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

[2024] SGHC 41

Suit No 545 of 2021

Between

Farzin Ratan Karma

… *Plaintiff*

And

(1) Helen Campos
(2) MC Corporate Services Pte Ltd
(3) MC Accounting Services Pte Ltd

… *Defendants*

JUDGMENT

[Companies — Oppression — Minority shareholders]
[Companies — Directors — Duties]

TABLE OF CONTENTS

Farzin Ratan Karma
v
Helen Campos and others

[2024] SGHC 41

General Division of the High Court — Suit No 545 of 2021
Hoo Sheau Peng J
10–13, 18–21, 24–25 April, 14 August 2023

13 February 2024 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This action is the culmination of an unhappy business relationship between the plaintiff, Mr Farzin Ratan Karma ("Mr Karma"), and the first defendant, Ms Helen Campos ("Ms Campos"). Mr Karma alleges that Ms Campos perpetrated various commercially unfair and oppressive acts against him, and seeks a buyout order of his shares in the second and third defendant companies. In response, Ms Campos and the defendant companies counterclaim against Mr Karma for various breaches of the fiduciary duties he owed as a director. Having considered the evidence and parties' submissions, I dismiss Mr Karma's claim and I partially allow the defendants' counterclaim. These are my reasons.

Facts

The parties

2 The second defendant, MC Corporate Services Pte Ltd ("MCCS"), was incorporated on 28 November 2006, and is in the business of providing corporate secretarial and general management consultancy services.[1] The third defendant, MC Accounting Services Pte Ltd ("MCAS"), was incorporated on 29 January 2008, and is in the business of providing accounting services.[2]

3 Both MCCS and MCAS were initially incorporated with Ms Campos as their sole shareholder.[3] By 2010, Mr Karma had acquired 35,000 out of 100,000 shares in MCCS, and 805 out of 2,300 shares in MCAS, amounting to a 35% share in each company.[4] Ms Campos retained the remaining 65% shareholding of each company until October 2019, when she transferred one share in each to her son, Andrew Cherian Thomas ("Mr Thomas").[5] By the time this action was commenced on 18 June 2021, the single share held by Mr Thomas had been transferred to Mr Chris Allix ("Mr Allix"), a director in MCCS and MCAS.[6]

4 After the commencement of the present action, in October 2021 and in January 2022, MCCS and MCAS each offered a rights issue respectively.[7] As

---

1 Statement of Claim (Amendment No. 1) (3 December 2021) ("SOC") at para 1–2; Defence and Counterclaim (Amendment No. 1) ("Defence") at para 5.

2 SOC at para 1–2; Defence at para 5.

3 SOC at paras 10–11; Defence at para 11.

4 SOC at para 3; Defence at paras 5, 14 and 15.

5 SOC at para 4; AEIC of Helen Campos (7 Feb 2023) ("AEIC of Helen Campos") at para 92.

6 AEIC of Helen Campos at para 19.

7 AEIC of Helen Campos at para 20.

Mr Karma did not take up either rights issue, the percentage of his shareholding in MCCS fell to 5%, and his shareholding in MCAS fell to 0.013%.[8] Mr Allix continued to hold a single share in each company, and Ms Campos owned the remaining 94.999% of the shareholding in MCCS, and 99.865% of the shareholding in MCAS.[9] This represents the parties' current shareholding.

Background to the dispute

Parties' history

5 Mr Karma and Ms Campos first met in 2003.[10] At the time, Mr Karma was employed as the Regional Technical Director of a computer software and management company named Ulysess System (Singapore) Pte Ltd ("Ulysess"), which was being advised by a law firm at which Ms Campos was working.[11] Ms Campos' practice related to the provision of corporate secretarial services.[12]

6 By 2005, Ms Campos had left the law firm and taken up a position as shareholder and managing director of ELTICI Corporate Services Pte Ltd's ("ELTICI") corporate secretarial practice.[13] However, in or around October 2006, ELTICI's management decided to sell its corporate secretarial practice. As Ms Campos was not keen on taking up employment with the buyer, she

---

8 SOC at para 25; AEIC of Helen Campos at para 20.

9 AEIC of Helen Campos at para 20.

10 Plaintiff's Closing Submissions (12 June 2023) ("PCS") at para 7; Defence at para 7.

11 AEIC of Helen Campos at para 16; AEIC of Farzin Ratan Karma (7 Feb 2023) ("AEIC of Farzin Karma") at para 2.

12 PCS at para 7; Defence at para 7; Defendant's Closing Submissions (12 June 2023) ("DCS") at para 10.

13 PCS at para 8; AEIC of Helen Campos at para 10.

decided to leave ELTICI.[14] Parties disagree over how acrimonious her departure was. Mr Karma argues that it was extremely so,[15] while Ms Campos claims that it was quite amicable.[16]

Incorporation of MCCS and MCAS

7 After leaving ELTICI in late 2006, Ms Campos decided to set up MCCS – a corporate services company.[17] At the outset, she was its sole director and shareholder.[18] While parties disagree on the importance of the role Mr Karma played in setting up MCCS and how significant his contributions were, it is common ground that he was at least supportive of Ms Campos' efforts to start MCCS.[19] Further, parties are in agreement that Mr Karma made at least "minimal" contributions to the starting-up and running of MCCS and MCAS.[20] In particular, Ms Campos concedes that he assisted in some "secondary matters", including logistics, dealing with the movers and contractors, and setting up the IT network system for MCCS.[21]

8 As noted above at [3], MCCS was incorporated on 28 November 2006. Mr Karma was appointed a director of MCCS on 12 December 2006.[22] He was then appointed a signatory for MCCS' bank account with United Overseas Bank

---

14 PCS at paras 9–10; AEIC of Helen Campos at para 10.

15 SOC at paras 6–8

16 AEIC of Helen Campos at para 11.

17 PCS at para 10; Defence at para 10.

18 PCS at para 21; Defence at para 11;

19 Defence at para 10.

20 AEIC of Helen Campos at paras 25 and 35.

21 AEIC of Helen Campos at paras 25–26.

22 AEIC of Farzin Karma at para 24; AEIC of Helen Campos at para 21.

Limited ("UOB") on 9 June 2007,[23] and thereafter acquired a 35% shareholding in MCCS (*ie*, 35,000 shares) from Ms Campos on 19 February 2008.[24]

9 MCAS was incorporated on 29 January 2008. On 21 April 2009, Mr Karma was appointed a director,[25] and acquired a 35% shareholding in MCAS (*ie*, 805 shares).[26] He lost both his shareholding and directorship in MCAS on 23 April 2009, with some dispute between the parties as to whether he knew of this at that time.[27] However, he thereafter regained his 35% shareholding in MCAS on 17 September 2010,[28] and his directorship on 25 February 2013.[29] Mr Karma does not appear to contest Ms Campos' allegation that he did not pay for the shares in either MCCS or MCAS, or contribute any capital to either of the companies.[30]

HCCS and FEL

10 In addition to MCCS and MCAS, Ms Campos incorporated a full-service corporate secretarial firm named HC Consultancy Pte Ltd ("HCCS") on 23 December 2008.[31] Her intention in doing so was to use HCCS to collect revenue generated from her provision of nominee-director services to

---

23 SOC at para 10; Defence at para 59.

24 SOC at para 10; AEIC of Helen Campos at para 34(a), p 132.

25 AEIC of Helen Campos at para 21.

26 AEIC of Helen Campos at para 34(b), p 133.

27 AEIC of Helen Campos at paras 21 and 34(b); DCS at para 17.

28 AEIC of Helen Campos at para 34(c), p 135.

29 AEIC of Helen Campos at para 21; DCS at para 17.

30 DCS at para 40; PCS at para 21.

31 PCS at para 6; AEIC of Helen Campos at para 14.

companies, and for other services which she provided outside the purview of MCCS or MCAS' business.[32]

11 In the meantime, Mr Karma was still employed at Ulysess.[33] He remained so employed until leaving in 2013, with Ulysess subsequently being struck off in 2015.[34] Mr Karma subsequently incorporated Farohar Enterprizes on 18 January 2013 ("FEL"), a management consultancy company, of which he was the sole director and shareholder.[35]

The Directors' Agreement

12 Over the years, various points of dispute had arisen between Ms Campos and Mr Karma over issues pertaining to remuneration.[36] On 23 April 2014, they entered into an agreement (the "Directors' Agreement") which was dated 1 January 2014.[37] This was meant to resolve their existing disagreements, and formalise their legal and commercial relationship with each other, as well as their financial entitlements vis-à-vis MCCS and MCAS.[38] The Directors' Agreement provided for *inter alia* the remuneration of Ms Campos and Mr Karma, payment of a lump sum of $350,000 by Ms Campos to Mr Karma in settlement of any possible claims or liabilities between themselves, MCCS, MCAS, HCCS, or FEL, and for apportionment of billings between Ms Campos

---

32 SOC at para 14; Defence at para 19; AEIC of Helen Campos at para 14.

33 PCS at para 21; Defence at 11.

34 DCS at para 12; AEIC of Helen Campos at para 47; NEs 11 April 2023 at p 28 lines 8–14.

35 AEIC of Helen Campos at para 17, p 118–121.

36 PCS at paras 31–43.

37 PCS at para 44; AEIC of Helen Campos at paras 53, 118.

38 PCS at para 46; AEIC of Helen Campos at para 50.

and Mr Karma, via HCCS and FEL respectively, going forward.[39] As the parties rely on different terms of the Directors' Agreement in making their arguments on the various issues raised, I will consider the terms upon which they rely in greater detail at the appropriate juncture.

Ms Campos' disqualification from directorship

13 On 9 March 2017, Ms Campos was disqualified from acting as a director in or taking part in the management of a company pursuant to s 155A of the Companies Act (Cap 50, 2006 Rev Ed), as she had been a director in three companies that were struck off by the Registrar within a five-year period.[40] Ms Campos officially resigned from MCCS and MCAS in October 2019,[41] having been granted several extensions of time to resign her directorships by ACRA.[42] Ms Campos eventually resumed her directorships of MCCS, MCAS, and HCCS after being granted leave by the court to do so on 1 February 2021.[43]

The Waiver Agreement

14 As of 2 November 2017, the accounts of MCCS and MCAS showed Mr Karma owing the companies a total debt of $546,015.76. It should be noted at this juncture that Mr Karma claims that a large portion of this debt was supposed to have been written off pursuant to the Directors' Agreement.[44] However, it is undisputed that Ms Campos and Mr Karma entered into an agreement ("the

---

39 AEIC of Farzin Karma at p 142–149; AEIC of Helen Campos at p 472–478.

40 PCS at para 91; AEIC of Helen Campos at paras 80–82.

41 Defence at para 39(c); AEIC of Helen Campos at para 86.

42 AEIC of Helen Campos at para 81.

43 AEIC of Helen Campos at para 87.

44 PCS at paras 52–56, 62, 71.

Waiver Agreement") on 2 November 2017, to waive the $546,015.76 which Mr Karma was shown to owe MCCS and MCAS.[45]

Rose's Salary Agreement

15 On 10 January 2020, MCCS entered into an agreement with FEL concerning the salary of one Asis Rose Dela Rosa ("Rose" and "Rose's Salary Agreement").[46] Rose was an accountant who had been employed by MCCS since around 2017.[47] This agreement was entered into in connection with the renewal of her employment pass by MCCS, brought about by Mr Karma.[48] Under Rose's Salary Agreement, Rose would spend some of her working hours providing services to FEL, and FEL would in exchange pay MCCS a sum of $1,700 on a monthly basis.[49] It was also provided that this arrangement would terminate upon one month's written notice, or when Rose was no longer on assignment with FEL.[50] FEL paid the $1,700 to MCCS for Rose's services up until December 2020, and did not pay this sum from January 2021 until July 2021.[51] Parties dispute whether Rose continued to render any services to FEL after January 2021. Rose's employment with MCCS was subsequently terminated in July 2021.[52]

