 31:5–7.

230 3BA at pp 280–291.

158 Second, H8 argues that all resolutions passed before April 2018 were passed unanimously.[231] I do not see how that is conclusive of whether the Company was run as a quasi-partnership. It could simply reflect that H8 and POP did not have disagreements on the running of the Company prior to that time. H8 also misconstrues Annie's evidence regarding how the chairman of the board of the Company was appointed. The specific exchange between H8's counsel and Annie in cross-examination was as follows:[232]

> Q Okay. Okay, Ms Leong, the chairman of the board of directors is appointed by POP Holdings, correct?
>
> A Is appointed by POP? Is appointed by the board.
>
> Q Yes. So the chairman is appointed by POP Holdings?
>
> A By the board, the board, not POP, because it's through AGM that it's appointed, not by POP itself.
>
> Q What about the chairman –
>
> A Because –
>
> Q – at the general meeting of shareholders?
>
> A – it's H8 and POP the – that's attending the meeting. So it's by the board, not by POP itself.
>
> Q So between the three of you all –
>
> A Yah.
>
> Q – who will nominate and who will vote for the chairman of the board of directors or for the general meeting?
>
> A I mean, they have the vote. We have the vote.
>
> Q Okay. But there will always – the two of you will always have a – be able to outvote anyone else on H8, correct?

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231 SLL's Closing Submissions at para 20(h).

232 Transcript 3 January 2024 at p 23:4–25.

> A But under – I think it's under the constitution. Or this is under the board, right? Shouldn't be under one side of POP.
>
> Q Okay, okay.
>
> A Should be under the vote of both.

159 The entire tenor of Annie's evidence in the above passage was that *both* H8 and POP were entitled to vote for the chairman of the Company's board, and it was not the case that only POP would get to cast a vote. She did not mean that the decision on this (or any other) matter had to be made by H8 and POP unanimously. However, H8 cites Annie's evidence out of context to argue that:[233]

> Major decisions such as appointing a chairman of the Board were conducted in a manner which will guarantee that "*they* [H8] *have the vote. We* [POP Holdings] *have the vote*". When asked whether POP Holdings' representatives possess the ability to outvote other directors by a simple majority, Annie recalled that it "[s]*houldn't be under one side of POP*" but "*under the vote of both* [H8 and POP Holdings]". [emphasis in original]

160 To the extent that H8's argument is that Annie had conceded that major decisions were to be taken unanimously by the Company's shareholders, that is, in my view, not borne out on consideration of the full exchange in Annie's cross-examination from which H8 has cherry-picked select phrases. If that is not H8's argument, then I do not see the relevance of H8's point and how it bears on the existence (or not) of a quasi-partnership.

161 Third, H8 argues that communications between the representatives of H8 and POP were "predominantly informal; taking place over WhatsApp, phone calls or physical meetings".[234] H8 relies on *See Eng Siong Ronnie v*

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233 SLL's Closing Submissions at para 20(f).

234 SLL's Closing Submissions at para 20(g).

Sassax Pte Ltd and another [2020] SGHC 96 ("*See Eng Siong Ronnie*"),[235] where the court considered there to have been a "fair argument" that the company in question operated as a quasi-partnership due, in part, to the fact that it was "operated on a rather informal basis". In particular, the court noted that "[b]usiness was regularly discussed over messaging applications rather than through formal email exchanges" (at [44]).

162 I find that *See Eng Siong Ronnie* does not assist H8. The court's focus in that case was not on informality in communications between the shareholder-directors *per se*, but specifically on informality in communications *on business matters*. In the present case, H8 cites as evidence of informal communications WhatsApp exchanges between William and Annie and between Terrence and Annie.[236] However, no evidence of the context of these communications was provided; Annie was not cross-examined on these communications; and they do not, on their face and for the most part, appear to relate to substantive business discussions. H8 also cites an instance where Annie tried to call William[237] and "a few" instances where she met him to discuss the possibility of POP buying H8 out of the Company.[238] These instances do not relate to the conduct of *business of the Company*. In contrast, the record shows numerous formal written communications between the parties on Company matters,[239] and that the

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235 SLL's Closing Submissions at para 19, footnote 5.

236 SLL's Closing Submissions at para 20(g), footnote 16; 2AB at pp 763–988; Index to 2AB at s/n 148–155.

237 SLL's Closing Submissions at para 20(g), footnote 16; Transcript 21 December 2023 at p 102:14–19.

238 SLL's Closing Submissions at para 20(g), footnote 16; Transcript 21 December 2023 at p 100:27–30.

239 See, *eg*, 2AB at pp 117, 122, 126, 127–128, 129–130, 131–132, 137, 175–176, 240, 247, 252–254, 489–490, 493–494 and 495.

agenda and minutes of shareholders' meetings were formally documented.[240] H8 has not established that the parties' communications on the business of the Company were "predominantly informal", and there is no basis to find on this count that the Company was operated informally and as a quasi-partnership.

163 Fourth, H8 argues that it and its representatives were entitled to financial information, documents and financial transparency.[241] However, I do not understand H8 to be suggesting that it was entitled to anything more than any other shareholder of a company would generally be entitled. This does not explain how or why the Company was allegedly run as a quasi-partnership.

164 Finally, H8 argues that William was acquainted with and had a personal relationship with Jason since the 1980s and prior to the joint venture between H8 and POP.[242] While William and Jason had interactions prior to the joint venture in the Company, the evidence does not bear out that they had agreed to associate in the joint venture in the Company *on the basis of a personal relationship involving mutual trust and confidence*. Rather, this was simply a commercial transaction and relationship. I accept Jason's evidence, which was unchallenged, that a previous business deal that William introduced to him (*ie*, Jason) turned out to be unsuccessful and Jason lost money as a result. Thus, when William contacted him about investing in the dormitory business, Jason was not particularly keen.[243] Against this background, I further accept that Jason eventually agreed to the proposed joint venture because of three commercial considerations (see [167] below); not because of any personal relationship of

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240 2AB at pp 266–268; Agreed Bundle of Documents Vol 4 at pp 547 and 552–555.

241 SLL's Closing Submissions at para 20(j).

242 SLL's Closing Submissions at para 20(i).

243 3BA at pp 7–8: Jason's AEIC at paras 10 and 13.

mutual trust and confidence between him and William, Terrence or Jieling. I also accept Annie's evidence, which was unchallenged, that she was not comfortable with the proposed joint venture because she did not know William well and there was a past transaction between William and Jason that had caused Jason financial losses. She eventually agreed to the joint venture because of Jason's inclination for POP to be part of the joint venture.[244]

There was no informal agreement between H8 and POP regarding their association in the Company

165 H8's pleaded case is that there was a "commercial [and] informal understanding" between H8 and POP on the terms of their joint venture in the Company.[245] These terms were agreed orally over the course of five to six meetings between William, Terrence, Jason and Annie from February to April 2014, and were that:[246]

(a) H8 would own 30% of the Company;

(b) POP would own 70% of the Company;

(c) H8 would continue the dormitory business at 34KB and 8ER as William, Terrence and Jieling had experience and expertise in operating dormitories, which POP, Jason and Annie did not have;

(d) H8 would have one director, Terrence, on the Company's board;

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244 3BA at pp 53 and 55: Annie's AEIC at paras 17, 26 and 28; 3BA at pp 8–9: Jason's AEIC at para 17; Transcript 3 January 2024 at pp 50:31–51:15.

245 S 1006 SOC at para 20.

246 S 1006 SOC at para 20.

(e) POP would have two directors, Jason and Annie, on the Company's board;

(f) all shareholders' resolutions would require the unanimous consent of all shareholders;

(g) all directors' resolutions would require the unanimous consent of all directors; and

(h) all major decisions concerning the Company including (i) any acquisition or disposal of substantial assets, (ii) the taking of any loans and credit facilities, and (iii) any appointment or removal of any director, would require the unanimous consent of the directors and/or shareholders.

166 This position was repeated in the AEICs of William, Terrence and Jieling.[247]

167 POP denies that such an informal understanding existed.[248] Jason's evidence was that the three matters which stood out for him from his negotiations with William and Terrence for the proposed joint venture were that: (a) the Company would benefit from a steady stream of revenue from its dormitories given that the 34KB dormitory could host 362 workers and the 8ER dormitory could host up to 1000 beds; (b) William's company (*ie*, H8) would be investing an equal stake in the joint venture; and (c) there was a possibility

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247 4BA at pp 11–12: William's AEIC at paras 22–23; 5BA at pp 663–664: Terrence's AEIC at paras 21–22; 5BA at pp 725–726: Jieling's AEIC at paras 21–22.

