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

[2024] SGHC 277

Suit No 103 of 2017

Between

ACE Spring Investments Ltd

… Plaintiff

And

(1) Balbeer Singh Mangat
(2) Sirjit Gill

… Defendants

And Between

(1) Balbeer Singh Mangat
(2) Sirjit Gill

… Plaintiffs in counterclaim

And

(1) Tembusu Growth Fund III Ltd
(2) ACE Spring Investments Ltd
(3) Eric Alfred Schaer
(4) Nicolas Kim-Hoang Nguyen
(5) Qualgro Pte Ltd
(6) Jagdish Murli Chanrai

… Defendants in counterclaim

JUDGMENT

[Tort — Conspiracy — Unlawful act — Duress]
[Tort — Conspiracy — Unlawful act — Undue influence]
[Tort — Conspiracy — Unlawful act — Breach of fiduciary duties]
[Tort — Conspiracy — Unlawful act — Breach of fiduciary duties — Self-dealing]
[Tort — Conspiracy — Unlawful act — Unlawful reliance on a purported resolution to pass other resolutions]
[Tort — Conspiracy — Lawful act — Predominant intention to injure]
[Tort — Conspiracy — Combination]
[Tort — Conspiracy — Damages]
[Tort — Misrepresentation — Fraud and deceit]

TABLE OF CONTENTS

ACE Spring Investments Ltd
v
Balbeer Singh Mangat and another

[2024] SGHC 277

General Division of the High Court — Suit No 103 of 2017
Chan Seng Onn SJ
31 January, 1–3, 7–10, 13–17, 21–24, 28 February, 1–3 March, 9–13, 16–20, 30–31 October, 1–2 November 2023, 2–4, 9, 11–12 January, 15 May, 24 June 2024

28 October 2024 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 A conspiracy can take many forms. In the present case, the plaintiffs-in-counterclaim ("PICs") allege that the six defendants-in-counterclaim ("DICs") mounted a grand conspiracy against them, through various acts spanning several years, leading to their financial ruin. Before the material events, the PICs were directors and shareholders of a not insignificant company. At the end of it all, the PICs had been removed from their directorships and declared bankrupt and the company had been placed in liquidation. The essential question of this case is whether the DICs should be held responsible for this unfortunate tale.

Facts

Parties

2 The first and second PICs are Mr Balbeer Singh Mangat ("Mr Mangat") and Mdm Sirjit Gill ("Mdm Gill") respectively. They were directors of FTMS Holdings (S) Pte Ltd ("FTMS") until 21 August 2018.[1] FTMS was a holding company incorporated in 1991[2] for a group of companies set up in 1986 to carry out a business related to training and education, particularly professional accountancy education.[3]

3 The first DIC is Tembusu Growth Fund III Ltd ("Tembusu"). Tembusu Partners Pte Ltd ("Tembusu Partners") was the fund manager of Tembusu at the material time.[4] Mr Andy Lim is the Chairman of Tembusu Partners and was one of the five members of Tembusu's investment committee.[5] At the material time, Mr Jonathan Ang ("Mr Ang") was a senior associate at Tembusu Partners and was tasked with managing Tembusu's investment in FTMS.[6] Mr Ang reported to Mr Andy Lim, one Ms Emily Goh and Tembusu's investment committee.[7] Mr Ang was a director of FTMS from 11 November 2016[8] to 9 April 2017.[9]

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1 Affidavit of Evidence in Chief ("AEIC") of Balbeer Singh Mangat dated 9 May 2022 ("AEIC Mangat") at para 18.

2 AEIC of Jagdish Murli Chanrai dated 9 May 2022 ("AEIC Chanrai") at p 133.

3 AEIC Mangat at paras 13–17.

4 AEIC of Andy Lim dated 3 January 2023 ("AEIC Andy Lim") at paras 1, 7.

5 AEIC Andy Lim at para 7.

6 AEIC of Ang Yong Sheng, Jonathan dated 6 May 2022 ("AEIC Ang") at para 6.

7 Transcript 13 October 2023 at p 121 lines 15–18.

8 AEIC Ang at para 105(a).

9 18AB347; AEIC Ang at paras 197–198.

4 The second DIC is ACE Spring Investments Ltd ("ACE"). It is not disputed that ACE is a company incorporated in the British Virgin Islands ("BVI"). While ACE initially participated in these proceedings and even filed an affidavit of evidence-in-chief (of one Mr Peter John Band ("Mr Band")), ACE ceased to participate from or around July 2022 onwards. ACE's previous counsel filed an application to discharge themselves *vide* HC/SUM 2566/2022 on 13 July 2022 on the ground that Mr Band, a director and secretary of ACE, informed them that "ACE will be discharging [the counsel] with immediate effect".[10] This application was heard and granted on 21 July 2022. Since then, ACE has been absent and unrepresented.

5 The third and fourth DICs are Mr Eric Alfred Schaer ("Mr Schaer") and Mr Nicolas Kim-Hoang Nguyen ("Mr Nguyen"), respectively. Mr Schaer was appointed director of FTMS on 16 December 2016.[11] Mr Nguyen was appointed director of FTMS on 19 December 2016,[12] before being removed soon after, and subsequently reappointed on 18 April 2017.[13] They have not entered appearance in this suit and were absent and unrepresented at trial.

6 The fifth DIC is Qualgro Pte Ltd ("Qualgro"). Qualgro is a venture capital fund.[14] Mr Eang Heang Chhor ("Mr Chhor") is the founder and manager partner of Qualgro Partners Pte Ltd, the fund manager of Qualgro.[15] Mr Jason

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10 Affidavit of Wee Heng Yi Adrian dated 13 July 2022 at para 3(a), p 6.

11 10AB221.

12 10AB357.

13 18AB344–18AB345.

14 AEIC of Eang Heang Chhor dated 9 May 2022 ("AEIC Chhor") at para 4.

15 AEIC Chhor at para 1.

Edwards Glenn ("Mr Edwards") was also a fund manager of Qualgro from November 2015 to 31 March 2020.[16]

7 The sixth DIC is Mr Jagdish Murli Chanrai ("Mr Chanrai"). Mr Chanrai became a shareholder of FTMS sometime in 2011 and was appointed a director of FTMS on 28 March 2011.[17]

8 For ease of reference, I shall refer to Qualgro and Tembusu collectively as the "Lenders".

Background to the dispute

Qualgro Loan Agreement

9 On 14 September 2015, FTMS, the PICs and Qualgro entered into a loan and investment agreement ("Qualgro Loan Agreement") whereby Qualgro would (a) extend a loan of US$3m to FTMS which was to be secured by (i) a charge over Mr Mangat's and Mr Chanrai's shares in FTMS, (ii) a guarantee issued by the PICs ("Qualgro Guarantee"), and (iii) a debenture over all of the assets of FTMS; and (b) be issued and allotted ordinary shares representing 3% of the shareholding in FTMS for a consideration of S$1.[18] The loan of US$3m was disbursed to and received by FTMS on 15 September 2015.[19] A few features of the Qualgro Loan Agreement bear highlighting, in anticipation of their relevance to the parties' submissions:

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16 AEIC of Edwards Jason Glenn dated 8 June 2022 ("AEIC Edwards") at para 1; AEIC Chhor at para 6.

17 AEIC Chanrai at para 28.

18 3AB127–3AB154.

19 3AB120.

(a) Under cl 1.1 of the Qualgro Loan Agreement, the repayment date of the loan was 31 August 2018;[20]

(b) Pursuant to cl 2.2 of the Qualgro Loan Agreement, the loan was to be used for (i) repaying a prior loan of US$1m made by Mr Chhor to FTMS (including accrued interest and a redemption premium) (see below at [11]); (ii) purchasing a 45% equity stake in FTMS Training Systems (Hong Kong) Limited (approximately US$220,000); (iii) repaying creditors and for working capital purposes (approximately US$1,250,000); and (iv) repayment of loans (approximately US$530,000).[21]

(c) Under cl 5 of the Qualgro Loan Agreement, the interest rate was 6% per annum, but would be increased to 9% per annum if certain circumstances materialised. The accrued interest was to be paid biannually on 30 June and 31 December, and on the repayment date, *ie*, 31 August 2018. Apart from the accrued interest, a redemption premium of 6% per annum on the loan was to be payable on the repayment date.[22] In short, the internal rate of return of the loan was conceptualised to be at least 11.55% per annum over a three year period (see Annex 1: The payment obligations under the agreements).

(d) With respect to the share issue of 3% to Qualgro, cl 7.2 of the Qualgro Loan Agreement allowed Qualgro to force FTMS to buy back the shares at a price determined with reference to the earnings before

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20 3AB131.

21 3AB130, 3AB133.

22 3AB133–3AB134.

interest, tax, depreciation and amortisation ("EBITDA") of the FTMS group.[23]

(e) Clause 8 of the Qualgro Loan Agreement provided Qualgro the right to convert all or part of the loan and the redemption premium to ordinary shares in FTMS at specified points in time. The conversion price of the shares would be determined with respect to either the price of new shares previously issued by FTMS or with reference to the EBITDA of the FTMS group.[24]

(f) Under cl 10.1.8 of the Qualgro Loan Agreement, FTMS agreed that it "shall not incur any Debt (save for Permitted Indebtedness) without the prior written consent of [Qualgro]. [FTMS] shall use at least fifty (50) percent of the proceeds of any Permitted Indebtedness to repay existing Debt".[25] "Permitted Indebtedness" was defined under cl 1.1 of the Qualgro Loan Agreement as debt of up to US$4m excluding the loan.[26]

(g) Under cl 11.1.3 of the Qualgro Loan Agreement, the breach of any terms of the Qualgro Loan Agreement and/or the security documents – which included the Qualgro Guarantee (see below at [10]) – constituted an event of default.[27]

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23 3AB134.

24 3AB135.

25 3AB138.

26 3AB131.

27 3AB140.

10 Alongside the Qualgro Loan Agreement, on 14 September 2015, Qualgro and the PICs entered into a deed of guarantee and indemnity, *ie*, the Qualgro Guarantee, under which the PICs jointly and severally guaranteed and indemnified Qualgro in respect of all sums of money owing and remaining unpaid by FTMS under the Qualgro Loan Agreement.[28] Clause 3.1 of the Qualgro Guarantee imposed on the PICs a negative undertaking in relation to their house at Cable Road, including the obligation not to sell or cause to be sold, or create or permit to subsist or be created any mortgage, charge, pledge or other security interest over the whole or any part of their house.[29]

11 Prior to the Qualgro Loan Agreement, on or around 27 July 2015, Mr Chhor extended a personal loan to FTMS of US$1m at an interest rate of 12% per annum (see above at [9(b)]).[30] On 18 September 2015 (after the Qualgro Loan Agreement), the principal of the personal loan provided by Mr Chhor, *ie*, US$1m, was repaid. An interest payment of US$17,755 was made on 23 September 2015, in full and final settlement of the personal loan.[31]

12 At the time of the Qualgro Loan Agreement, FTMS had a total outstanding loan amount of S$13,890,500, of which S$3,081,000 were shareholder loans by Mr Mangat and Mr Chanrai.[32]

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28 3AB158.

29 3AB163.

30 AEIC Chhor at para 15.

31 AEIC Chhor at para 15.

32 3AB152–3AB153.

Tembusu Loan Agreement

13 On 15 October 2015, FTMS, the PICs and Tembusu entered into a loan agreement ("Tembusu Loan Agreement") whereby Tembusu would extend a loan of S$4,500,000 to FTMS which was to be secured by (a) a charge over Mr Mangat's and Mr Chanrai's shares in FTMS, (b) a guarantee issued by the PICs ("Tembusu Guarantee"), and (c) a debenture over all of the assets of FTMS.[33] A few features of the Tembusu Loan Agreement bear highlighting as well:

(a) Under cl 1.1 of the Tembusu Loan Agreement, the repayment date of the loan was 30 months from the drawdown date, *ie*, 15 April 2018.[34]

(b) Under cl 5 of the Tembusu Loan Agreement, the interest rate was 6% per annum, but would be increased to 9% per annum if the same circumstances as set out in the Qualgro Loan Agreement materialised (see above at [9(c)]). The accrued interest was to be paid at six-month intervals after the drawdown date and the final repayment date. This meant that the first interest payment was due on 15 April 2016. Apart from the accrued interest, a redemption premium of 11% per annum on the loan was to be payable on the repayment date.[35] In short, the internal rate of return of the loan was conceptualised to be at least 16.38% per annum over a 30-month period (see Annex 1: The payment obligations under the agreements).

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33 3AB340–3AB374.

34 3AB346.

35 3AB349.

(c) In terms of the obligations placed on FTMS, cl 3.2 read with Schedule 2 of the Tembusu Loan Agreement set out the conditions subsequent which included the repayment of loan principal payments listed in Schedule 5 of the Tembusu Loan Agreement within 30 days of the drawdown date, *ie*, by 15 November 2015.[36] Similarly, cl 10.1.9 of the Tembusu Loan Agreement required the reduction of FTMS's existing loans listed in Schedule 4 of the agreement,[37] while cl 10.1.11 of the agreement required the repayment of a loan of S$2.5m from Dolphin One Pte Ltd ("Dolphin Loan") by no later than July 2016 and the full release of the security supporting that loan by September 2016.[38]

(d) Clause 11.1 of the Tembusu Loan Agreement set out the events of default which include:[39]

(i) the non-payment of any sums due under the Tembusu Loan Agreement (cl 11.1.1);

(ii) the breach of any term of the Tembusu Loan Agreement or the associated agreements relating to the share charge, the Tembusu Guarantee and the debenture (cl 11.1.3);

(iii) the cross-default by FTMS in relation to its other loans (cl 11.1.4); and

(iv) the insolvency of FTMS (cl 11.1.7).

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36 3AB348, 3AB365, 3AB373.

37 3AB355.

38 3AB343, 3AB355.

39 3AB356–3AB357.

There was no cure period with respect to cl 11.1.3 (in relation to the breach or failure to comply with certain clauses of the Tembusu Loan Agreement such as cl 3.2 concerning the conditions subsequent for the repayment of loans and cl 10.1.11 concerning the Dolphin Loan).[40] Clause 11.4 of the Tembusu Loan Agreement set out the relevant cure periods. Clause 11.5 prescribed that if the event of default was not cured within the relevant cure period or if there was no cure period, the principle amount of the loan plus the default redemption premium plus any accrued default interest would be immediately due and payable, and Tembusu would be entitled to exercise all its rights under the associated agreements relating to the share charge, the Tembusu Guarantee and the debenture. Under cl 11.6, the default redemption premium was set at an amount such that the overall loan would achieve an internal return rate of 25% per annum.[41]

Intercreditor Deed

14 On the same day that the Tembusu Loan Agreement was executed, *ie*, 15 October 2015, an intercreditor deed was entered into by Qualgro, Tembusu and FTMS ("Intercreditor Deed").[42] Pursuant to cl 2.1 of the Intercreditor Deed, the debts of Tembusu and Qualgro were ranked *pari passu* in right and priority of payment.[43] Clause 3.1 of the Intercreditor Deed obligated the Lenders, *ie*, Tembusu or Qualgro, as the case may be, to give written notice to the other lender upon the occurrence of an enforcement event as defined in the Qualgro

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40 3AB358.

41 3AB358.

42 4AB41–4AB52.

43 4AB45.

Loan Agreement and/or the Tembusu Loan Agreement. In the same spirit, cl 3.5 set out Tembusu's and Qualgro's agreement that "if any Lender wishes to take any Enforcement Action, the other Lender will co-operate and give reasonable assistance to the Lender taking Enforcement Action."[44]

Tembusu's default letters

15 On 6 May 2016, Mr Chong Fang Siong ("Mr Chong") of FTMS sent an e-mail to Tembusu stating that FTMS's cash flow position was affected, and thus it projected to settle the first interest payment to Tembusu of S$135,000 (that was due on 15 April 2016) plus the additional late interest by 20 May 2016.[45] Later on the same day, Mr Ang of Tembusu replied to Mr Chong and Mr Mangat with a notice from Tembusu.[46] The notice stated that FTMS's default in the payment of interest that was due on 15 April 2016 constituted an event of default under cl 11.1.1 of the Tembusu Loan Agreement and that:[47]

> 3. We also note that a number of other Events of Default pursuant to Clause 11.1 of the [Tembusu] Loan Agreement have occurred, including but not limited to the following:-
>
> (a) cross defaults and [FTMS] having negotiated with its creditors to defer its indebtedness; and
>
> (b) failure to repay the loans as set out in item 6 of Schedule 5 of the [Tembusu] Loan Agreement by 15 November 2015.

16 On 20 May 2016, Mr Chong sent a further e-mail to Tembusu, requesting to settle the interest payment and the late interest by 6 June 2016.[48]

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44 4AB45.

45 6AB209.

46 6AB208.

47 6AB210.

48 6AB223.

17 On 26 May 2016, FTMS made a payment of S$138,780 to Tembusu by way of a bank transfer of S$100,000 and a cheque for a sum of S$38,780.[49] Tembusu acknowledged receipt of the cheque.[50] It transpired that the cheque was sent for marking on 27 May 2016,[51] and was subsequently cleared on the night of 27 May 2016.[52] An additional interest payment of S$117 was made on 29 May 2016 by FTMS to Tembusu for the additional day of default interest.[53]

18 On 1 June 2016, Tembusu issued a notice to FTMS, stating that the first interest payment was only made on 30 May 2016, and that a number of other events of default pursuant to Clause 11.1 of the Tembusu Loan Agreement had occurred, including but not limited to the following:[54]

> (a) cross defaults pursuant to [FTMS's] failure to repay loans;
>
> (b) [FTMS] is insolvent, being unable to pay its debts as it falls due and having negotiated with its creditors to defer its indebtedness; and
>
> (c) failure to repay the loans as set out in item 6 of Schedule 5 of the [Tembusu] Loan Agreement by 15 November 2015.

As such, Tembusu notified FTMS that the principal amount of its loan plus the default redemption premium was immediately due and payable. Full repayment was to be made by 30 June 2016, failing which Tembusu would exercise its right to enforce on the security documents (namely, the share charges, the Tembusu Guarantee and the debenture over FTMS's assets).[55]

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49 6AB222; 7AB32, 7AB34.

50 6AB222.

51 7AB33.

52 AEIC Ang at para 46.

53 7AB32; AEIC Ang at para 46.

54 7AB44.

55 7AB44.

Tembusu Redemption Agreement

19 On 15 June 2016, FTMS, Tembusu, the PICs and Mr Chanrai entered into a deed of redemption ("Tembusu Redemption Agreement"),[56] under which Tembusu's loan would be redeemed and the terms of the Tembusu Loan Agreement would be superseded and replaced by the terms of the Tembusu Redemption Agreement.[57] Clause 2.1 of the Tembusu Redemption Agreement set out a schedule of repayments, which is as follows:[58]

Date	**Redemption Payment (S$)**
29 July 2016	100,000
31 August 2016	200,000
30 September 2016	1,600,000
31 October 2016	2,465,000
30 November 2016	900,000
30 December 2016	251,733.90

20 Based on the schedule of payments above and taking into account the payments previously made by FTMS pursuant to the Tembusu Loan Agreement, the Tembusu Redemption Agreement increased the internal rate of return of this loan from *at least* 16.38% per annum at its inception to 25.10% per annum (see Annex 1: The payment obligations under the agreements).

21 On 29 July, 31 August and 30 September 2016, FTMS made payment of the first, second and third instalments of S$100,000, S$200,000 and S$1.6m

56 7AB179.

57 7AB179–7AB184.

58 7AB180.

respectively,[59] in accordance with the deadlines under the Tembusu Redemption Agreement.

Hiro Loan Agreement

22 On 30 September 2016, FTMS and two of its related companies, the PICs, Mr Chanrai and one Mr Hiro J Bhojwani ("Mr Bhojwani") entered into a loan agreement ("Hiro Loan Agreement").[60] Under the Hiro Loan Agreement, Mr Bhojwani would extend a loan of S$1.6m to FTMS by way of a cashier's order made payable to Tembusu.[61] The interest on the loan was 2.1% per calendar month and the loan was to be repaid by 30 September 2017.[62] Mr Chanrai guaranteed the loan,[63] and the PICs undertook to execute and deliver to Mr Bhojwani a legal mortgage over their house at Cable Road when requested by Mr Bhojwani.[64]

Qualgro Redemption Agreement

23 On 10 October 2016, Qualgro served a notice to FTMS that was copied to the PICs and Mr Chanrai.[65] The notice stated that (a) Qualgro had learnt of the Hiro Loan Agreement; (b) Qualgro's nominee director of FTMS, *ie*, Mr Chhor, was not advised of any board meeting or resolution which had approved the Hiro Loan Agreement; and (c) the Hiro Loan Agreement was in breach of the Qualgro Loan Agreement, particularly cl 10.1.8 relating to the

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59 AEIC Ang at paras 70, 77, 80.

60 8AB339–8AB346.

61 8AB340–8AB341.

62 8AB341.

63 8AB341.

64 8AB342.