---

45 PCS at para 64; Defence at para 63; AEIC of Helen Campos at para 67, p 593.

46 PCS at para 237; Defence at para 52.

47 AEIC of Helen Campos at para 202.

48 AEIC of Helen Campos at p 1183.

49 PCS at paras 237–238; AEIC of Helen Campos at p 1199.

50 PCS at para 239–242; Defence at para 52(e).

51 AEIC of Farzin Karma at paras 126–127; Defence at para 55.

52 PCS at para 244; Defence at para 54.

Appointment of additional directors

16 On 8 October 2019, while still disqualified from holding directorships, Ms Campos transferred one share each in MCCS and MCAS to her son, Mr Thomas.[53] She then convened an extraordinary general meeting ("EGM"), held on 8 November 2019, to appoint Dr Theyvendran s/o Ramanathan ("Dr Theyvendran") as a director of MCCS and MCAS.[54]

17 On 29 June 2020, Ms Campos requisitioned another EGM, for the purposes of appointing Mr Allix as a director of the MCCS and MCAS, and for Mr Madadevan Lukshumayeh ("Mr Lukshumayeh") to be appointed as an alternate director for Dr Theyvendran.[55]

18 The EGM was held on 17 July 2020.[56] At the EGM, Mr Allix and Mr Lukshumayeh also appointed Ms Campos as the General Manager of MCCS and MCAS.[57] Mr Lukshumayeh was subsequently appointed a director of MCCS and MCAS on 29 December 2020.[58] As mentioned above at [13], on 1 February 2021, Ms Campos was granted leave to act as a director of MCCS and MCAS by order of court.[59]

---

53 SOC at para 4; AEIC of Helen Campos at para 92.

54 AEIC of Helen Campos at para 93.

55 AEIC of Helen Campos at para 94, p 825–828.

56 AEIC of Helen Campos at p 825.

57 AEIC of Helen Campos at para 157, p 1066.

58 AEIC of Helen Campos at para 96, p 828.

59 AEIC of Helen Campos at para 87.

The rights issues

19 Mr Karma commenced the present action on 18 June 2021.[60] By this time, Ms Campos had been reinstated as a director of MCCS and MCAS.

20 On 20 October 2021, a resolution authorising a rights issue for MCCS was passed at an EGM.[61] A separate EGM was to be held on 2 November 2021 to authorise a rights issue in MCAS, but Mr Karma obtained an injunction on 29 October 2021 blocking the carrying out of the rights issue in MCCS and proceeding with the EGM to authorise the rights issue in MCAS.[62] The injunction was subsequently set aside on 14 January 2022.[63] The rights issue for MCAS was approved in January 2022, and shares in both MCCS and MCAS were subsequently allotted in February 2022.[64] As mentioned above at [4], Mr Karma did not take up the rights issue,[65] and as a result, the percentage of his shareholding in MCCS fell from 35% to 5%, and his shareholding in MCAS fell from 35% to 0.013%.[66]

The parties' cases

Mr Karma's claim

21 Mr Karma argues that MCCS and MCAS were in substance quasi-partnerships formed on the basis of mutual trust and confidence between himself

---

60 PCS at para 107; AEIC of Helen Campos at para 19.

61 AEIC of Farzin Karma at para 90–92; AEIC of Helen Campos at para 180.

62 SOC at para 29; AEIC of Helen Campos at para 180.

63 AEIC of Helen Campos at para 181.

64 AEIC of Helen Campos at para 20.

65 PCS at para 108.

66 SOC at para 25; AEIC of Helen Campos at para 20.

and Ms Campos. As I will elaborate on below (at [44]), the legal implication of finding a quasi-partnership, is that the court will be more generous in looking beyond the parties' strict legal rights when determining whether there was oppressive conduct. In any event, Mr Karma argues that he had a legitimate expectation that Ms Campos would conduct herself in accordance with both companies' Articles of Association.[67] In this connection, he identifies three major patterns of conduct which he claims were commercially unfair and oppressive within the meaning of s 216 of the Companies Act 1967 (2020 Rev Ed) ("Companies Act").

22 First, Mr Karma alleges that Ms Campos unlawfully drew and continues to draw a director's salary for herself in a manner which was inconsistent with the Articles of Association of both MCCS and MCAS.[68] Specifically, Article 87 of both companies' Articles of Association provides that:

> Subject to Section 169 of the [Companies Act], the remuneration of the Directors shall be determined from time to time by the Company in General meeting, and shall be divisible among the Directors in such proportions and manner as they may agree and in default of agreement equally …

23 Mr Karma highlights the fact that, while both he and Ms Campos were authorised signatories of MCCS' bank account (as noted above at [8]), only Ms Campos could operate the bank account of MCAS.[69] This meant that she could "freely draw on these bank accounts to pay herself a director's salary without [Mr Karma's] knowledge or concurrence".[70] Mr Karma's case is that Ms Campos took advantage of this to bypass the need to obtain either a board

---

67 PCS at para 113.

68 PCS at para 34; AEIC of Farzin Karma at p 51.

69 PCS at para 30.

70 PCS at para 30.

decision or shareholder resolution to authorise payment of her salaries, and to thus "[help] herself to millions of dollars of director's salary" while avoiding the need to share any remuneration with him.[71] He claims that the high salaries which she drew for herself placed MCCS and MCAS in a "state of perpetual loss" and left "nothing for the shareholders", and also impacted the value of his own shares in both the companies.[72]

24 Second, Mr Karma claims that Ms Campos diverted business and revenues from MCCS and MCAS, in which he and Ms Campos are shareholders, to HCCS, in which Mr Karma is not a shareholder.

25 Third, Mr Karma claims that the rights issues in both MCCS and MCAS were not *bona fide* attempts to raise cash, as he claims that both companies were not actually in a cash crunch but for Ms Campos' drawing of inordinately high salaries. The low price per share in the rights issue was based on budgets wrongly premised on the assumption that Ms Campos was entitled to continue drawing the full amount of her salary, which Mr Karma claims she was not legally entitled to do.[73] He argues that this meant that the rights issues had to be a deliberate attempt to "inflict maximum damage" on his interest as a minority shareholder.[74]

---

71 PCS at para 35, 162.

72 PCS at para 114.

73 PCS at para 183, 186.

74 PCS at para 116.

26 In view of the above, Mr Karma thus seeks a buyout order under s 216 of the CA,[75] at a price to be valued by an independent valuer on *inter alia* the following basis:[76]

(a) That the rights issues are voided, set aside, or otherwise reversed, as inferred from his prayer for a "buy-out order of his 35% shares in MCCS and MCAS".[77]

(b) That MCCS and MCAS had undertaken all the business which Ms Campos is alleged to have diverted to HCCS from the date of HCCS' incorporation up till the date of valuation.[78]

(c) The unauthorised salaries and other sums drawn by Ms Campos are to be treated as a debt owing from her to MCCS and MCAS.[79]

(d) All goodwill and revenue of HCCS from the date of its incorporation up till the date of valuation should be attributed to MCCS and MCAS unless it arose from a contract which would have been "physically impossible" for MCCS and MCAS to fulfil.[80]

27 In short, he asks that the valuation of his shareholding be determined in such a way that Ms Campos "will not gain any advantage or benefit" from the alleged acts of oppression discussed at [22]–[25].[81]

---

75 SOC at para 21.

76 PCS at para 250(1).

77 PCS at para 250(1).

78 PCS at para 250(1)(c)(i).

79 PCS at para 250(1)(c)(ii).

80 PCS at para 250(1)(d)(i).

81 PCS at para 250.

Ms Campos' defence

28 In response to Mr Karma's allegations as outlined above, Ms Campos makes the following arguments.

29 First, she takes the position that MCCS and MCAS are not quasi-partnerships. MCCS and MCAS were always meant to be vehicles for her personal professional practice. This is evident from the fact that both were incorporated with her as their sole shareholder and director,[82] and that she ultimately determined the extent of Mr Karma's involvement in MCAS.[83] Mr Karma only became a shareholder in MCCS a year after it was incorporated, and in MCAS two years after its incorporation.[84] He also remained employed at Ulysess until 2013.[85] Ms Campos' acts of making Mr Karma a director and shareholder in MCCS and MCAS, and a signatory of MCCS' bank account with UOB, were only done at his insistence and do not reflect any relationship of mutual trust and confidence.[86] Mr Karma did not even pay for the shares in MCCS and MCAS which she transferred to him.[87] Finally, Mr Karma did not have any legitimate expectation that his shareholding in MCCS or MCAS would remain constant over time,[88] and any expectations which he did have would be superseded by the Directors' Agreement signed in 2014.[89]

---

82 DCS at para 10.

83 DCS at para 17.

84 DCS at para 7.

85 DCS at para 20.

86 DCS at para 23.

87 DCS at para 26; PCS at para 21.

88 DCS at para 40.

89 DCS at para 41.

30 Second, on the issue of her salaries, Ms Campos argues that they were appropriate and not excessive, given that MCCS and MCAS were essentially her own professional practice, and she was the one making the major decisions, running daily operations of the businesses, and actually rendering services to clients.[90] In any event, Mr Karma is precluded from making any claim in respect of her salaries drawn before 1 January 2014, by virtue of having signed the Directors' Agreement, pursuant to which he received $350,000 from Ms Campos,[91] and thereafter signing the financial statements of MCCS and MCAS reflecting the salary which Ms Campos had drawn.[92] Ms Campos also argues that all the salaries she drew after 1 January 2014 were authorised by clause 2(A)(ii) of the Directors Agreement.[93] Finally, the salaries she drew during her disqualification period were drawn pursuant to an employment contract appointing her as general manager of MCCS and MCAS, which was validly approved by Mr Allix and Mr Lukshumayeh.[94]

31 Third, in respect of the alleged diversion of business from MCCS and MCAS to HCCS, Ms Campos argues that any billings of clients by HCCS prior to 1 Jan 2014 could be justified on the basis that the services it rendered were not rendered by MCCS and MCAS at the material time.[95] Additionally, it was the accounting practice between MCCS, MCAS, and HCCS that where each rendered different services to a client, the client would be invoiced by the

---

90 DCS at para 67.

91 DCS at para 71, 80.

92 DCS at para 77.

93 DCS at para 72.

94 DCS at para 81–83.

95 DCS at para 54.

company with the largest billing, and the fee would be distributed internally.[96] In any event, Mr Karma is again precluded from taking issue with this by virtue of the Directors' Agreement.[97]As for HCCS' invoicing of MCCS' clients for services rendered *after* 1 January 2014, Ms Campos' case is that she had been permitted to do so by clause 2(D) of the Directors' Agreement, and that her doing so therefore could not be considered oppressive towards Mr Karma.[98]

32 Finally, Ms Campos argues that the rights issues were *bona fide* attempts to raise funds which MCCS and MCAS needed. This need had arisen partly because of the billing-sharing arrangement under clause 2(D) of the Directors' Agreement, which had allowed 50% of both Ms Campos' and Mr Karma's billings to be taken out of MCCS.[99] COVID-19 also had a negative impact on their revenue. She argues that she was rightfully entitled to the salaries reflected in the budgets upon which the prices of issued shares were based.[100] She also claims that she had not been drawing her full salary entitlement owing to the companies' precarious financial positions, and did not want to continue lending money to the companies.[101] In light of these circumstances, Ms Campos, Mr Allix, and Mr Lukshumayeh all believed that raising funds via a rights issue was necessary.[102] Mr Karma had a chance to participate in the rights issue.[103] As he had no legitimate expectation that his shareholding would remain constant, and