248 Defence of the 2nd, 3rd and 4th defendants (Amendment No 7) dated 23 October 2023 filed in S 1006 ("S 1006 D2–D4 Defence") at para 16.

for Jason's separate enterprise to operate a central kitchen at 8ER.[249] These have nothing to do with the alleged informal understanding pleaded by H8. Annie's evidence was that after her visit to the 34KB and 8ER dormitories in 2013, she dropped out of the negotiations with William and Terrence for the proposed joint venture, and only entered the picture again in May 2014.[250]

168 I find that H8 has failed to prove that the alleged informal understanding pleaded by H8 ever existed.

169 First, it cannot be disputed that at the time of the alleged negotiations from February to April 2014 during which the alleged informal understanding was agreed (*per* H8's case), the parties were proceeding on the basis that H8 and POP would be *equal* shareholders in the Company. This is evident from the fact that the cited negotiations were bookended by the Draft 50:50 SHA (see [14] above) and POP's letter to the Company dated 23 May 2014 indicating that POP had agreed in principle to acquire 50% of the shares in the Company.[251] William stated in his AEIC that this 23 May 2014 letter reflected the parties' original intent for H8 and POP to be equal shareholders in the Company.[252] This completely undermines H8's pleaded case that an informal agreement was reached during discussions from February to April 2014 on how POP and H8 would conduct themselves as shareholders of 70% and 30% respectively of the shareholding in the Company; there was simply no contemplation at that time that POP was to be the majority shareholder in the Company. The reason POP ended up having to take up a larger proportion of the shareholding in the

249 3BA at pp 9–10: Jason's AEIC at para 20.

250 3BA at p 55: Annie's AEIC at paras 27–28.

251 3AB at p 19; 4BA at p 89.

252 4BA at p 13: William's AEIC at para 25.

Company was that H8 "decided that it could not afford to purchase 50% of [the Company's] shares and opted to purchase 30% instead".[253] The 70:30 shareholding split between POP and H8 was subsequently documented in the SPA (see cl 4.1(a)(iii)).[254]

170 William must have belatedly recognised this fallacy in H8's case. He refused to accept in cross-examination that as at 23 May 2014, the parties' intention was still for H8 and POP to acquire an equal number of shares in the Company,[255] although he had previously made that very point in his AEIC.[256] This undermined William's credibility as a witness, and reinforced my view that the parties had never reached any informal understanding that H8 would effectively be treated as an equal shareholder in the Company despite choosing to take only a minority stake in the Company.

171 Second, on William's second day on the stand, he alleged, for the first time, that he, Terrence, Jieling, Jason and Annie had signed a shareholders' agreement that reflected POP's 70% shareholding and H8's 30% shareholding in the Company.[257] I shall call this supposed document the "70:30 SHA". William inconsistently purported that the 70:30 SHA provided for decisions to be made with the unanimous approval of the Company's shareholders and directors,[258] while also asserting that he could not be sure of the contents of the

253 4BA at p 13: William's AEIC at para 25.

254 4BA at p 113.

255 Transcript 29 November 2023 at p 50:22–25.

256 4BA at p 13: William's AEIC at para 25.

257 Transcript 30 November 2023 at p 2:9–10 and p 4:1–5.

258 Transcript 30 November 2023 at pp 1:25–2:10, p 4:10–18 and p 13:13–14 read with p 14:11–12.

70:30 SHA.[259] Terrence[260] and Jieling,[261] who took the stand after William, then also sang the same tune. I find the evidence of these three witnesses on this matter wholly incredible. The existence of the 70:30 SHA would be a critical matter, but it was never mentioned in H8's pleadings or in their AEICs. The supposed document was never produced, and H8's counsel did not even put it to Jason or Annie that a 70:30 SHA had been signed. In my view, the belated conjuring up of a supposed 70:30 SHA was a desperate attempt by William, Terrence and Jieling to contrive a basis for their allegation that H8 had a legitimate expectation that all shareholders' and directors' decisions would be made unanimously. In turn, their resort to such an implausible claim while on the stand further undermines the existence of H8's pleaded informal understanding.

172 Third, at the 4th AGM on 23 April 2018, Terrence was not re-elected as a director of the Company, POP having voted against a shareholders' resolution for his re-election.[262] With that, it meant that H8 no longer had a representative on the Company's board, contrary to the alleged terms of the alleged informal understanding that H8 would have one representative on the Company's board and that any removal of any director would require the unanimous consent of the Company's shareholders (see [165(d)] and [165(h)] above). Yet, H8 never raised to POP at the material time that H8's supposed legitimate expectations in this regard had been breached.[263] H8 also did not ask for another representative to be appointed to the board of the Company to replace Terrence. William could

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259 Transcript 30 November 2023 at p 3:8–27 and p 18:25–27.

260 Transcript 1 December 2023 at p 41:6–31.

261 Transcript 7 December 2023 at p 98:13–32 and p 99:16–31.

262 4BA at pp 222 and 224.

263 KLGSL's Closing Submissions at para 48.

give no good explanation why H8 did not even attempt to appoint a replacement director.[264] This supports the view that the alleged informal understanding pleaded by H8 simply did not exist.

173 Finally, in oral closing submissions, H8's counsel argued that the matters stated in H8's written closing submissions as evidencing a quasi-partnership[265] also evidenced the existence of the alleged informal understanding.[266] I do not accept this submission. One, I do not think the mere fact that different persons involved in the enterprise initially focused on different roles (see [155]–[157] above) or that all resolutions passed before April 2018 happened to be passed unanimously (see [158]–[160] above) rises to the level of establishing any of the terms of the alleged informal understanding. Two, the remaining matters, *viz*, the alleged informal communications between H8 and POP representatives (see [161]–[162] above); H8's entitlement to financial information (see [163] above); and the alleged personal relationship between William and Jason (see [164] above), have no bearing on the existence of the alleged informal understanding. Three, and most significantly, I have explained the fundamental impediments in believing William, Terrence and Jieling's evidence that the alleged informal understanding, pleaded to have been orally agreed in February to April 2014, was ever discussed or reached. The lack of credibility in their evidence and positions is not easy to, and has not been, overcome.

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264 Transcript 1 December 2023 at p 5:29–30 and p 22:26–32.

265 SLL's Closing Submissions at para 20.

266 Transcript 28 February 2024 at p 12:27–30 and pp 20:4–21:7.

174 In sum, the Company was not operated as a quasi-partnership and the alleged informal understanding pleaded by H8 did not exist. It is in this context that the alleged acts of oppression fall to be assessed.

The non-re-election of Terrence as a director of the Company was not oppressive

175 I do not accept that POP voting against a shareholders' resolution for the re-election of Terrence as a director of the Company at the 4th AGM on 23 April 2018,[267] which consequently meant that Terrence ceased to be a director, was an act of oppression against H8.

176 First, I find that, contrary to H8's submissions, there was no express or implied understanding, and H8 had no legitimate expectation, that H8 would be involved in the management of the Company by having a representative on the board. I have explained at [168]–[173] above why I reject H8's case that there was such an alleged "express" informal understanding.[268] As for H8's submission that even if there was no express understanding, there was an "implied understanding" which "continued … up until April 2018" that the parties would take on different roles in the joint venture and H8 would be actively involved in the Company's management,[269] I decline to imply such an understanding. In my view, the evidence does not bear out that H8 was particularly vested in the management and operations of the Company or its businesses, even prior to April 2018. William supplied workers to work at the dormitories because that was pursuant to a commercial arrangement where he

267 4BA at pp 222 and 224.

268 *Cf*, SLL's Closing Submissions at paras 73–74.

269 SLL's Closing Submissions at paras 75–77.

was paid by the Company to do so.[270] In a conversation with Jason and Annie in 2017, Terrence stated multiple times that he wanted to "withdraw" from the joint venture.[271] Jason's unchallenged evidence was similarly that, by 2016 and 2017, Terrence and William told him that they wanted to sell their shares,[272] this notwithstanding that the acquisition of the Company had only been completed in January 2016.[273] When Terrence ceased to be a director of H8 after the 4th AGM, H8 never proposed a replacement representative for the board (see [172] above). In short, a holistic appreciation of the events at the material time indicates that H8 was not particularly desirous of, interested in, or committed to playing any specific role in the management of the Company.

177 Given my rejection of any understanding between H8 and POP that an H8 representative would sit as a director on the Company's board at all times, it follows that the legal rights of the parties *inter se* apply. In this regard, the non-re-election of Terrence as a director at the 4th AGM was in accordance with the Company's Articles of Association. Article 66 provides that:[274]

> The [C]ompany at the meeting at which a director so retires may fill the vacated office by electing a person thereto, and in default the retiring director shall if offering himself for re-election and not being disqualified under the Act from holding office as a director be deemed to have been re-elected, … *unless a*

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270 Transcript 7 December 2023 at p 31:5–7.

271 3BA at pp 309, 310, 312–313 and 317.

272 Transcript 4 January 2024 at p 12:13–16; Transcript 29 November 2023 at pp 65:30–66:4.

273 4BA at p 14: William's AEIC at para 29.

274 3BA at p 286.

> *resolution for the re-election of that director is put to the meeting and lost.* [emphasis added]

Therefore, the cessation of Terrence holding office as a director of the Company was not contrary to H8's legitimate expectations (of which there were none in this connection) or legal rights.