65 9AB75–9AB77.

permitted indebtedness of FTMS, and cl 3 of the Qualgro Guarantee relating to the negative undertaking over the PICs' house at Cable Road. The notice stopped short of declaring an event of default, stating:

> We are considering our rights and whether we should declare an event of default for this and for the many other breaches of the [Qualgro] Loan Agreement that have taken place, and what other steps we should take to protect our interests. …

The notice also sought confirmation from FTMS that it would not take on a further loan without Qualgro's written consent and further required the PICs to consent to Qualgro registering a caveat over their house at Cable Road. Finally, the notice disclosed that Qualgro was discussing with Tembusu about the appointment of a "Special Accountant" to FTMS if Qualgro had reasonable concerns over the financial position of FTMS, regardless of whether an event of default had occurred.

24 On 31 October 2016, FTMS, Qualgro, the PICs and Mr Chanrai entered into a deed of redemption ("Qualgro Redemption Agreement"),[66] whereby the loan extended by Qualgro to FTMS under the Qualgro Loan Agreement and the shares of FTMS held by Qualgro were to be redeemed, and the following payments were to be made by FTMS to Qualgro:[67]

Date	Redemption Payment (US$)
30 November 2016	200,000
29 December 2016	1,000,000
31 January 2017	1,200,000
28 February 2017	1,000,000

66 9AB317–9AB323.

67 9AB318.

31 March 2017	600,000
28 April 2017	426,000

25 Based on the schedule of payments above and taking into account payments previously made by FTMS pursuant to the Qualgro Loan Agreement, the Qualgro Redemption Agreement effectively contemplated an internal return rate of 35.41% per annum for both the loan and equity components of Qualgro's collaboration with FTMS (see Annex 1: The payment obligations under the agreements).

First Tembusu Side Agreement

26 On 31 October 2016, FTMS, Tembusu and Mr Mangat entered into a side agreement in relation to the Tembusu Redemption Agreement ("First Tembusu Side Agreement").[68] Clause 2.1 of the First Tembusu Side Agreement set out that in consideration for Tembusu agreeing to not enforce its security pursuant to the Tembusu Redemption Agreement and other security agreements such as the Tembusu Guarantee prior to 14 November 2016, FTMS and Mr Mangat agreed to, jointly and severally, make an irrevocable payment of S$100,000 to Tembusu by 8 November 2016. This was to be over and above the redemption payments under the Tembusu Redemption Agreement.[69]

27 At and around the time of the First Tembusu Side Agreement, FTMS had proposed that Tembusu assign its rights under the Tembusu Redemption Agreement and other security agreements such as the Tembusu Guarantee for a consideration of S$3,622,180, on terms acceptable to Tembusu, with such

68 9AB325–9AB329.

69 9AB325.

assignment to be completed by 14 November 2016, *ie*, the same date till which Tembusu had agreed to forbear its rights. This proposed assignment was contemplated in Recital (C)[70] and cl 3 of the First Tembusu Side Agreement.[71]

28 If the proposed assignment was not completed by 14 November 2016, cl 3.2 of the First Tembusu Side Agreement imposed the following payment obligations:

Date	Redemption Payment (S$)
15 November 2016	2,465,000
30 November 2016	900,000
30 December 2016	275,076

29 On top of these payments, pursuant to cl 3.2.3, FTMS had to pay a liquidated sum of S$14,000, being late interest for the period of 31 October to 15 November 2016, for the payment scheduled on 31 October 2016 under the Tembusu Redemption Agreement that was missed by FTMS.[72] The payment of the additional sums of S$100,000 and S$14,000 alongside the rescheduled redemption payments increased the internal rate of return of the Tembusu loan to 27.5% per annum (see Annex 1: The payment obligations under the agreements).

Second Tembusu Side Agreement

30 On 10 November 2016, FTMS, Tembusu and Mr Mangat entered into a further side agreement in relation to the Tembusu Redemption Agreement

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70 9AB325.

71 9AB326.

72 9AB326.

("Second Tembusu Side Agreement").[73] Under cl 2.1 of the Second Tembusu Side Agreement, FTMS agreed to make full payment of all outstanding sums due – which came to S$3,818,261 – by 2 December 2016.[74] Further, under cl 3, in consideration for Tembusu agreeing not to enforce its rights under the previous agreements prior to 2 December 2016, FTMS and Mr Mangat agreed to, jointly and severally, place with Tembusu a deposit of S$100,000 on 16 November 2016 and another deposit of S$100,000 on 21 November 2016. Failure to do so would attract an additional liquidated sum of S$1,000 per day until the deposits were made. The deposits were to be offset against the outstanding sums due.[75]

31 Accordingly, the following payment obligations were imposed:

Date	**Redemption Payment (S$)**
16 November 2016	100,000
21 November 2016	100,000
2 December 2016	3,618,261

32 The restructuring of the Tembusu loan translated into a revised internal rate of return of 28.31% per annum (see Annex 1: The payment obligations under the agreements).

Third Tembusu Side Agreement

33 On 30 December 2016, FTMS, Tembusu, the PICs and Mr Chanrai entered into a further side agreement in relation to the Tembusu Redemption

[73] 9AB377–9AB380.

[74] 9AB377–9AB378.

[75] 9AB378.

Agreement ("Third Tembusu Side Agreement").[76] Under cl 2 of the Third Tembusu Side Agreement, FTMS agreed to make full payment of the outstanding sums under the previous agreements with Tembusu, by 28 February 2017. By that time, the outstanding sum was calculated to be S$4,599,683, including additional liquidated sums payable due to late payment.[77] In consideration for Tembusu agreeing not to enforce its security under the prior agreements, FTMS, the PICs and Mr Chanrai undertook various obligations, including:[78]

(a) To procure the appointment of accountants to review the financial situation of FTMS (cl 2.3.1);

(b) To procure a working capital loan of up to S$500,000 for FTMS by 10 January 2017 as may be necessary to ensure prompt payment of essential operational outgoings (cl 2.3.4); and

(c) For Mr Chanrai to execute and deliver to Tembusu a Deed of Guarantee and Indemnity (cl 2.3.5).

34 The restructuring of the Tembusu loan translated into a revised internal rate of return of 37.23% per annum (see Annex 1: The payment obligations under the agreements).

Qualgro Side Agreement

35 On 2 December 2016, Qualgro sent a notice to FTMS, copied to the PICs and Mr Chanrai, stating that the redemption payment of US$200,000 due

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76 13AB288–13AB303.

77 12AB289.

78 12AB290.

on 30 November 2016 under the Qualgro Redemption Agreement remained unpaid, and therefore an enforcement event had occurred.[79] The notice also stated that as a consequence, a liquidated sum of S$1,000 a day over and above the redemptions payments would be payable from that date until full payment of the cumulative redemption amount, *ie*, US$4,426,000.[80]

36 On 30 December 2016, the same day that the Third Tembusu Side Agreement was executed, FTMS, Qualgro, the PICs and Mr Chanrai entered into a side agreement ("Qualgro Side Agreement").[81] The key terms of the Qualgro Side Agreement are as follows:

(a) Under cl 2.1 of the Qualgro Side Agreement, the parties agreed and acknowledged that the outstanding sums due to Qualgro were as set out in the Qualgro Redemption Agreement, with an additional sum of S$1,000 per day payable from 30 November 2016 until such date as the cumulative redemption amount of US$4,426,000 was paid in full.[82]

(b) Under cl 2.2 of the Qualgro Side Agreement, FTMS agreed to make full payment of the outstanding sum to Qualgro by 28 February 2017.[83] This was supplemented by cl 2.3.9 of the Qualgro Side Agreement, which required FTMS to procure a payment of US$1.2m to Qualgro by 26 January 2017.[84] Assuming that the additional

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79 10AB40–10AB41.

80 10AB41.

81 13AB257–13AB268.

82 13AB258.

83 13AB258.

84 13AB259.

sum was paid on 28 February 2017, the new schedule of payments from FTMS to Qualgro was as follows:

Date	Redemption Payments	Cumulative Payments
26 January 2017	US$1,200,000	US$1,200,000
28 February 2017	US$3,226,000 + S$90,000 (additional payment)	US$4,426,000 + S$90,000

(c) Under cl 2.3.4 of the Qualgro Side Agreement, FTMS, the PICs and Mr Chanrai undertook to procure a working capital loan of up to S$500,000 for FTMS by 10 January 2017.[85]

Chanrai Guarantees

37 On 30 December 2016, Mr Chanrai executed two deeds of guarantee and indemnity in favour of Tembusu and Qualgro respectively, under which Mr Chanrai effectively guaranteed the sums payable by FTMS to the Lenders under the Third Tembusu Side Agreement and the Qualgro Side Agreement.[86]

Mangat-Chanrai Side Agreement

38 On 3 January 2017, the PICs and Mr Chanrai entered into an agreement ("Mangat-Chanrai Side Agreement"). Under this agreement, Mr Chanrai agreed to give his personal guarantees under several loans, including the loans to Tembusu and Qualgro, in consideration for Mr Mangat placing all shares in

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85 13AB259.

86 13AB178–13AB189, 13AB191–13AB200; AEIC Ang at para 146(b); AEIC Chanrai at para 147(c).

FTMS Holdings (M) Sdn Bhd ("FTMS Malaysia"), legally and beneficially held in his name, in escrow with Premier Law LLC.[87]

39 Clause 2.3.2 of the Mangat-Chanrai Side Agreement stated that Mr Chanrai "agrees to provide a personal guarantee for [FTMS] to raise funds of between SGD20 million to SGD30 million … the terms of such personal guarantee which shall be subsequently agreed".[88]

40 On 23 January 2017, the PICs issued a letter to Premier Law LLC which enclosed the relevant share certificates to be placed in escrow, as well as conditions which the placement in escrow was subject to.[89] The following day, Mr Chanrai's solicitors wrote to Premier Law LLC, copying Mr Mangat, to state that the conditions in the PICs' letter were inconsistent with the Mangat-Chanrai Side Agreement.[90]

41 Premier Law LLC subsequently returned the share certificates on or around 26 January 2017.[91]

42 Subsequently, at the FTMS board meeting of 9 February 2017, Mr Mangat revealed that his shares in FTMS Malaysia were, in fact, held on trust for his family and he needed to seek his family's advice before placing

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87 13AB343–13AB347.

88 13AB345.

89 15AB115.

90 14AB326.

91 AEIC Chanrai at para 161.

them in escrow.[92] Mr Chanrai did not proceed with providing any further personal guarantees pursuant to the Mangat-Chanrai Side Agreement.[93]

Enforcement action by the Lenders

43 On 19 January 2017, Tembusu's solicitors sent a letter to Mr Chanrai. The letter declared an enforcement event, citing the failure to procure the working capital loan for FTMS (see above at [33(b)]). The letter sought payment by Mr Chanrai of the outstanding sum of S$4,346,322 owed by FTMS to Tembusu, and stated that Tembusu would exercise its rights under the various agreements and/or Mr Chanrai's guarantee if full payment was not received.[94]

44 On 27 January 2017, the Lenders' solicitors sent letters to FTMS[95] and the PICs,[96] noting that the working capital loan was not procured to date and, with respect to Qualgro, the first payment tranche of US$1.2m was not made by 26 January 2017. As such, the Lenders gave formal notice of an enforcement event and sought the outstanding sums owing to the Lenders.

45 On 7 February 2017, Tembusu and Qualgro commenced HC/S 103/2017 ("S 103") and HC/S 104/2017 ("S 104") respectively against the PICs.

46 On 9 February 2017, Mr Chanrai's solicitors sent a letter to the Lenders setting out an in-principal consensus that the parties had reached in relation to

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92 AEIC Chanrai at para 170(c).

93 AEIC Chanrai at para 171.

94 14AB331–14AB332.

95 15AB319–15AB320; 16AB10–16AB11.

96 16AB4–16AB5, 16AB7–16AB8.

the loans owing to the Lenders. However, no formal agreement was reached and executed.[97]

47 On 1 March 2017, Tembusu commenced HC/S 189/2017 against Mr Chanrai, seeking the repayment of the outstanding sum owed to Tembusu that was guaranteed by Mr Chanrai. On the same day, Qualgro's solicitors issued a letter to Mr Chanrai demanding payment of the outstanding sum owed by FTMS to Qualgro.[98]

ACE Assignment Agreement

48 On 28 March 2017, the Lenders and ACE entered into an assignment agreement ("ACE Assignment Agreement").[99] Under this agreement, Tembusu and Qualgro assigned all their rights and interests arising from their agreements with FTMS and in relation to the outstanding debt due from FTMS in consideration for the following payments:[100]

Date (No later than)	**Payment to Qualgro (US$)**	**Payment to Tembusu (US$)**
28 March 2017	578,000	422,000
11 April 2017[101]	2,312,000	1,688,000
20 December 2017	1,156,000	844,000
Total	4,046,000	2,954,000

97 AEIC Ang at paras 174–179.

98 17AB314–17AB316.

99 18AB258–18AB283.

100 18AB261.

101 18AB262.

49 Under cl 5.2 of the ACE Assignment Agreement, Tembusu agreed to file a Notice of Discontinuance for HC/S 189/2017 commenced against Mr Chanrai.[102]

50 Alongside the ACE Assignment Agreement, Mr Chanrai guaranteed the payments by ACE to Tembusu and Qualgro by way of a deed of guarantee and indemnity dated 28 March 2017.[103]

51 I note that the ACE Assignment Agreement had been executed by Mr Nguyen for and on behalf of ACE.[104]

52 Notices of assignment were issued to FTMS and the PICs to inform them of the ACE Assignment Agreement.[105]

Changes to the FTMS board

53 On 18 April 2017, Mr Nguyen, Mr Nguyen Ngoc Hoang Vinh and Mr David Glenn Schaer were appointed as directors of FTMS by way of a directors' resolution signed by Mr Chanrai, Mr Schaer and Tembusu's nominated directors.[106] On the same day, the FTMS board accepted the resignation of Tembusu's nominated directors.[107]

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102 18AB263.

103 18AB272–18AB283.

104 18AB270.

105 18AB318–18AB320, 18AB322–18AB324, 18AB326–18AB328, 18AB330–18AB332.

106 18AB344–18AB345.

107 18AB347–18AB352.

54 On 19 April 2017, FTMS passed another directors' resolution wherein, *inter alia*:[108]

(a) The three new directors of FTMS were appointed directors of several of FTMS's subsidiaries.

(b) The PICs were removed as directors of several of FTMS's subsidiaries and their powers as directors of FTMS were revoked. They were also removed as bank signatories of FTMS and several of its subsidiaries.

(c) FTMS called for Extraordinary General Meetings ("EGMs") of several of its subsidiaries on 20 April 2017, *ie*, the next day.

55 On 20 April 2017, the EGMs were held and directors' resolutions were passed to the extent relevant and necessary for the various subsidiaries to put into effect the above-mentioned resolved matters.[109]

56 On 24 April 2017, FTMS passed a directors' resolution removing the PICs from all management and operational positions in FTMS and its subsidiaries with immediate effect. All of FTMS's directors except the PICs agreed to, and signed, the said directors' resolution.[110]

PICs' bankruptcy

57 On 22 June 2017, one Chew Kheng Hwee ("Mr Chew") filed a creditor's bankruptcy application against Mr Mangat *vide* HC/B 1379/2017. Subsequently, on 7 September 2017, Trusha Realty Pte Ltd ("Trusha") filed

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108 18AB377–18AB380.

109 19AB9–19AB122.

110 19AB246–19AB255.

creditor's bankruptcy applications against Mr Mangat and Mdm Gill *vide* HC/B 2002/2017 and HC/B 2001/2017 respectively. Mr Chew's application was withdrawn on 12 October 2017. On 26 October 2017, one Rajandran s/o Ramalingham ("Mr Rajandran") filed creditor's bankruptcy applications against Mr Mangat and Mdm Gill *vide* HC/B 2431/2017 and HC/B 2432/2017 respectively.

58 Accordingly, on 13 November 2017, Mr Mangat and Mdm Gill each filed an application for an interim order pursuant to s 45 of the Bankruptcy Act (Cap 20, 2009 Rev Ed) – which (loosely speaking) functions akin to a moratorium on bankruptcy applications and other proceedings against the PICs – *vide* HC/OSB 123/2017 and HC/OSB 122/2017 respectively, for the PICs to propose an individual joint voluntary arrangement with their creditors. On 4 January 2018, the court granted an interim order for 42 days, which was subsequently extended to 30 March 2018. On 20 February 2018, Mr Rajandran's bankruptcy application was withdrawn by consent.

59 On 11 May 2018, ACE filed creditor bankruptcy applications against Mr Mangat and Mdm Gill *vide* HC/B 1105/2018 ("B 1105") and HC/B 1104/2018 ("B 1104") respectively. The debt supporting these applications was the PICs' guarantee of the Dolphin Loan (see above at [13(c)]). At the time of these bankruptcy applications, a sum of S$1,104,726.14 remained due and owing under that loan.

60 The creditors' meeting at which the proposed voluntary arrangement was put to a vote was held on 15 March 2018.[111] On 23 August 2018, the court held that the proposal had been rejected at the meeting.[112]

61 On 25 October 2018, the court granted the bankruptcy orders in B 1104 and B 1105, adjudging the PICs to be bankrupt. Trusha's bankruptcy application was withdrawn on 22 November 2018.

Procedural history

62 On 7 February 2017, the Lenders commenced separate actions against the PICs (see above at [45]). On 21 March 2017, the PICs filed a counterclaim in each of these actions against Tembusu, Qualgro and Mr Chanrai.

63 On 28 March 2017, the ACE Assignment Agreement was entered into (see above at [48]). On 11 May 2017, ACE was substituted as the plaintiff in both S 103 and S 104 against the PICs.[113]

64 On 25 October 2018, the PICs were declared bankrupt (see above at [61]). Subsequently, the PICs obtained the approval of the Official Assignee ("OA") to pursue their counterclaims in S 103 and S 104. However, ACE did not proceed with its claims in both suits, and confirmed by way of a letter to the OA dated 2 July 2019 that it was not seeking to advance its claims in both suits and would not be applying for leave to proceed with the same.[114] At an interlocutory hearing on 29 June 2020, ACE accepted that its claim was "dealt

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111 AEIC Mangat at para 154.

112 Transcript 23 August 2018 (in the matter of HC/OSB 122/2017 and HC/OSB 123/2017) at p 13 lines 22–23.

113 HC/ORC 2998/2017; HC/ORC 3066/2017.

114 Letter from Characterist LLC to the Official Assignee dated 2 July 2019 at para 3.

with because the [PICs] have been adjudged bankrupts" and that it had filed proof(s) of debt with the OA in relation to its claims.[115] Thus, the present judgment only concerns the adjudication of the counterclaims.

65 On 27 October 2021, it was ordered that S 103 and S 104 were to proceed as one action, with the former being the leading action.[116]

66 On 19 August 2022, it was ordered that the trial of S 103 be bifurcated into separate trials of liability and damages.[117]

Parties' cases

67 Before setting out the parties' respective cases, I digress to make an important, and in some respects dispositive, remark about the PICs' pleadings.

68 It is trite that a party will be confined to its pleaded case so as to avoid taking the opposing parties by surprise as to the case they need to meet. The law on pleadings was recently summarised by the High Court in *Manoj Dharmadas Kalwani v Bharat Dharmadas Kalwani* [2024] SGHC 70 at [36]–[41]. It is apposite to specifically reproduce the general principles identified there:

> 36 The law on pleadings had been examined in detail by the Court of Appeal in *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [34]–[41].
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> 37 In *SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 at [46], the Court of Appeal summarised the key holding of *V Nithia* in the following manner:

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115 Transcript 29 June 2020 at p 2 line 28 to p 3 line 19.

116 HC/ORC 6210/2021; HC/ORC 6211/2021.

117 HC/ORC 4475/2022.

> … it must be emphasised that procedure is the handmaiden of justice, not its master. In *V Nithia v Buthmanaban s/o Vaithilingam* [2015] 5 SLR 1422 ("*Nithia*"), this court embarked on a review of the law of pleadings and observed (at [2]) that the process of pleadings is to ensure, *inter alia*, that the plaintiff knows the nature and substance of the defence. A court should not adopt "an overly formalistic and inflexibly rule-bound approach" which might result in injustice (see *Nithia* at [39]). Ultimately, the underlying consideration of the law of pleadings is to prevent surprises arising at trial (see, for example, the Singapore High Court decision of *Lu Bang Song v Teambuild Construction Pte Ltd* [2009] SGHC 49 at [17]). …
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> …
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> 38 In essence, the process of pleadings seeks to ensure that the opposing party knows the nature and substance of the case that the pleading party seeks to run. The underlying consideration of the law of pleadings is to prevent surprises arising at trial, and courts should not adopt an overly formalistic or rule-bound approach. …

69 These principles equally operate to ensure that a party's pleaded case does not shift or evolve into a different state such that an opposing party is then taken by surprise and is prejudiced in its ability to meet the pleaded case. Ultimately, it is essential for a party to be able to relate back its submissions to the expressly pleaded case.

70 It is for these reasons, amongst others, that there exists a mechanism for the amendment of pleadings, which a party may have recourse to during the course of proceedings, subject to the relevant legal tests.