---

96 DCS at para 54.

97 DCS at para 57.

98 DCS at para 60–61.

99 DCS at para 87.

100 DCS at para 87.

101 DCS at para 88.

102 DCS at paras 89, 93.

103 DCS at para 91.

given that the price of shares was appropriate in light of the companies' negative equity value, it could not be said to be unfair, prejudicial, or oppressive to him.[104]

The Defendants' counterclaim

33 Ms Campos, MCCS, and MCAS (collectively "the Defendants") also make several counterclaims against Mr Karma. First, the Defendants argue that Mr Karma caused MCCS to enter into Rose's Salary Agreement with FEL, and caused FEL to fail to pay the agreed $1,700 from the months of January to July 2021, as noted above at [15]. In this connection, they claim that FEL was obliged to do so as it had not validly terminated Rose's services, and there is evidence that Rose continued working for FEL after February 2021.[105] These were breaches of his fiduciary obligations to act *bona fide* in the best interest of MCCS, specifically the duty to act in good faith and to avoid putting himself in a position of conflict.[106]

34 Second, the Defendants argue that Mr Karma took advantage of his position as a signatory of MCCS' bank account to incur substantial personal expenses between 2017 and 2020 which they claim also constituted a breach of his fiduciary duties.[107]

35 Finally, the Defendants argue that the Waiver Agreement contained an implied term that, in exchange for waiving the outstanding $546,015.76 which Mr Karma was reflected as owing to MCCS and MCAS, he would stop

---

104 DCS at paras 92–93.

105 DCS at paras 113–114.

106 DCS at para 100.

107 DCS at paras 118–122.

misappropriating funds from MCCS.[108] As noted above at [34], they allege that as Mr Karma continued to misappropriate funds between 2017 and 2020, he was in fundamental and repudiatory breach of the Waiver Agreement, and MCCS was entitled to enforce the debt of $546,015.76 which had been waived thereunder.[109]

Mr Karma's defence to the counterclaim

36 In response to the Defendants' counterclaim, Mr Karma's defence is as follows.

37 In relation to the allegation as to his claiming personal expenses in breach of his fiduciary duties, Mr Karma argues that it was an accepted practice between both Ms Campos and himself to use the companies' funds for their personal expenses, and their doing so would be captured in the financial records.[110]

38 In relation to the Waiver Agreement, Mr Karma first argues that the legal test for the implication of a term has not been met.[111] Second, as noted above, he argues that his drawing of personal expenses was not improper as this was a standing practice for both him and Ms Campos at the time.[112] The legal significance of this assertion is presumably that his drawings therefore could not be said to be improper, and hence cannot be considered "misappropriations". Third, he disputes the fact that he ever owed the debt of $546,015.76 to the

---

108 DCS at para 132.

109 DCS at para 135.

110 PCS at para 232.

111 PCS at para 220–225.

112 PCS at para 227.

companies in the first place, and in this connection argues that his signing of the Waiver Agreement cannot be taken as an acknowledgement that he owed that sum.[113]

39 Finally, regarding Rose's Salary Agreement, Mr Karma argues that he was not personally party to it and therefore cannot be held liable for any alleged failure of FEL to perform its payment obligations for the period of January to July 2017; the test to pierce the corporate veil of FEL is not met.[114] In any event, he argues that Rose had ceased working for FEL by January 2021, and that FEL therefore was under no contractual obligation to pay MCCS the monthly sum of $1,700 under Rose's Salary Agreement to begin with.[115]

Issues to be determined

40 From the foregoing, the following issues arise for my consideration in relation to Mr Karma's claim:

(a) Are MCCS and MCAS quasi-partnerships?

(b) Did Ms Campos draw salaries in a manner which ought to be considered oppressive to Mr Karma?

(c) Did Ms Campos divert business from MCCS and MCAS to HCCS in a manner which ought to be considered oppressive to Mr Karma?

---

113 PCS at para 211–216.

114 PCS at para 240–241.

115 PCS para 242.

(d) Were the rights issues in MCCS and MCAS oppressive to Mr Karma?

41 In relation to the Defendants' counterclaim, these are the issues raised:

(a) Did Mr Karma cause MCCS to enter into Rose's Salary Agreement in a manner which constituted a breach of his fiduciary duties to MCCS?

(b) Did Mr Karma's use of the funds of MCCS and MCAS for his personal expenses constitute a breach of his fiduciary duties?

(c) Are MCCS and MCAS entitled to claim the sum of $546,015.76 which Mr Karma allegedly owed to them?

42 I examine each of these issues in turn.

Mr Karma's claim in minority oppression

Were MCCS and MCAS quasi-partnerships?

43 The concept of commercial unfairness is the touchstone by which the court determines whether to grant relief under s 216 of the CA, and will arise where there is a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect (*Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70], [77], [81]). This is a multifaceted inquiry, which must take into account not only members' legal rights, but also their legitimate expectations, informal understandings and assumptions (*Over & Over* at [78], [81], [84]).

44 This distinction between legal rights and legitimate expectations is particularly salient in the context of quasi-partnerships, which are set up on the basis of mutual trust and confidence and operate with a degree of informality, and in which members' rights and obligations are not always spelt out in their entirety (*Over & Over* at [83]). In such situations, considerations of a personal character arising between one individual and another may make it unjust or inequitable to insist on legal rights, or to exercise them in a particular way (*Ebrahimi v Westbourne Galleries Ltd and others* [1972] 2 All ER 492 at 500; *Over & Over* at [79]–[80]). The courts have thus consistently applied a stricter yardstick of scrutiny because of the peculiar vulnerability of minority shareholders in such companies (*Over & Over* at [83]). The law will hence be more willing to scrutinise the parties' past conduct and communications to determine if there are any informal agreements or understandings between them, which might form the context for considering whether specific conduct is or is not commercially unfair (*Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others* [2018] 4 SLR 331 ("*Leong Chee Kin*") at [50]). However, outside the quasi-partnership context and in the absence of equitable considerations, the relevant yardstick for determining the unfairness of a party's conduct would generally be the legitimate expectations arising from members' legal rights and the company's constitution or articles of association (*Leong Chee Kin* at [51]).

45 In the present case, Mr Karma argues that MCCS and MCAS are quasi-partnerships. In support of this, he relies primarily on the circumstances in which Ms Campos left ELTICI to demonstrate the existence of a relationship of trust and confidence between them, which served as the basis for MCCS and

MCAS.[116] As noted above at [6], Mr Karma submits that Ms Campos' departure from ELTICI was highly acrimonious. He claims that he helped her manage the conflicts arising from that departure, set up various aspects of MCCS' infrastructure, and transfer her clients and their data from ELTICI.[117] He also claims that Ms Campos had in fact wanted to join the buyer of ELTICI, but that he dissuaded her from doing so, claiming that the understanding was that they "will work together … will continue to do that, and we'll start a business".[118] In exchange for this support, Mr Karma claims that "it was always a consideration that … [he] would be a shareholder".[119] According to him, it is "unbelievable" that Ms Campos would have given him shares just to placate or appease him, given that she would have known the legal implications of doing so.[120]

46 On the other hand, Ms Campos's relies heavily on the uncontested fact that MCCS was incorporated with her as its sole shareholder and director, and that it therefore could not have been a quasi-partnership. She argues that she made Mr Karma a director only because he had "pleaded with [her] endlessly to make him a director as he promised he could bring in business and help to grow the two companies".[121] Similarly, she claims to have made him a bank signatory of MCCS' UOB account only because he "insisted on being appointed and she wished to keep the peace",[122] and to have given him shares in MCCS

116 SOC at paras 5–12.

117 DCS at para 18; NEs 11 April 2023 at p 41 lines 8–12, p 43 lines 13–31.

118 NEs 11 April 2023 at p 39 lines 1–4.

119 NEs 11 April at p 44 lines 1–3.

120 PCS at para 23.

121 Defence at para 12.

122 DCS at para 23.

only after he "insisted and begged".[123] In sum, her case appears to be that MCCS and MCAS were effectively set up as vehicles for her own professional business, and that she reluctantly included Mr Karma only at his insistence.

47 As noted above at [7], I accept that Mr Karma provided some support and assistance in Ms Campos' departure from ELTICI and in setting up MCCS. Indeed, in arguing that she "did not necessarily need Mr Karma's help" as things like logistics, IT, and dealing with the movers and contractors "could have been" outsourced,[124] Ms Campos must necessarily be taken as implicitly accepting that he rendered some help. I also accept that it is very difficult to believe that Ms Campos gave Mr Karma a 35% shareholding in her new company simply to placate him or because of the mere fact of his insistence, especially since she would have known of the legal implications of doing so in light of her legal training.

48 At the same time, I do not think that there was any implied or informal understanding that Mr Karma would be a shareholder or director in MCCS or MCAS, let alone as to what his rights would be vis-à-vis Ms Campos. Here, the chief difficulty confronting Mr Karma is the task of explaining why, if it was true that MCCS and MCAS were both started and thereafter run on the basis of mutual trust and confidence, they were not incorporated with him as a shareholder at the very outset. Mr Karma's case was "always understood that [he] would be joining [Ms Campos] as a shareholder as and when … [he] had more … comfort in becoming a shareholder",[125] but that he did not do so immediately upon MCCS's incorporation because it "was not convenient for

---

123 Defence at para 14.

124 DCS at para 14.

125 NEs 11 April 2023 at p 39 lines 29–32.

him to formally join [Ms Campos] as a shareholder and business partner of MCCS because he was still in the employment of Ulysses".[126] However, I find this difficult to believe. As noted above at [8], MCCS was incorporated on 28 November 2006, and Mr Karma was appointed a director of MCCS on 12 December 2006.[127] However, he remained employed with Ulysses until 2013.[128] This being the case, it is difficult to understand why it might have been "inconvenient" for him to have been appointed a director at the very outset, when he accepted the directorship barely a few weeks later even though nothing appears to have changed in respect of his employment at Ulysses.

49 Moreover, even if his acceptance of an operational position with MCCS might plausibly been an issue given his continued employment at Ulysses, it is difficult to see what similar difficulty might have made it inconvenient to have accepted a *shareholding* in MCCS, or what might have made him "not ready to take up a shareholding position".[129] Yet, as noted above at [8], contrary to what one would have expected if it was really his employment with Ulysses that was the source of any alleged inconvenience, Mr Karma first accepted a directorship weeks after MCCS was incorporated in November 2006, was then made a signatory of MCCS' bank account in 2007, and only in 2008 became a shareholder, by which time MCCS had already been running for a full year and turning a profit.[130] Indeed, he also accepted that "the shareholding percentage in the beginning was not … determined and agreed",[131] which in my view points

---

126 PCS at para 21.

127 AEIC of Farzin Ratan Karma (7 Feb 2023) ("AEIC of Farzin Karma") at para 24; AEIC of Helen Campos at para 21.

128 NEs 11 April 2023 at p 28 lines 8–11.

129 NEs 11 April 2023 at p 39 lines 12–13.

130 NEs 11 April 2023 at p 39 lines 17–19.

131 NEs 11 April 2023 at p 39 lines 10–11.

away from any implicit understanding underpinning the parties' relative shareholdings in MCCS at the point of its incorporation.