178 Second, I find that POP's decision to vote against the re-election of Terrence as a director was neither commercially unjustifiable nor unfair. Annie's evidence was that at the 5 April 2018 directors' meeting preceding the 4th AGM, it was decided that she would take over the management of the operations at 34KB. Terrence admitted at the meeting that he had overlooked certain things regarding the maintenance of 34KB and that due to his oversight, he would pay on behalf of the Company the fine imposed on the Company.[275] The capacity of the 34KB dormitory and the practice of shifting workers in and out of the dormitories during URA inspections were also discussed.[276] Given Terrence's admission at the meeting that he had been procuring the Company's breach of URA regulations and given Terrence's failure to properly manage the 34KB dormitory, POP decided to vote against Terrence's re-election as a director at the 4th AGM.[277] Jason similarly explained that POP found that Terrence's behaviour in moving the workers in and out of the dormitory was not honest, and further, that many things had not been done properly at 34KB.[278]

179 I accept that it was for these reasons POP decided against re-electing Terrence as a director. They are borne out by the minutes of the 5 April 2018

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275 3BA at p 89: Annie's AEIC at para 106.

276 3BA at p 90: Annie's AEIC at para 107.

277 3BA at p 90: Annie's AEIC at para 108.

278 Transcript 4 January 2024 at p 9:7–13.

directors' meeting. First, the minutes record that "BCA rectification work required for the warehouse and [Annie] taking over the operation at [34KB]" (at item 13) and "[Terrence] to bear the sum $1,500.00, being composition fine by PUB" (at item 15),[279] reflecting lapses on Terrence's part in the management of the 34KB dormitory as alluded to by Jason and Annie. Second, the minutes also record that "by their usual practice, the ex-directors would shift out the workers from the dormitory at issue to another dormitory and back to the dormitory at issue again after the inspection of URA" and that URA's approval was for a dormitory capacity of only 130 workers (see [71] above).[280] While reference was made to the "ex-directors" of the Company (*ie*, Eer and Ting), it was actually H8 that had run the 34KB dormitory for the Company when it was owned by Eer and Ting.[281] Indeed, in his meeting with Annie on 16 March 2017, Terrence stated that he "did the same thing", *ie*, moved the workers, "two years ago" (see [65] above). In other words, at the 5 April 2018 directors' meeting, Terrence implicitly admitted to having breached URA regulations on the 34KB dormitory capacity and to moving workers in and out of the 34KB dormitory to mislead URA during inspections. I see nothing wrong with POP, in consequence of the aforesaid reasons, deciding that Terrence was not fit to remain a director of the Company and should not be re-elected as such. In my view, it would also be disingenuous for H8 or Terrence to claim that they had no idea these matters played a part in POP voting against Terrence's re-election as a director. I further reject H8's arguments that Annie had acquiesced in 2017 to Terrence moving the workers around,[282] in view of my findings at [65]–[69] above.

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279 3BA at p 489.

280 3BA at p 489.

281 Transcript 7 December 2023 at p 56:21–26.

282 SLL's Closing Submissions at paras 83–87.

180 Third, I do not accept H8's submission that "[g]iven that a resolution was also passed to dilute [H8's] shareholding at the 4th AGM, Terrence's removal from the board of directors was part of a broader effort by Jason and Annie to diminish [H8's] involvement in the affairs of [the Company]".[283] As I explain at [192] below, I find that POP had not set out to dilute H8's shareholding through the rights issue. There was no "broader effort" to diminish H8's involvement in the Company. I also reject H8's argument that Terrence's removal from the board was "possibly in retaliation for flagging various acts of mismanagement by Annie".[284] This allegation was never put to Annie[285] and is entirely speculative.

181 Finally, I do not accept H8's argument that its exclusion from management coupled with the lack of a reasonable buyout offer was unfairly prejudicial. According to H8, H8 and POP are at a stalemate over who should manage the operations of the Company's dormitory business. H8 claims to deserve an exit from the Company because its legitimate expectation to be involved in the management of the Company's business was defeated following Terrence's removal from the board. In the circumstances, the joint venture had "transformed beyond recognition".[286] There is no merit in this argument:

(a) In the first place, I have found that there was no express or implied understanding, and H8 had no legitimate expectation, that H8 would be involved in the management of the Company by having a representative on the board (at [176] above). H8's assertion that the joint venture had "transformed beyond recognition" has no force.

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283 SLL's Closing Submissions at para 88.

284 SLL's Closing Submissions at para 88.

285 Transcript 3 January 2024 at pp 83:6–84:13.

286 SLL's Closing Submissions at paras 89–102.

(b) In any event, POP did not exclude H8 from the Company's management. Terrence's non-re-election was POP's response to an errant director's misconduct. H8 never proposed a replacement director for POP's consideration. Instead, as I have found at [176] above, the evidence suggests that H8 was disinterested in continuing to run the Company and simply wanted to exit.

(c) Further, H8 has not established any deadlock in the management of the Company. To the contrary, H8 and POP managed to consensually sell 34KB in 2023 and achieved (through Annie's efforts) a higher price than initially offered.[287]

(d) H8's argument, thus distilled, amounts to no more than a complaint that POP refused to buy H8 out. However, this in itself does not constitute commercial unfairness. Shareholders do not have a general right of unilateral withdrawal from the company: *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 ("*Suying Design*") at [35].

The issuance of new shares in the Company resulting in the dilution of H8's shareholding was oppressive

182 On 22 February 2018, Annie sent an e-mail to William, Terrence and Jieling to put on record that POP had provided funds of $795,000 to the Company and that H8 had failed to provide funds in the amount of $256,378.19 (being the balance due from H8 corresponding to its 30% stake in the Company).[288]

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287 3BA at pp 106–107: Annie's AEIC at paras 164–167; 3BA at p 680; 4BA at p 60: William's AEIC at para 105; 5BA at p 628.

288 4BA at pp 212–213.

183 In response to this e-mail, H8 instructed Engelin Teh Practice LLC ("ETP") to send a letter to the Company (marked for the attention of Jason and Annie) dated 23 March 2018.[289] In this letter, H8 denied that it was liable to provide the funds sought and asked for information "to understand why [the Company's] business operations [were] unable to generate sufficient revenue to pay off [its] liabilities", "in order for [H8] to *consider* extending funding to [the Company]" [emphasis in original].[290] The requested information included:[291]

(a) the Company's management accounts and cashflow statements for the months of January 2017 to February 2018;

(b) a list of the Company's expenditure and expenses for the months of January 2017 to February 2018;

(c) the Company's bank account statements for the months of January 2017 to February 2018;

(d) the Company's list of outstanding bills; and

(e) the Company's budget for the months of April, May and June 2018.

It is undisputed that no substantive response was provided to H8's queries. William averred that without the requested information, H8 "remained in the dark on the financial health of [the Company] in this period and the need for top-up funds".[292]

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289 4BA at pp 215–217.

290 4BA at p 216: Letter from ETP dated 23 March 2018 at paras 3 and 5.

291 4BA at p 216: Letter from ETP dated 23 March 2018 at para 5.

292 4BA at p 22: William's AEIC at para 39.

184 At the directors' meeting on 5 April 2018, it was discussed that the agenda of the upcoming 4th AGM would include: to increase the paid-up share capital from $1m to $3m; to issue and allot 2m ordinary shares at $1 to existing shareholders; and to approve "diluting shares for any outstanding amount due by any shareholder for the new shares to be issued" (resolution 3). The majority of the directors resolved that the increase in the paid-up capital of the Company was for the Company to make various payments of taxes, fees and costs itemised in the minutes of the directors' meeting (resolution 4). The majority of the directors also resolved that there would be "dilution of the shareholdings should the shareholders be unable to pay for the new shares before or on the day designated for payment" (resolution 12).[293]

185 On 6 April 2018, the Notice of the 4th AGM was issued. It set out the agenda of the 4th AGM, which included: to give authority to the directors of the Company to issue new shares; to approve the increase in paid-up share capital from $1m to $3m; to approve the issue and allotment of 2m ordinary shares at $1 to existing shareholders; and to "approve diluting of shareholding should the shareholder be unable to pay the application amounts for the new shares before or on the day designated for payment".[294]

186 At the 4th AGM on 23 April 2018, the resolutions summarised at [22] above were passed, based on POP's vote as the majority shareholder.[295]

187 On 8 May 2018, Annie sent an e-mail to William, Terrence and Jieling reminding them that the first payment of $316,537.47 was due from H8 on

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293 3BA at pp 487–488.

294 4BA at p 220.

295 4BA at pp 222–225.

9 May 2018.[296] H8 did not make this payment. On 17 May 2018, Annie sent another e-mail to William, Terrence and Jieling stating that as the payment was not made, she "shall proceed with Dilution of Shareholding as per Resolution passed" at the 4th AGM.[297]

188 At the 2018 EGM on 23 May 2018, it was recorded that H8 would inform the Company by e-mail that it did not wish to apply for the allotment of shares.[298]

189 On or around 26 June 2018, 1m ordinary shares were issued to POP, and H8's shareholding was diluted from 30% to 15%.[299] Annie explained that only 1m ordinary shares were issued because H8 had previously extended $193,000 to the Company and if H8 wanted to convert this sum to paid-up capital and take up the balance shares (which had been approved for issuance and allotment at the 4th AGM), H8 could "let us know and then we will work out the figure".[300] It is undisputed that POP paid the $1m purchase price for the 1m new shares by setting off that entire sum against the amount of shareholder's loans that POP had previously extended to the Company.[301] There was therefore no new cash injected into the Company.[302] At the material time, H8 was not informed of POP's set-off of the share purchase price against the funds that POP had

296 4BA at p 227.

297 4BA at p 227.

298 5BA at p 218.