71 It bears mentioning this general principle relating to pleadings because, as will be observed, several aspects of the PICs' case as set out in their written submissions appear to be undisclosed in and/or unsupported by their pleaded case. In such instances – that will be identified – I find that the PICs are not permitted to stray from their pleaded case to make the relevant claim or

allegation. It is simply not fair to the DICs who would not have had the opportunity to address these at trial through adducing the necessary witness testimony, particularly through the cross-examination of the PICs or the relevant party against whom the allegation is made.

72 In addition, it bears highlighting that the PICs have been given several indulgences to date to amend their pleadings, with the Defence and Counterclaim (Amendment No. 3) dated 31 August 2023 ("DCC") being the fourth iteration. Notwithstanding this, I am cognisant of the guidance of the Court of Appeal, particularly that "an overly formalistic and inflexibly rule-bound approach" should not be taken.

PICs' case

73 In short, the PICs aver that two or more of the six DICs (and/or their associates) (hereinafter referred to as the "alleged conspirators") agreed, conspired and/or combined to commit, or cause to be committed, acts as part of an overarching conspiracy by unlawful and/or lawful means. This conspiracy was carried out with the intention to injure and/or with the sole or predominant intention to injure and/or cause financial loss and damage to FTMS and/or the PICs and/or cause loss to the PICs by taking control of FTMS.[118]

74 The PICs' case is that the conspiracy consists of four broad categories of acts, each of which is inextricably linked to the others as part of the conspiracy,[119] namely:

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118 Defence and Counterclaim (Amendment No. 3) dated 31 August 2023 ("DCC") at para 3.

119 DCC at para 21.

(a) "Loan and Redemption Agreement Acts": the alleged conspirators induced FTMS and the PICs, by way of untrue representations and/or by applying undue pressure and/or influence on the PICs, to cause FTMS to enter into the Qualgro Loan Agreement and the Tembusu Loan Agreement ("Loan Agreements"), and the Qualgro Redemption Agreement and the Tembusu Redemption Agreement ("Redemption Agreements").[120]

(b) "Enforcement Event Acts": the alleged conspirators called an enforcement event under the Redemption Agreements, and consequently applied undue pressure and/or influence and/or threats on the PICs to cause FTMS to enter into the four side agreements with the Lenders on terms which were far more onerous and/or unconscionable than the terms of the original loan agreements. In that regard, the original loan agreements were part of a "bait and switch" tactic and were not enforced genuinely, reasonably, rationally and/or fairly.[121]

(c) "Corporate Raid Acts": the alleged conspirators induced FTMS and the PICs, by way of untrue representations and/or by applying undue pressure and/or influence on the PICs, to appoint Mr Schaer and Mr Nguyen as directors of FTMS in December 2016, enabling the conspirators to orchestrate a takeover of FTMS.[122]

(d) "Other Acts": the alleged conspirators incorporated ACE as a front and assigned ACE the rights under the agreements with the Lenders in order to distance themselves from the conspiracy. Following

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120 DCC at paras 23–24.

121 DCC at paras 25–26.

122 DCC at paras 27–29.

> the assignment, the alleged conspirators took unlawful control of the FTMS board and put in motion a series of events to entrench themselves in FTMS and wrest control of FTMS from the PICs. The alleged conspirators took further steps to incapacitate and injure the PICs by bankrupting them. Finally, the alleged conspirators attempted to conceal and/or disguise the conspiracy by not complying with the requirements of the Accounting and Corporate Regulatory Authority of Singapore and/or corporate governance regulations, destroying FTMS's company servers and/or liquidating and winding-up FTMS.[123]

75 The PICs aver that by reason of the four broad acts forming the conspiracy, the PICs have suffered and continue to suffer loss and damage.[124] They further aver that the acts are evidence of a predominant intention on the part of the alleged conspirators to injure the PICs and/or cause financial loss and damage to FTMS and/or to the PICs and/or cause loss to the PICs by taking control of FTMS.[125]

76 In addition, the PICs claim that the alleged conspirators who were directors of FTMS have acted in breach of their directors' duties in causing loss to the FTMS group by refusing to allow the PICs to discharge their duties as directors of FTMS and/or other companies in the FTMS group, which has caused the PICs to continue incurring personal financial liabilities in Sri Lanka, India, Cambodia and Mauritius for the acts of the alleged conspirators.[126]

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123 DCC at paras 30–37.

124 DCC at para 47

125 DCC at para 64.

126 DCC at para 63.

77 Moreover, the PICs claim that by reason of the same matters, Mr Chanrai is liable to them for fraudulent misrepresentation, or alternatively, misrepresentation under s 2 of the Misrepresentation Act 1967.[127]

78 Ultimately, the PICs allege the following consequences of the alleged conspiracy and misrepresentation:

(a) The PICs were bankrupted, resulting in:[128]

(i) all the creditors of FTMS, to whom the PICs had given a guarantee for loans made to FTMS, calling upon their guarantees which increased the size of the liabilities in the PICs' estate in bankruptcy by approximately 95%;

(ii) the bank, to whom the PICs had granted a mortgage, foreclosing on the PICs' house at Cable Road, with an alleged estimated value of S$25m;

(iii) Mr Mangat losing his licence to practice as a chartered accountant and his practice and revenue stream from M/s B S Mangat & Co ("BSM & Co"), a sole proprietorship owned by Mr Mangat;[129] and

(iv) Mr Mangat suffering reputational loss, which even after bankruptcy discharge, cannot ever be fully restored, further resulting in Mr Mangat not ever being able to pursue a profession as a chartered accountant at the same level as prior to the conspiracy.

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127 DCC at para 66.

128 DCC at paras 67(a)–67(d).

129 DCC at para 62.

(b) Mr Mangat lost his investment in the shares of FTMS and the PICs both lost the right to recover their loans from FTMS.[130]

(c) The PICs were removed from their various executive management, directorship and employment positions in the FTMS group of companies, causing financial loss represented by (i) the loss of income from their various executive management and employment positions;[131] and (ii) increased financial obligations in being kept on as directors in various FTMS group companies without the corresponding ability to control the FTMS group.[132]

(d) Mr Mangat, trading as BSM & Co and/or FTMS Corporate Services Pte Ltd ("FTMS Corporate Services"), was unable to carry out his usual business during the period of around April 2017 to September 2018 due to the unlawful retention of documents and items belonging to the PICs by FTMS and FTMS Global Academy Pte Ltd ("FGA"), a subsidiary of FTMS.[133]

79 In sum, the PICs seek declarations that the Loan Agreements, the Redemption Agreements and the four side agreements with the Lenders are null and void, or alternatively rescinded as a result of the conspiracy and/or for being unconscionable, and for damages to be assessed for the tort of conspiracy by unlawful means and/or by lawful means. The PICs also seek an account of profits made by the conspirators as a result of the conspiracy and for damages to be assessed as against Mr Chanrai for the misrepresentations.

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130 DCC at paras 8, 66(f)–66(g).

131 DCC at paras 11(a), 66(e).

132 DCC at paras 11(b), 63, 67(h).

133 DCC at para 62.

Tembusu's case

80 Tembusu flatly denies the conspiracy and avers that at all times it was unaware of, and did not agree to, any conspiracy and/or combination with any other party to commit (or cause to be committed) any acts, intended to cause any injury to and/or with the sole or predominant intention to injure and/or which caused loss to FTMS and/or the PICs.[134] In this regard, Tembusu denies that it had at any time agreed, conspired and/or combined with any other party to place FTMS into liquidation and cause loss to the PICs.[135]

81 Notably, Tembusu asserts that the PICs' allegations in relation to the four broad acts forming the conspiracy were pleaded in "exceedingly general terms", without particulars of (a) any specific acts of the alleged conspiracy; (b) the specific alleged conspirators who carried out each of such acts; or (c) any indications of alleged intent to injure FTMS and the PICs on the part of Tembusu.[136]

82 Tembusu avers that the Tembusu Redemption Agreement and the Tembusu Side Agreements were entered into freely and willingly by FTMS and the PICs,[137] the terms of these agreements were entirely reasonable,[138] and the agreements were enforced genuinely, reasonably, rationally and fairly.[139] All

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134 Defence of the 1st Defendant in the Counterclaim (Amendment No. 3) dated 18 September 2023 ("1DD") at paras 5, 10, 18, 28, 30A, 39–40, 40D, 46, 48.

135 1DD at para 9A.

136 1DD at paras 18, 28.

137 1DD at paras 19, 22, 23A, 29.

138 1DD at paras 20, 23, 23A, 33(a), 42A.

139 1DD at para 23A.

sums payable under the agreements are sums enforceable and payable in law.[140] Tembusu pleads that its sole intention at all times was to protect its investment in FTMS.[141] The assignment of its rights to ACE was a purely commercial decision made within the legal rights of Tembusu and was regarded as a suitable opportunity to exit its investment in FTMS.[142] Accordingly, Tembusu was no longer involved in FTMS's and the PICs' affairs from 28 March 2017.[143]

83 In relation to the Corporate Raid Acts and/or the Other Acts, Tembusu avers that it did not and could not have participated in those alleged acts.[144] In relation to the bankruptcy of the PICs, Tembusu denies any involvement and avers that it was ACE that filed for bankruptcy against the PICs on the basis of the Dolphin Loan.[145]

84 Finally, in relation to the losses pleaded, Tembusu denies that they are claimable under the tort of conspiracy and that the PICs are entitled to any reliefs for any tortious damages.[146] It argues instead that the counterclaim is an abuse of process.[147]

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140 1DD at para 42.

141 1DD at paras 18, 24A.

142 1DD at para 37(a).

143 1DD at paras 10, 39, 40E, 40F, 46.

144 1DD at para 36.

145 1DD at para 25A.

146 1DD at para 48A.

147 1DD at para 48B.

Qualgro's case

85 Similar to Tembusu, Qualgro denies agreeing, conspiring and/or combining with any party, whether by lawful or unlawful means, to commit (or cause to be committed) acts intended to injure and/or cause injury, financial loss and/or damage to the PICs and/or to take control of FTMS.[148] Qualgro maintains that it acted lawfully within its legal rights and did not have any intention, predominant or otherwise, to injure and/or cause any injury, financial loss and/or damage to the PICs.[149] Equally, Qualgro was unaware of any such conspiracy.[150]

86 Qualgro avers that the allegations of the four broad acts forming the conspiracy have been pleaded with "insufficient particularity and clarity", and that the PICs have not particularised (i) the specific alleged conspirator(s) who carried out each of the pleaded (group of) acts of the alleged conspiracy, or (ii) any facts to indicate any intent to injure FTMS and the PICs on the part of Qualgro.[151] In the same vein, the allegations in relation to the concealment of the alleged conspiracy have been pleaded with insufficient particularity and clarity.[152]

87 In contrast to the PICs' allegations, Qualgro's investment into FTMS was a commercial decision made after determining FTMS's growth potential on the basis of financial information and projections it was presented with, and

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148 Defence of the 5th Defendant in the Counterclaim (Amendment No. 2) dated 18 September 2023 ("5DD") at paras 5, 9, 13, 16, 17, 19, 33, 69, 81, 83, 84, 93, 94.

149 5DD at para 5.

150 5DD at para 21.

151 5DD at para 19.

152 5DD at para 37.

after ensuring that sufficient safeguards were in place to address the risk of the investment.[153] Particularly, Qualgro's investment into FTMS was a genuine and legitimate commercial decision on the basis of the terms and conditions of the Qualgro Loan Agreement. Qualgro denies carrying out or having knowledge of any "bait and switch" tactic, whether pursuant to any conspiracy as alleged or otherwise.[154]

88 The Qualgro Loan Agreement, the Qualgro Redemption Agreement and the Qualgro Side Agreement were entered into freely, willingly and voluntarily by FTMS and the PICs.[155] FTMS and the PICs were not subject to any alleged undue pressure and/or influence by Qualgro to enter into the Qualgro Loan Agreement and Qualgro Redemption Agreement.[156] The terms of the Qualgro Redemption Agreement and the Qualgro Side Agreement were entirely reasonable.[157] Further, Qualgro had no involvement in causing FTMS to enter into the Tembusu Loan Agreement.[158] Qualgro also denies that the Qualgro agreements were not enforced genuinely, reasonably, rationally and/or fairly.[159]

89 In relation to the Corporate Raid Acts and/or the Other Acts, Qualgro did not ask for or agree to the appointments of Mr Schaer and Mr Nguyen as directors of FTMS.[160] Qualgro was not a party to any alleged agreement to carry

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153 5DD at para 20.

154 5DD at para 31.

155 5DD at paras 22–24, 29, 43, 57, 63, 68.

156 5DD at paras 25, 57(a).

157 5DD at paras 26, 30, 61(a).

158 5DD at para 27.

159 5DD at para 31.

160 5DD at para 32.

out a takeover of FTMS,[161] and Qualgro was unaware of the background to the incorporation of ACE.[162] Qualgro did not and could not have agreed, conspired and/or combined to commit the Corporate Raid Acts,[163] and the Other Acts.[164] The assignment of Qualgro's rights to ACE was a commercial decision made within Qualgro's legal rights and was regarded as a suitable opportunity to finally exit its investment in FTMS.[165]

90 In addition, Qualgro avers that Mr Chhor had at all times acted in the best interests of FTMS.[166]

91 In relation to the liquidation of FTMS, Qualgro avers that FTMS was placed into liquidation as it was unable to pay its debts as they fell due, including but not limited to debts under the Qualgro Loan Agreement, as amended by the Qualgro Redemption Agreement and the Qualgro Side Agreement.[167] Crucially, Qualgro did not place FTMS into liquidation and the underlying debt which formed the basis of the winding up application against FTMS had no relation to the outstanding debt arising from the Qualgro agreements.[168]

92 In relation to the losses pleaded, Qualgro asserts that the loss of the PICs' investments in the shares of FTMS are reflective of FTMS's loss and the

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161 5DD at para 33.

162 5DD at paras 34, 74(c), 79(a).

163 5DD at para 74.

164 5DD at para 78.

165 5DD at para 80(a).

166 5DD at para 72.

167 5DD at para 9.

168 5DD at para 9(b).

PICs are not the proper plaintiffs to recover such losses.[169] Further, this loss and the loss of the PICs' right to recover their loans made to FTMS were caused by the winding up of FTMS, which in turn was caused by FTMS's and the PICs' inability to pay their debts as they fell due.[170] As for the removal of the PICs from their positions in FTMS, Qualgro avers that it was no longer involved in FTMS's affairs following the assignment of its rights related to its loan and investment in FTMS, and that Qualgro did not play any role in and was unaware of the PICs' removal.[171] Qualgro also denies that the PICs were bankrupted as a result of the alleged conspiracy.[172] In all, Qualgro denies that the PICs are entitled to any of the reliefs claimed or any other relief at all.[173]

Mr Chanrai's case

93 Mr Chanrai similarly denies that he had at any time conspired with any of the other DICs to injure and/or cause financial loss and damages to the PICs as alleged or at all,[174] and/or that he had as his sole or dominant purpose of any such alleged conspiracy to cause injury to the PICs.[175] Mr Chanrai denies committing any of the acts of conspiracy alleged by the PICs, or any wrongful or unlawful acts, and/or lawful acts with the sole or predominant intention to injure the PICs and/or FTMS pursuant to a conspiracy.[176] Mr Chanrai further

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169 5DD at para 10.

170 5DD at para 10.

171 5DD at para 12.

172 5DD at para 86.

173 5DD at para 99.

174 6th Defendant's Defence to Counterclaim (Amendment No. 1) date 18 September 2023 ("6DD") at paras 4(a), 12(d).

175 6DD at para 4(b).

176 6DD at paras 4(c), 10(c).

avers that (a) at all material times, he was neither a direct or indirect beneficial owner, nor a director of ACE; (b) he did not wield any power and/or influence over Tembusu and/or Qualgro; (c) his role in FTMS was primarily as an investor; and (d) in so far as he was a director of FTMS, he acted in good faith and/or in the best interests of FTMS.[177]

94 With respect to the Loan and Redemption Agreement Acts, Mr Chanrai avers that he played no role which resulted in FTMS entering into the Loan Agreements.[178] Mr Chanrai did not make any representations to the PICs which induced them to enter into the Loan Agreements and/or the Redemption Agreements.[179] FTMS, acting through the PICs, entered into the Redemption Agreements freely and willingly, with the benefit of legal advice.[180] The calling of any enforcement event(s) under the Loan Agreements was well within the rights of Tembusu and/or Qualgro, and Mr Chanrai was not involved in the same.[181]

95 In relation to the Enforcement Event Acts, the financial difficulties faced by FTMS which affected its repayment obligations under the Redemption Agreements were not caused by Mr Chanrai.[182] FTMS and the PICs entered into the Tembusu Side Agreements and the Qualgro Side Agreement freely and willingly, with the benefit of legal advice.[183]

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177 6DD at paras 4(e), 18(g), 27(n).

178 6DD at para 16(a).

179 6DD at paras 16(b), 18(c).

180 6DD at paras 16(d), 18(d).

181 6DD at para 16(e).

182 6DD at para 16(f).

183 6DD at para 16(g).

96 With respect to the Corporate Raid Acts, Mr Chanrai denies that Mr Schaer and Mr Nguyen were appointed as directors of FTMS as part of an alleged conspiracy; Mr Chanrai acted in good faith at all material times in supporting their appointment.[184] The PICs signed the board resolutions relating to Mr Schaer's and Mr Nguyen's appointment of their own free will.[185] Mr Chanrai denies making any representations in the nature alleged in relation to the appointment of Mr Schaer and Mr Nguyen as directors.[186]

97 With respect to the Other Acts, Mr Chanrai denies that he was involved in the incorporation of ACE and/or the assigning of rights by the Lenders to ACE.[187] The removal of the PICs from FTMS was done lawfully, without any sole or predominant intention to injure the PICs and not pursuant to any conspiracy alleged.[188] Mr Chanrai also denies that the PICs' bankruptcies were pursuant to an alleged conspiracy; he did not take any steps and was not involved in the bankruptcy proceedings against the PICs.[189]

98 With respect to the damages claimed by the PICs, Mr Chanrai denies that the PICs have suffered the alleged damage or any damage as a result of his alleged act(s).[190] Mr Chanrai denies that FTMS was wound up as a result of any alleged conspiracy,[191] and in any event, the PICs are not the proper claimants for

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184 6DD at para 14.

185 6DD at para 16(h).

186 6DD at paras 22(j)–22(k).

187 6DD at paras 16(i), 24(b)–24(d), 25(a).

188 6DD at paras 16(j), 26(d)–26(e), 33(b).

189 6DD at paras 16(k), 29(a), 33(a).

190 6DD at paras 4(d), 18(i).

191 6DD at paras 9(c), 33(c).

any alleged acts of wrongdoing committed against FTMS.[192] The damages arising from the alleged loss of value of Mr Mangat's shares and/or the alleged loss of right of the PICs to recover any loans made to FTMS by them is not maintainable in law against the DICs.[193] As for documents and items belonging to the PICs, BSM & Co and/or FTMS Corporate Services, they have been duly returned to the best of Mr Chanrai's knowledge.[194] Any personal liabilities incurred by the PICs in relation to entities in Sri Lanka, India, Cambodia and Mauritius are a result of their own doing and poor management of the same.[195] Mr Chanrai also denies any liability to the PICs for fraudulent misrepresentation or otherwise.[196]

Case of the other DICs

99 As traversed (see above at [5]), the third and fourth DICs, *ie*, Mr Schaer and Mr Nguyen, did not enter an appearance in this suit and have not filed their defences.

100 ACE had filed a defence to a previous iteration of the PICs' Defence and Counterclaim. In this defence, ACE denied the alleged conspiracy and claimed that it was not a party to any alleged conspiracy, particularly because most, if not all, of the acts complained of by the PICs purportedly in support of the conspiracy pre-dated the incorporation of ACE.[197]

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192 6DD at paras 9(d), 18(j).

193 6DD at para 9(e).

194 6DD at para 32(a).

195 6DD at paras 32(b), 33(d).

196 6DD at para 32(c).

197 Reply and Defence to Counterclaim (Amendment No. 1) dated 18 December 2020 at paras 12–17.

Law on conspiracy

101 The elements to be satisfied for each type of conspiracy are uncontroversial and undisputed by the parties.[198]

102 According to the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112], to succeed in a claim for conspiracy by *unlawful* means of conspiracy, the plaintiff(s) must show that:

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

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

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

103 In contrast, the elements to constitute *lawful* means conspiracy differ in that (a) there is no requirement for an unlawful act(s); and (b) the alleged conspirators must have had the *predominant* intention or purpose of causing damage or injury to the plaintiff, which purpose was in fact achieved: see *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal*

198 Plaintiffs in Counterclaim's Closing Submissions dated 22 April 2024 ("PIC Subs") at paras 253–261; 1st Defendant in Counterclaim's Closing Submissions dated 22 April 2024 ("1DIC Subs") at paras 21–28; 5th Defendant in Counterclaim's Closing Written Submissions dated 22 April 2024 ("5DIC Subs") at paras 54–60, 62; 6th Defendant in Counterclaim's Closing Submissions dated 22 April 2024 ("6DIC Subs") at paras 10–12.

[2015] 2 SLR 686 at [150], citing *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 at [23]; see also *Ok Tedi Fly River Development Foundation Ltd and others v Ok Tedi Mining Ltd and others* [2023] 3 SLR 652 at [113].