50 In a similar vein, it is also difficult to believe Mr Karma's claim that "[Ms Campos] had known all along that [Mr Karma] would be leaving his then well-paying job with good perks to become her business partner and co-shareholder",[132] when he only in fact left that well-paying job with good perks in 2013, seven years after MCCS was incorporated and five years after MCAS was incorporated. On the contrary, I note that Mr Karma's salary with Ulysses was originally around $300,000, up till around 2009.[133] However, while he denied that his income from Ulysses "started either diminishing or disappearing" from around 2011, he accepted that his income around 2011 would have been closer to $200,000,[134] which appears to constitute a diminution. Perhaps not coincidentally, Ms Campos alleges that it was also around 2011 that Mr Karma "informed [her] that he wanted to do work for [MCCS and MCAS] as their business development director", and "demanded that he should have received at least half of what [she] was earning".[135] When this was brought to Mr Karma's attention during cross-examination, he denied asking to be made a business development director, but he did not deny Ms Campos' claim that it was at this point that he began asking for money from MCCS and MCAS.[136]

---

132 Reply and Defence to Counterclaim (Amendment No. 1) ("Reply") at para 7.

133 NEs 11 April 2023 at p 27 lines 24 to p 28 line 18.

134 NEs 11 April 2023 at p 28 lines 15–21.

135 AEIC of Helen Campos at para 38.

136 NEs 11 April 2023 at p 75 line 24 to p 76 line 6.

51 In sum, I do not believe Mr Karma's claim that MCCS and MCAS were from the outset "started by two intimate friends based on mutual trust and confidence".[137] I accept that Mr Karma and Ms Campos might have been close friends, and that Mr Karma did render some support and assistance to Ms Campos following her departure from ELTICI. However, the piecemeal nature of his being made a director, signatory of MCCS' bank account, and shareholder, and the subsequent negotiation of his salary which only came many years later and coincided with his declining fortunes at Ulysses, suggest to me that none of these things were done pursuant to any genuine understanding. Rather, they were requests made spontaneously and granted by Ms Campos, not simply to appease or placate Mr Karma, but more likely out of a genuine sense of gratitude for the support and assistance which he had rendered to her during and following her departure from ELTICI.[138]

52 In this light, I agree with Ms Campos that the present case appears similar to that of *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*"), in which the court found that (at [70]):

> …this is not an association between Lim and Ms Chan based on a personal relationship involving mutual confidence, as one would find in two persons coming together to embark on a business in common with a view to profit. Lim was there because of his close personal relationship and later "very good friends" relationship with Ms Chan. He was initially an appendage because of his close personal relationship with Ms Chan with little knowledge, passion, interest or capability in the art business. He was mainly doing his own IT business with only peripheral involvement in Ms Chan's art business.

This finding was in turn a factor which led the court to find that there was no quasi-partnership between the parties (*Lim Chee Twang* at [79]). Indeed, *Lim*

---

137 PCS at para 24.

138 NEs 11 April 2023 at p 42 lines 1–14.

Chee Twang demonstrates that even where one party is brought into a company because of a close personal relationship, this will not suffice to demonstrate that theirs was an association based on a personal relationship involving mutual confidence, whereby two persons come together to embark on a business in common with a view to profit (see *Lim Chee Twang* at [70]). A similar conclusion ought to follow in the present case.

53 This conclusion is reinforced by the fact that Ms Campos seems to have had the power to determine unilaterally who would be a shareholder and who would be a director of the companies. When this power resides in a single person, it is a factor which strongly suggests that a company is not a quasi-partnership (*Lim Kok Wah and others v Lim Boh Yong and others and other matters* [2015] 5 SLR 307 ("*Lim Kok Wah*") at [114]; *Lim Chee Twang* at [70]). Here, Mr Karma's shareholding derived not from his jointly incorporating MCCS with Ms Campos, but via a transfer of shares from her.[139] And this is even clearer in respect of MCAS. Mr Karma only discovered MCAS' existence "much later on" after its incorporation.[140] Moreover, on 21 April 2009, Ms Campos had appointed Mr Karma as a director in MCAS and transferred him a 35% shareholding, but unilaterally revoked the appointment and transfer only two days later.[141] As Ms Campos observes, Mr Karma does not claim that this was oppressive.[142] More importantly, this strongly suggests that both MCCS and MCAS were incorporated as vehicles for Ms Campos' personal professional practice, and that she had final say in whether Mr Karma came onboard and to what extent. The fact that she might have done so out of gratitude for his support

---

139 AEIC of Helen Campos at para 34(a), p 132.

140 DCS at para 16, 25; NEs 11 April 2023 at p 68 line 25–28.

141 DCS at para 17; Reply at para 37.

142 DCS at para 17.

and assistance, does not suffice to render this a quasi-partnership. The present case thus stands in marked contrast to *Over & Over*, in which the company in question was originally incorporated as a joint venture vehicle between the two disputing families from the outset (at [4]), and *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745, in which the company was likewise set up by six families to carry on their business (at [13]). Unlike the companies in those cases, MCCS and MCAS cannot be considered quasi-partnerships.

54 In light of the above, and the fact that Mr Karma accepts that he did not contribute any capital to the starting up of MCCS and MCAS,[143] I am of the view that neither MCCS nor MCAS are quasi-partnerships. Despite Mr Karma's attempts to explain otherwise, the evidence does not suggest the existence of any "core understandings" between the parties (see *Over & Over* at [7]), and rather points in the opposite direction. Accordingly, there is no scope for the superimposition of equitable considerations. The measure of commercial unfairness can only be determined by the parties' legal rights and legitimate expectations derived from and enshrined in the company's constitution (*Lim Kok Wah* at [115]), agreements entered into directly between shareholders (see *Lim Tong Zhen Kevryn v Cheo Jean Sheng and others* [2022] SGHC 315 at [62]–[70]; *Lian Hwee Choo Phebe and another v Maxz Universal Development Group Pte Ltd and others and another suit* [2010] SGHC 268 at [60]), and from an objective consideration of the alleged wrongdoing in the context of the parties' relationship and the fact that it is a commercial relationship (*Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [81]).

---

143 DCS at para 26.

Ms Campos' drawing of salaries

55 I turn to consider the first act of oppression alleged by Mr Karma, that being Ms Campos' alleged excessive and improper drawing of salaries. Mr Karma's case is that Ms Campos' salaries were not drawn in accordance with Article 87 of the constitutions of MCCS and MCAS, which both provided that:[144]

> … the remuneration of the Directors shall be determined … by the Company in General Meeting, and shall be divisible among the Directors in such proportions and manner as they may agree and in default of agreement equally.

56 While Ms Campos in her defence originally sought to draw a distinction between director's remuneration and director's salary,[145] she appears to have abandoned this argument as of her closing submissions. Rather, the dispute on the issue of the propriety of her salaries now turns largely on the Directors' Agreement signed in 2014.[146]

57 In this connection, a distinction must be made between her drawing of salaries *before* the signing of the Directors' Agreement, between 2007 and 2013, and her drawings of salaries *after*, from 2014 onwards. This is because of Ms Campos' position that the former salaries, and any dispute potentially arising in connection therewith, were settled by virtue of Clause 2(C) of the Directors' Agreement, the relevant portions of which read as follows:[147]

> i. [Ms Campos] and [Mr Karma] have both agreed to a <u>full and final settlement amount</u> of S$350,000, to be paid by [Ms Campos] to [Mr Karma], in respect of any possible outstanding

144 PCS at para 34.

145 Defence at para 40(a).

146 PCS at para 158; DCS at para 2(c).

147 AEIC of Farzin Karma at p 145.

> business matter including but not limited to salary, consultancy fees, claims and dividends due among all parties in the MC Group for the period January 2007 to December 2013 year end accounts.
>
> ii. The full payment of S$350,000 brings to conclusion any outstanding business matter, claims, potential and/or future claims relating to the MC Group for the period January 2007 to December 2013 year end accounts.
>
> [emphasis in original]

58 It is trite law that a settlement agreement for the "full and final settlement" settlement of claims that a party has or may have connotes an intention to settle all existing disputes and to be free from having to go to court to resolve their issues (*Quek Kwee Kee Victoria (in her personal capacity and as executor of Quek Kiat Siong, deceased) and another v Quek Khuay Cheah* [2014] 4 SLR 1 at [7] and [25]). A settlement agreement discharges all claims that have been advanced and any future claims that may be advanced in connection with whatever state of affairs brought parties into dispute (*Ashlock William Grover v SetClear Pte Ltd and others* [2012] 2 SLR 625 at [6] and [22], and *Ter Yin Wei v Lim Leet Fang* [2012] 3 SLR 172 at [16]–[18]).

59 As alluded to above at [12], Mr Karma did not seriously dispute that the Directors' Agreement is legally binding on the parties. His signatures are found on the Directors' Agreement, and he does not challenge their authenticity.[148] The only argument he raised (somewhat belatedly in his reply submissions), is that the Directors' Agreement was not binding upon him because Ms Campos had not signed it in her personal capacity.[149] However, although Ms Campos did not sign the Directors' Agreement in the space provided for her to do so in her personal capacity, she signed three times on behalf of MCCS, MCAS, and

---

148 Reply at para 12-13; AEIC of Helen Campos at pp 478–479.

149 PRS at para 106–107.

HCCS in her capacity as a director in each.[150] More importantly, by relying on the Directors' Agreement, both parties appear to accept it has legal effect. Ms Campos relies on it, *inter alia,* to argue that Mr Karma is precluded from complaining of any alleged impropriety in respect of her drawings of salaries prior to the signing of the Directors' Agreement.[151] Mr Karma appears to attempt to rely on it in connection with the allegedly outstanding debt which Ms Campos seeks to recover from him in her counterclaim for breach of the Waiver Agreement.[152] As such, I find that Clause 2(C) of the Directors' Agreement precludes parties from taking any issue with any conduct predating its signing in 2014, including the drawing of salaries by Ms Campos.

60 I then turn to consider the salaries Ms Campos drew *after* the signing of the Directors' Agreement. Ms Campos' case is that she was permitted under Clause 2(A) of that agreement to do so, and that having been agreed to by Mr Karma, her doing so cannot be considered commercially unfair, not in accordance with his legitimate expectations, or oppressive. Clause 2(A) provides as follows:[153]

> i. As directors of MCCS and MCAS, both [Ms Campos] and [Mr Karma] agree that directors of MCCS and MCAS shall be paid a salary.
>
> ii. The amount of salary to be paid to [Mr Karma] as director of MCCS/MCAS shall be $_____ effective from the date parties agree to a definite scope of work and deliverables by [Mr

150 AEIC of Helen Campos at p 478.

151 DCS at para 71.

152 DRS at para 12; PCS at para 213.

153 AEIC of Farzin Karma at p 144.

> Karma], such salary payments to [Mr Karma] to commence as soon as agreement is reached.
>
> iii. The amount of salary currently paid to [Ms Campos] as managing director of MCCS/MCAS is S$30,000. This amount shall continue to be paid to [Ms Campos] until otherwise agreed upon in writing.
>
> [emphases in original]

61 The difficulty arises from three handwritten mark-ups made by Mr Karma against Clause 2(A)(iii) of the Directors' Agreement. First, he struck off the word "managing" from the phrase "managing director of MCCS/MCAS". Second, following on from the end of Clause 2(A)(iii), he added on a line reading "& subject to the satisfaction of the terms of the employment agreement for [Ms Campos] signed separately by [Ms Campos] and [Mr Karma]". Third, in the empty space to the left of Clause 2(A)(iii), he added in the phrase "Agreed subject to refinement and also finalization of Employment contracts of [Ms Campos] and [Mr Karma]".[154] In sum, Mr Karma's case is that the effect of these handwritten amendments was to modify Clause 2(A)(iii) in such a way that Ms Campos' continued entitlement to draw her salary of S$30,000 was made *contingent* upon the finalisation of an employment contract which she was to execute with MCCS and MCAS.