299 4BA at p 23: William's AEIC at para 43; 3BA at p 88: Annie's AEIC at para 100.

300 Transcript 3 January 2024 at pp 72:28–73:30.

301 SLL's Closing Submissions at para 66; KLGSL's Closing Submissions at para 64; 3BA at p 88: Annie's AEIC at para 100.

302 Transcript 20 December 2023 at pp 22:29–23:3.

advanced the Company,[303] or informed that H8 too could set off the approximately $193,000 it had previously put into the Company against the price of any new shares H8 might take up.[304]

190 H8 argues that it had a legitimate expectation emanating from its informal agreement with POP that it would be apportioned 30% of the shares in the Company, and that this expectation was breached when the issuance of new shares and resultant dilution of H8's shareholding in the Company took place.[305] I do not accept this argument because first, H8 does not go so far as to plead that the alleged informal agreement was for H8 to *always* hold *at least* 30% of the shares in the Company[306] (see [165] above); and second and in any event, I have found that no informal agreement between H8 and POP, as pleaded by H8, existed (see [168] above).

191 However, the parties also accept that a rights issue would be unfair within the meaning of s 216 if (a) there was no commercial reason to raise capital through a rights issue, or (b) the dominant purpose of the rights issue was to dilute non-subscribing shareholders: *The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 ("*The Wellness Group*") at [183].[307]

192 In the present case, I find that the rights issue was not conducted with the dominant purpose of diluting H8's shareholding:

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303 Transcript 20 December 2023 at pp 33:26–34:3.

304 Transcript 20 December 2023 at p 42:12–22.

305 SLL's Closing Submissions at para 34.

306 S 1006 SOC at para 20(a).

307 SLL's Closing Submissions at para 35; KLGSL's Closing Submissions at para 62.

(a) First, this is evident from the fact that Annie had first requested that H8 provide its share of funds to the Company in February 2018, without any mention of any intended rights issue (see [182] above). In my view, it was because of H8's refusal to provide funds that Jason and Annie moved, in April 2018, towards a rights issue as a means of incentivising H8 to contribute proportionately to the financing of the Company by subscribing to the rights issue or risk dilution of its shareholding. To put matters in context, H8 had extended only approximately $193,000 in the period from 2016 to April 2018 (and to-date) to the Company,[308] in contrast to POP, which, in around the same period, had extended in excess of $1m to the Company.[309] That the rights issue was, at least initially, intended to raise cash to fund the Company's operations is also evident from the payments listed in the minutes of the 5 April 2018 directors' meeting, towards which the cash raised from the rights issue was intended to be applied (see [184] above). There is nothing wrong with a majority shareholder using the potentially dilutive effect of a rights issue for the purpose of encouraging shareholders to subscribe to the rights issue, so that the company is able to raise the amount of financing needed: *The Wellness Group* at [193]–[194].

(b) Second, that the new shares were issued at par does not indicate any intention to dilute H8's shareholding. The shares were offered to H8 and POP at the same price; both parties' valuation expert witnesses gave evidence that it is common for private companies to issue new shares at $1 per share;[310] and beyond a general statement that directors "should

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308 Transcript 29 November 2023 at p 76:20–31; S 1006 D2–D4 Defence at para 51D(a).

309 3BA at pp 410–414, 416–421 and 423–425.

310 KLGSL's Closing Submissions at para 71.

not unthinkingly issue shares at par",[311] H8 has not in its closing submissions seriously advanced any case that the new shares were issued at undervalue.

(c) Third, there is no evidence that the S 1006 Defendants conducted the rights issue because they knew that H8 could not afford to take up the new shares and thus intended through that exercise to dilute H8's shareholding. To the contrary, Terrence averred that it was "not an issue" for him to inject money into the Company but claimed that he had wanted to first have sight of the Company's accounts.[312]

193 However, I find that, at some point prior to POP taking up the new shares, the commercial justification for the issuance of the new shares ceased and the exercise became oppressive to H8. A recognised commercial reason for a rights issue is, where this is a reasonable option, to raise funds needed by the company: *The Wellness Group* at [186]. I am prepared to accept that this was the original purpose of the rights issue in the present case for the reason mentioned at [192(a)] above; and further, that it was a commercially justified reason since POP could not be expected to unilaterally and continually inject cash into the Company to meet the Company's financial needs.[313] However, POP ultimately decided to pay for the new shares by setting off the purchase price against its previous loans to the Company. It is unclear when exactly POP decided to do so, but once POP so proceeded, the issuance of the new shares no longer served to raise any new working capital for the Company, leaving no commercial justification for the exercise. The S 1006 Defendants argue that the

311 SLL's Closing Submissions at para 37.

312 Transcript 5 December 2023 at p 16:11–12.

313 *Cf*, SLL's Closing Submissions at para 44.

set-off of POP's purchase price for the new shares against POP's loans to the Company had the "effect" of "strengthening" the Company's balance sheet, which is a commercial reason for the issuance of the new shares.[314] I do not accept POP's present assertion of commercial justification, which seeks to rationalise POP's conduct *ex post facto*. There is no evidence that Jason and Annie thought at the material time that "strengthening" the Company's balance sheet in this manner was commercially necessary, much less evidence of *why* they thought this would be so.

194 To avoid doubt, I maintain my view that there was no dominant purpose of diluting H8's shareholding, even at this later point in time, notwithstanding that the original commercial justification for the rights issue (*ie*, to raise funds for the Company) was abandoned. While the means by which POP chose to pay for the new shares is germane to the subsistence of its original intention to raise funds, it does not bear on whether the new shares were issued with the intention of diluting H8's shareholding. Put another way, in a hypothetical scenario where POP intended to dilute H8's shareholding, POP could very well have paid moneys (rather than resort to a set-off) for the new shares. Further, the means by which POP ultimately chose to pay for the new shares does not displace the weight of the evidence (see [192] above) indicating that there was no dominant intention to dilute H8's shareholding.

195 Having said that, the two grounds set out in *The Wellness Group* at [183] for finding that a rights issue is commercially unfair (see [191] above), while probably the most common, are not meant to be exhaustive: *The Wellness Group* at [184]. In my view, the manner in which a rights issue is conducted may also lead to the conclusion that the exercise was commercially unfair to the non-

314 Transcript 28 February 2024 at p 61:5–10; KLGSL's Closing Submissions at para 63.

subscribing shareholder. In the present case, I find that the rights issue was conducted in a commercially unfair manner because of the cumulative effect of the following three factors:

(a) Jason and Annie provided no response to H8's request (through ETP's 23 March 2018 letter) for information on the Company's financial status that would have facilitated H8's understanding of the Company's need for working capital to be raised (see [183] above). In the context of POP wishing H8 to inject more funds into the Company, the request from H8 was not unreasonable, and Annie (who was in charge of the Company's financial operations) could have facilitated the provision of information. To be clear, I do not mean that this instance of non-provision of information amounts in and of itself to an act of oppression, since Terrence (who was at the time still a director of the Company) could have taken steps to find out the information for H8. However, taken in conjunction with the following factors, it added to a commercially unfair environment in which H8 was being asked to make a decision on whether to subscribe for new shares.

(b) At the 4th AGM on 23 April 2018, it was decided (by POP's majority vote) that H8 was to make a first payment of $316,537.47 by 9 May 2018, with the second payment of $283,462.53 due at a later date to be fixed (see [22(e)] above). Prior to the 4th AGM, H8 was not given notice of these timelines and was taken by surprise.[315] Further, the treatment of H8 was not even-handed as no timelines were stipulated for

315 SLL's Closing Submissions at para 48(a).

POP to make payment.[316] I accept H8's submission that these matters were unfair to H8.

(c) Lastly, POP set off the purchase price for the new shares against its loans to the Company without telling H8 it was going to do that. H8 was not given the option of setting off the approximately $193,000 owed by the Company to H8 against the price of new shares for which H8 might wish to subscribe. I do not think it is an answer to say that H8 could have suggested a set-off of its own accord. H8 clearly did not think this was an option, and POP did not share its view otherwise.

196 In summary, I find that the issuance of new shares in the Company to POP, which resulted in the dilution of H8's shareholding in the Company from 30% to 15%, was an act of oppression for two main reasons: the exercise lost, at the last, its commercial justification (see [193] above); and it was conducted in a commercially unfair manner (see [195] above).

The increase in Jason's, but not Annie's, director's fees and remuneration was excessive and oppressive

197 At the 2018 EGM, a resolution (which POP voted for and H8 voted against) was passed for Jason and Annie to receive $30,000 and $10,000 a month, respectively, with effect from 1 May 2018 (resolution 2).[317] These sums comprised $24,000 in director's fees and $6,000 in director's remuneration for Jason, and $4,000 in director's fees and $6,000 in director's remuneration for Annie.[318] Jason and Annie's directors' fees and remuneration remained at these

316 SLL's Closing Submissions at para 48(c).

317 5BA at pp 217 and 219.

318 Transcript 2 January 2024 at p 27:1–3.

levels thereafter.[319] Jason and Annie explained that while these fees and remuneration have been declared and accrued, they have not been paid out given the Company's tight cashflow situation.[320] I accept this to be the case, given that the Company had similarly conveyed to IRAS in 2022 and 2023 that the directors' fees and remuneration had not been paid,[321] and H8 does not seriously contest otherwise.