104 In unlawful means conspiracy, the element of unlawfulness covers both a criminal act or means, as well as an intentional act that is tortious, provided that they are the means by which harm is intentionally inflicted on the plaintiff (rather than being merely incidental to it): see *Beckkett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 ("*Beckkett*") at [120] citing the House of Lords in *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174 at [93]. There is no requirement for the unlawful means to be independently actionable: *Beckkett* at [120]–[121].

105 In relation to the element of intention, it is not sufficient for the plaintiff to show that it was reasonably foreseeable that the plaintiff would or might suffer damage as a result of the defendant's act. Injury to the plaintiff must have been intended as a means to an end or as an end itself: *EFT Holdings* at [99]–[101].

106 In *OBG Ltd v Allan; Douglas v Hello! Ltd (No 3); Mainstream Properties Ltd v Young* [2008] 1 AC 1, Lord Nicholls stated at [167] (cited with approval by the Court of Appeal in *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [63], and further cited by the High Court in *Tuitiongenius Pte Ltd v Toh Yew Keat and another* [2020] 5 SLR 354 at [115]):

> … Take a case where a defendant seeks to advance his own business by pursuing a course of conduct which he knows will, in the very nature of things, necessarily be injurious to the claimant. *In other words, a case where loss to the claimant is the*

> *obverse side of the coin from gain to the defendant. The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort.* … [emphasis added]

107 In *Voltas Ltd v Ng Theng Swee and another* [2023] SGHC 245 at [51], the General Division of the High Court remarked that to establish the element of an intention to cause damage or injury for the tort of unlawful means conspiracy, "a plaintiff has to show that the unlawful means and the conspiracy were *targeted and directed* at the plaintiff" [emphasis added].

108 A *predominant* intention, however, as the term suggests, requires more. To repeat the analogy of the Court of Appeal in *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 ("*Quah Kay Tee*") at [49], if a thief breaks a window to enter a room, the predominant intention is to steal and not to break the window, although he must have intended to break the window so as to achieve his main purpose. However, where a party carried out lawful acts with the predominant purpose of protecting its economic interests, it is not sufficient to make out a claim in lawful means conspiracy *even if* that party intended, in order to realise that predominant purpose, that the plaintiff would suffer a loss: see *The "Dolphina"* [2012] 1 SLR 992 ("*Dolphina*") at [201]; *Quah Kay Tee* at [50].

109 As for the requirement of there being a combination, the combination or agreement between conspirators need not be in the nature of an express agreement, and the court may infer an agreement from the acts of the parties alleged to be conspiring: *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 at [95]–[96]; *EFT Holdings* at [113]. In that regard, the requirements of combination and unlawful

or lawful acts, although in theory discrete, in practice often have to be considered together because direct evidence of a combination is unlikely to be forthcoming. Therefore, proof of the agreement or combination is usually gathered from the relevant acts committed, for such acts are often sufficient (when taken with any relevant surrounding circumstances) to justify the inference that their commission was the product of concert between the alleged conspirators: *Dolphina* at [264].

110 Whilst a party may join in the execution of the conspiracy at a different time and may not be exactly aware of what the other conspirators have actually agreed to do, to be liable for the tort of conspiracy, the party in question must nonetheless be sufficiently aware of the surrounding circumstances and share the same objective as the others: see *Wing Hak Man and another v Bio-Treat Technology Ltd and others* [2009] 1 SLR(R) 446 at [7], citing *OCM Opportunities Fund II, LP v Burhan Uray alias Wong Ming Kiong) and Others* [2004] SGHC 115 at [49].

111 With respect to loss, the plaintiff must prove that actual pecuniary loss was caused: *SH Cogent Logistics Pte Ltd and another v Singapore Agro Agricultural Pte Ltd and others* [2014] 4 SLR 1208 at [155]. This is uncontroversial, as the tort of conspiracy is intended to protect a plaintiff's economic interests: *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 ("*Ong Han Ling*") at [13]. Crucially, the causal link between the alleged loss and the conspiracy is essential to establish the element of damage, which is essential to the tort: *Ong Han Ling* at [14].

112 Finally, the threshold for establishing conspiracy is high such that the evidence that is relied upon must be of a level that is convincing enough in light

of the seriousness of the allegations. The more serious the allegations asserted, the more compelling the evidence must be to convince the court that the allegations are true: *Syed Ahmad Jamal Alsagoff (administrator of the estates of Shaikah Fitom bte Ghalib bin Omar Al-Bakri and others) and others v Harun bin Syed Hussain Aljunied and others and other suits* [2017] 3 SLR 386 at [58]. This is consistent with the general principle that the more serious the allegations are, the more cogent the evidence demanded of the party making those allegations.

Law on misrepresentation

113 Similar to the law on conspiracy, the elements to be satisfied in respect of claims of fraudulent and negligent misrepresentation are settled and the parties do not dispute the same.[199]

114 To establish a claim in fraudulent misrepresentation, the following elements must be established, as distilled by the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14] and reiterated more recently by the General Division of the High Court in *Yong Khong Yoong Mark and others v Ting Choon Meng and another* [2021] SGHC 246 ("*Yong Khong Yoong Mark*") at [90]:

(a) there must be a representation of fact made by words or conduct;

(b) the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff;

(c) the representee had acted upon the false statement;

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199 PIC Subs at paras 262–267; 6DIC Subs at paras 13–15.

(d) the representee suffered damage by so doing; and

(e) the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

115 To establish a claim in negligent misrepresentation, the following elements must be established, as summarised in *Yong Khong Yoong Mark* at [91]:

(a) the representor made a false representation of fact to the representee;

(b) the representation induced the representee's actual reliance;

(c) the representor owed the representee a duty to take reasonable care in making the representation;

(d) the representor breached that duty of care; and

(e) the breach caused damage to the representee.

Issues to be determined

116 Several broad issues arise for consideration, which are as follows:

(a) Whether Mr Chanrai had committed any actionable misrepresentation(s);

(b) Whether the alleged conspirators had committed any unlawful act(s);

(c) Whether the alleged conspirators had the intention or predominant intention to cause damage or injury to the PICs;

(d) Whether the alleged conspirators had combined to commit the relevant acts, and whether the acts were performed in furtherance of the agreement between them; and

(e) Whether the PICs suffered loss as a result of the conspiracy.

Mr Chanrai had not committed any actionable misrepresentation(s)

117 Given that the PICs are relying, at least in part, on Mr Chanrai's misrepresentations to them to establish their claim for unlawful means conspiracy, it is fitting to consider whether Mr Chanrai committed any actionable misrepresentations to begin with.

The alleged representations

118 As prefaced (see above at [114(a)] and [115(a)]), the fundamental precursor to any claim in fraudulent and/or negligent misrepresentation is the requirement for the representor to have made a representation of fact to the representee.

119 In the present case, the PICs plead that Mr Chanrai had made the following representations:

(a) In relation to the Tembusu Redemption Agreement, Mr Chanrai:[200]

(i) told the PICs to resolve the situation with Mr Andy Lim of Tembusu because Mr Chanrai wanted to avoid any legal proceedings between FTMS and Tembusu, as that would in turn cause embarrassment and bring disrepute to the Kewalram

[200] DCC at para 24(p).

Group – which is a group of companies owned by Mr Chanrai's family and of which Mr Chanrai was a principal and board member –[201] given that Mr Chanrai was a shareholder and director of FTMS;[202]

(ii) had the financial means to ensure that FTMS would be able to meet the early redemption payments proposed, by either bringing in investors to FTMS (and providing his personal guarantees to these investors) or personally financing the repayments;

(iii) would personally manage any of FTMS's other lenders, such as Qualgro, and would provide his personal funds and/or his personal guarantees in order that FTMS be able to satisfy these other lenders, in the event that these other lenders also insisted on early redemption of their loans following FTMS's entry into the Tembusu Redemption Agreement; and

(iv) agreed to be a co-guarantor in respect of the PICs' obligations under the Tembusu Redemption Agreement.

I shall refer to these as the "alleged Tembusu Representations".

(b) In relation to the Qualgro Redemption Agreement, Mr Chanrai:[203]

(i) had the financial means to ensure that FTMS would be able to meet the early redemption payments proposed, by either

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201 AEIC Chanrai at paras 1, 3.

202 DCC at para 24(o).

203 DCC at para 24(x).

bringing in investors to FTMS (and providing his personal guarantees to these investors), or personally financing the repayments;

(ii) would personally manage any of FTMS's other lenders, such as Trusha and Mr Bhojwani, and would provide his personal funds and/or his personal guarantees in order that FTMS be able to satisfy these other lenders, in the event that these other lenders also insisted on early redemption of their loans following FTMS's entry into the Qualgro Redemption Agreement; and

(iii) agreed to be a co-guarantor in respect of the PICs' obligations under the Qualgro Redemption Agreement.

I shall refer to these as the "alleged Qualgro Representations".

(c) In relation to the Corporate Raid Acts, Mr Chanrai:

(i) would arrange for S$500,000 to be injected into FTMS so that FTMS would be able to meet its immediate working capital needs;[204]

(ii) would raise funds of up to S$30m so that FTMS could repay various loans provided to FTMS;[205] and

(iii) had introduced Mr Schaer and Mr Nguyen to FTMS and Mr Mangat, and represented that they would assist in raising the

204 DCC at para 29(b)(i).

205 DCC at para 29(b)(ii).

> funds required by FTMS for immediate working capital and to repay various loans provided to FTMS.[206]

I shall refer to these as the "alleged Corporate Raid Representations".

120 I will consider each of these sets of representations *in seriatim*.

Alleged Tembusu Representations not proved

121 Mr Mangat claims that the alleged Tembusu Representations were made in person at a meeting on the evening of 9 June 2016, when he and Mr Chanrai had met up to discuss Tembusu's demands.[207] To set the context, Tembusu had, almost a week prior, sent FTMS a notice of default and sought to recall the whole of the loan from FTMS by 30 June 2016 (see above at [18]). According to Mr Mangat, Mr Chanrai had said that Mr Andy Lim of Tembusu "had brought the [loan from Tembusu] to the attention of his family members at the Kewalram Chanrai Group and there was family pressure on [Mr Chanrai] to not have his name dragged into a legal case." To this end, Mr Chanrai "stated that FTMS should redeem the [loan from Tembusu]", to which Mr Mangat replied that "FTMS, [Mdm Gill] and [he] would not have funds to bring forward the repayment of the [loan from Tembusu] and pay a premium" and that Qualgro and other third-party loan providers could demand similar redemptions.[208] In order to "[persuade] [Mr Mangat] that [Mr Chanrai] would like to avoid any legal battle", Mr Chanrai made the alleged Tembusu Representations, minus his

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206 DCC at para 29(c).

207 AEIC Mangat at para 74.

208 AEIC Mangat at para 74.

agreement to be a co-guarantor of the PICs' obligations in respect of the Tembusu Redemption Agreement (see above at [119(a)(iv)]).[209]

122 Notably, Mr Mangat does not include in his Affidavit of Evidence-in-Chief ("AEIC") the fact that Mr Chanrai had represented that he had agreed to be a co-guarantor in respect of the PICs' obligations under the Tembusu Redemption Agreement.

123 When confronted with the alleged Tembusu Representations under cross-examination, Mr Chanrai flatly denied saying that Mr Andy Lim had brought up the issue of Tembusu's loan to his family members,[210] or that his family was pressuring him to settle.[211] Mr Chanrai also denied pushing Mr Mangat to settle the matter with Tembusu, stating that Mr Mangat himself was the one who wanted to settle.[212] Mr Chanrai unequivocally disagreed that he had made the representations set out at [119(a)(ii)]–[119(a)(iii)] above in June 2016.[213]

124 In my judgment, there is no contemporaneous evidence that the alleged Tembusu Representations were made by Mr Chanrai on 9 June 2016. Under cross-examination, Mr Mangat attempted to point towards the written guarantees that Mr Chanrai had purportedly given and the disclosure of his net worth as contemporaneous evidence of these representations.[214] However, Mr Mangat later conceded that Mr Chanrai did not actually give his personal

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209 AEIC Mangat at para 74.

210 Transcript 11 January 2024 at p 190 line 25 to p 191 line 3.

211 Transcript 11 January 2024 at p 190 lines 4–7.

212 Transcript 11 January 2024 at p 192 lines 9–11.

213 Transcript 11 January 2024 at p 193 line 12 to p 194 line 1.

214 Transcript 1 February 2023 at p 157 line 3 to p 158 line 5.

guarantee to the Tembusu Redemption Agreement.[215] As for the disclosure of Mr Chanrai's net worth, this has not been particularised and in any case, I do not see how this disclosure by Mr Chanrai to Mr Mangat supports the fact that these representations had been made, especially since Mr Mangat considered it "public knowledge" that Mr Chanrai was a high net worth individual.[216]

125 In addition, Mr Mangat agreed under cross-examination that the alleged Tembusu Representations were "huge commitments" on the part of Mr Chanrai that caused him to be very assured and would have equally assured other lenders.[217] Despite so, Mr Mangat did not inform Qualgro and/or Mr Chhor about these representations, allegedly because these were "confidential"[218] and "private".[219] In fact, Mr Mangat agreed that, beyond Mdm Gill, he told no one else about the alleged Tembusu Representations.[220] Thus, despite the incentive for Mr Mangat to share the contents of those representations to assure Qualgro and/or Mr Chhor about the viability of Qualgro's loan to and investment in FTMS, it is curious that Mr Mangat did not strategically deploy the alleged Tembusu Representations to FTMS's and the PICs' advantage. Even if I were to accept Mr Mangat's explanation that he believed that those representations were made in confidence, there is also no contemporaneous record between himself and Mr Chanrai noting down these representations themselves, much less suggesting that some of these representations had been made.

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215 Transcript 1 February 2023 at p 189 lines 13–21.

216 Transcript 1 February 2023 at p 150 lines 14–18.

217 Transcript 1 February 2023 at p 148 lines 7–18.

218 Transcript 1 February 2023 at p 150 lines 2–8.

219 Transcript 1 February 2023 at p 151 line 23 to p 152 line 12.

220 Transcript 1 February 2023 at p 155 lines 4–21.

126 Therefore, I find that the PICs have not proved that the alleged Tembusu Representations were made, and the claim for misrepresentation based on these statements fails from the outset.

Alleged Qualgro Representations not proved

127 Mr Mangat claims that the alleged Qualgro Representations were made in person at the office of Mr Tito Isaac ("Mr Isaac") on 31 October 2016, before the Qualgro Loan Agreement was signed that day.[221] According to Mr Mangat, he had met with Mr Chanrai and Mr Isaac privately, in a separate room, where he had stated that neither FTMS nor the PICs would be able to repay the early redemption payments set out in the Qualgro Redemption Agreement. At that point, Mr Chanrai had made the alleged Qualgro Representations, in the presence of Mr Isaac.[222] Under cross-examination, Mr Mangat testified that the said meeting actually took place at the "office snack bar".[223] While Mr Mangat also alleges that Mr Chanrai had represented that Mr Isaac, as Mr Chanrai's lawyer, would look after the interests of FTMS and the PICs,[224] I make nothing of this for the purposes of assessing the PICs' claim for misrepresentation since this representation was not particularised in the DCC.

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221 AEIC Mangat at para 101; Transcript 1 February 2023 at p 196 line 16 to p 197 line 11.

222 AEIC Mangat at para 101.

223 Transcript 1 February 2023 at p 197 lines 14–19.

224 AEIC Mangat at para 102.

128 While Mr Chanrai agreed under cross-examination that there was a small private discussion between Mr Mangat, Mr Isaac and himself,[225] he unequivocally denied making the alleged Qualgro Representations.[226]

129 The same analysis that applies to the alleged Tembusu Representations applies here as well. Plainly, there is no contemporaneous evidence of the alleged Qualgro Representations. Mr Chanrai had flatly denied making them. While the meeting in which these alleged Qualgro Representations were made was attended by a third party, *ie*, Mr Isaac, for reasons only known to the PICs, he was not called as a witness to give evidence of what happened at the meeting or what representations had or had not been made.

130 Similarly, the allegation that Mr Chanrai had represented his agreement to be a co-guarantor in respect of the PICs' obligations under the Qualgro Redemption Agreement is contradicted by the fact that Mr Chanrai was not eventually made a guarantor under that agreement.

131 Therefore, I similarly find that the PICs have not proved that the alleged Qualgro Representations were made. The claim for misrepresentation based on the alleged Qualgro Representations thus fails.

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225 Transcript 11 January 2024 at p 217 lines 20–25.

226 Transcript 11 January 2024 at p 219 lines 5–15.

Claim for misrepresentation based on the alleged Corporate Raid Representations not made out

132 Finally, I turn to the alleged Corporate Raid Representations. The PICs allege that the representations were made in or around late 2016,[227] specifically in or around "late November/early December 2016".[228]

133 Mr Chanrai admitted that Mr Schaer was his personal friend and had objectively believed at the material time that "[Mr Schaer's] expertise would be able to help [FTMS] find investors to bring it out of the financial predicament that it was in".[229] Mr Chanrai also conceded that he was the one that introduced Mr Schaer to FTMS.[230] In particular, Mr Chanrai had introduced Mr Schaer to Mr Mangat at the FTMS Malaysia 30th Anniversary Celebrations in late November 2016.[231] In addition, Mr Chanrai also clarified that he had proposed the addition of Mr Schaer to the board of FTMS because he believed that Mr Schaer could assist in fundraising for FTMS, and this reason was shared with Mr Mangat.[232] Mr Chanrai also explained under cross-examination that Mr Schaer and him had indeed proposed, at various meetings in December 2016, that they would raise about S$20–30m for FTMS to refinance all its existing debt.[233]

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227 DCC at para 29(b).

228 PIC Subs at para 194.

229 AEIC Chanrai at para 126.

230 Transcript 11 January 2024 at p 50 lines 4–5.

231 Transcript 11 January 2024 at p 51 lines 17–19, p 51 line 25 to p 52 line 2.

232 Transcript 11 January 2024 at p 52 lines 15–22.

233 Transcript 11 January 2024 at p 55 lines 11–14.

134 The evidence demonstrates that the alleged Corporate Raid Representations had been made by Mr Chanrai. Based on Mr Chanrai's own evidence, he effectively accepts that the representations in [119(c)(ii)] and [119(c)(iii)] above had been made. As for the remaining representation in [119(c)(i)], I find that this is made out given that Mr Chanrai and Mr Schaer had issued a letter to the Lenders in which Mr Chanrai undertook to procure a working capital loan of up to S$500,000 for FTMS by 10 January 2017.[234]

135 Indeed, it does not appear to be Mr Chanrai's case that the alleged Corporate Raid Representations were not made. Rather, Mr Chanrai asserts that any such representations made by him at the material time were incorporated into the various terms of the Mangat-Chanrai Side Agreement (see above at [38]).[235] I note that the Mangat-Chanrai Side Agreement includes an entire agreement clause which states that "[t]his Agreement sets forth the entire agreement and understanding between the parties and supersedes all other agreements between parties, whether oral or in writing".[236] This, Mr Chanrai argues, prevents the PICs from raising any claim in misrepresentation.[237] I agree. The subject matter of the Mangat-Chanrai Side Agreement evidently relates to the raising of funds for FTMS, to the same tune of S$20–30m, in order for the refinancing of FTMS's debt.[238] The operation of the entire agreement clause thus thwarts the claim in misrepresentation for the representations in [119(c)(ii)] and [119(c)(iii)].

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234 13AB228–13AB229.

235 6DIC Subs at para 105.

236 13AB346.

237 6DIC Subs at para 105.

238 13AB345.

136 As for the representation in [119(c)(i)] that Mr Chanrai would arrange for S$500,000 to be injected into FTMS, the PICs claim that the representation was made in order for the alleged conspirators to obtain a majority on the board of FTMS as well as access to FTMS's confidential information for the purpose of calculating FTMS's true value.[239] The PICs affirmed this in their closing submissions, stating that Mr Chanrai "was merely giving [Mr Mangat] false assurances as part of [Mr Chanrai's] strategy to take over control of FTMS".[240] This submission is, however, flawed. The PICs have not demonstrated the connection between Mr Chanrai's representation to procure working capital and the appointment of Mr Schaer and Mr Nguyen to the board of FTMS. On the PICs' case, the latter two were brought in specifically for the purpose of assisting with the fundraising of up to S$30m to refinance FTMS's debt; it is not their case that Mr Schaer and Mr Nguyen were involved in procuring the funding for working capital. The consequence of this is that Mr Chanrai's representation did not cause the PICs to be more agreeable to the board appointments of Mr Schaer and Mr Nguyen. In turn, the pleaded consequences of this representation as stated above does not follow from any falsity in this representation. The claim in misrepresentation in this instance is hence also not made out.

137 In sum, I find that the PICs have not made out any of their claims in misrepresentation.

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239 DCC at para 29(f).

240 PIC Subs at para 195.

Lenders did not commit any unlawful act

138 I turn to the Lenders, *ie*, Qualgro and Tembusu, and their alleged participation in the conspiracy. I first seek to determine whether the Lenders had performed any unlawful act as this would inform (a) whether there may be a case for unlawful means conspiracy against the Lenders, and in turn, (b) the requisite intention that must be proved.