62 The question is whether Mr Karma's attempted modifications are of any legal effect, and if so, what that effect is. Ms Campos argues that they were not legally binding upon her, as they were made only *after* she signed the main contract and she did not countersign Mr Karma's mark-ups.[155] She also argues that, in any event, the proper interpretation of the clause read with Mr Karma's amendments is that Ms Campos would be entitled to continue drawing a total

---

154 AEIC of Farzin Karma at p 144.

155 DCS at para 74.

salary of $30,000 *until* otherwise agreed in writing *and* an employment agreement for her was signed separately with herself and Mr Karma.[156] On the other hand, Mr Karma claims that the proper interpretation of the amendments is that there was no outright agreement as to Ms Campos' proposed salary, and that "he had to be satisfied with the terms to be set out" in the employment contract which would be signed by both parties.[157] He also rejects Ms Campos' argument that the handwritten amendments to Clause 2(A) were not legally binding.[158]

63 In my view, given that it is accepted that the Directors' Agreement was entered into, the burden falls upon Mr Karma to prove that the Directors' Agreement was validly modified, and that properly interpreted, the modifications have the effect of suspending Ms Campos' right to draw a salary under Clause 2(A)(iii) until separate employments for each of them were finalised. I find that he has not discharged this burden.

64 First, I note that next to the handwritten amendments to Clause 2(A)(iii), Mr Karma has appended his signature. He also signed against another set of handwritten amendments made to Clause 2D(i). However, Ms Campos has not done so. I find this to be rather peculiar. Mr Karma clearly demonstrated that he had the presence of mind to sign next to each set of amendments. If Ms Campos had genuinely agreed to them, then one would think it likely that he would also have made some attempt to procure *her* signature next to each set of amendments as well. On its own, this is something that makes it more likely that Ms Campos' version of events is true, *ie,* that both of them first signed the

156 DCS at para 76.

157 PCS at para 174–175.

158 PRS at para 36.

original version of the Directors' Agreement, and that Mr Karma then unilaterally made the amendments and then countersigned against them.

65 Second, it is not obvious that Mr Karma was entirely clear as to what his own handwritten amendments meant. In his closing submissions, he claims that the effect was *inter alia* that he "had to be **satisfied** with the terms to be set out in a formal Employment Contract [emphasis added]".[159] In his reply submissions, he again argues that his agreement to Ms Campos salary of S$30,000 was subject to … "he being **satisfied** with the terms of the Employment Contract for [Ms Campos] to be signed by both of them [emphasis added]".[160] However, to the extent that he claims that the proper interpretation of the amended Clause 2(A)(iii) entails a discrete requirement of him being "satisfied" as to the terms of the employment agreement, this is not the proper objective interpretation of the clause. The amended portion reads "… & subject to the satisfaction **of the terms of the employment agreement** [emphasis added]. On a plain reading of the amended term, it is not Mr Karma who must be satisfied as to the contents of the employment agreement. To my mind, the haphazard nature of the handwritten amendments and the untidy, and somewhat ambiguous end result, would further suggest that Mr Karma had been unable to obtain Ms Campos' agreement in respect of the exact wording, and thus had to make these unilateral modifications to the Directors' Agreement subsequently.

66 However, even if the amendments were validly incorporated, the amendment to the left of Clause 2(A)(iii) reads "[**a]greed** subject to refinement and also finalization of employment contracts for [Ms Campos] and [Mr Karma]

159 PCS at para 175.

160 PRS at para 43.

[emphasis added]".[161] As Ms Campos argues,[162] this would seem to suggest that there was an agreement that Ms Campos would be entitled to draw a salary of S$30,000 per month, but that this would be open to revision by separate employment contracts in the future. Mr Karma's interpretation, as summarised above at [61], would also have been more obviously correct if Clause 2(A)(iii) had instead been modified without the word "**[a]greed** [emphasis added]" in relation to the amendment to the left of Clause 2A(iii). Turning to the handwritten amendment at the end of Clause 2A(iii), it would also have helped Mr Karma's case if he had at least struck out "until otherwise agreed upon in writing" from the line "[t]his amount shall continue to be paid to [Ms Campos] **until otherwise agreed upon in writing** [emphasis added]", before his adding "& subject to the satisfaction of the terms of the employment agreement for [Ms Campos] signed separately by [Ms Campos] and [Mr Karma]". This would make it somewhat clearer that entitlement to payment of S$30,000 is suspended until further agreement. I am mindful that Mr Karma is not legally trained. However, on a plain reading of these handwritten amendments, I do not find that they support Mr Karma's case.

67 I turn to address certain portions of an email dated 28 February 2019, which Mr Karma relies on as evidence that there had been no agreement on the matter of directors' salaries for either one of them.[163] These portions read as follows:[164]

> 1. You have booked SGD360k as your "salary" and I have since many years, year after year notified you that in the absence of proper supporting documentation and approval from the BoD

---

161 AEIC of Farzin Karma at p 144.

162 DRS at para 42.

163 PCS at para 72.

164 1 AB at p 322.

> of MCCS and MCAS and an employment agreement duly signed by me also, you cannot claim such salary. However, you have booked and withdrawn such salary as is evident from the attached AIS…
>
> …
>
> 5. You claim that I retrospectively stake a claim for a humble share of the shareable profits each year without justification or grounds. Well, firstly, that is wrong. Please refer to my emails of 2017 and 2018 as an example: "…I have put forth a reasonable salary claim but this claim was rejected by you. I rejected yours too. However, you went ahead and processed your conflicted claim of salary in the books of MCCS and MCAS regardless of the fact that there was no authorization for you to do so and I refrained from doing so to ensure compliance with law and hoping that due payment to both of us would then be worked out as a dividend in the absence of any officially agreed directors fee or salary for either of us. Again over the years, you have simply unilaterally claimed what you wanted to claim knowing that such disproportionate claims left nothing to share as dividends or earnings for me …"

68 Mr Karma argues that if parties had truly understood the Directors' Agreement to mean that Ms Campos would be entitled to draw a $30,000 monthly salary, she would have "[presented] the agreement to [Mr Karma] to shut him up".[165] On his case, the fact that she did not suggests that she herself did not believe that she was entitled to do so under the Directors' Agreement.

69 I do not think much support for Mr Karma's case can be gleaned from Ms Campos' response, which comprises fourteen one-line points. Most of these pertain to the fact that she was at the material time busy and overstretched, and did not have the time to deal with his allegations.[166] Her substantive responses to his allegations revolve around the fact that she had been responsible for the vast majority of the companies' work, and that her salaries had nonetheless

---

165 PCS at para 73.

166 1 AB at p 321.

remained constant since 2007.[167] These have consistently been her main points of contention with Mr Karma, and it is unsurprising that they comprise the bulk of a rather terse reply. In this light, it is my view that little can be inferred from what she did *not* say. I therefore find on balance of probabilities that the amendments were not incorporated into the agreement so as to qualify, suspend, or hold in abeyance Ms Campos' right to draw a salary under Clause 2(A)(iii).

70 However, even *if* the amendments *were* validly incorporated *and* had the meaning that Mr Karma claims, I am of the view that it does not necessarily follow that Ms Campos' continued drawing of salaries rises to the level of oppression. As noted above at [54], assessing the commercial unfairness of a course of conduct entails an objective consideration of the parties' relationship, bearing in mind that it is a commercial relationship (*Ho Yew Kong* at [81]; *Leong Chee Kin* at [47]). Even infringements of the company's constitution or articles of association, or even the Companies Act, may not necessarily be commercially unfair, unless something more can be shown (*Leong Chee Kin* at [48]; *Lim Kok Wah* at [100]; *Marten, Joseph Matthew and another v AIQ Pte Ltd (in liquidation) and others* [2023] SGHC 361 at [158]).

71 In this case, it must be remembered that the companies were effectively vehicles for Ms Campos' personal professional practice (see above at [53]). It is worth highlighting that from 2007, after the incorporation of MCCS, Ms Campos drew a salary of S$23,000 per month. As explained by Ms Campos, this was based on the salary offered to her by the buyer of ELTICI. Her monthly salary was increased to S$30,000 for both companies, upon the incorporation of MCAS in 2008. There was no increase to her salary thereafter.[168] I accept Ms

---

167 1 AB at p 321.

168 DCS at paras 67 and 69.

Campos' evidence of the history of her drawings. More importantly, despite some disagreement over the exact extent of each party's contributions, it does not appear to be seriously disputed that Ms Campos was the one responsible for the vast majority of the companies' billings.[169] Against this backdrop, even *if* her drawing of salaries was inconsistent with the Directors' Agreement, a monthly salary of S$30,000 would have been far from unreasonable, or commercially unfair to Mr Karma. Even if there was a breach by Ms Campos, it is not one which rises to the level of oppression, so as to justify the court's intervention under s 216 of the Companies Act. In this regard, I also note that during her period of disqualification from 9 March 2017 to 1 February 2021, Ms Campos drew a reduced monthly salary from the companies. Thereafter, during the Covid-19 period, she drew a reduced monthly salary of $21,160.[170] Accordingly, on the whole, I do not find that Ms Campos' drawing of salaries constituted a form of oppression.

Ms Campos' alleged diversion of business and revenues from MCCS and MCAS

72 I next consider Ms Campos' alleged diversion of business and revenues from MCCS and MCAS to HCCS. Mr Karma alleges that Ms Campos used HCCS to engage clients for the same services provided by MCCS and MCAS.[171] In doing so, she effectively claimed referral fees not only from new work from the existing clients of MCCS and MCAS, but also any subsequent work from them.[172] In this connection, he produces letters sent by HCCS to various third

---

169 1 AB at pp 317–323.

170 DCS at para 68–69.

171 PCS at para 150; PRS at para 100.

172 PCS at para 150; PORS at para 122.

parties, which he claims show that HCCS billed the clients for accounting services which MCAS also provided.[173]

73 Moreover, while Ms Campos attempts to justify this with reference to Clause 2(D) of the Directors' Agreement, Mr Karma argues that on a plain reading of this clause, this only allowed Ms Campos or Mr Karma to claim a financial reward of referral fee from MCCS and MCAS if they "brought in New Clients" or "if they got the Existing Clients of MCCS and MCAS to give the companies New Matters".[174] It could not be interpreted in such a manner as to allow Ms Campos to "divert the entire business (and with it the revenues) of MCCS and MCAS to HCCS", as this would be inconsistent with the purpose of Clause 2(D) which was to "incentivize the directors to bring in more business and revenues to MCCS and MCAS".[175]

74 On the other hand, Ms Campos' case in this regard again rests on the Directors' Agreement. As regards any alleged acts of diversion taking place *before* the signing of the Directors' Agreement on 23 April 2014, she argues that Mr Karma is precluded from taking issue with them by virtue of Clause 2(C) of the Directors' Agreement. As noted above at [58]–[59] in the context of her drawing of salaries, this provides for full and final settlement of all potential causes of action arising between January 2007 and December 2013.[176]

75 Regarding alleged acts of diversion after the signing of the Directors' Agreement, she makes the following points. First, she argues that Clause 2(D)

---

173 PRS at paras 99, 103; AEIC of Farzin Karma at p 62–118; 8 AB pp 124, 177; 9 AB pp 107, 351.

174 PCS at para 148.

175 PCS at para 147.

176 AEIC of Farzin Karma at p 145.

of the Directors' Agreement allowed her to put 50% of the billings of any new work carried out by MCCS, into HCCS. Specifically, she relies on Clause 2(D)(i) of the Directors' Agreement, which provides as follows:

	Percentage of Billings to be apportioned to the Personal Company of the Representative Director from MCCS and/or MCAS	Percentage of Billings to remain within MCCS and/or MCAS respectively	Percentage of Billings to be apportioned to the other director
Any New Matter of Existing Clients within MCCS and/or MCAS belonging to [Mr Karma]	50%	45%	5%
Any New Matter of Existing Clients within MCCS and/or MCAS belonging to [Ms Campos]	50%	45%	5%
Any New Matter for New Clients sourced by [Mr Karma]	50%	50%	0%
Any New Matter for New Clients sourced by [Ms Campos]	50%	50%	0%

76 In this connection, Ms Campos claims that she would give effect to this arrangement by having HCCS directly invoice the clients of MCCS for any new work, and then subsequently credit 50% of the invoiced amount to MCCS.[177] The phrase "new matter of existing client" meant that Clause 2(D) allowed her