198 Prior to the 2018 EGM, Annie and Terrence were each paid a salary of $2,000 a month, which was accrued and not paid out. Jason did not receive any remuneration.[322]

199 H8 argues that the increase in Jason and Annie's directors' fees and remuneration was excessive and oppressive because: (a) the increase was without commercial justification; and (b) Jason and Annie had simultaneously failed to have the Company declare dividends "despite the fact that [the Company] remained profitable between 2018 to 2021 with a 6-figure net profit in all but one year".[323]

200 POP accepts that a policy of declaring inadequate dividends coupled with an overly generous policy of remunerating directors *might* cumulatively result in conduct that is oppressive or commercially unfair. However, POP

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319 See, *eg*, 5BA at pp 171–172 (resolution 5 passed at the Company's AGM on 15 June 2021), 208 and 211 (resolution 8 passed at the Company's AGM on 29 December 2022).

320 S 1006 D2–D4 Defence at para 59(a); 3BA at pp 14–15: Jason's AEIC at para 39; 3BA at p 95: Annie's AEIC at para 123(b).

321 5BA at p 200; Agreed Bundle of Documents Vol 1 ("1AB") at pp 165 and 166.

322 3BA at p 89: Annie's AEIC at para 105; Transcript 5 December 2023 at pp 31:29–32:6.

323 SLL's Closing Submissions at paras 125–144.

submits that, in the present case, the Company could not reasonably declare dividends because its business was not generating sufficient cash to do so. That leaves the question of whether the level of (accrued but unpaid) directors' fees and remuneration of Jason and Annie in itself amounted to oppression. POP submits that it does not as the increase in their directors' fees and remuneration was justified by the increase in their responsibilities following the departure of Terrence from the Company's board and during the COVID-19 pandemic. Even if their directors' fees and remuneration were excessive, the appropriate relief would be to reverse the relevant transactions since the fees and remuneration have not been paid out.[324]

201 I accept POP's submission that it was reasonable for the Company not to declare dividends because the Company had insufficient cash to do so during the periods referred to by H8. A summary of the retained earnings versus the actual cash balance in the bank account of the Company in the financial years from 2017 to 2020 is as follows:[325]

Financial year ending	**Retained earnings**	**Cash balance**
31 December 2017	$4.58m	$246,226
31 December 2018	$4.87m	$7,513
31 December 2019	$4.99m	$50,388
31 December 2020	$5.14m	$199,780

[324] KLGSL Closing Submissions at paras 84–89 and 93.

[325] KLGSL Closing Submissions at para 86; 3AB at pp 500–501, 358–359 and 436–437.

202 As Annie explained, the repayments of the Company's bank loans would not be reflected in the Company's profit and loss statement.[326] The monthly repayments of the principal amount of the loans plus interest were high, at about over $300,000 a month, and this meant that the Company's cash flow was not good.[327] The amount of repayments cited by Annie is corroborated by the Company's statements of cash flows, which, for example, showed that in excess of $3m of repayments were made in each of the financial years 2018 and 2019.[328] It would be "foolhardy" for the directors of a company to effect a declaration of dividends where the company is or may as a consequence of the payment of dividends become cash flow insolvent: *BTI 2014 LLC v Sequana SA and others* [2024] AC 211 at [161]. I thus accept that it was a reasonable exercise of commercial judgment by Jason and Annie (as directors) not to have caused the Company to declare dividends during the periods cited by H8, given the need to service the Company's bank loans and the Company's consequent limited cash flow.

203 I also accept that the increase in Annie's director's fees and remuneration from $2,000 a month to $10,000 a month was not excessive:

(a) It is H8's own case that Annie was in charge of the Company's finances.[329] After Terrence ceased to be a director, Annie took on overseeing the entire operations and management of the Company and

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326 Transcript 21 December 2023 at p 56:23–24; Transcript 2 January 2024 at p 5:1–2.

327 Transcript 21 December 2023 at pp 56:26–57:3.

328 3AB at p 399; Transcript 2 January 2024 at pp 8:13–10:4. See also 3AB at pp 437 and 501.

329 4BA at p 19: William's AEIC at para 33.

the dormitories at 8ER and 34KB.[330] I am satisfied that her responsibilities did increase.

(b) I further find that the increase in her responsibilities went beyond merely undertaking what Terrence had been doing. Terrence had mainly spent his time looking after the dormitory at 34KB.[331] Even then, his performance had not been satisfactory (see [178]–[179] above).[332] After he stepped down, Jason instructed Annie to take a serious approach in managing the Company as it was in a dire situation and they could not afford to make any mistakes.[333]

(c) There was a manager who was hired to handle the operations at 34KB while Terrence was still on the board of the Company. The manager was terminated due to misconduct, and in late 2018, Annie's brother was hired to take over when the manager left.[334] I accept, however, Annie's evidence that the job scope of the manager involved more manual tasks and did not negate her responsibilities which included ensuring the workers' welfare and liaising with the authorities.[335]

(d) It must also be borne in mind that the level of Annie's (increased) director's fees and remuneration has remained constant since 2018, including through the COVID-19 pandemic years during which I accept

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330 3BA at p 104: Annie's AEIC at para 157.

331 3BA at p 89: Annie's AEIC at para 102.

332 See also Transcript 2 January 2024 at pp 24:31–25:1.

333 Transcript 4 January 2024 at p 18:25–32.

334 Transcript 2 January 2024 at pp 19:7–20:4.

335 Transcript 2 January 2024 at p 24:1–22; Transcript 20 December 2023 at p 150:14–17 and p 151:7–10.

that her workload in ensuring the workers' welfare and cooperating with MOM increased even further.[336]

(e) As for H8's argument that Annie was "juggling" other directorships and so had limited time to spend on the Company,[337] I find that H8 failed to establish that any significant amount of Annie's time was taken up by other directorships. In respect of other companies to which H8's counsel referred her, she explained that for one company, her partner handled the operations, while the other companies had no operations; in contrast, she was working "full-time" at the Company.[338]

(f) In these circumstances, I would not conclude that on an objective view, the increase in Annie's fees and remuneration to $10,000 a month was excessive.

204 However, I am of the view that the increase in Jason's director's fees and remuneration from nil to $30,000 a month is excessive. In contrast to Annie, Jason did not play a hands-on role in the management of the Company.[339] While I am prepared to accept that he arranged funding for the Company at his own costs and had a vital relationship with the banks that financed the Company,[340] and that some credit should be given for that, I do not think that, on an objective view, that justifies the large increase in his director's fees and remuneration to an amount thrice that of Annie's (increased) director's fees and remuneration.

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336 Transcript 20 December 2024 at pp 149:30–150:8 and p 151:10–12.

337 SLL's Closing Submissions at para 130(a).

338 Transcript 19 December 2023 at pp 113:21–115:20.

339 Transcript 20 December 2023 at p 139:7–18.

340 KLGSL's Closing Submissions at para 88(e); Transcript 2 January 2024 at p 24:12–18.

In my view, the contributions made by Jason to the Company did not exceed those of Annie from 1 May 2018 onwards. I therefore find that the amount of Jason's director's fees and remuneration was excessive, and the charging of this excessive amount was oppressive in respect of H8. It does not matter that the fees and remuneration were not paid out. That they were accrued means that the Company would be obliged eventually to pay the same, arguably ahead of any dividends (if and when declared) payable to H8. I address at [214]–[215] below the appropriate remedy in respect of this finding.

The application of $2m of the Bridging Loan towards repaying POP was not oppressive

205 On 3 April 2020, Jason and Annie, on behalf of the Company, submitted an application to RHB for an "SME Working Capital Loan" under the Enterprise Financing Scheme supported by Enterprise Singapore.[341] By paragraph 6 of the application form, which Jason signed, Jason undertook on the Company's behalf to use the loan facility "strictly for the purpose(s) as approved by the Participating Financial Institution".[342] On 9 June 2020, the Bridging Loan in the amount of $3m was extended by RHB to the Company,[343] on terms which included that (a) the purpose of the loan was "[t]o finance the [Company's] working capital", and (b) interest would be charged at "3.75% per annum with monthly rests".[344]

206 The S 1006 Defendants do not dispute that $2m of the Bridging Loan was transferred from the Company to POP for the repayment of loans that POP

341 1AB at pp 169–176.

342 1AB at p 174.

343 3AB at pp 209–221.

344 3AB at p 214.

had made to the Company.[345] The S 1006 Defendants state that the shareholder's loans provided by POP to the Company were interest-free but repayable on demand.[346] Annie explained that POP needed money in March 2020 but had already reached the limit of its own credit facilities.[347]

207 There may be questions whether Jason and Annie had breached their duties as directors by placing POP's interests ahead of the Company's and/or by failing to act in good faith in the best interests of the Company, when they procured the Company to apply $2m of the Bridging Loan towards repayment of loans from POP. However, even *assuming* Jason and Annie had breached their fiduciary duties, a director's breach of fiduciary duties does not by itself constitute oppression of a shareholder; it is only when an injury is caused to the shareholder which is distinct from the injury caused to the company and such injury amounts to commercial unfairness that oppression is made out: *Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 at [56]; *Suying Design* at [31] and [34].