139 According to the PICs, the alleged unlawful acts that involve the Lenders comprise of (a) acts of undue influence/pressure by the Lenders and (b) breach of fiduciary duties owed to FTMS by Mr Chhor and the Lenders' representatives appointed as directors of FTMS, and by Mr Andy Lim of Tembusu as a shadow director of FTMS.[241]

140 With respect to the allegations concerning the breach of fiduciary duties, the PICs' submission faces two challenges. First, those alleged breaches are personal to the individual directors. The Lenders were not themselves directors of FTMS and so could not have committed any breach of fiduciary duties *qua* director. To this end, I note that it is not the PICs' pleaded case that the Lenders were directors (whether *de jure*, *de facto* or shadow directors) of FTMS. As such, even if those breaches are proven, the PICs would not have proven that *the Lenders* had committed an unlawful act. In so far as other persons had committed an unlawful act, that will be relevant against the Lenders if those other persons are alleged to be part of the conspiracy. The PICs have not pleaded that the Lenders' representatives appointed as directors of FTMS – save for Mr Chhor – or Mr Andy Lim were conspirators. In fact, the PICs have not even pleaded that Mr Andy Lim was a shadow director of FTMS.

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241 PIC Subs at paras 423–434; Plaintiffs-in-Counterclaim's Closing Submissions dated 24 June 2024 ("PIC Reply Subs") at para 6.

141 Second, any directors' and/or fiduciary duties owed are owed to FTMS *qua* director and not to the PICs. In so far as the PICs ground their claim in the unlawful act(s) of a breach of duties owed *to FTMS*, the PICs have to demonstrate how this act was targeted and directed at the PICs (see above at [107]).

142 With respect to the allegation of placing undue pressure and/or influence, it is doubtful whether such acts can be considered an "unlawful act" sufficient to establish a claim in conspiracy. As I had noted (see above at [104]), the element of unlawfulness covers both a criminal act or means, as well as an intentional act that is tortious, although there is no requirement for the unlawful means to be independently actionable. In this regard, Qualgro submits that the doctrines of duress and undue influence are not tortious acts and are instead "vitiating factors which impact the formation of a contract".[242] It further submits that there is no authority for the proposition that duress and undue influence can be considered unlawful acts for the purpose of unlawful means conspiracy.[243] These arguments went unanswered by the PICs in their reply submissions.

143 In my view, there is some force to Qualgro's argument. Duress and undue influence are distinct from tortious acts in general. As intimated by Qualgro, the concepts of duress and undue influence relate to the validity of agreements and concern the pressures or manipulations exerted on a party that compromise the party's ability to make a free and informed decision or to consent. The consequence, if proven, is that the agreement is voided and/or voidable and it may therefore be unlawful to insist on the rights flowing from that agreement. However, tortious acts concern wrongful actions in and of

242 5DIC Subs at para 65.

243 5DIC Subs at para 67.

themselves that cause harm and lead to liability. The act *itself* is unlawful and the consequence (or remedy) is generally one that would compensate for the act that should not have been undertaken, or to reinstate the party as if the act did not take place.

144 For completeness, the PICs had, in their submissions, raised the case of *Mark Alan Holyoake and others v Nicholas Anthony Christopher Candy and others* [2017] EWHC 3397 (Ch) wherein the English High Court at [445(2)] expressed "considerable doubts" on the submission that duress and actual undue influence could not constitute unlawful means for the tort of conspiracy, but did not ultimately decide on this question. This is not dispositive of the question before me. Further, this also appears to be contradicted by the PICs' later submission that, in the context of duress, it is not necessary that the pressure exercised involved unlawful means.[244]

145 As it stands, the PICs have not brought my attention to any case in which duress and/or undue influence was considered to be sufficient to show an "unlawful act". Nor have they made any detailed submissions as to why this would be sufficient. Proving so formed part of the legal burden that the PICs had to satisfy in prosecuting their claim. Having failed to meet this burden, I thus am unable to find that the PICs have proven that the acts of "undue pressure and/or influence and/or threats" are unlawful acts capable of establishing a claim in unlawful means conspiracy.

146 In any case, I find that the PICs have not made out either of their allegations of a breach of fiduciary duties or of undue pressure/influence. These allegations, as detailed in the PICs' pleaded claim, comprise the following:

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244 PIC Subs at para 269(b).

(a) The alleged conspirators *applied undue pressure and/or influence* on the PICs to cause FTMS to enter into the Loan Agreements and the Redemption Agreements;[245]

(i) Mr Andy Lim used his power and position as chairman of Tembusu to place undue pressure and/or influence on FTMS and the PICs to enter into the Tembusu Redemption Agreement;[246]

(ii) Mr Chhor used his power and position as founder and managing partner of Qualgro to place undue pressure and/or influence on the PICs to cause FTMS to enter into the Qualgro Redemption Agreement;[247]

(b) The alleged conspirators *applied undue pressure, influence and/or threats* on the PICs to cause FTMS to enter into the Tembusu Side Agreements and the Qualgro Side Agreement;[248]

(c) By participating in the Loan and Redemption Agreement Acts and in having induced the PICs to cause FTMS to enter into the Qualgro Redemption Agreement, Mr Chhor was in *breach of his fiduciary duty as a director of FTMS*;[249] and

(d) By participating in the Enforcement Event Acts and in having induced the PICs to enter into and consent to FTMS entering into the

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245 DCC at paras 22(a)–22(b), 24.

246 DCC at para 24(m).

247 DCC at para 24(v).

248 DCC at paras 22(d)–22(e), 26(c).

249 DCC at para 24(bb).

side agreements with the Lenders, Mr Chhor was in *breach of his fiduciary duty as director of FTMS* to act in the best interests of FTMS.[250]

147 First, despite the express pleadings,[251] it does not appear to be the PICs' case that there had been undue pressure and/or influence to enter into the Loan Agreements. The PICs have not particularised this in their pleadings and have not submitted on the same. Neither have the PICs suggested in their evidence that this was the case:

(a) Mr Mangat admitted under cross-examination that the Tembusu Loan Agreement was a fair agreement and that Tembusu did not apply pressure or influence on him to enter into the same.[252]

(b) Similarly, Mr Mangat accepted that the terms of the Loan Agreements were "very fair" and that they were "fair agreement[s]".[253]

148 Second, it is essential to appreciate the circumstances surrounding the entry of the Redemption Agreements. I begin with the Tembusu Redemption Agreement. It is not disputed that FTMS failed to pay the first interest payment of S$135,000 under the Tembusu Loan Agreement to Tembusu on 15 April 2016.[254] This prompted Tembusu's letter dated 6 May 2016 alleging several events of default (see above at [15]). The PICs submit that this was "one of the first steps to place undue pressure on [the PICs] and FTMS".[255]

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250 DCC at para 26(g).

251 DCC at paras 22(a)(i), 22(b)(i), 24.

252 Transcript 9 February 2023 at p 33 line 21 to p 34 line 1.

253 Transcript 22 February 2023 at p 35 lines 1–23.

254 PIC Subs at paras 114–115; 1DIC Subs at para 39.

255 PIC Subs at para 116.

149 I do not accept this submission. It is apparent from the express terms of the Tembusu Loan Agreement that there was an event of default by virtue of the failure to pay the first interest payment. Whether or not there was a cure period, which the PICs allege,[256] does not take away from the fact that an event of default had occurred.

150 As for the payment of certain loans set out in item 6 of Schedule 5 of the Tembusu Loan Agreement – which was also cited as an event of default (see above at [15]) – it is undisputed that the loan of S$300,000 from Trusha, which appeared in Schedule 5, had not been paid.[257] The PICs submit that this was because the loan was due much later, as a result of an agreement between FTMS and Tembusu for that loan to be restructured in accordance with cl 10.1.16 read with Schedule 3 of the Tembusu Loan Agreement.[258] This clause required FTMS to reschedule its existing loans set out in that schedule before their respective due dates for repayment, and to provide written evidence of the same to Tembusu. Schedule 3 included the loan of 14 May 2015 of a sum of S$300,000 from Trusha, which was noted to be due on 31 March 2016. Be that as it may, there is no evidence that this loan was indeed restructured before its due date, much less at the time of Tembusu's letter on 6 May 2016. Evidently, there are two conflicting obligations in relation to this specific loan. Nevertheless, none of these obligations – whether to repay or to reschedule – had been fulfilled at the material time. Whichever of these obligations prevailed, there had been an event of default.

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256 PIC Subs at paras 116, 119.

257 PIC Subs at para 119.

258 PIC Subs at paras 119–120, 132.

151 As for the cross-defaults – which was the other event of default cited in Tembusu's letter (see above at [15]) – I accept that the letter had not particularised this alleged event of default. However, I note that Mr Mangat had not sought to clarify this at the material time. In fact, despite there being correspondence between Mr Mangat and Mr Andy Lim of Tembusu on the same day in relation to that letter (see below at [153]),[259] this issue was not raised. In my view, it is either that (a) FTMS and/or the PICs had understood what this meant and thus saw no need to clarify, which undermines the PICs' argument "that the alleged 'cross-defaults', apart from being unclear and lacking in particulars, could not logically have constituted an event of default under the Tembusu Loan Agreement";[260] or (b) this issue was not of significance to FTMS and/or the PICs and thus they saw no need to clarify, which undermines the PICs' argument that this was undue pressure that operated on them.

152 Therefore, in the round, I reject the PICs' submission that the letter of 6 May 2016 was an attempt to put *undue pressure* on FTMS and the PICs by falsely claiming events of default.[261] Instead, I find that there had been events of default and Tembusu was acting within its rights in notifying FTMS of these events which it believed had occurred. There is no evidence to suggest that this notification was sent in bad faith or that Tembusu did not actually believe these to be events of default. FTMS and/or the PICs had not, at that material time, denied or contested any of these events of default as well.

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259 PIC Subs at para 122; 6AB220.

260 PIC Subs at para 121.

261 PIC Subs at paras 116, 118.

153 In addition, Mr Andy Lim of Tembusu had sent an e-mail to Mr Mangat on the same day as the letter of 6 May 2016, stating:[262]

> … I just heard from [Mr Ang] that the independent Directors of Tembusu have asked him to send an email to FTMS for failing to pay interest on 20 April. This is a technical default and even though you have a 'cure' period, the Independent Directors are concerned with FTMS ability to repay the loans in the future.
>
> Perhaps we can discuss the email with Qualgro and [Mr Chanrai] when we meet on 11 May to find a comprehensive solution to your immediate cash flow problems. A placement of 10% of your shares or an equivalent rights issue if you feel the dilution is not desirable or the valuation is not right.

The PICs allege that this was an attempt by Mr Andy Lim to use his power and position as chairman of Tembusu to put pressure on FTMS and the PICs to eventually cave in and enter into the Redemption Agreements.[263]

154 Again, I do not agree that this was illegitimate pressure. As has been established, FTMS had defaulted on the first interest payment (see above at [149]) and the e-mail was factually correct. As a lender, Tembusu was naturally concerned about the recovery of its loan, which was in question given the default of the very first interest payment. It cannot be illegitimate pressure for a lender to seek its rightful repayment that is overdue and to that end propose to "find a comprehensive solution to [the borrower's] immediate cash flow problems". Tembusu was not seeking to obtain more than what it was legally entitled to and was simply acting to secure its interests under the Tembusu Loan Agreement.

155 The PICs allege that the sending of the notice of 1 June 2016 by Tembusu (see above at [18]) calling for the full redemption of its loan was

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262 6AB220.

263 PIC Subs at para 123.

another attempt to pressure, influence and/or induce FTMS and the PICs to eventually enter into the Redemption Agreements.[264] This notice alleged the same events of default, with the additional allegation that FTMS was "insolvent, being unable to pay its debts as it [fell] due and having negotiated with its creditors to defer its indebtedness".[265] My observations above as to the events of default particularised in the letter of 6 May 2016 apply equally here. Crucially, FTMS did not deny these events of default at the material time. This was despite the fact that Premier Law LLC, who was acting as FTMS's solicitors, had drafted a response to be sent to Tembusu which set out (a) FTMS's disagreement that Tembusu was entitled to redeem the loan in full; (b) sought for detailed particulars of the events of default; and (c) denied that there were events of default entitling immediate redemption of the loan.[266] This response, however, was never sent.[267]

156 The PICs allege that "Tembusu's sudden appointment of Don Ho & Associates ("DHA") as receiver on 30 May 2016" was a step taken by Tembusu to pressure, influence and/or induce FTMS and the PICs to enter into the Redemption Agreements.[268] The difficulty with this submission is that it is not clear whether DHA was indeed appointed as receiver. The PICs only point to a letter dated 30 May 2016 wherein DHA confirmed that it *could* act as receiver of FTMS on behalf of Tembusu.[269] There was no confirmation that DHA was eventually appointed. Further, the minutes of Tembusu's investment committee

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264 PIC Subs at para 130.

265 7AB52.

266 7AB78–7AB79.

267 PIC Subs at para 139.

268 PIC Subs at para 135.

269 7AB46.

meeting of 8 June 2016 suggest that DHA would only be appointed as receiver in the event that a resolution could not be reached,[270] implying that DHA had not yet been appointed at the time of that meeting. Mr Ang also clarified that Tembusu had reached out to DHA as a *potential* receiver of FTMS.[271]

157 In addition, the PICs aver that Mr Andy Lim of Tembusu had placed undue pressure and/or influence in calling a meeting at which he proposed to change the terms of the Tembusu Loan Agreement such that they were more onerous.[272] This meeting, which Mr Andy Lim denies calling and/or arranging,[273] had taken place on 4 June 2016. According to Mr Mangat's contemporaneous notes circulated to FTMS's solicitors, Tembusu had proposed various amendments to the obligations under the Tembusu Loan Agreement including changes in interest, cure periods and consequences of defaults in payment.[274] This proposal must be understood in its context. By this time, Tembusu had issued its notice of 1 June 2016 declaring several events of default and calling for full redemption of the loan. Resolution of this matter would require the parties to come to a mutually agreed arrangement. On the part of Tembusu, it is predictable for it to have demanded revised terms that could deliver the desired assurances and protection over its interests. This would, of course, translate into more exacting obligations on the part of FTMS. The alternative to this would have been for Tembusu to proceed with the full redemption of the loan by 30 June 2016, which was far more demanding. Hence, I am unable to agree with the PICs that making such demands was

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270 22PBD146.

271 AEIC Ang at para 51.

272 DCC at para 24(m); PIC Subs at para 136.

273 AEIC Andy Lim at p 11.

274 7AB75.

illegitimate or amounted to undue pressure as it is consonant with the commercial realities of the situation.

158 Based on the above, I find that there is no *undue* pressure or influence by Tembusu over the PICs to cause FTMS to enter into the Tembusu Redemption Agreement. It cannot be disputed that there was some commercial pressure, but there is nothing improper about this *per se* and is simply an unavoidable by-product of participating in any economic market.

159 Turning to the allegations of undue pressure to enter into the Qualgro Redemption Agreement, the PICs claim that Mr Chhor had exerted undue pressure and influence in calling for a board meeting of FTMS to pass a resolution of no confidence against *Mr Mangat*.[275] First, despite this express pleading, Mr Mangat accepts in his AEIC that this was actually a vote of no confidence against *the financial management of FTMS*.[276] There was no such vote against Mr Mangat.

160 Second, even if I disregard this issue, such an action, again, must be understood in its context. Prior to entering into the Qualgro Redemption Agreement in October 2016, Qualgro was notified on 21 April 2016 by Mr Ang of Tembusu that FTMS was facing a "total cash crunch in the coming months [of] ~[S$]6.8m … including a shortfall of ~S$3.8m next month".[277] Subsequently, on 6 May 2016, Qualgro was informed, by way of an e-mail copied to Mr Chhor, that FTMS previously defaulted on the first interest payment due under the Tembusu Loan Agreement for a relatively modest sum

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275 DCC at para 24(v).

276 AEIC Mangat at para 91, p 854.

277 5AB336.

of S$135,000 in April 2016.[278] On 30 June 2016, Mr Mangat sent an e-mail to Mr Chhor explaining, in essence, that FTMS was facing cash flow issues and sought to make the interest payment under the Qualgro Loan Agreement, which was due on the same day, in instalments spread across the month of July 2016.[279]

161 Slightly before the entry into the Qualgro Redemption Agreement in October 2016, FTMS was due to make its third payment of S$1.6m under the Tembusu Redemption Agreement on 30 September 2016 (see above at [19]). In the lead up to this, it was clear that FTMS, however, did not have the financial means to make this payment without any further fund raising. To this end, the FTMS board meeting minutes of 13 August 2016 noted that (a) in respect of the 2016 forecast, Mr Mangat had presented that "[i]n terms of cash flows, repayment of loans is the challenge that lay ahead";[280] and (b) the board agreed to raise S$5m in equity capital and S$5m in debt capital "for [the] repayment of Tembusu redemption premium".[281] It does not appear that this materialised, although there was admittedly an effort by the Lenders to find other investors. Instead, on 26 September 2016, Mr Edwards of Qualgro informed Mr Mangat that Qualgro was willing to assist in a loan of S$1m to Mr Chanrai, to lend on to FTMS, provided that certain additions to the Qualgro Loan Agreement were consented to.[282] This offer was not eventually accepted.

162 In its place, FTMS, the PICs and Mr Chanrai entered into the Hiro Loan Agreement (see above at [22]). According to Mr Chhor, Mr Mangat had

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278 6AB209.

279 7AB202–7AB203.

280 8AB17.

281 8AB19.

282 8AB310–8AB311.

breached the trust Qualgro placed in him in doing so,[283] primarily because (a) Qualgro and/or Mr Chhor did not know about the Hiro Loan Agreement until after Mr Mangat had decided to enter into the same, and they (*ie*, Qualgro and/or Mr Chhor) certainly did not agree to it; and (b) Qualgro found the terms of the Hiro Loan Agreement to be unacceptable because they constituted a breach of the Qualgro Loan Agreement and compromised the Qualgro Guarantee.[284]

163 Indeed, in taking on this loan – that was above the "Permitted Indebtedness" as defined in the Qualgro Loan Agreement – without the consent of Qualgro, there was a breach of cl 10.1.8 of the Qualgro Loan Agreement, and an event of default had occurred *per* cl 11.1.3 of the same agreement (see above at [9(f)]–[9(g)]). Moreover, in granting a legal mortgage over the PICs' house at Cable Road as part of the Hiro Loan Agreement, the PICs had breached cl 3.1 of the Qualgro Guarantee, which was also an event of default *per* cl 11.1.3 of the Qualgro Loan Agreement; Mr Mangat agreed as much under cross-examination.[285]

164 In view of these events, it is therefore understandable for Mr Chhor to have proposed a vote of no-confidence regarding the financial management of FTMS. As Mr Chhor explained in his AEIC, he did so in order to "make clear and indicate that there had been a loss of confidence in the financial management of FTMS" because "FTMS was clearly in a precarious position and more had to be done" to improve its financials.[286] I recognise that these concerns were contemporaneously recorded in an e-mail sent by Mr Chhor on

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283 AEIC Chhor at para 77.

284 AEIC Chhor at paras 77–79.

285 Transcript 28 February 2023 at p 150 line 19 to p 151 line 13.

286 AEIC Chhor at para 80.

7 October 2016 to the other directors of FTMS, including the PICs.[287] Subsequent to this, Qualgro issued its notice of 10 October 2016 (see above at [23]) notifying FTMS that certain events of default had occurred.

165 I find that Qualgro and/or Mr Chhor did not exert undue or illegitimate pressure in calling for the vote of no confidence. As with Tembusu, it is vital to recognise that Qualgro was a lender seeking to protect its interests under the Qualgro Loan Agreement. There had been signs from as early as April 2016 indicating the uncertain financial state of FTMS. In order to reduce as much risk to its investment and loan as possible, Qualgro took reasonable steps in good faith.

166 In any case, the vote of no-confidence was defeated.[288] It is tenuous to argue that this constituted illegitimate or undue pressure when the vote had little practical sting to the PICs. Further, the Qualgro Redemption Agreement was not even conceived at the time of the vote and the PICs have not demonstrated how the vote operated to pressure them into entering the Qualgro Redemption Agreement.

167 Therefore, I similarly find that there had been no *undue* pressure or influence by Qualgro over the PICs to cause FTMS to enter into the Qualgro Redemption Agreement.

168 For completeness, the PICs have not made out a case of *presumed* undue influence based on a relationship of trust and confidence between FTMS and/or themselves and the Lenders. In so far as the PICs advance their case based on

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287 9AB63.

288 9AB6.

"Class 2" undue influence, this requires proof of (a) a relationship of trust and confidence between themselves and the Lenders (or Mr Chanrai); (b) that the relationship was such that it could be presumed that the Lenders (or Mr Chanrai) abused their trust and confidence in influencing the PICs to enter into the subsequent agreements with the Lenders; and (c) that the subsequent agreements called for an explanation: see *BOM v BOK and another appeal* [2019] 1 SLR 349 at [101].