[177] DCS at para 60.

to put 50% of billings for any new work done for existing clients into HCCS, even if the work done for the clients was the same as had been done previously.[178] She highlights that, on his own admission, Mr Karma appears to have done the same since 2017, and that there is no evidence that he ever took issue with this method of giving effect to Clause 2(D)(i).[179]

77 Ms Campos further argues that Clause 2(E)(i) of the Directors' Agreement allowed her to carry out nominee services, advisory services, and preparation of documents and agreements through HCCS, and to keep 100% of the billings earned from such work in HCCS.[180] She also notes that HCCS does not provide accounting services, highlighting that none of the invoices disclosed show any accounting services. As such, there is no evidence that HCCS offered accounting services or invoiced clients of MCAS for accounting services that MCAS had carried out.[181]

78 Preliminarily, I note that belatedly, Mr Karma also attempts to claim that the Directors' Agreement was not binding upon him because Ms Campos had not signed it in her personal capacity.[182] However, as noted above at [59], Mr Karma has himself attempted to rely on aspects of that agreement. Moreover, specifically in connection with the diversion issue, it would appear that Mr Karma received payments through FEL under Clause 2(D), albeit between 2017 to 2020.[183]

---

178 DCS at para 62.

179 DCS at para 63.

180 DRS at para 33.

181 DCS at paras 64–66.

182 PRS at para 106–107.

183 DRS at para 31; AEIC of Helen Campos at p 856–859; DCS at para 65; NEs 11 April 2023 at p 144 lines 5–13.

79 I now briefly address the alleged acts of diversion taking place before the signing of the Directors' Agreement. In short, as was the case in respect of Ms Campos' drawing of salaries, I find that parties are precluded from taking issue with any alleged diversion of business prior to that time, for the reasons mentioned above at [58]–[59].

80 I therefore turn to consider the alleged acts of diversion taking place after the signing of the Directors' Agreement. Here, the question is essentially whether Clause 2(D) allowed Ms Campos to give effect to the arrangement in the manner she did, rather than by using MCCS and MCAS to bill the clients first and only then giving a portion of those billings to HCCS, and whether it was commercially unfair or oppressive for her to have done so.

81 I find that it was not. At the outset, I note that Mr Karma's contention is *not* that Ms Campos did not actually transfer 50% of the billings of HCCS to MCCS, in order to bring about the proportions of revenue set out in Clause 2(D). Rather, the crux of his argument on Clause 2(D) is that it must necessarily be read as requiring that new clients had to be *first* brought into and billed by MCCS or MCAS, and only *then* would the portion of those billings provided for in Clause 2(D)(i) be "apportioned to" HCCS from MCCS or MCAS.[184] On his argument, the key difference between this and using HCCS to bill the clients and then transfer the appropriate portion to MCCS, *ie,* what Ms Campos actually did, was that the latter would "affect the value of the companies and hence the value of [Mr Karma's] share" in them.[185]

---

184 PRS at paras 117–119.

185 PRS at para 130.

82 However, I do not think that the phrases "apportioned to…from" or "remain within" necessarily mean Clause 2(D) required that, as a matter of *procedure*, billings had to be done by either MCCS or MCAS first, before then transferring the allocated portion to HCCS or FEL. These phrases are broadly consistent with an understanding of Clause 2(D) as providing that, going forward, all future billings would be shared between MCCS, MCAS, HCCS, and FEL in the proportions set out in Clause 2(D)(i).

83 In preferring this interpretation of Clause 2(D), I observe that the essence of the dispute between the parties, both before and after the signing of the Directors' Agreement, appears to have related simply to their respective financial entitlements and drawings from MCCS and MCAS.[186] For example, the bulk of Mr Karma's complaints in his email to Ms Campos dated 25 January 2013 pertain to revenue sharing, Ms Campos taking of salaries, and sharing of earnings.[187] In the email he sent to her on 28 February 2019 set out above at [67], he complains of Ms Campos' booking and drawing of salaries, his own salary claims, and monies owed to him by MCCS and MCAS.[188] Ms Campos' response to him on 28 February 2019 likewise pertains to his financial demands, directors' fees, and salaries.[189] In another email dated 23 March 2019, Ms Campos accused him of bringing in "miserable" billings less than 10% of the firm's total, drawing and demanding far more than those billings, and expecting her to share earnings with him.[190] Conversely, there appears to have been no mention or complaint of negative impact on share value. While it is true that Ms

---

186 1 AB at p 318–323; AEIC of Helen Campos at p 416–417.

187 AEIC of Helen Campos at p 416–417.

188 1 AB at p 322–323.

189 1 AB at p 321.

190 1 AB at p 318–319.

Campos' method of billing clients with HCCS might objectively have impacted the cash flow of MCCS and MCAS, this does not appear to have been the main point of dispute between parties at the time when they entered into the Directors' Agreement. Indeed, nowhere in their earlier correspondence does Mr Karma appear to have made complaints about MCCS and MCAS' loss of clients and goodwill, or anything to do with the value of his shares, with his focus being predominantly on his financial entitlements whether in the form of dividends or salaries.

84 In this light, I accept Ms Campos' evidence that the intention of the arrangement set out in Clause 2(D) was simply to "split the revenue between the parties based on the parties' actual revenue generation".[191] This is not inconsistent with her admission that the intention behind this arrangement was to incentivise directors to bring in more clients,[192] as apportioning revenue based on actual revenue generation would naturally create a stronger incentive to bring in more clients of their own. This being the case, Clause 2(D) ought not to be interpreted as containing any procedural requirement to first bill clients using MCCS or MCAS and only thereafter transferring a portion to HCCS or FEL, but as simply laying out *final* proportions, which could be achieved in any manner chosen by the parties.

85 For similar reasons, I am also of the view that Clause 2(D) did not simply envision a "one-time incentive payment for getting the Existing Clients to provide the companies with New Work".[193] Rather, it allowed both parties to allocate billings for repeat matters by existing clients to their personal

---

191 AEIC of Helen Campos at para 123.

192 DCS at para 139.

193 PCS at para 150.

companies, even if that type of work had been done previously, as long as that item of work was new rather than continuing. This would be consistent with the primary aim of Clause 2(D), which for reasons discussed above I have found to be to allocate parties' share of revenues going forward. It also would not have been tantamount to allowing Ms Campos to divert the *entire* business of MCCS and MCAS to HCCS. A portion of the billings for new matters would still be apportioned to MCCS and MCAS under Clause 2(D)(i), with a portion even going to the other director where existing clients were concerned. This is consistent with Mr Karma's admission that while the bulk of the 45% to 50% of the billings apportioned to MCCS or MCAS would simply go towards covering costs, a small portion would go towards "share capital".[194] In fact, Ms Campos' interpretation permitting each to put billings of repeat matters by existing clients into their personal companies *i.e.* HCCS or FEL, would have created a *stronger* incentive to bring in more business,[195] as each director would stand to gain *more* from new work which they brought in over the long run, whether from existing or new clients, and less from work brought in by the other. Finally, this interpretation is further supported by the fact that Mr Karma does not appear to have objected to this practice before the commencement of this action, but admits to having done this himself beginning in 2017.[196]

86 Accordingly, having found that the purpose of the arrangement was primarily to resolve their disagreements over revenue allocation, and also in light of the fact that Mr Karma himself began billing for work previously done as well, Ms Campos' billing of new and existing clients for new matters, including matters of a type previously done for existing clients, was permitted

---

194 NEs 11 April 2023 at p 118 line 31 to p 119 line 24.

195 NEs 20 April 2023 at p 65 lines 3–28.

196 PCS at para 63; NEs 11 April 2023 at p 144 lines 5–14.

under Clause 2(D) of the Directors' Agreement. It therefore cannot be said to be commercially unfair or oppressive towards Mr Karma.

The rights issues

87 The last act on Ms Campos' part which Mr Karma alleges to have been oppressive is her calling for the rights issues in MCCS and MCAS mentioned above at [20].

88 On this issue, Mr Karma claims that each rights issue was a "mala fide exercise to dilute his shares", meant to force him to either foolishly subscribe to the rights shares or have his shareholdings severely diluted.[197] He argues that the rights issue was not justified as MCCS and MCAS were not genuinely in need of cash. The only reason that they appeared to be was because the budgets upon which Ms Campos relied to justify the rights issues included her improper drawing of salaries,[198] and also because of her diversion of business from MCCS and MCAS to HCCS.[199] Moreover, the proposed values of the rights shares were entirely arbitrary, and Mr Karma had not been given the opportunity to participate in the decision-making.[200] Finally, there was no real urgency for the rights issues, or any other good reason why Ms Campos, Mr Allix, and Mr Lukshumayeh refused to give Mr Karma enough time and information to properly consider them.[201]

---

197 PCS at para 182–183.

198 PCS at paras 186, 188.

199 PCS at para 203–204; PRS at p 95.

200 PCS at para 191.

201 PCS at para 192.

89 Naturally, Ms Campos' case was that the rights issues were *bona fide* attempts to address a genuine and legitimate cash shortage faced by MCCS and MCAS, and which were necessary to keep the businesses operational.[202] She acknowledges that this shortage arose in part due to the revenue sharing arrangement under Clause 2(D).[203] However, she also attributes this to a slowdown in business and corresponding earnings due to COVID-19.[204] She also highlights that MCCS and MCAS were only able to remain going concerns because she not only did not take her full salary entitlement, but extended loans to both companies.[205] She claims that she did not want to "continually be put in a position where she had to lend the companies monies", given that "there was no realistic chance the companies would be able to pay if she recalled her loans".[206] This being the case, she, Mr Allix, and Mr Lukshumayeh all genuinely believed that the companies needed to find another way of raising funds.[207]

90 In response to Mr Karma's allegations that he was given insufficient notice of the rights issues, she points out that he was notified of the MCCS rights issue on 1 October 2021,[208] with the rights issue itself being held on 20 October 2021 as noted above at [20]. He also attended a directors' meeting held on Zoom on 5 October 2021; he logged on for 10 minutes to make a "bare objection" to the budget before logging off.[209] He again attended the EGM on 20 October

202 DCS at para 86.

203 DCS at para 87.

204 DCS at para 87.

205 DCS at para 88.

206 DCS at para 88.

207 DCS at para 89.

208 DCS at para 90.

209 DCS at para 90.

2021 to object to the budget and to ask for an extension of time until 10 November 2021. In fact, he had until 22 October 2021 to provide the funds needed.[210]

91 The lack of urgency for new funds, especially when contrasted with the speed at which the issue of new shares is carried out, is often a good indication of what the true objective of a rights issue is: *Over & Over* at [122]. In *Over & Over*, the minority shareholder was permitted only eight days to raise over $7 million to subscribe for new shares (at [120]). The majority shareholder admitted during cross-examination that requests for an extension of time to make payment were deliberately ignored so as to make it difficult for the minority to subscribe for the rights shares, because he felt unhappy with one of the members of the minority shareholder (at [121]). Moreover, the fact that the majority shareholder was willing to borrow money to fund their subscription to the rights issue at a higher rate than the loan which the rights issue was being conducted in order to pay back, suggested that there was really no commercial justification for the rights issue at all (at [123]–[124]). In such a situation, this was a clear case of commercial unfairness, and the minority's case in oppression was made out.

92 In the present case, the question in respect of the rights issue is therefore whether it was carried out in order to deliberately dilute Mr Karma's shareholding, or whether there was indeed a commercial justification for it, namely the alleged urgent need for cash by MCCS and MCAS. Relatedly, even if MCCS and MCAS were having cash flow issues, there is also the question of whether this can be attributed to any wrongdoing on the part of Ms Campos. For

---

210 DCS at para 90.

reasons discussed above, I have found that her drawing of salary was permitted under the Directors' Agreement and hence not improper.