208 The question is whether H8 suffered a distinct injury as a result of $2m of the Bridging Loan being applied towards repayment of loans from POP, instead of towards the Company's working capital needs. H8 submits that: (a) the amount transferred to POP could have been used to repay the Hong Leong Loan and RHB Loan, for which the representatives of H8 were personal guarantors;[348] and (b) as the transfer to POP resulted in the Company retaining less capital, it also adversely impacted the ability of the Company to pay out

345 S 1006 D2–D4 Defence at para 51A.

346 KLGSL's Closing Submissions at para 82(c).

347 Transcript 21 December 2023 at p 90:8–28.

348 SLL's Closing Submissions at para 108(c).

dividends.[349] However, in respect of (a), H8 has not shown that the Company's ability to make the required repayments of principal and interest due on the Hong Leong Loan and RHB Loan was ever compromised (such that the guarantors of those loans were ever placed at risk) by the Company having applied $2m of the Bridging Loan towards repayment of loans from POP. In respect of (b), that is a mere assertion which H8 has not demonstrated.

209 I therefore find that H8 has not established any distinct personal injury caused to it by the application of $2m of the Bridging Loan towards repayment of loans from POP. This act thus does not amount to oppression against H8.

The allegation that Jason and Annie attempted to sell 8ER without H8's knowledge or consent is rejected

210 H8's pleaded case is that Jason and Annie attempted to sell 8ER for $20m through a listing on the CommercialGuru website in August 2023 without the consent and knowledge of H8, and that this was oppressive because: (a) the sale of 8ER would leave "no basis for [the Company's] business as a dormitory operator"; (b) the sale of 8ER would "hurt the value of [H8's] shares"; and (c) Jason and Annie's refusal to consider H8's reverse buyout offer of POP's shares in the Company made on 19 September 2023, when they no longer intended to run the business of the Company, was unreasonable.[350] In my judgment, this entire claim fails at the threshold because H8 has failed to prove that Jason and Annie attempted to sell 8ER.

211 First, I accept Annie's evidence that a real estate agent, Matthew, had gone to 8ER to pick up a cheque from her (for the sale of 34KB). He took

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349 SLL's Closing Submissions at para 108(d).

350 S 1006 SOC at para 85A.

photographs of the 8ER premises while there, and subsequently advertised 8ER for sale, without Annie's knowledge or authorisation. Annie found this out when she confronted Matthew.[351] It is illogical that Annie would have thought she could conceal a public advertisement for the sale of 8ER from H8. Further and in any event, Matthew submitted an apology letter to Annie[352] and made a statutory declaration affirming what he had told Annie.[353] There is simply no discernible reason Matthew would lie (on penalty of perjury) to assist Annie.

212 Second, H8 procured and relies on a statutory declaration by Raymond, a marketing director at ERA Real Estate Singapore, stating that Annie confirmed on a call with him on or around 23 or 24 August 2023 "that the property … was put out for sale". He texted Annie on 24 and 25 August 2023 to ask for "No.8 Workers Dormitory documents, current income, balance lease, Started Year", and Annie forwarded a URA Grant of Written Permission dated 25 November 2022 for the use of the dormitory at 8ER and the 8ER storey plans. He called Annie after receiving the documents and she told him that 8ER "was selling for [$20m]".[354] Annie's explanation was that it was Raymond who had approached her and not the other way around; she had given him only basic information like drawings; and she was just testing the market for 8ER at a $20m sale price, with no intention of actually selling 8ER.[355] She emphasised that if a "good deal" was offered such that the shareholders could "get back the investment", they would call for a shareholders' meeting, as had been done for

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351 3BA at pp 758–759: Annie's Supplemental AEIC at paras 7–10; Transcript 3 January 2024 at pp 56:12–58:5.

352 5BA at p 226.

353 5BA at pp 230–231.

354 5BA at pp 236–250.

355 Transcript 3 January 2024 at pp 59:1–62:22.

the sale of 34KB, and get the approval of the shareholders for any sale.[356] Indeed, the proceeds of any sale of 8ER (if conducted) would ultimately benefit H8 as well. In my view, the evidence in connection with Raymond does not, on a balance of probabilities, bear out that Jason and Annie were attempting to sell 8ER without H8's knowledge and consent as pleaded by H8. Notably, H8's counsel put it to Annie that she was "open to the possibility of selling",[357] which is far from Annie attempting to sell 8ER without H8's knowledge and consent. The sale of 34KB by the Company, which was conducted openly and with the agreement of both H8 and POP, provides a salutary indication that Jason and Annie would not attempt to sell 8ER clandestinely.

Conclusion on H8's oppression claims

213 In conclusion, I find that of the claims advanced by H8, only the S 1006 Defendants' acts in respect of (a) the rights issue that led to the dilution of H8's shareholding in the Company and (b) the excessive increase in Jason's director's fees and remuneration constitute oppression against H8.

Decision on the appropriate relief

Jason's director's fees and remuneration are set aside

214 Under s 216, the court has wide power to make orders with a view to bringing to an end or remedying acts of oppression: *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 at [71]. This includes, under s 216(2)(*a*), cancelling or varying any transaction or resolution. The S 1006 Defendants rightly acknowledged that if Jason's director's fees and remuneration were found to be unfair or prejudicial to H8's

356 Transcript 3 January 2024 at pp 59:29–60:3.

357 Transcript 3 January 2024 at p 62:10.

interests as a shareholder of the Company, relief could be granted to "reverse" the accrued but unpaid fees and remuneration.[358] Their counsel further submitted that the fees and remuneration should be "reversed in [their] entirety" and that it be left for the Company to determine what the appropriate level of fees and remuneration should be.[359] I accept the S 1006 Defendants' submission.

215 I therefore order that resolution 2 passed at the 2018 EGM[360] be and is hereby varied to cancel the approval for Jason to receive $30,000 a month in director's fees and remuneration with effect from 1 May 2018. Consequently, the accrual of Jason's director's fees and remuneration with effect from 1 May 2018 is reversed. It shall be for the Company to determine the appropriate level of director's fees and remuneration for Jason for the period from 1 May 2018. In making this determination, the Company shall have regard to my finding that Jason's contributions to the Company did not exceed those of Annie from 1 May 2018 onwards (at [204] above).

The issuance of 1m shares to POP in June 2018 is reversed

216 Given my finding that the rights issue amounted to oppression against H8, I order that the issuance of 1m ordinary shares in the Company to POP in June 2018 be and is hereby cancelled. Consequently, H8 retains a 30% shareholding in the Company, and as acknowledged by the parties' counsel, POP's payment for the 1m shares is likewise reversed (*ie*, the loans from POP to the Company, against which POP had set off the purchase price for the 1m shares, will remain due from the Company to POP).[361]

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358 KLGSL's Closing Submissions at para 89.

359 Transcript 28 February 2024 at pp 76:14–77:4.

360 5BA at pp 217 and 219.

361 Transcript 28 February 2024 at pp 51:24–53:4.

POP shall buy out H8's shares in the Company

217 H8 seeks an order that POP purchase H8's shareholding in the Company on terms that (a) H8's shares be valued as at the date of the buyout order;[362] (b) no discount for lack of marketability or lack of control should be applied in the valuation because H8 has been "compelled to sell its shares" and POP will have complete control of the Company after buying H8's shares;[363] and (c) "the valuation of [H8's] shares should take into account the wrongful dilution effected by [POP]".[364] POP submits that a buyout should not be ordered as that would be "a windfall to H8 and its shareholders, who have reaped the profit from the acquisition of RIC Marine and who have done nothing to turn around [the Company]".[365]

218 I consider the following principles to be relevant in deciding whether a buyout should be ordered in the present case, and if so, on what terms.

219 Section 216(2)(*d*) expressly empowers the court to make a buyout order. A buyout order is appropriate in circumstances where there is no residual goodwill or trust left between the parties: *Dystar Global Holdings (Singapore) Pte Ltd v Kiri Industries Ltd and others and another suit* [2018] 5 SLR 1 ("*Dystar*") at [278] (where the relief ordered was affirmed in *Senda International Capital Ltd v Kiri Industries Ltd and others and another appeal* [2019] 2 SLR 1 at [140]–[141]).

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362 SLL's Closing Submissions at para 179.

363 Transcript 28 February 2024 at p 51:17–18; SLL's Closing Submissions at para 189; S 1006 SOC at prayer (3).

364 SLL's Closing Submissions at para 192; S 1006 SOC at prayer (4).

365 KLGSL's Closing Submissions at para 93.

220 In making a buyout order, the court has a wide and unfettered discretion to reach a just and equitable result: *Dystar* at [279]; *Poh Fu Tek and others v Lee Shung Guan and others* [2018] 4 SLR 425 at [31]; *Koh Keng Chew and others v Liew Kit Fah and others* [2018] SGHC 262 ("*Koh Keng Chew (No 3)*") at [9]. The entire purpose of making a buyout order is to ensure that the shares are sold at a fair value, and the quantification of that value would have to take into account all the circumstances of the case in ensuring that the minority shareholder is not over-compensated: *Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and another v Ayaz Ahmed and others and other appeals* [2024] SGHC(A) 17 ("*Mustaq Ahmad*") at [382]. Taking into account the equities, the court may adjust the basis or date of the valuation of the shares and/or direct the imposition of a discount for minority shareholding: *Mustaq Ahmad* at [377], citing Margaret Chew, *Minority Shareholders' Rights and Remedies* (LexisNexis, 3rd Ed, 2017) at para 4.265. The court need not be bound by what the parties have submitted: *Mustaq Ahmad* at [382].