169 It is apparent that the parties were engaging in a commercial transaction at arm's length, with each pursuing its individual interest. There was no significant relationship or transaction involving the PICs and the Lenders prior to the Loan Agreements that would have given rise to a relationship of trust and confidence. Neither do the PICs and/or FTMS have a relationship with the Lenders within a class which would give rise to a presumption of trust and confidence (such as a familial or fiduciary relationship).

170 Finally, I turn to the allegations of breach of fiduciary duty by Mr Chhor. The difficulty with this allegation is that it is not particularised whatsoever in the PICs' pleaded case. They have simply asserted the breach of the duty "to act in the best interests of FTMS" without identifying how this duty was precisely breached. The allegation is plainly a bare, unsubstantiated assertion.

171 The PICs' written submissions, in any case, do not assist them. At the outset, notwithstanding that the PICs' pleaded case is a breach of *the fiduciary duty to act in the best interests* of FTMS, in their closing submissions, they make reference to the duties to act honestly in the discharge of directors' duties and to the exercise of directors' powers in good faith, not preferring the interests of another principal over FTMS. Evidently, this is a departure from their pleaded case.

172 To the extent that these other duties come under the broader duty to act in the best interests of FTMS – which the PICs do not contend – I shall consider the alleged breaches for completeness. They allege three instances of breach of fiduciary duties by Mr Chhor, namely that he was preferring Qualgro's interests over FTMS's interests in issuing the notices dated 10 October 2016 (see above at [23])[289] and 2 December 2016 (see above at [35])[290], where Qualgro had noted that an event of default and an enforcement event respectively had occurred, and that Mr Chhor had "shared confidential information of FTMS with Tembusu that he received *qua* his position as a director of FTMS".[291]

173 In my view, the PICs overstate their case. First, FTMS, the PICs, Qualgro and Mr Chhor were aware that a key reason for Mr Chhor to be on the board of FTMS was to enable Qualgro and/or Mr Chhor to monitor the performance of FTMS, and thereby the performance of Qualgro's investment and loan in FTMS. Indeed, cl 7.5 of the Qualgro Loan Agreement granted Qualgro the right to nominate one director to the board of FTMS if Qualgro continued to hold at least 2% of the issued shares in FTMS or if the loan had yet to be repaid in full. It does not lie in the mouth of the PICs to now claim that such an arrangement was a conflict of interest when they were acutely aware that Mr Chhor's participation in FTMS was ultimately to safeguard Qualgro's interests. In this sense, any conflict in interests owing to the concurrent directorships of Mr Chhor had been consented to by FTMS, Qualgro and the PICs.

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289 PIC Subs at para 433(a).

290 PIC Subs at para 433(c).

291 PIC Subs at para 433(b); PIC Reply Subs at para 30(b).

174 Second, the relevant breaches of the agreements with Qualgro had occurred, as set out above, and Qualgro was at liberty to issue the notices of default to FTMS. It is immaterial that Mr Chhor was the one who signed off on those notices, especially since the notices were issued in the name of Qualgro. To that end, Qualgro could issue those notices – and would likely have still issued those notices – in its own name, even without the involvement of Mr Chhor. The PICs' case elevates form over substance in this respect.

175 As for the final breach relating to the alleged sharing of confidential information of FTMS with Tembusu, this is a misplaced objection given that Tembusu too had its own nominated directors on the board of FTMS and would have had access to the same information anyway.

176 For completeness, Qualgro also submits that because the fiduciary duties allegedly breached were owed to FTMS, any action for such breach can only be brought by FTMS and not the PICs, and thus cannot sustain an unlawful act for the purposes of unlawful means conspiracy.[292] This submission is legally flawed. It does not appear to be a requirement that the unlawful act be *actionable by* the injured party; instead, it is conceivable for an unlawful act to be performed against a third party, which in turn causes injury to a claimant. This being the case, the fact that any action for breach of fiduciary duties can only be brought by FTMS is of no consequence to the finding of an unlawful act under the PICs' claim.

177 Thus, the PICs have not proven that the Lenders had committed an unlawful act.

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[292] 5DIC Subs at para 146.

Mr Chanrai had not committed any unlawful act

178 Having addressed the allegations of unlawful acts against the Lenders, I turn to the same against Mr Chanrai. According to the PICs, the alleged unlawful acts that involve Mr Chanrai comprise the (a) alleged misrepresentations made by Mr Chanrai; (b) acts of undue pressure and/or influence by Mr Chanrai; and (c) breach of fiduciary duties owed to FTMS by Mr Chanrai.[293] As I have found that there were no actionable misrepresentations made by Mr Chanrai (see above at [137]), the PICs cannot establish an unlawful act on that basis.

Undue pressure and/or influence

179 In relation to the allegation of undue pressure and/or influence, the PICs aver that Mr Chanrai had "placed further undue pressure and/or influence on the [PICs] by telling the [PICs] to resolve the situation with [Mr Andy Lim] as [Mr Chanrai] said he wanted to avoid any potential legal proceedings between FTMS and Tembusu, which would cause embarrassment and bring disrepute to the Kewalram Group given that [Mr Chanrai] was a shareholder and a member of the FTMS [board of directors]".[294] According to Mr Mangat, this took place at the meeting between himself and Mr Chanrai on 9 June 2016 (see above at [121]). I had found earlier that these alleged representations made by Mr Chanrai, which form the basis for this allegation of undue influence and/or pressure, have not been proven (see above at [121]–[126]). For this reason alone, the PICs' allegation of undue pressure and/or influence is not made out.

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293 PIC Subs at paras 414–434; PIC Reply Subs at para 6.

294 DCC at para 24(o).

180 More generally, the PICs claim that Mr Chanrai had placed undue pressure and/or influence on, and induced the PICs to enter into and consent to FTMS entering into the various agreements with the Lenders.[295] Putting aside the fact that this allegation is unsubstantiated in the pleadings in that it does not point to any specific act(s) of pressure or influence, save for the instance that I have already rejected above, I shall consider whether the allegation may still be made out.

181 While the PICs have pleaded the fact that there was undue pressure and/or influence in relation to the Loan Agreements, the PICs appear to have abandoned this argument (see above at [147]). I thus make no findings on this.

182 Next, according to Mr Chanrai, the allegations in relation to the Redemption Agreements cannot succeed because there was independent legal advice obtained before FTMS and the PICs entered into those agreements.[296] It is trite that proving the existence of independent legal advice is one of the methods to *rebut the presumption* of any undue influence, since a recipient of legal advice is expected to have understood the legal consequences of the proposed action such that he or she can be taken to have acted independently of any influence, unless shown otherwise: see *Nature Resorts Ltd v First Citizens Bank Ltd* [2022] 1 WLR 2788 at [13] and [23].

183 Under cross-examination, Mr Mangat conceded that FTMS was legally advised in relation to the Tembusu Redemption Agreement.[297] In addition, there is contemporaneous correspondence between Mr Mangat and FTMS's solicitors

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295 DCC at paras 24, 26(c).

296 6DIC Subs at paras 60, 62–66.

297 Transcript 1 February 2023 at p 159 line 18 to p 160 line 13.

on and around 6 June 2016,[298] which was just after Tembusu's second notice of default dated 1 June 2016 (see above at [18]). This also extended to correspondence on and around 14 June 2016, wherein Mr Mangat was seeking legal advice in relation to the draft Tembusu Redemption Agreement.[299] Mr Mangat himself noted that the Tembusu Redemption Agreement was "finalised after incorporating [FTMS's] lawyer's comments".[300]

184 Similarly, Mr Mangat confirmed under cross-examination that FTMS was represented by the same solicitors in the lead-up to the Qualgro Redemption Agreement.[301] This is also supported by correspondence on the subject of the appointment of a special accountant, between FTMS's solicitors and Qualgro at and around mid-October 2016,[302] after Qualgro had sent its notice dated 10 October 2016 and before the Qualgro Redemption Agreement was entered into on 31 October 2016 (see above at [23]–[24]). In addition, in an e-mail to Mr Edwards of Qualgro, Mr Carl Athayde, who was negotiating the terms of the Qualgro Redemption Agreement on behalf of FTMS, had expressly referred to seeking FTMS's solicitors' input in relation to the proposed redemption agreement with Qualgro.[303]

185 Thus, it is clear that any presumption of undue influence, even if one exists (which I similarly do not find exists in this case between Mr Chanrai and FTMS or between Mr Chanrai and the PICs), is necessarily rebutted by the fact

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298 7AB78–7AB84.

299 7AB136–7AB139.

300 7AB136.

301 Transcript 1 February 2023 at p 196 lines 1–4.

302 9AB162–9AB164.

303 9AB195.

that FTMS and the PICs were legally advised in relation to the Redemption Agreements.

186 As for the First and Second Tembusu Side Agreements, Mr Chanrai submits that he had no involvement in them and so no allegation of undue pressure or influence can be sustained.[304] Indeed, Mr Chanrai was not a party to either of these agreements, although this does not resolve the question of whether there could be undue pressure and/or influence. What is critically deficient on the part of the PICs is that Mr Mangat's AEIC does not disclose the involvement of Mr Chanrai in the negotiations of these agreements. Mr Chanrai deposed that he was not involved in the discussions of these agreements.[305]

187 Mr Mangat's attempts to demonstrate Mr Chanrai's involvement were unsuccessful. As for the First Tembusu Side Agreement, Mr Mangat initially suggested that Mr Isaac, presumably as Mr Chanrai's representative, may have been involved in the negotiations of the agreement.[306] Mr Mangat later clarified that Mr Isaac was not involved.[307] Similarly, Mr Mangat was unable to point to any contemporaneous correspondence demonstrating that Mr Chanrai knew about the First Tembusu Side Agreement.[308]

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304 6DIC Subs at para 82.

305 AEIC Chanrai at paras 120, 123.

306 Transcript 1 February 2023 at p 210 line 11 to p 216 line 1.

307 Transcript 2 February 2023 at p 24 lines 11–25.

308 Transcript 2 February 2023 at p 68 line 18 to p 84 line 10.

188 Further, I note that Mr Mangat had conceded under cross-examination that FTMS's lawyers had reviewed the First Tembusu Side Agreement,[309] notwithstanding that he earlier said that he could not recall so.[310]

189 The same deficiency applies to the Third Tembusu Side Agreement and the Qualgro Side Agreement: the PICs' pleadings and submissions are bereft of details as to the undue pressure and/or influence exerted by Mr Chanrai. In any case, this allegation does not cohere with the fact that Mr Chanrai had to, and did, provide his personal guarantee under these two agreements. The PICs have not explained why Mr Chanrai would pressure them to enter and consent for FTMS to enter into these agreements when Mr Chanrai was personally more exposed as a result of its entry.

190 Therefore, for the above reasons, I am unable to find that Mr Chanrai had exerted undue pressure and/or influence.

191 For completeness, my remarks in relation to whether duress and/or undue influence is sufficient to show an "unlawful act" for the purposes of establishing a claim in unlawful means conspiracy apply equally to the allegations against Mr Chanrai.

Breach of fiduciary duties

192 Turning to the alleged breach of fiduciary duties by Mr Chanrai, the PICs plead that by participating in the Loan and Redemption Agreement Acts and in the Enforcement Event Acts, "and having induced the [PICs] to cause

309 Transcript 2 February 2023 at p 15 lines 9–21.

310 Transcript 1 February 2023 at p 210 line 11 to p 211 line 12.

FTMS to enter into" one or more of the agreements with Tembusu[311] and Qualgro,[312] Mr Chanrai "was in breach of his fiduciary duty as a director of the FTMS Board to act in the best interests of FTMS".

193 As I have explained in the context of the alleged breach of the same duties by Mr Chhor (see above at [170]), this allegation lacks crucial particulars such as what were the best interests of FTMS, and how Mr Chanrai's actions ran counter to that. These are crucial to establishing how this duty was allegedly breached.

194 Similarly, the PICs' written submissions do not assist them. My earlier remarks in relation to the departure from their pleaded case on the types of duties allegedly breached apply here as well (see above at [171]).

195 In any case, the alleged breaches are not made out. The PICs argue that Mr Chanrai caused FTMS to enter into the agreements "through a series of representations that he made to [the PICs], that he knew were false and/or without any belief in their truth, thereby breaching his duty to act honestly as a director of FTMS".[313] In other words, the PICs have premised Mr Chanrai's breach of fiduciary duties on his alleged misrepresentations. That being the case, and given that I have found that there were no such misrepresentations (see above at [118]–[137]), the PICs have also not made out Mr Chanrai's breach of fiduciary duties.

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311 DCC at paras 24(t), 26(g).

312 DCC at paras 24(bb), 26(g).

313 PIC Subs at para 432.

196 Before moving from this allegation, I note that the PICs also argue, in their reply submissions, that Mr Chanrai had breached his fiduciary duty by:[314]

> … procuring and/or acquiescing in the sale of FTMS's Vietnam and Cambodia subsidiaries at an undervalue, in what were actually self-dealing transactions to [Mr Chanrai] himself, [Mr Schaer] and/or Mr Nguyen, and without any proper approval from the board of FTMS (as the ultimate holding company) or due process …

This allegation was not contained, let alone particularised, in the PICs' pleadings. As such, I say no more about this allegation.

No unlawful act proved in relation to the Other Acts

197 Based on the expressly pleaded case, the PICs *appear* to raise two further unlawful acts that form part of the Other Acts:

(a) The conspirators had engaged in self-dealing, as evidenced by an e-mail from Mr Isaac to Mr Chanrai dated 23 May 2017;[315] and

(b) The conspirators unlawfully relied on a purported board resolution of FTMS dated 19 April 2017 to pass other resolutions, which caused FTMS and/or its related companies to terminate the employment of the PICs unlawfully and without the requisite contractual notice.[316]

198 I shall begin by addressing the first of these unlawful acts. The rule against self-dealing prohibits a director from entering, on behalf of the company, into an arrangement or transaction with himself or with a company or firm in which he is interested: see *Nordic International Ltd v Morten Innhaug*

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314 PIC Reply Subs at para 30(a).

315 DCC at para 32(h).

316 DCC at para 34(d)

[2017] 3 SLR 957 at [55], citing *Tan Hup Thye v Refco (Singapore) Pte Ltd* [2010] 3 SLR 1069 at [29].

199 The e-mail dated 23 May 2017 which the PICs refer to contains Mr Isaac's reproduction of a conversation he had with Mr Schaer in relation to the sale of FTMS's subsidiaries in Vietnam and Cambodia.[317] The e-mail stated that the counterparty to the sale would likely be a "BVI entity", which the parties do not dispute is a reference to a company incorporated in the BVI.

200 It is not in dispute that a sale of FTMS's indirect subsidiary in Vietnam ("FTMS Vietnam") took place. In a letter from the liquidators of FGA to the creditors of FGA dated 25 September 2019, the liquidators referred to a sale and purchase agreement between "[FGA] as seller and FTMS Global Academy ("FTMS BVI") as buyer of [sale assets which includes shares in FTMS Vietnam]".[318] Similarly, in a letter from Mr Chanrai to the liquidators of FGA dated 27 September 2018, he stated that he understood that FTMS Vietnam was sold sometime on or about 24 May 2017 for approximately S$700,000.[319] There is no evidence of any transaction involving FTMS's Cambodian subsidiary.

201 The PICs submit that "the sale of the FTMS subsidiaries in Vietnam and Cambodia were in fact self-dealing transactions whereby the true persons behind the purchase were [Mr Chanrai], [Mr Schaer] and/or [Mr Nguyen]".[320]

202 Under cross-examination, Mr Chanrai accepted that the sale of FTMS Vietnam was by Mr Schaer and he had no idea who FTMS Vietnam was sold

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317 22PBD66.

318 24AB81–24AB83.

319 24AB57.

320 PIC Subs at para 407.

to.[321] Mr Chanrai also guessed that it was not a related party transaction, although he accepted that he did not know.[322] In the same vein, Mr Chanrai testified that he did not check if it was a related party transaction.[323] Later, Mr Chanrai clarified that he was told by Mr Schaer that FTMS Vietnam was sold to a third party.[324]

203 From the perspective of the PICs, Mr Chanrai's evidence *at best* leaves unresolved who was behind the sale of FTMS Vietnam, and *at worst*, confirms that FTMS Vietnam was sold to a third party. Even taking the former would be insufficient to prove the PICs' claim of self-dealing, which would require evidence that any of the then-directors of FTMS, such as Mr Chanrai, Mr Schaer or Mr Nguyen, were the persons behind the BVI entity that purchased FTMS Vietnam.

204 In their submissions, the PICs also make reference to a pair of e-mails from and to Mr Schaer dated 31 May and 1 June 2021 respectively.[325] In the earlier e-mail, Mr Schaer had requested for an "Aged Payables report" from the "Finance & Admin officer" of FTMS Vietnam, which appears to have been sent as an attachment in the later e-mail. According to the PICs, this suggests that Mr Schaer appears to be *involved in* FTMS Vietnam as of 1 June 2021, despite the sale of FTMS Vietnam in 2017.[326] When confronted with these e-mails, Mr Chanrai accepted that based on the e-mail, it was possible that Mr Schaer

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321 Transcript 12 January 2024 at p 162 line 6 to p 163 line 18.

322 Transcript 12 January 2024 at p 164 lines 10–17.

323 Transcript 12 January 2024 at p 165 lines 14–17.

324 Transcript 12 January 2024 at p 169 lines 9–22.

325 13PBD91–13PBD92.

326 PIC Subs at para 410.

was "still in charge of FTMS Vietnam" in 2021.[327] As was brought to Mr Mangat's attention at that time, the e-mails do not suggest that FTMS Vietnam was *sold* to Mr Schaer; Mr Mangat accepted the same.[328] Even if the e-mail was conclusive proof that Mr Schaer was still in-charge of FTMS Vietnam, this does not prove that Mr Schaer was the ultimate beneficial owner of the same. To the extent that the PICs are arguing that Mr Schaer's continued involvement implies that FTMS Vietnam is owned by him, I find this suggestion to be speculative and wholly unsupported.

205 Putting the above together, there is no objective evidence that the sale of FTMS Vietnam was indeed an instance of self-dealing. This is principally because the PICs have failed to demonstrate that the sale was to a then-director of FTMS or a related party.

206 Before moving away from this point, I note that it is *not* the PICs' pleaded case that the assets of FTMS had been sold at an undervalue, whether to the then-directors or to third parties. While the PICs have made reference to the acts of asset stripping,[329] there is no allegation that the assets of FTMS were sold at an undervalue or an unfair discount. Asset stripping does not, by itself, imply that such transactions would be undertaken and certainly, the asset stripping can be undertaken in a legitimate manner. Despite the parties' submissions on this, this matter was ultimately not an issue in dispute, in light of the pleadings. I reiterate my earlier remarks in respect of the general principle that parties are confined to their pleaded case (see above at [68]–[72]). I thus make no findings on whether any transactions were at an undervalue.

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327 Transcript 12 January 2024 at p 171 lines 10–18, p 172 lines 19–21.

328 Transcript 12 January 2024 at p 171 line 10 to p 172 line 13.

329 DCC at paras 32(h), 35, 35(h).

207 As for the second of the unlawful acts allegedly performed as part of the Other Acts, *ie*, that the conspirators unlawfully relied on a purported resolution of the board of FTMS dated 19 April 2017 to pass other resolutions, the PICs appear to have abandoned this argument in their submissions. They have not explained why there was unlawful reliance on this resolution. I thus am unable to find any unlawfulness in this respect.

208 In sum, the PICs have not established any unlawful act that formed part of the Other Acts.

Claim in unlawful means conspiracy dismissed

209 Given my findings above that none of the alleged conspirators had committed an unlawful act, the PICs have not made out an essential element of their claim in *unlawful* means conspiracy against the alleged conspirators. I thus dismiss this said claim against all six DICs.

210 That being the case, in order to succeed in their action, the PICs must establish their claim against the alleged conspirators in *lawful* means conspiracy. To do so, the PICs must demonstrate, *inter alia*, that the alleged conspirators harboured a *predominant* intention to cause damage or injury to them (see above at [103]).

211 I note that the PICs have pleaded that there was a "sole or predominant intention to injure and/or cause financial loss and damage *to FTMS* and/or the [PICs] and/or cause loss to the [PICs] by taking control of FTMS" [emphasis added].[330] In order for the PICs to establish a claim in conspiracy, they would need to demonstrate that the alleged conspirators intended to cause damage *to*

330 DCC at paras 3, 22, 24, 26, 28, 31, 36, 38, 64.

the PICs themselves. As such, the intention to cause financial loss and damage to *FTMS* by itself is insufficient, and also irrelevant to the present inquiry.

212 I shall move to consider whether the PICs have proven a predominant intention to cause damage or injury to them on the part of the alleged conspirators.

Lenders did not have a predominant intention to injure the PICs

213 In their pleadings, the PICs plead that:[331]

> …the matters pleaded at paragraphs 21 to 47 of this Defence and Counterclaim are evidence of a predominant intention on the part of the Conspirators (or any two or more of them acting together) to injure [the PICs] and/or cause financial loss and damage to FTMS and/or [the PICs] and/or cause loss to [the PICs] by taking control of FTMS.