93 Further, I have also found that her alleged "diversion" of business to HCCS was permitted under the Directors' Agreement, and any effect of this on MCCS and MCAS cannot be said to be oppressive. In any event, as noted above at [85], Mr Karma himself was also billing clients for repeat matters as of 2021. Additionally, as regards the direct billing of clients by HCCS as opposed to first billing them with MCCS or MCAS and thereafter transferring the apportioned share to HCCS, while this might have made a difference to MCCS' and MCAS' revenues,[211] where it comes to the companies' overall financial positions, it is difficult to see why there should be a difference.

94 Additionally, I note that at trial, Mr Karma attempted to admit two tables which he claimed contained information extracted from the documentary evidence in the agreed bundles of documents, and which allegedly showed that but for Ms Campos' salaries, MCCS and MCAS would not be in a cash crunch situation.[212] Ms Campos argues that these tables should not be admitted. The tables were not simply summaries of primary evidence, but were compiled in exercise of the judgment or opinion on the part of their maker.[213] They should therefore have been provided in affidavit evidence so that her counsel could have had the opportunity to respond on them and cross-examine Mr Karma's witnesses, rather than a mere five minutes before the start of the eighth day of trial.[214]

---

211 NEs 12 April 2023 at p 105 lines 12–19.

212 PCS at para 196; Plaintiff's Letter of 7 August 2023 at para 2.

213 DRS at para 46; Defendant's letter of 14 August 2023 at paras 5–7.

214 DRS at para 46.

95 In my view, I am in agreement with Ms Campos that the tables are not reliable enough to be referred to and ought to be excluded. The contentious albeit brief correspondence on the tables is full of attempts to justify or dispute the inclusion or exclusion of various items, and demonstrates precisely why they ought to have been disclosed to Ms Campos' counsel ahead of the trial, so as to allow them time to examine and prepare to cross-examine Mr Karma and his witnesses on it. I further observe that the last-minute manner in which they were adduced is consistent with Mr Karma's unsatisfactory conduct in respect of his discovery obligations.[215] He ought not to be allowed to benefit from such conduct.

96 However, even if they are admissible, I do not think they can show that the rights issues were so clearly without commercial justification that they must necessarily be said to have been issued in bad faith, or with an ulterior motive of diluting Mr Karma's shareholding. As Ms Campos' counsel points out in their letter of 14 August 2023, even if her salaries are excluded from MCCS and MCAS' bank withdrawals, the average monthly balance cash in 2021 for MCCS would be S$2,699.90, and that of MCAS would be negative S$1,874.66.[216] The former is not a large sum of money. I also bear in mind the outstanding loans which Ms Campos had extended to MCCS and MCAS.[217] In view of her ongoing dispute with Mr Karma, I find it quite reasonable that she would be reluctant to keep extending such loans and essentially putting her money into MCCS and MCAS without any real prospect of getting it back.

---

215 Defendant's Letter of 10 June 2022.

216 Defendants' Letter of 14 August 2023 at para 6.

217 AEIC of Helen Campos at para 161.

97 Additionally, while Mr Karma has sought to portray MCCS and MCAS as not having been severely impacted by the COVID-19 pandemic,[218] this is somewhat undercut by his admission that they had "trimmed down on staff", that they were on "4 days' work week", and had to rely on grants from the government.[219] Indeed, after Mr Karma succeeded in obtaining an injunction to block the rights issue on 29 October 2021, Ms Campos extended a further loan of $22,000 to MCCS and MCAS.[220] In my view, this provides further support for Ms Campos' claim that MCCS and MCAS were in need of funds, which she was reluctant to provide but nonetheless felt compelled to owing to Mr Karma's injunction. With all of the above in mind, even if Ms Campos salary had not been included in the computation, it seems plausible that Ms Campos, Mr Allix, and Mr Lukshumayeh would have considered it wise, if not absolutely necessary to raise additional funds by way of rights issues of approximately $250,000 for MCCS and $150,000 for MCAS.

98 I also do not think that the rights issue was unduly rushed, or that the time given to Mr Karma was unreasonably short.[221] He received notice of and documents pertaining to the rights issue for MCCS on 1 October 2021, and had four days to review them before the directors' meeting on 5 October 2021. He had a total of 21 days between first receiving notice of the rights issue and the EGM on 20 October 2021, to consider his options and raise a relatively modest $87,500.70 if he decided to take it up. This was far more time than the eight days given to the minority shareholder in *Over & Over* to raise a whopping $7 million (at [120]). Moreover, the three-week period and refusal to allow Mr

---

218 NEs 12 April 2023 at p 100 lines 11–15.

219 NEs 12 April 2023 at p 103 lines 27–30.

220 AEIC of Helen Campos at para 180, p 1113.

221 PCS at para 191.

Karma's request for an extension appears justifiable in light of the less-than-constructive nature of his prior objections, and the urgent need for funds as evident from the loan Ms Campos gave to the companies after Mr Karma obtained the injunction. For MCAS, I similarly do not see any issues arising from the conduct of the rights issue.

99 Conversely, I also do not agree that Ms Campos necessarily knew that Mr Karma would not be subscribing to the rights issue because he was seeking an exit from the companies.[222] It *might* have been the case that she was trying to get him to contribute to the expenses of MCCS and MCAS, as one key aspect of the long-running dispute between them had been over Mr Karma's alleged failure to bear his share of the companies' expenses.[223] However, Mr Karma admits that he requested an extension to the deadline for subscription "because [he] needed some time to study the documents, and which was more than what was being afforded. And [he] asked for some … documents to be … provided to [him]".[224] He also claims he was not given enough time to properly consider the proposed rights issue.[225] This suggests that as far as he was *himself* concerned, his eventual refusal was not a foregone conclusion. It therefore cannot be said that Ms Campos knew that he would not be subscribing to the rights issue, or that her dominant intention was necessarily to dilute his shareholding, even if it might have been a foreseeable outcome.

100 Moreover, I note that the finding in *Over & Over* that the act of dilution warranted a finding of oppression appears to have been premised in significant

---

222 PCS at para 190.

223 1 AB at p 318–319.

224 NEs 12 April 2023 at p 114 lines 26–29.

225 PCS at para 192.

part on the finding that there *was* a quasi-partnership between the majority and minority shareholders (at [130]). Conversely, as discussed above at [43]–[54], I have found that MCCS and MCAS are not quasi-partnerships. This being the case, the default position is that there is no general expectation that the shareholding of a company will remain constant (*The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit* [2016] 3 SLR 729 at [188]). Indeed, if a shareholder is unable or unwilling to take up a rights issue conducted in order to raise funds for the company, then it is "only fair that he should offer to sell out" (*Re a Company (No 007623 of 1984)* [1986] BCLC 362 at 367, cited in *Over & Over* at [76]). Accordingly, given that the facts suggest there was a plausible need for urgent funding, a fairly reasonable three-week period in which to consider and raise a fairly modest sum, and absent any quasi-partnership or other equitable considerations, I do not find that the rights issues amounted to an act of oppression.

101 For completeness, I also observe that while Mr Karma's pleadings state his position that the appointments of Mr Allix and Mr Lukshumayeh were not in accordance with the Articles of Association of the companies,[226] he makes no mention of this issue in his closing submissions other than to say that the validity of the appointment of *Dr Theyvendran* is disputed and "will be dealt with later".[227] As Mr Karma does not in fact deal with this issue again in his closing submissions, I say no more on this issue.

---

226 Reply at para 23.

227 PCS at para 29.

The Defendants' counterclaim

Rose's Salary Agreement

102 I now turn to consider the Defendants' counterclaim against Mr Karma. To recapitulate, Rose was an employee of MCCS. Mr Karma caused MCCS to enter into an agreement with FEL, his personal company, for Rose to spend some time doing FEL's work. In exchange, FEL would pay MCCS a monthly sum of S$1,700. As noted above at [15], it is not disputed that FEL did not pay MCCS this sum for the months of January 2021 to July 2021.[228] Both parties' cases have been predicated on the agreement being that FEL would pay MCCS a monthly sum of S$1,700.[229] MCCS thus claims a sum of S$15,300, being FEL's contractual obligation for the seven months between January 2021 to July 2021 (inclusive), as well as for two further months for which MCCS had to pay Rose maternity pay when her services were terminated in July 2021.[230]

103 The first issue which arises is whether FEL's failure to pay in fact constituted a breach of Rose's Salary Agreement. While it is not disputed that it did not pay for the months of January 2021 to July 2021, Mr Karma's case is that the Rose Salary Agreement provided that the "arrangement would terminate upon 1 month's written notice from [Mr Karma] or if Rose is no longer on this assignment".[231] Mr Karma claims that, because Rose had in fact stopped doing work for FEL by January 2021, it was under no contractual obligation to pay MCCS for her services under Rose's Salary Agreement.[232] On the other hand,

---

228 Reply at para 46; Defence at para 55.

229 Reply at para 44; Defence at para 56.

230 Defence at para 57.

231 Defence at para 52(e); PCS at para 239.

232 PCS at para 242.

the Defendants argue that Rose Salary Agreement had not been properly terminated by written notice, and that Rose had in fact continued to work for FEL during the period between January 2021 to July 2021.[233]

104 On this issue, I accept the Defendants' position. As they point out, there is no evidence that any written termination notice was given to MCCS to bring the arrangement under Rose's Salary Agreement to an end.[234] Despite having received an email from Ms Campos on 24 February 2021 requesting that FEL pay its share of Rose's salary,[235] and a series of correspondence in early February 2021 on the same issue,[236] Mr Karma himself admitted that he had not provided any written termination as stipulated under the agreement.[237] Indeed, instead of claiming that Rose was no longer working for FEL or terminating Rose's Salary Agreement, his response to Ms Campos' demands for payment of the S$1,700 was simply that he was "owed far more by MCCS, than the monthly payment of [FEL] to MCCS".[238] Moreover, an email sent by Mr Karma to Rose on 1 February 2021, instructing her that "… there will be no change in my works assigned to you unless I instruct",[239] suggests that Rose was in fact still rendering services to FEL at that time to the same extent as before. Rose herself admitted that she continued to render a "mix of administrative work" for FEL, even if she claimed that it did not meet the "minimum 1 hour per

233 DCS at para 113–114.

234 DCS at para 113.

235 AEIC of Helen Campos at p 1199.

236 1 AB at pp 401–405.

237 NEs 12 April 2023 at p 80 lines 4–14.

238 1 AB at p 404.

239 1 AB at p 406.

weekday".[240] This being the case, I find that Rose remained on assignment with FEL and that FEL had not given the requisite notice of termination under Rose's Salary Agreement. Consequently, the agreement remained in effect, and FEL's failure to pay constituted a breach of its contractual obligation.