221 Where a company is a going concern, its shares ought to be valued as of the date of the buyout order as this would best reflect the value of the shares: *Koh Keng Chew and others v Liew Kit Fah and others* [2018] 3 SLR 312 at [6]–[9]; *Dystar* at [279].

222 There is no presumption as regards the application or non-application of a discount for lack of control (as the term is used in *Liew Kit Fah and others v Koh Keng Chew and others* [2020] 1 SLR 275 ("*Liew Kit Fah*") at [45]) in valuing a minority shareholder's shares under a s 216(2) buyout order: *Liew Kit Fah* at [48], citing *Thio Syn Pyn v Thio Syn Kym Wendy and others and another appeal* [2019] 1 SLR 1065 ("*Thio Syn Pyn*") at [19]. Whether or not a discount is to be factored into the valuation depends on the court's assessment of the

relative equities of the case: *Thio Syn Pyn* at [19]; *Koh Keng Chew (No 3)* at [9]. In this connection:

(a) A free election by the minority shareholder to sell its shares may, albeit not necessarily, mandate applying a discount in contrast to a situation where there is no choice on the part of the minority shareholder, which would justify not applying the discount: *Liew Kit Fah* at [48], citing *Thio Syn Pyn* at [19].

(b) Where the purchasing shareholder would gain significantly increased control over the company after the buyout, that may justify an order of no discount: *Thio Syn Pyn* at [38]. In *Thio Syn Pyn*, an order of no discount was considered justified as the majority shareholders would control 76% of the shareholding in the company (over the 75% threshold necessary to pass special resolutions), up from 56%, after the buyout (at [38]).

(c) On the other hand, factors the court may consider in *ordering a discount* in the valuation of shares to reflect a minority shareholding include: (i) where many of the oppression claims of the minority shareholder were not successful; (ii) where the minority shareholder had acquiesced over the years to the majority's mode of management and did not contribute in any substantial or meaningful way to the growth of the business; and (iii) the contributions of the minority shareholder towards the company's business: *Mustaq Ahmad* at [378]. In *Mustaq Ahmad*, the Appellate Division of the High Court cited *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*") as an example where the valuation of the shares was ordered to be discounted to reflect a minority shareholding based on the considerations at (i) and (ii) above (see *Mustaq Ahmad* at [378]). In *Lim*

Chee Twang, the majority shareholder held a 60% shareholding. Notwithstanding that she would become the sole shareholder following the buyout of the minority's 40% shareholding, the court ordered the valuation of the latter to be discounted to reflect a minority shareholding (see *Lim Chee Twang* at [150(a)]).

(d) What emerges clearly from the case law is that the court has a wide discretion in deciding whether to order a discount or no discount for lack of control in valuing a minority shareholder's shares so as to achieve an outcome that is fair, just and equitable as between the parties in the circumstances of the case.

223 A discount for lack of marketability refers to the difficulty of selling shares in a private company as a result of the typical transfer restrictions and narrowness of the market that apply in this context: *Liew Kit Fah* at [46]; *Thio Syn Kym Wendy and others v Thio Syn Pyn and another* [2018] SGHC 54 ("*Thio Syn Kym*") at [21]. This difficulty (and correspondingly, the discount) arises whether the shares are majority or minority shares. Lack of marketability is industry-specific and it is appropriate to leave it to the expertise of an independent valuer to decide whether to apply the lack of marketability discount in valuing the shares to be sold: *Liew Kit Fah* at [59]; *Thio Syn Kym* at [32].

224 Applying these principles to the present case, I find that it is appropriate to order POP to purchase H8's 30% shareholding in the Company (following the cancellation and reversal orders I have made at [216] above) given that the parties' relationship has irretrievably broken down. It is in neither party's interest for their association via the Company to continue.

225 As the parties agree that the Company is a going concern,[366] I consider that the Company's shares should be valued as at the date of the buyout order made in this judgment and on a going concern basis.

226 I further take the view that it is appropriate for a discount for lack of control to be applied in the valuation of H8's minority shareholding, having regard to the equities in the present case. Specifically:

(a) First, in my view, the beginning of the breakdown in the parties' relationship can be traced to the emergence of the fraud that William, Terrence and Jieling had perpetrated on POP by misrepresenting the capacity of the 34KB dormitory to induce POP to purchase shares in the Company as part of the joint venture with H8. The gradual emergence of the truth from late 2017 into 2018 marked the deterioration of the relationship between H8 and POP's respective representatives (see [70]–[72] and [115] above). Although I have found two acts of oppression on the part of POP (*viz*, the rights issue and the excessive increase in Jason's director's fees and remuneration), I do not think these matters would necessarily have rendered the parties' relationship irreparable, had William, Terrence and Jieling not perpetrated and been exposed for their fraudulent misrepresentation to POP. To be clear, I am *not* suggesting that the wrong perpetrated by William, Terrence and Jieling on POP excuses the two acts of oppression committed by POP. Rather, my point is that it is in light of the irretrievable breakdown in the parties' relationship that I have considered a corporate divorce by way of ordering a buyout of H8's shares to be appropriate. Given that H8's

366 Transcript 30 November 2023 at pp 82:8–85:3; Transcript 5 December 2023 at p 58:13–15; Transcript 7 December 2023 at p 97:5–16; Transcript 18 December 2023 at pp 56:26–57:5.

shareholders, *ie*, William, Terrence and Jieling, were instrumental in the breakdown of that relationship, I do not think it would be equitable for them to profit from a result to which their misdeeds contributed.

(b) Second, H8 is not an unwilling seller. As early as 2016 and 2017, William and Terrence were already looking to exit the Company (see [176] above). H8 in fact complains that an offer by POP to buy over H8's shares in the Company in 2020 (when H8's shareholding was only 15%) was not followed through.[367] H8's willingness to sell its shares on the basis of its post-rights issue diluted 15% stake shows an eagerness to divest of its shareholding. This is unsurprising given that William had already made a gain by selling 70% of the Company to POP based on 8ER being valued at $28m,[368] although just prior to that, the Company had acquired RIC Marine, the company that owned 8ER, for only $16.3m (see [18] above).[369] A common rationale for not applying a minority discount when making a buyout order is that the minority shareholder has not elected freely to sell his shares: see *Thio Syn Pyn* at [19]. In the reality of the present case, this rationale applies with far less force. I do not think H8 can properly be regarded as a minority shareholder that is being unwillingly compelled by a court order to sell its shares. In my assessment, the buyout order fulfils H8's long-held wish for POP to buy H8 out of the Company, and it is only equitable that the discount for lack of control should apply in these circumstances.

(c) Third, although I found two instances of oppressive conduct on POP's part, a greater number of the oppression claims pleaded by H8

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367 SLL's Closing Submissions at para 96; 5BA at p 126.

368 3BA at p 177.

369 KLGSL's Closing Submissions at paras 8–10 and 14–15.

were either abandoned[370] or not established (see [175], [201], [203], [209] and [210] above). Further, in the said two instances, I find that POP's actions had not been specifically directed at worsening H8's position as a shareholder to compel H8 to sell its shares. POP's conduct does not warrant ordering no discount for lack of control.

(d) Fourth, H8 has not contributed in any substantial or meaningful way to the Company's business. Among other things:

(i) William and Terrence's conduct in housing more than 130 workers at the 34KB dormitory prior to 2018, in contravention of URA regulations, landed the Company in trouble with the authorities (see [115(f)] above).

(ii) Since 2016, H8 has advanced funds of only approximately $193,000 to the Company to meet its financial needs (see [192(a)] above), in contrast to POP which advanced several million dollars to the Company over the years.[371]

(iii) I accept Jason and Annie's unchallenged evidence that during the intensive period of restrictions imposed on foreign worker dormitories during the COVID-19 pandemic, they were the ones who stepped up efforts to cooperate with the authorities and care for the workers housed at the Company's dormitories.[372] There was no suggestion that H8's representatives did anything

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370 *Eg*, S 1006 SOC at paras 39–43, 61–68, 69–78, 79–80 and 83–84; Transcript 28 February 2024 at pp 2:24–5:3.

371 3BA at pp 410–414, 416–421 and 423–425; KLGSL's Closing Submissions at Annex B: Letter from KLGSL to SLL dated 23 February 2023 at pp 21–33, 50, 55–57, 61 and 73–74.

372 Transcript 20 December 2023 at pp 149:30–150:8, p 151:10–12 and pp 151:25–152:5; Transcript 4 January 2024 at p 35:5–11.

to assist with the Company's dormitory operations during those times of crisis.