For context, paras 21–47 of the DCC contain the majority of the particulars of the four broad categories of acts forming the conspiracy (see above at [74]). In other words, the PICs have not identified any specific acts or events that demonstrate a predominant intention. Such an approach to pleading one's case is unhelpful and leaves much work to be done by the DICs and by the court. On a separate occasion, a claim may be liable to be struck out for a lack of particulars if such an approach is taken.

214 In their written submissions, the PICs aver that the alleged conspirators had the "predominant intention … to personally harm [the PICs] by bankrupting [them] and taking away from [them their] 2 major assets – FTMS and [their] family home",[332] "the predominant intention … to personally attack and injure

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331 DCC at para 64.

332 PIC Subs at paras 14, 480(b).

[the PICs]" that "went beyond mere business and seemed motivated by personal malice against [the PICs]",[333] and "the predominant intention to destroy [the PICs'] longtime business and inflict severe personal losses on them".[334]

215 As against the Lenders, the PICs submit that the following demonstrate that there was a predominant intention to injure the PICs:

(a) The allegedly unconscionable and onerous interest rates, as well as absence of any cure periods, under the Redemption Agreements and side agreements with the Lenders;[335]

(b) The allegedly false claims of events of defaults by the Lenders in relation to the Loan Agreements;[336]

(c) The recurring references in the Lenders' correspondence to bankrupting the PICs, including:

(i) the series of events on 15 December 2016, particularly the conditions proposed in an e-mail from Mr Ang of Tembusu to Mr Mangat and Mr Chanrai concerning FTMS;[337]

(ii) Two e-mails dated 16 and 17 December 2016 from Mr Edwards to Mr Chhor, both of Qualgro;[338]

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333 PIC Subs at para 251.

334 PIC Reply Subs at para 81.

335 PIC Subs at para 326.

336 PIC Subs at paras 339–358.

337 PIC Reply Subs at pp 37–39.

338 PIC Subs at paras 250–251.

(iii) An e-mail dated 20 January 2017 from Mr Ang to Mr Chhor and Mr Edwards setting out the next steps to be taken by the Lenders;[339]

(iv) An e-mail dated 24 January 2017 from Mr Edwards to Mr Chhor raising options that were available to Qualgro;[340]

(v) The issuance of a letter of demand dated 27 January 2017 by the Lenders;[341] and

(vi) An e-mail dated 8 February 2017 sent by Mr Edwards to Mr Ang containing an attachment titled "IF WE DO NOT GET CO.docx".[342]

216 The PICs argue that the Lenders "were not concerned simply with recovery of their loans, but had, together with [Mr Chanrai] and the other [alleged conspirators], the predominant intention of enforcing against every asset owned by [the PICs], to cause extreme losses, damages and/or injury to them".[343] Specifically, the PICs submit that the actions of the Lenders "cannot be reconciled with those of any commercial lender".[344]

217 Tembusu denies that there is any evidence of such predominant intention to injure the PICs.[345] Instead, it argues that "the evidence shows that Tembusu's

339 PIC Reply Subs at pp 52–54.

340 PIC Reply Subs at pp 54–55.

341 PIC Reply Subs at p 55.

342 PIC Subs at p 117; PIC Reply Subs at pp 59–60.

343 PIC Reply Subs at para 36.

344 PIC Reply Subs at para 168.

345 1DIC Subs at para 98.

sole intention at all times was to recover its loan and exit its investment on the most advantageous terms it could get".[346] In relation to the acts and/or events identified by the PICs as evidence of a predominant intention, Tembusu argues that all that those acts and/or events show "are the acts of individual [DICs] taking steps to secure their own interest by doing things, presumably against [the PICs'] interest", which are insufficient to establish a predominant intention.[347]

218 Qualgro similarly submits that it did not have an intention, predominant or otherwise, to cause injury and/or loss to FTMS and the PICs.[348]

219 I shall address each of the indicators identified by the PICs listed at [215] above.

Allegedly unconscionable and onerous interest rates and absence of any cure periods

220 The PICs refer to the allegedly unconscionable and onerous interest rates and absence of any cure periods, under the Redemption Agreements and side agreements with the Lenders, as proof of a predominant intention to injure. From the PICs' written submissions, this argument is based on a number of false premises.

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346 1DIC Subs at para 99.

347 1st Defendant in Counterclaim's Reply Closing Submissions dated 24 June 2024 at para 17.

348 5DIC Subs at para 182.

221 First, the PICs contend that there were no events of default under the Tembusu Loan Agreement[349] and the Qualgro Loan Agreement.[350] As I have established (see above at [149]–[150] and [163]), this is untrue.

222 It bears repeating that against the background of the defaults by FTMS (a borrower), it is understandable for the Lenders (creditors), who are commercially-minded parties, to seek to secure their financial interest by reducing cure periods and tightening repayment terms to have more control over their loans, while also increasing interest rates to reflect the increased risk of their investment. It is therefore not unexpected, and indeed reasonable, for the subsequent, renegotiated agreements to have a higher internal return rate or a shorter investment timeframe, as was the case here. To claim that these new terms are unconscionable simply because they are *relatively more onerous* than the previous terms would require turning a blind eye to the commercial realities.

223 Second, in relation to Qualgro, the PICs contend that there was "no justifiable reason for Qualgro to tighten the terms of [the Qualgro Loan Agreement] ***if*** *a third-party was able to take over FTMS's existing loans on the same terms*" [emphasis added].[351] Instead, according to them, this demonstrates that Qualgro "would pounce on any opportunity to tighten the loan conditions … in order to ensure that they obtained supernormal returns, even when there had been no defaults by FTMS".[352] The third-party being referred to here was a party known to the parties as "Ashley". Based on the draft term sheet shared

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349 PIC Subs at para 327.

350 PIC Subs at paras 333–334.

351 PIC Subs at para 333.

352 PIC Subs at para 333.

and correspondence between the parties,[353] Ashley was a potential candidate only for the refinancing of Tembusu's loans, and was not approached to take over Qualgro's loan and investment. That being the case, it remained necessary for Qualgro to secure its interests by tightening the terms of the Qualgro Loan Agreement.

224 Finally, for completeness, I note that the PICs have been inconsistent with, and ultimately presented a misleading picture of, the financial onerousness of the later agreements with the Lenders.

(a) In their pleadings, they argue that the amended schedule of payments under the Tembusu Redemption Agreement "represented an effective interest rate of approximately 62% per annum"[354] and that the same under the Qualgro Redemption Agreement "represented an effective interest rate of approximately 139% per annum".[355]

(b) In their closing submissions, they assert that Qualgro was essentially making a return of almost 50% per annum under the Qualgro Redemption Agreement.[356] They further assert that the Lenders had turned their loans of US$3m and S$4.5m into almost a S$24m loan in less than three years.[357]

225 However, when the parties were directed to provide their calculations of the internal return rate under the various agreements, the PICs notably distanced

353 8AB288–8AB306.

354 DCC at para 24(r).

355 DCC at para 24(z).

356 PIC Subs at para 337.

357 PIC Subs at para 338.

themselves from these astronomically inaccurate and misleading figures.[358] I do not speculate on how the PICs arrived at such initial computations. It goes without saying that such figures should never have been presented in the first place, not least from an accountant with approximately four decades of relevant experience.[359]

Events of default

226 I have already established that there were events of default in relation to the Loan Agreements (see above at [149]–[150] and [163]).

227 While the PICs argue that at no time during the board meetings of FTMS held on 26 January, 11 May, 13 August 2016 or at any other meetings was it mentioned that there were events of default, even though there were representatives from the Lenders on the board of directors,[360] this does not preclude the finding of such events of default. Further, this also ignores the fact that the Lenders had separately issued notices of default and there was no requirement for such notices to be given at board meetings.

228 Hence, the PICs cannot point to the allegedly improper calling of or false claims of defaults as there had been defaults of both the Loan Agreements.

The events of 15 December 2016

229 Before going into the events of 15 December 2016, it is important to set the context. By this point of time, FTMS had entered into the Second Tembusu Side Agreement under which FTMS was required to make three payments

358 PIC Reply Subs at pp 103–107.

359 PIC Subs at para 19.

360 PIC Subs at para 339.

totalling more than S$3.8m, with the last payment due on 2 December 2016. (see above at [30]). None of those payments had been made. FTMS had also entered into the Qualgro Redemption Agreement, pursuant to which it was required to make a payment of US$200,000 by 30 November 2016 (see above at [24]). That too remained outstanding. These were not the first instances where FTMS had failed to meet its payment obligations.

230 Against this context, Mr Ang of Tembusu had met with Mr Schaer on 15 December 2016, the latter of whom Mr Mangat was in discussions with two days prior in relation to managing Tembusu's demands. Subsequent to the meeting, Mr Ang wrote to Mr Mangat and Mr Chanrai, copying Mr Schaer, to share a proposal on how to move forward. This included the appointment of Mr Schaer in place of one of the FTMS board members, the appointment of a special accountant, and the change of FTMS's bank signatories.[361] This e-mail was forwarded to Mr Edwards of Qualgro, who then suggested obtaining a second mortgage on the PICs' house and for a pledge of 25% of the shares in FTMS Malaysia that Mr Mangat owned.[362]

231 The PICs argue that these conditions put forward show that the alleged conspirators "were simply rushing to take control of FTMS and [the PICs'] assets", and "clearly shows that the [alleged conspirators] harboured a predominant intention to harm and injure [the PICs]".[363] Again, seen in its context, the Lenders were simply acting to protect their interests and their investment in FTMS. All the suggestions are evidently to obtain security for

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361 10AB144–10AB145.

362 10AB143–10AB144.

363 PIC Reply Subs at p 39.

their loans and their primary concern was a favourable financial outcome for themselves.

The correspondence between the lenders

232 I shall consider the remaining indicators identified by the PICs listed above in [215] together. They all relate to e-mail correspondence between the Lenders about the next steps to be taken. It is unnecessary to set out the full details of these correspondence, save to mention that there was reference to possibly commencing bankruptcy proceedings against the PICs. The PICs suggest that this illustrates the intention to personally attack them, motivated by personal malice.[364]

233 In fixating on the fact that the option of bankruptcy was on the table, the PICs fail to give due recognition to the fact that the Lenders had proposed many other solutions alongside this, including for Mr Chanrai to buy out their interests. Further, this was after months of renegotiation with FTMS and/or Mr Mangat, and after various (failed) attempts to secure additional fundraising for FTMS. In my view, the Lenders cannot be faulted for considering this option and it is an overstatement to say that the Lenders had a predominant intention to injure, simply because they had considered bankrupting the PICs.

234 In any case, the PICs' suggestion is misconceived because the Lenders did not pursue the said bankruptcy proceedings and instead simply assigned their loans to ACE and exited their investments. If the PICs are correct that the Lenders had a predominant intention to injure them, it is unexplainable why the Lenders would assign their loans and thereby give up their standing as a creditor

364 PIC Subs at para 251.

to commence bankruptcy proceedings against the PICs. If anything, this demonstrates that the Lenders were not at all concerned with the PICs but were focused on their own financial returns.

235 Additionally, as Tembusu submits, the witnesses from Tembusu and/or Qualgro were not cross-examined on several of these e-mails.

236 Ultimately, I find that the Lenders were acting to protect their commercial interests and to secure their investments in FTMS. It is evident that their primary aim was consistently to ensure that they could recover their loans and achieve their investment goals as much as possible. In these circumstances, the Lenders cannot be said to have directly intended loss or injury to the PICs. While it may have been a foreseeable consequence, this is insufficient to make out a predominant intention.

237 Moreover, the focus on securing satisfactory financial returns is evident from the very beginning of the Lenders' involvement with FTMS. On the part of Qualgro, I accept its submission that its only intention when entering into the Qualgro Loan Agreement was to obtain returns on its investment from the long-term growth of FTMS:[365]

> (a) As Mr Chhor testified, the objective of Qualgro was to invest into companies for financial return and thereby "make money" for its investors.[366] This is supported by the minutes of Qualgro's investment committee meeting of 11 September 2015, wherein it was noted that Mr Chhor had reminded attendees that "[e]verything we do should be in

365 5DIC Subs at para 187.

366 Transcript 3 January 2024 at p 72 lines 11–20.

the interest of our investors" and that they should "[f]ocus on the most important aspects of decision[s], affecting return to our investors".[367]

(b) Qualgro's decision to invest into FTMS was made after a comprehensive review of FTMS's business, as is evident from the investment committee minutes and the investment committee paper.[368]

(c) Based on the terms of the investment, which included an equity component comprising 3% of FTMS's outstanding shares, Qualgro stood to achieve greater returns if FTMS performed well. This was all the more so given that the valuation of this equity component upon Qualgro's exit via a buy-back by FTMS would be a multiple of FTMS's EBITDA (see above at [9(d)]). As Qualgro points out,[369] any intention to "engineer" a default would actually result in a loss to Qualgro and be counterproductive to the whole purpose of the investment and the objective of the fund.

238 On the part of Tembusu, as evidenced in Mr Ang's AEIC, the decision to invest into Tembusu was made after considering the growth potential and challenges facing FTMS, which led Tembusu to conclude that FTMS "could potentially be an investment with high returns".[370] To that end, Mr Ang disagreed under cross-examination that Tembusu had "conspired right from the beginning with a clear intent to cause loss to FTMS and [the PICs]".[371]

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367 5DBD Vol 13 at p 249.

368 5DBD Vol 13 at pp 249–252, 255–309.

369 5DIC Subs at paras 189–190.

370 AEIC Ang at paras 9–10.

371 Transcript 2 January 2024 at p 150 lines 12–15.

239 In my view, the Lenders' decision to involve themselves with FTMS was certainly a purely commercial decision. Their subsequent actions to manage their investments in FTMS were also commercially motivated. The PICs have not proven that there was a *predominant* intention to injure them. There being no predominant intention, I dismiss the claims in lawful means conspiracy against the Lenders.

Mr Chanrai did not have a predominant intention to injure the PICs

240 As against Mr Chanrai, the PICs submit that the following demonstrate a predominant intention to injure the PICs:

(a) the introduction of Mr Schaer and Mr Nguyen to obtain information and take control of FTMS;[372]

(b) the setting up and use of ACE as a front;[373] and

(c) the sale of FTMS's assets.[374]

241 I consider each in turn.

Introduction of Mr Schaer and Mr Nguyen

242 It is unclear how Mr Chanrai's introduction of Mr Schaer and Mr Nguyen evidences a predominant intention on Mr Chanrai's part to injure FTMS and/or the PICs. To recapitulate, Mr Schaer was introduced to Mr Mangat by Mr Chanrai in November 2016 (see above at [133]) and Mr Schaer was first appointed as director of FTMS on 16 December 2016 (see

372 PIC Subs at paras 359–365.

373 PIC Subs at paras 366–402.

374 PIC Subs at paras 403–411.

above at [5]). Mr Nguyen was first appointed as director of FTMS on 19 December 2016 before being removed soon after, and subsequently reappointed on 18 April 2017 (see above at [5]). Both of their appointments in 2016 were approved by the PICs.

243 Much of the PICs' submissions appear to be focused on the fact that even though Mr Schaer and Mr Nguyen were introduced for the purpose of sourcing for funding on behalf of FTMS,[375] such funding did not materialise.[376] However, it would be extremely tenuous to conclude that Mr Chanrai's introduction of individuals that were allegedly incapable of achieving the objectives assigned to them indicates a predominant intention to injure the PICs.

244 Further, there is also no basis to attribute the acts of these individuals to Mr Chanrai, even if he did introduce them to Mr Mangat.

Mr Chanrai and ACE

245 The PICs' submission relating to ACE rests wholly on the premise that Mr Chanrai is behind ACE. However, the PICs fail to establish this. The PICs allege that ACE was incorporated by Mr Chanrai, Mr Schaer and Mr Nguyen "as a front" for the alleged conspiracy,[377] "by or through [Mr Chanrai's] lawyer".[378] However, there is nothing to corroborate this. Mr Chanrai denies being involved in the incorporation of ACE.[379] He confirms that he did not hold

375 PIC Subs at para 359.

376 PIC Subs at paras 361–362.

377 DCC at para 32(c); AEIC Mangat at para 42(f).

378 DCC at para 32(b).

379 AEIC Chanrai at para 258(b); Transcript 12 January 2024 at p 117 lines 1–4.

any (direct or indirect) interest in ACE at all material times.[380] He also denies being a partner or director of ACE.[381] Further, there is plainly no evidence to support the assertion that ACE was incorporated by Mr Chanrai's solicitors, and in any case, this was not put to Mr Chanrai under cross-examination.

Sale of FTMS's assets

246 In relation to the sale of FTMS's assets, the PICs focused on the sale of FTMS Vietnam, which they claim was a self-dealing transaction.[382] The PICs fail to establish a predominant intention by reference to this sale for several reasons. First, as I have found, the PICs have not proven that this was a self-dealing transaction (see above at [204]–[205]).

247 Second, even if it was a self-dealing transaction, the PICs have not established Mr Chanrai's involvement in the transaction. As I have noted, Mr Chanrai testified that the sale was by Mr Schaer (see above at [202]). Even if Mr Chanrai knew that this was a self-dealing transaction, which the evidence does not show, it is unclear how this translates into a predominant intention to injure the PICs.

Mr Chanrai's interest

248 Apart from the above, I also observe that Mr Chanrai did not have any economic interest in injuring FTMS, given that he too was a significant shareholder of FTMS. According to him, he had invested approximately S$8m

380 AEIC Chanrai at para 258(b).

381 Transcript 12 January 2024 at p 47 lines 1–21.

382 PIC Subs at paras 406–411.

in or around 2011 in FTMS by way of a share subscription.[383] In addition, he had extended personal loans to FTMS, including a loan of US$1.6m in or around August 2012.[384] Further, by late 2016, Mr Chanrai had personally guaranteed a number of loans taken by FTMS including the loans from the Lenders and Mr Bhojwani. In short, Mr Chanrai was similarly situated as the PICs in terms of his financial interests. In so far as the PICs allege that there was a predominant intention to injure them by way of injuring FTMS, this makes little commercial sense in these circumstances.

249 In whole, the PICs have failed to demonstrate a predominant intention on the part of Mr Chanrai to injure FTMS and/or the PICs. I therefore dismiss the claim in lawful means conspiracy against Mr Chanrai as well.

Claim in lawful means conspiracy dismissed

250 As I have dismissed the claim in lawful means conspiracy against Mr Chanrai and the Lenders, the PICs' entire action falls away. To recapitulate, the PICs' case is that the conspiracy consists of the four broad categories of acts, *each of which is inextricably linked to the others as part of the conspiracy* (see above at [74]). Mr Schaer and Mr Nguyen were alleged to be only involved in the Corporate Raid Acts and the Other Acts. ACE was alleged to be only involved in the Other Acts. This means that even if ACE, Mr Schaer and Mr Nguyen had combined to commit the acts alleged with the predominant intention to injure the PICs, the PICs pleaded conspiracy, comprising the four acts, would still *not* be proven.

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383 AEIC Chanrai at para 49.

384 AEIC Chanrai at para 52.

251 Crucially, it is not the PICs' case that the four acts were individual sub-conspiracies. Rather, as has been emphasised time and again in the pleadings, at the trial and in the written submissions, the PICs' case is that the DICs had engaged in a *grand* conspiracy against the PICs spanning at least from 2014 to 2018. This being the case, there is no room to find that there is a sub-conspiracy in relation to a particular period or particular act(s). The PICs must be held to their pleaded case (see above at [68]–[72]).

252 For completeness, I address the questions of whether there was any combination between the alleged conspirators and whether the PICs have proved loss as a result of the conspiracy.

No combination between the alleged conspirators found

253 In addition to my finding that Mr Chanrai and the Lenders did not have a predominant intention to injure the PICs, I also find that there was no combination to speak of between the alleged conspirators. In relation to the Lenders, they each pursued their individual commercial objectives of maximising financial returns and managing the performance and risk of their investments. In so far as there is any evidence of "collaboration" between them, this was necessitated by the Intercreditor Deed (see above at [14]). Notwithstanding that, there have also been instances where the Lenders took different positions on the way forward, which demonstrates the lack of a common purpose grounding any combination between them.

254 As between the Lenders and ACE (together with Mr Schaer and Mr Nguyen), there is minimal overlap between the two. In effect, by way of the ACE Assignment Agreement, ACE stepped into the shoes of the Lenders and the latter ceased to have any interest in this matter thereafter. The PICs' case of

any combination between the two is also severely undermined by the fact that ACE was not the first candidate that was considered for the assignment of the Lenders' rights under their agreements with FTMS; many other entities had been considered at different times and ACE was only introduced rather late in the process.

255 As between the Lenders and Mr Chanrai, again there is inadequate evidence of any combination. Mr Chanrai was a director of FTMS and he, expectedly, was required to communicate with the Lenders during the period of their investments. This was especially so given the defaults of FTMS and the need for the Lenders' expectations to be managed. Even if there were instances where Mr Chanrai had been in discussions with the Lenders to the exclusion of Mr Mangat, which the PICs have identified in their submissions, I do not accept the PICs' suggestion that an inference of collusion should be drawn. On the part of the Lenders, they operated as independent entities with the primary objective of securing financial return. To that end, I recognise that there were also instances where the Lenders sought to take a different course of action from what was proposed by Mr Chanrai, on the view that it was more favourable to them.

256 Finally, as between Mr Chanrai and ACE (together with Mr Schaer and Mr Nguyen), the PICs have also not proven any combination for several reasons. First, as I have concluded, there is no evidence that Mr Chanrai is using ACE as a "front" (see above at [245]). Second, Mr Chanrai also confirmed under cross-examination that he did not fund ACE's payment to the Lenders for the ACE Assignment Agreement.[385]

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385 Transcript 12 January 2024 at p 154 line 11 to p 155 line 13.

Loss as a result of the conspiracy not proved

257 The PICs plead various heads of losses as a result of the conspiracy (see above at [78]). I shall consider each of these *seriatim*.

Alleged losses flowing from the PICs' bankruptcies

258 The PICs contend four separate categories of losses arising from the PICs' bankruptcies. Before turning to that, it is necessary for the PICs to first establish that their bankruptcies themselves were *caused* by the alleged conspiracy.

259 In their pleadings, the PICs assert that ACE and FTMS's other creditors (backed by Mr Chanrai) had voted against the voluntary arrangement proposed at the creditors' meeting of 15 March 2018 (see above at [60]),[386] and subsequently, ACE filed an application to void the decision of the creditors' meeting.[387] The PICs then plead that ACE commenced bankruptcy proceedings against the PICs "using the Dolphin Loan acquired by ACE and/or [Mr Chanrai] bought at a premium",[388] and accordingly, that they were made bankrupt as a result of the alleged conspiracy orchestrated by the alleged conspirators.[389]

260 In my judgment, this is insufficient to prove that the bankruptcies were caused by the alleged conspiracy for several reasons.

261 First, the events surrounding the PICs' attempt at a voluntary arrangement are somewhat of a red herring. From the evidence, it is clear, as

386 DCC at para 37(b).

387 DCC at para 37(c).

388 DCC at para 37(d).

389 DCC at para 37(e).

Mr Chanrai submits,[390] that bankruptcy was an inevitable end for the PICs. In Mdm Gill's affidavit of 13 November 2017 filed in support of her and Mr Mangat's applications for an interim order (see above at [58]), Mdm Gill stated that "[the PICs] are unable to pay [their] debts as and when they fall due, and [their] liabilities, including prospective and contingent liabilities, presently exceed [their] assets or prospective or contingent assets".[391] The proposed arrangement, which was annexed to the same affidavit, acknowledged that (a) there were five bankruptcy applications against the PICs (see above at [57]);[392] (b) eight judgment debts had accrued, with three additional pending claims by creditors;[393] (c) there were eight pending statutory demands;[394] and (d) the PICs' total estimated liabilities was over S$44m or over S$27m (excluding the mortgage on their home).[395] This demonstrates that the PICs were already in a dire financial position to begin with.

262 Further, Trusha's bankruptcy applications were pending at the time of the bankruptcy orders on 25 August 2018. Even though those applications came up for hearing on 1 November 2018, *ie*, after the PICs had been adjudged bankrupt, the applications were not withdrawn then but instead only withdrawn on 22 November 2018 as Trusha wished to wait for the appeal timeline to lapse, as indicated in the court's minute sheet. Trusha thus appeared equally resolute at obtaining bankruptcy orders against the PICs.

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390 6DIC Subs at para 200.

391 Affidavit of Sirjit Gill dated 13 November 2017 filed in HC/OSB 122/2017 ("Affidavit of Sirjit Gill") at para 7(a).

392 Affidavit of Sirjit Gill at pp 33–34.

393 Affidavit of Sirjit Gill at pp 16–31.

394 Affidavit of Sirjit Gill at p 34.

395 Affidavit of Sirjit Gill at p 35.

263 Second, the act – by FTMS's other creditors, in particular Mr Bhojwani and Trusha – of voting against the proposed arrangement cannot be ascribed to the alleged conspirators, particularly Mr Chanrai. The fact that the loans to Mr Bhojwani and Trusha were *guaranteed* by Mr Chanrai is neither here nor there. To the extent that the PICs are suggesting that these creditors had colluded with Mr Chanrai to vote against the proposal because of the guarantees, I accept Mr Chanrai's submission[396] that this is a bare assertion unsupported by any credible evidence, and one that was not put to Mr Chanrai during cross-examination. In any case, I note that the evidence shows that it was Mr Mangat who requested for these guarantees to begin with.[397]

264 Third, the bankruptcy order was made on the basis of the PICs' guarantee of the Dolphin Loan (see above at [59]–[61]), which remained partly unpaid. In so far as the PICs suggest that Mr Chanrai had a part to play in acquiring the Dolphin Loan, I accept Mr Chanrai's submission that there is no credible evidence to support this and that this was not put to Mr Chanrai during cross-examination.[398] Similarly, there is nothing to suggest that the Lenders were connected to the bankruptcy orders, which were due to the PICs' inability to meet their financial commitments unrelated to the Lenders. In fact, the Lenders had already exited the scene before the bankruptcy applications B 1104 or B 1105 were even filed. In short, the bankruptcy orders were unconnected to the Lenders or Mr Chanrai.

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396 6DIC Subs at para 202.

397 Transcript 12 January 2024 at p 56 line 24 to p 58 line 9.

398 6DIC Subs at para 199.

265 For completeness, the PICs' assertion that the Dolphin Loan was acquired "at a premium"[399] is also untrue: the assignment from Dolphin One Pte Ltd to ACE of the Dolphin Loan was for a consideration equivalent to the outstanding sum due and owing from FTMS.[400] In other words, the Dolphin Loan was acquired at par value of the sums recoverable, with no discount or premium.

266 Therefore, since it is not proven that the bankruptcies of the PICs were caused by the alleged conspiracy, the four specified categories of losses arising from the bankruptcies are similarly not proven to be caused by the alleged conspiracy.

Other alleged losses

267 The PICs claim that they have suffered financial loss and damage arising from Mr Mangat's "loss of one of his main assets, being [the shares in FTMS]" due to FTMS's liquidation.[401] This claim is problematic for several reasons.

268 First, the PICs need to establish, as an anterior matter, that the liquidation of FTMS was done pursuant to the alleged conspiracy. In this respect, the PICs appear to be blowing hot and cold. They argue that the ultimate objective of the conspiracy was to take over FTMS. However, the liquidation of FTMS does not cohere with this objective, especially since control now vests with the liquidators. In addition, there is also reason to suggest that FTMS would have eventually faced liquidation in any case (see below at [272]).

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399 PIC Subs at para 230.

400 23AB259–23AB260.

401 DCC at para 67(f).

269 Second, it is trite that a shareholder does not lose its shareholding simply upon a liquidation of the company. The shareholder remains a shareholder, maintains his interest in the company throughout the liquidation process, and at the end of which, may be entitled to any surplus. It is thus incorrect to say that the liquidation of FTMS has resulted in Mr Mangat losing his shares.

270 Third, to the extent that the PICs are instead arguing that there is a loss *in value* of Mr Mangat's shares, that is not the pleaded case. Even if I were to consider this submission, the claim is barred as it is essentially a claim for reflective loss. As held by the Court of Appeal in *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at [206], "claims by shareholders for the diminution in the value of their shareholdings or in distributions they receive as shareholders as a result of actionable loss suffered by their company cannot be maintained". I do not accept the PICs' argument that the exception in *Giles v Rhind* [2003] BCC 79 applies to this case.

271 Fourth, given the parlous state of FTMS, the PICs have not demonstrated that there was any value in the shares of FTMS to begin with, such that there can be any loss suffered. The PICs submit that before the Loan Agreements with the Lenders in 2015, "FTMS was running well",[402] and was a "prudently managed business" as seen from its audited accounts.[403] While the PICs make reference to FTMS's audited accounts, I observe that this was done in a selective manner, with the PICs emphasising what they thought to be favourable figures and turning a blind eye to the undesirable aspects of the accounts.

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402 PIC Reply Subs at para 90.

403 PIC Reply Subs at para 92.

272 Contrary to the PICs' narrative, FTMS was in a questionable financial state. Based on the schedules to the Loan Agreements, FTMS owed close to S$14m to creditors (excluding existing shareholder loans) and was paying relatively high interest rates on those loans of up to 38.4% per annum. Further, in FTMS's independent auditors' report for the financial year ending 31 December 2014, the auditors drew attention to the fact that:[404]

> … the group has borrowings of S$12,140,371 as at 31 December 2014. The continuation of the group as a going concern is therefore *dependent on its creditors and shareholders to continue extending financial support to the group and of its subsidiaries achieving profitable operations*. [emphasis added]

In that financial year, the current liabilities of FTMS exceeded its current assets, and FTMS suffered a loss of more than S$5m.[405] Further, the auditors had cast doubt on certain entries in the accounts, namely the deferred tax assets and intangible assets,[406] which if excluded, would have resulted in FTMS's total assets being lesser than its total liabilities.

273 Separately, the PICs claim for the loss of the ability to recover their loans to FTMS as a result of the liquidation. This too had its challenges. First, the PICs must show that they would have been able to recover their loans from FTMS in the first place. Given the doubts over FTMS's future as a going concern at the material time as I have noted above, the PICs have not established this foundational fact.

274 Second, it is also trite that a liquidation does not extinguish a creditor's claims. On the contrary, a creditor is still able to file its proof of debts and seek

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404 2AB146.

405 2AB147–2AB149.

406 2AB146.

repayment from the company in liquidation, to the extent that that company can, with whatever assets it has, make such payment alongside any concurrent obligations to other creditors. As such, the PICs are not prevented from recovering their loans to FTMS simply by reason of the liquidation.

275 The PICs also allege that the *unlawful* termination of their employment by the alleged conspirators have resulted in loss of income. The PICs' written submissions did not address this, and as such, I am unable to find that such loss was indeed occasioned by the alleged conspiracy. While I note that Mr Chanrai has submitted on this, arguing that the PICs' employment contracts allow for termination for cause without any advance notice,[407] it is not necessary to consider this since the PICs have not even made out a case on this.

276 As for the alleged losses arising from increased personal financial liabilities in being kept on as directors in various FTMS group companies, the PICs' argument is misconceived. This was not elaborated upon in the PICs' written submissions. Crucially, the PICs have not explained what these "personal financial liabilities" are, and how they have arisen. I acknowledge that the PICs have pleaded that "*by refusing to allow the [PICs] to discharge their duties as directors of FTMS and/or other FTMS Group companies*" [emphasis added], the PICs "continue incurring personal financial liabilities in Sri Lanka, India, Cambodia and Mauritius for the acts of the [alleged conspirators]".[408] However, that does not resolve the two essential questions above.

277 In any case, if the PICs are suggesting that these "personal financial liabilities" arise from a breach of directors' duty on their part, the PICs would

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407 6DIC Subs at paras 150–152.

408 DCC at para 63.

still have much left unestablished such as what duties were breached, how they were breached, how the breach was connected to the alleged conspiracy and so on. Further, it was, at all times, open to the PICs to resign from their directorships in those entities if they were not willing to take on any personal risk arising specifically from those directorships.

278 Finally, as for the alleged inability of Mr Mangat to continue his business due to the alleged unlawful retention of documents and items, this too was not elaborated upon in the PICs' written submissions. In any case, I observe that since the alleged unlawful retention was by FTMS and/or FGA, the PICs' cause of action lies primarily against those entities.

Conclusion

279 I therefore dismiss the PICs' claims in both unlawful and lawful means conspiracy, and in misrepresentation.

280 I shall hear the parties on costs.

Chan Seng Onn
Senior Judge

The plaintiffs in counterclaim in person;
Daniel Chia Hsiung Wen, Ker Yanguang (Ke Yanguang) and Charlene Wee Swee Ting (Prolegis LLC) for the first defendant in counterclaim;
The second, third and fourth defendants in counterclaim absent and unrepresented;
Balakrishnan Ashok Kumar, Tay Kang-Rui Darius (Zheng Kangrui), Shu Kit, Loh Song-En Samuel, Nee Hoong Yi Adriel and Oh Shi Jie Jonathan (Blackoak LLC) for the fifth defendant in counterclaim;
Lim Tahn Lin Alfred, Lye May-Yee Jaime and Choong Guo Yao Sean (Meritus Law LLC) for the sixth defendant in counterclaim.

Annex 1: The payment obligations under the agreements

Qualgro Agreements

Qualgro Loan Agreement (*without equity component)

Payment Type	*Date*	*Days Count*	*Payment (US$)*	*Cumulative Payment (US$)*
Initial Drawdown	14-Sep-15		-3,000,000	0.00
Interest	31-Dec-15	108	53,260.27	53,260.27
Interest	30-Jun-16		90,000.00	143,260.27
Interest	31-Dec-16		90,000.00	233,260.27
Interest	30-Jun-17		90,000.00	323,260.27
Interest	31-Dec-17		90,000.00	413,260.27
Interest	30-Jun-18		90,000.00	503,260.27
Interest for 30 Jun – 31 Aug 2018	31-Aug-18	62	30,575.34	533,835.62
Redemption Premium	31-Aug-18	1082	533,589.04	1,067,424.66
Principal	31-Aug-18		3,000,000.00	4,067,424.66
			IRR	**11.55%**

Qualgro Loan Agreement (*without equity component) before Qualgro Redemption Agreement

Payment Type	*Date*	*Days Count*	*Payment (US$)*	*Cumulative Payment (US$)*
Initial Drawdown	14-Sep-15		-3,000,000	0.00
Interest Paid	8-Jan-16	116	45,000.00	45,000.00
Interest Paid	3-Feb-16	142	7,826.00	52,826.00
Interest Paid	1-Jul-16		90,000.00	142,826.00
Interest	31-Dec-16		90,000.00	232,826.00
Interest	30-Jun-17		90,000.00	322,826.00
Interest	31-Dec-17		90,000.00	412,826.00
Interest	30-Jun-18		90,000.00	502,826.00
Interest for 30 Jun – 31 Aug 2018	31-Aug-18	62	30,575.34	533,401.34
Redemption Premium	31-Aug-18	1082	533,589.04	1,066,990.38
Principal	31-Aug-18		3,000,000.00	4,066,990.38
			IRR	**11.54%**

Qualgro Redemption Agreement

Payment Type	*Date*	*Payment (US$)*	*Cumulative Payment (US$)*
Initial Drawdown	14-Sep-15	-3,000,000	0.00
Interest Paid	8-Jan-16	45,000	45,000.00
Interest Paid	3-Feb-16	7,826	52,826.00
Interest Paid	1-Jul-16	90,000	142,826.00
Instalment	30-Nov-16	200,000	342,826.00
Instalment	29-Dec-16	1,000,000	1,342,826.00
Instalment	31-Jan-17	1,200,000	2,542,826.00
Instalment	28-Feb-17	1,000,000	3,542,826.00
Instalment	31-Mar-17	600,000	4,142,826.00
Instalment	28-Apr-17	426,000	4,568,826.00
		IRR	**35.41%**

Qualgro Side Agreement

Payment Type	**Date**	**Payment (US$)**	**Cumulative Payment (US$)**
Initial Drawdown	14-Sep-15	-3,000,000	0.00
Interest Paid	8-Jan-16	45,000	45,000.00
Interest Paid	3-Feb-16	7,826	52,826.00
Interest Paid	1-Jul-16	90,000	142,826.00
Instalment	26-Jan-17	1,200,000	1,342,826.00
Instalment	28-Feb-17	3,226,000	4,568,826.00
Per day rate from 30 Nov '16	28-Feb-17	65,217.39*	4,634,043.39
		IRR	**36.20%**

*Conversion rate of US$1 = S$1.38

ACE Assignment Agreement (in relation to Qualgro)

Payment Type	**Date**	**Payment (US$)**	**Cumulative Payment (US$)**
Initial Drawdown	14-Sep-15	-3,000,000	0.00
Interest Paid	8-Jan-16	45,000	45,000.00
Interest Paid	3-Feb-16	7,826	52,826.00
Interest Paid	1-Jul-16	90,000	142,826.00
Instalment from ACE	28-Mar-17	578,000	720,826.00
Instalment from ACE	11-Apr-17	2,312,000	3,032,826.00
Instalment from ACE	20-Dec-17	1,156,000	4,188,826.00

IRR	**21.49%**

Actual Received Payments by Qualgro

Payment Type	**Date**	**Payment (US$)**	**Cumulative Payment (US$)**
Initial Drawdown	14-Sep-15	-3,000,000	0.00
Interest Paid	8-Jan-16	45,000	45,000.00
Interest Paid	3-Feb-16	7,826	52,826.00
Interest Paid	1-Jul-16	90,000	142,826.00
Paid (from ACE)	28-Mar-17	578,000	720,826.00
Paid (from ACE)	11-Apr-17	2,312,000	3,032,826.00
Paid (from ACE)	21-Dec-17	1,156,000	4,188,826.00
		IRR	**21.48%**

Total payment received from ACE	4,046,000
Total actionable remedy to ACE (rights under QSA) *excluding any potential late interest	4,516,000
Discount	470,000

Tembusu Agreements

Tembusu Loan Agreement

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest	15-Apr-16	135,000	135,000.00
Interest	15-Oct-16	135,000	270,000.00
Interest	15-Apr-16	135,000	405,000.00
Interest	15-Oct-16	135,000	540,000.00
Interest	15-Apr-18	135,000	675,000.00
Redemption Premium (interest for 30 months)	15-Apr-18	1,237,500	1,912,500.00
Principal	15-Apr-18	4,500,000	6,412,500.00
		IRR	**16.38%**

Tembusu Loan Agreement (immediately before the Tembusu Redemption Agreement)

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest	15-Oct-16	135,000	273,897.00
Interest	15-Apr-16	135,000	408,897.00
Interest	15-Oct-16	135,000	543,897.00
Interest	15-Apr-18	135,000	678,897.00
Redemption Premium (interest for 30 months)	15-Apr-18	1,237,500	1,916,397.00
Principal	15-Apr-18	4,500,000	6,416,397.00
		IRR	**16.40%**

Tembusu Redemption Agreement

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Instalment	29-Jul-16	100,000	238,897.00
Instalment	31-Aug-16	200,000	438,897.00
Instalment	30-Sep-16	1,600,000	2,038,897.00
Instalment	31-Oct-16	2,465,000	4,503,897.00
Instalment	30-Nov-16	900,000	5,403,897.00
Instalment	30-Dec-16	251,733.90	5,655,630.90
		IRR	**25.10%**

First Tembusu Side Agreement (If Assigned)

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest Paid	29-Jul-16	100,000	238,897.00
Interest Paid	31-Aug-16	200,000	438,897.00
Interest Paid	30-Sep-16	1,600,000	2,038,897.00
Payment not to enforce rights	8-Nov-16	100,000	2,138,897.00
Deferred Oct '16 payment	15-Nov-16	2,465,000	4,603,897.00
Late Interest	15-Nov-16	14,000	4,617,897.00
Instalment	30-Nov-16	900,000	5,517,897.00
Instalment	30-Dec-16	275,076.00	5,792,973.00
		IRR	**27.50%**

First Tembusu Side Agreement (If Not Assigned)

Payment Type	*Date*	*Payment (US$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest Paid	29-Jul-16	100,000	238,897.00
Interest Paid	31-Aug-16	200,000	438,897.00
Interest Paid	30-Sep-16	1,600,000	2,038,897.00
Payment not to enforce rights	8-Nov-16	100,000	2,138,897.00
Payment	8-Nov-16	3,622,180	5,761,077.00
		IRR	**27.54%**

Second Tembusu Side Agreement

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest Paid	29-Jul-16	100,000	238,897.00
Interest Paid	31-Aug-16	200,000	438,897.00
Interest Paid	30-Sep-16	1,600,000	2,038,897.00
Instalment	16-Nov-16	100,000	2,138,897.00
Instalment	21-Nov-16	100,000	2,238,897.00
Instalment	2-Dec-16	3,618,261	5,857,158.00
		IRR	**28.31%**

Third Tembusu Side Agreement

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest Paid	29-Jul-16	100,000	238,897.00
Interest Paid	31-Aug-16	200,000	438,897.00
Interest Paid	30-Sep-16	1,600,000	2,038,897.00
Payment	28-Feb-17	4,599,683	6,638,580.00
		IRR	**37.23%**

ACE Assignment Agreement (in relation to Tembusu)

Payment Type	*Date*	*Payment (SG$)*	*Cumulative Payment (SG$)*
Initial Drawdown	15-Oct-15	-4,500,000	0.00
Interest Paid	26-May-16	100,000	100,000.00
Interest Paid	30-May-16	35,000	135,000.00
Late Interest Paid	30-May-16	3,897	138,897.00
Interest Paid	29-Jul-16	100,000	238,897.00
Interest Paid	31-Aug-16	200,000	438,897.00
Interest Paid	30-Sep-16	1,600,000	2,038,897.00
To be paid by ACE	28-Mar-17	582,360*	2,621,257.00
To be paid by ACE	10-Apr-17	2,329,440*	4,950,697.00
To be paid by ACE	20-Dec-17	1,164,720*	6,115,417.00
		IRR	**24.36%**

*Conversion rate of US$1 = S$1.38

Total payment from ACE	4,076,520
Total actionable remedy to ACE (rights under the Third Tembusu Side Agreement) ***excluding any potential late interest**	4,599,683
Discount	523,163