(iv) H8 (through Terrence) was pressuring POP to agree to sell 34KB for $7.25m in 2023, although a sale at that amount would not have covered the RHB Loan and the Company's expenses. It was only because Annie held out and pressed for a higher price that 34KB was eventually sold for $9m.[373]

I add that H8's non-contribution to the Company cannot be simplistically characterised as a function of being allegedly "excluded from management".[374] For example, H8 could have contributed funds to the Company to meet its financial needs, as a shareholder. H8's representatives could also have made humanitarian contributions towards advancing the welfare of the workers housed at the 34KB and 8ER dormitories during the COVID-19 pandemic; they did not have to be part of the "management" of the Company to do so. In my view, H8's overall conduct in the course of the joint venture reflected that it was simply not vested in the Company's business, its representatives having been desirous of exiting the Company since 2016–2017. This warrants the imposition of the discount for lack of control.

(e) Finally, while POP will wholly own and control the Company following the buyout of H8's shares, I find that this factor is outweighed by all the other factors enumerated at [(a)]–[(d)] above, and on balance, does not warrant ordering no discount for lack of control.

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373 3BA at p 107: Annie's AEIC at paras 166–167; Transcript 5 December 2023 at pp 41:29–42:15; Transcript 4 January 2024 at pp 24:25–25:2.

374 SLL's Closing Submissions at p 28, sub-heading VII.C.

227 As for the discount for lack of marketability, I leave it to the independent valuer to be appointed to determine if such a discount should be applied.

228 In consequence, I make the following orders:

(a) POP shall purchase H8's 30% shareholding in the Company at a fair value, after the determination referred to in [(b)] below.

(b) The price of the shares is to be determined by an independent valuer.

(c) In valuing the shares, the independent valuer shall:

(i) value the shares as at the date of this judgment;

(ii) utilise such valuation approach(es) and method(s) as are most suitable having regard to the nature of the Company's business and that it is a going concern;

(iii) apply a discount for lack of control;

(iv) consider whether to apply a discount for lack of marketability, and to apply such a discount if the independent valuer deems appropriate;

(v) take into account all outstanding loans advanced by the directors and shareholders (be it H8 or POP) to the Company; and

(vi) take into account all directors' fees and remuneration that are due and unpaid (be it to Terrence, Jason (further to my order at [215] above) or Annie).

(d) The independent valuer shall be appointed by agreement between the parties within 21 days hereof, failing which the parties shall seek directions from the court with a view to the court making the appointment.

(e) The parties are to make available to the independent valuer all relevant records, bank statements, ledgers, accounts, papers and any other documents or information required by the independent valuer.

(f) The costs of the independent valuer are to be shared by H8 and POP equally.

(g) H8, POP, the Company and the independent valuer have liberty to apply for further orders or directions, if necessary.

229 For completeness, I consider the order at [228(f)] above to be fair and appropriate for reasons similar to those in [226(a)]–[226(d)] above.

No order is made for an audit of the Company

230 H8's pleaded prayer for an audit of the Company was framed and made in the following context:[375]

[375] S 1006 SOC at prayers (1)–(3).

> **AND [H8] PRAYS AS FOLLOWS:**
>
> (1) An order that an independent financial audit of [the Company's] financial accounts be conducted to ascertain if it is a going concern.
>
> (2) An order that [the Company] be wound up by the Court pursuant to section 216(2)(f) of the Act if it is found not to be a going concern.
>
> (3) In the event that [the Company] is found to be a going concern, an order that the Defendants, or such of the Defendants as found to have oppressed [H8] purchase all [H8's] shares in [the Company], …
>
> [emphasis in original]

231 As is evident, H8's pleaded basis for seeking an order for an audit of the Company was to ascertain if the Company is a going concern. In turn, H8's pleaded basis for ascertaining if the Company is a going concern was to determine if H8 should pursue a winding-up order (if the Company is not a going concern) or a buyout order (if the Company is a going concern).

232 I decline to order an audit of the Company.

233 First, *all* of H8's representatives accepted at trial that the Company is a going concern.[376] In that vein, H8 makes no mention of a winding-up order in its closing submissions, which focus solely on the buyout relief. The pleaded basis for H8's prayer for an audit is thus plainly unnecessary, since H8 is already satisfied that the Company is a going concern and that a buyout order is the appropriate relief that it wishes to pursue. Indeed, in oral closing submissions, H8's counsel stipulated that H8 was "asking for a buyout in any case".[377]

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376 Transcript 30 November 2023 at pp 82:8–85:3; Transcript 5 December 2023 at p 58:13–15; Transcript 7 December 2023 at p 97:5–16.

377 Transcript 28 February 2024 at p 47:22–23.

234 Second, H8 has effectively shifted its case in its closing submissions, now seeking an audit due to alleged "concerns" over the state of the Company's financial affairs arising from certain alleged conduct of Jason and Annie.[378] This is substantively contrary to H8's pleaded basis for seeking an audit of the Company. I do not think it would be fair to entertain H8's case shift and I make no findings on H8's allegations against Jason and Annie.

235 Indeed, it appears that at least some of H8's "concerns" stem from its own inability to understand the financial documents with which it was provided by the Company. For example, H8 argues that:[379]

> While Annie proceeded to take the Court on an expedition to find out where the repayments of term loan can be found within the Company's documents, the fact remains that there are item(s) that may affect the view of the Company's cashflow but cannot be found in the financial reports of [the Company]. …

236 However, Annie explained that the loan repayments made to RHB could be found in the general ledgers of the Company that had been provided to H8. It then transpired that H8 had printed the Excel file of the general ledgers provided to it in a manner which did not capture all the information in the file and hence H8 could not make sense of its own printed document.[380] That was hardly the fault of Annie, and H8's criticism of her does not fairly represent what transpired at trial.

237 Another untenable submission made by H8 in seeking the audit, which I do not entertain, is the insinuation that the proceeds from the sale of 34KB had not been applied towards repayment of the Company's loans from RHB,

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378 SLL's Closing Submissions at paras 164–175.

379 SLL's Closing Submissions at para 167.

380 Transcript 3 January 2024 at pp 11:4–14:31, pp 68:4–70:15 and p 80:1–19.

contrary to the approval at the Company's Extraordinary General Meeting on 7 June 2023 for the proceeds to be used for this purpose.[381] This point was never even canvassed at trial, and as the S 1006 Defendants' counsel put it, 34KB could not logically have been sold without the mortgage of 34KB being discharged by repayment of the loans from RHB.[382] H8's counsel eventually conceded in oral closing submissions that he would proceed without this point.[383]

238 Third, I find that POP had never opposed the conduct of an audit on the Company. On 17 April 2019, William sent an e-mail to Annie stating H8's request for "certified audited financial reports".[384] On 22 April 2019, Annie replied to William explaining that the Company was exempted under the applicable criteria from having its accounts audited. She nevertheless provided a quote for audit works that she had obtained and sought William's confirmation that H8 was prepared to bear the cost of the requested audit so that she could proceed to arrange for it.[385] On 22 April 2019, William replied that the cost of obtaining audited financial statements should be borne by the Company and not by its shareholders.[386] The matter proceeded no further. In cross-examination, Annie explained, in my view not unfairly, that the Company should not have to incur the additional cost of producing audited financial statements when it was not legally required to do so. She had no issues with assisting H8 to obtain an

381 SLL's Closing Submissions at paras 171–173.

382 Transcript 28 February 2024 at p 68:13–28.

383 Transcript 28 February 2024 at pp 7:30–9:18.

384 5BA at p 39.

385 5BA at pp 37–38.

386 5BA at p 37.

audited report if H8 paid for the cost.[387] That being the case, it is within H8's means to procure an audit of the Company if it wishes, and there is no reason that this has to be ordered by the court.

239 Fourth, in oral closing submissions, after multiple shifts, H8's counsel decided to take the position of asking for an "expanded scope" of any buyout order for the valuer to also perform a "limited audit".[388] I see no reason for such an order. In addition to the points I have made at [234]–[238] above, given the orders I have made at [228(c)], [228(e)] and [228(g)] above, it is open to the independent valuer to seek clarity on areas of the Company's financials over which he/she has any doubt when undertaking the valuation of H8's shares.

Conclusion

240 In summary, in respect of S 27, I find the S 27 Defendants jointly and severally liable (a) in the tort of deceit as claimed by POP, and consequently, (b) to pay damages to POP assessed at $3.5m. I will hear the parties on the interest to be ordered on the damages awarded.

241 In respect of S 1006, I find the S 1006 Defendants liable for oppression in respect of (a) the rights issue that led to the dilution of H8's shareholding in the Company and (b) the excessive increase in Jason's director's fees and remuneration. I order the reversal of the transaction by which 1m ordinary shares in the Company were issued to POP in June 2018, as well as the reversal of Jason's accrued director's fees and remuneration since 1 May 2018. I further order that POP purchase H8's 30% shareholding in the Company on the terms set out in [228] above.

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387 Transcript 2 January 2024 at p 33:5–14.

388 Transcript 28 February 2024 at p 49:7–14.

242 I will hear the parties on the costs of both actions.

Kristy Tan
Judicial Commissioner

Siraj Shaik Aziz and Walter Ferix Silvester (Silvester Legal LLC) for the plaintiff in S 1006 and the first to fifth defendants in S 27;
Sim Chong and Chen Sixue (Sim Chong LLC) for the first defendant in S 1006;
Narayanan Sreenivasan SC, Tan Kai Ning Claire and Joseph David Nayer (K&L Gates Straits Law LLC) for the second to fourth defendants in S 1006 and the plaintiff in S 27.