105 The question is whether this breach and the losses flowing from it can be brought home to Mr Karma personally, given that this contract was between MCCS and FEL. Mr Karma argues that the high bar for finding that FEL is his *alter ego* is not reached, and that the Defendants therefore cannot pierce the corporate veil and hold him personally liable for FEL's contractual breaches.[241] However, the Defendants' case is instead premised on the fiduciary duties he owed to MCCS in his personal capacity as a director.[242] They allege that his causing MCCS to enter into Rose's Salary Agreement with FEL was a breach of Mr Karma's duty of good faith which he owed to MCCS, and a breach of the no-conflict rule.[243] Specifically, he breached this duty by failing to make the agreed payments under Rose's Salary Agreement, which could not have been in MCCS' best interests.[244] Relatedly, the Defendants also claim that Mr Karma subjectively did not believe that entering into Rose's Salary Agreement was in MCCS' best interests, as he had "gone behind Ms Campos' back" to renew her employment pass in December 2019, based on a salary higher than her then-salary, which Ms Campos claims MCCS could not afford.[245]

---

240 NEs 13 April 2023 at p 50 line 1–2.

241 PCS at para 241.

242 DCS at para 100.

243 DCS at para 100.

244 DCS at para 107–108.

245 DCS at para 102–104.

106 I do not find it necessary to inquire into Mr Karma's subjective motives and beliefs in so far as the renewal of Rose's employment pass is concerned, whether he "unduly" influenced MCCS to enter into it, and whether he breached his duty of good faith by causing FEL to fail to make the payments. Rather, I agree with the Defendants that Mr Karma's conduct amounted to a straightforward breach of the rule against self-dealing. This rule 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, and is closely related to a director's duty not to place himself in a position of conflict (*Traxiar Drilling Partners II Pte Ltd (in liquidation) v Dvergsten, Dag Oivind* [2019] 4 SLR 433 at [96]–[97]; *Nordic International Ltd v Morten Innhaug* [2017] 3 SLR 957 at [55]–[56]; *Tan Hup Thye v Refco (Singapore) Pte Ltd* [2010] 3 SLR 1069 at [29]). In this case, it is undisputed that Mr Karma was a director of MCCS at the material time, and that FEL was his personal company. It is also not seriously denied by Mr Karma that he was the one who caused MCCS to enter into Rose's Salary Agreement.[246] It does not suffice for him to say that there was no evidence that Dr Theyvendran complained about Rose's Salary Agreement. It is incumbent on the fiduciary who wishes to place himself in a position of conflict to obtain the informed consent of his principal, not on the principal to object to his doing so (*Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Winsta Holdings*") at [69]; *Bristol and West Building Society v Mothew* [1998] Ch 1 at 18A–18C).

107 This being the case, it is clear that Mr Karma has acted in breach of his fiduciary duties. The question thus becomes one of damage and causation. In *Winsta Holdings*, the Court of Appeal held (at [254]) that in a claim for a non-

246 PRS at para 161.

custodial breach of the duty of no-conflict or no-profit or the duty to act in good faith:

(a) The plaintiff-principal must establish that the fiduciary breached the duty and establish the loss sustained.

(b) If the plaintiff-principal is able to do so, a rebuttable presumption that the fiduciary's breach caused the loss arises. The legal burden is on the wrongdoing fiduciary to rebut the presumption, to prove that the principal would have suffered the loss in spite of the breach.

(c) Where the fiduciary is able to show that the loss would be sustained in spite of the breach, no equitable compensation can be claimed in respect of that loss.

(d) Where the fiduciary is *unable* to show that the loss would be sustained in spite of the breach, the upper limit of equitable compensation is to be assessed by reference to the position the principal would have been in had there been no breach.

108 While Mr Karma's breach is clear, it might not at the outset be entirely apparent as to what MCCS' loss is. However, I am of the view that this loss constitutes the time Rose spent rendering services to FEL as opposed to MCCS, for which MCCS was to be paid $1,700. There is admittedly some dispute over how much time she in fact spent working for FEL as opposed to MCCS between January 2021 to July 2021. However, in view of the fact that there was no written notice of termination, the evidence that Rose was still providing services to FEL in February 2021 (and required to do so to the extent as she was providing all along), as discussed above at [104], and the fact that the fundamental concern of the no-profit rule and the no-conflict rule is the utmost

protection of the principal (see *Winsta Holdings* at [252]), I am inclined to accept that Rose did continue to render services to FEL as contemplated under Rose's Salary Agreement. This corresponds to the loss of her services which MCCS would have suffered, valued at S$1,700 per month under Rose's Salary Agreement.

109 This being the case, it is clear that MCCS would not have suffered this loss but for Mr Karma's breach of the no-conflict rule, and that he cannot discharge his burden of showing otherwise. Accordingly, he is liable in equitable compensation for FEL's portion of Rose's salary, at a rate of S$1,700 per month between January 2021 to July 2021. This makes for a total of S$11,900.

110 However, it is necessary for me to separately address the question of the S$3,400 of Rose's maternity pay, for which the Defendants also seek to hold Mr Karma accountable. Mr Karma argues that this sum does not flow naturally from FEL's alleged breach (which on the foregoing analysis is brought home to him by way of his fiduciary duties and the no-conflict rule).[247] I agree with him that this is not referable to Rose's Salary Agreement. According to Ms Campos, Rose's employment with MCCS was terminated because she wanted to go back to her home country to give birth, and in light of the COVID-19 pandemic, there was no guarantee that she would be able to return.[248] This would have been the case regardless of whether Mr Karma had caused MCCS to enter into Rose's Salary Agreement. I accept that MCCS' having to pay this sum is referable to his decision to extend her employment pass, which was another point of

247 PCS at para 244.

248 AEIC of Helen Campos at para 218.

contention between Mr Karma and Ms Campos.[249] If her employment pass had not been extended, she would have been terminated much earlier and MCCS would naturally not have had to bear her maternity pay. However, I do not think that Mr Karma's decision to extend her employment pass was necessarily a breach of his fiduciary duties. Such a decision is properly considered a management decision which resides with directors: see s 157A of the Companies Act. There is no obligation to consult shareholders on such decisions, and Ms Campos was not a director at the time.[250] I therefore do not accept the Defendants' argument that his renewal of Rose's employment pass was a breach of the duty of good faith. This being the case, Mr Karma has successfully shown that even if he had not caused MCCS to enter into Rose's Salary Agreement with FEL, it would still have had to pay this sum. Accordingly, he is to make equitable compensation of S$11,900 to MCCS.

Mr Karma's alleged abuse of his position as MCCS' bank signatory

111 The next breach of fiduciary duty which the Defendants allege against Mr Karma relates to his use of his position as MCCS' bank signatory to incur substantial personal expenses. Specifically, they claim that he claimed a total of $12,756.26 in personal expenses, which included personal courier fees, ACRA filings for FEL, personal mobile and telecommunication bills, repairs for personal and FEL's computers, and fines incurred with another of his private companies.[251] Mr Karma does not deny this; rather, his defence is that it was a "practice" for both he and Ms Campos to use the companies' funds for their

249 AEIC of Helen Campos at para 204.

250 AEIC of Helen Campos at para 204.

251 DCS at para 119.

personal expenses, and to offset this from funds due to them from the companies.[252]

112 I have little difficulty dismissing Mr Karma's defence. It is clear law that a director's use of company funds constitutes a breach of fiduciary duty: *Creanovate Pte Ltd and another v Firstlink Energy Pte Ltd and another appeal* [2007] 4 SLR(R) 780 at [41]. In the present case, it is clear that Mr Karma incurred personal expenses out of MCCS' bank account, and he admits that these are recorded in the financial records of MCCS.[253] Moreover, in arguing that "the parties would have negotiated to see how to treat the claims"[254] and that Ms Campos had "used her majority right to oppressively prevent Farzin from offsetting these expenses",[255] he necessarily concedes that such sums were owing by him to the companies.

113 Finally, I do not think it assists Mr Karma to claim that Ms Campos was doing likewise. There are several key differences between the two. First, Ms Campos' case is that she would use her personal credit card to pay for MCCS' operational expenses. MCCS would pay her credit card bills out of convenience, and her personal expenses would be immediately offset against the loans which she had extended to it.[256] Mr Karma does not challenge this. On the other hand, Mr Karma's expenses remained as outstanding liabilities on the books. Moreover, Ms Campos' personal expenses were immediately set-off against

252 PCS at para 232.

253 AEIC of Farzin Karma at para 135.

254 DCS at para 234.

255 DCS at para 235.

256 DCS at para 125.

loans which it is not disputed that she made to the companies.[257] The sums which Mr Karma claimed that the companies owed him, however, are disputed and have not been proven. In any event, even if Ms Campos was doing something improper in getting MCCS to pay her personal credit card bills, Mr Karma is free to seek leave to take out a derivative action against her for doing so. He is also free to take out an action against the companies to determine and recover any debt which they might owe to him. This does not change the fact that the expenses which he caused MCCS to incur for his personal purposes remain outstanding. He is therefore liable to make equitable compensation to MCCS for S$12,756.26.

Claim for sums allegedly owed by Mr Karma

114 Finally, Ms Campos seeks to reclaim debts from Mr Karma which Mr Karma claims were written off under the Waiver Agreement. To recapitulate, as of the end of 2016, MCCS' and MCAS' financial records showed that Mr Karma owed a total sum of S$546,015.76.[258] On 2 November 2017, Ms Campos and Mr Karma entered into the Waiver Agreement, to waive this sum.[259] However, the Defendants argue that there is an implied term in the Waiver Agreement that going forward, Mr Karma would cease misappropriating money from MCCS and MCAS,[260] and that allowing continued misappropriation by Mr Karma would have "defeated the entire purpose of the agreement".[261] They also claim that, in any event, Mr Karma had not given any consideration for the

257 AEIC of Helen Campos at para 161–162.

258 DCS at para 130; PCS at para 210.

259 PCS at para 64; Defence at para 63; AEIC of Helen Campos at para 67.

260 DCS at para 130.

261 DRS at para 62.

Waiver Agreement, making it unenforceable against the Defendants.[262] As against this, Mr Karma argues that the high threshold for implication of terms has not been met.[263] Additionally, a large portion of the S$546,015.76 debt had in fact been written off under Clause 2(C) of the Directors' Agreement, and was therefore not properly regarded as a debt still owing by Mr Karma to the companies.[264]

115 I am of the view no such term as the Defendants propose can be implied into the Waiver Agreement. As Mr Karma points out, the threshold for the implication of terms is a high one. As laid out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*"), the implication of terms is to be considered using the following three step process (at [101]):

(a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because parties did not contemplate the gap.

(b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such

262 DCS at para 138.

263 PCS at para 217–225.

264 PCS at para 213–214.

a clear response, then, the gap persists and the consequences of that gap ensue.

116 Moreover, it is trite that the court must have regard to the context at the time of contracting when considering the issue of implication (*Sembcorp Marine* at [73]). In this connection, I observe that Ms Campos and Mr Karma entered into the Waiver Agreement in the context of a dispute over the accumulated amount of S$546,015.76 which Mr Karma was reflected as owing in the companies' accounts.[265] In this light, it is very difficult to imagine that he would have reacted with "Oh, of course!" to a term which would have essentially entailed a tacit acknowledgment of wrongdoing on his part. I also note that the Defendants have sought to argue that Mr Karma's signing of the Waiver Agreement constituted an acknowledgement of the debt which he was reflected as owing to the companies.[266] If this was true, given that his *prior* position was that he did *not* owe the full sum reflected in the companies' accounts, it is very difficult to believe that he would have agreed to a term which would have allowed for the possibility of that previously disputed debt being revived against him.

117 However, the greatest difficulty for the Defendants lies in the fact that the Waiver Agreement itself explicitly states as follows:[267]

---

265 AEIC of Helen Campos at para 66.

266 DCS at para 133; AEIC of Helen Campos at para 68.

267 AEIC of Helen Campos at p 593.

> It is also agreed that he owed amount indicated above (SGD 546,015.76) shall not be increased or in **any way re-entered** into the Companys' accounts.
>
> Farzin Ratan Karma shall **at no time be required to pay such amount or part thereof** to the Companys or any other claimants or receiver/s at any time.

118 In this connection, the Court of Appeal in *Sembcorp Marine* made clear that a term will not be implied if it would contradict an express term of the contract (at [98]). Both these terms categorically make clear that no part of the S$546,015.76 debt would ever be revived against Mr Karma. This directly contradicts the Defendants' proposed term which specifically envisions the debt being revived in certain circumstances. I therefore decline to imply such a term into the Waiver Agreement.

119 I also reject the Defendants' argument that Mr Karma provided no consideration for the Waiver Agreement. To the extent that this argument is premised on the fact that the Waiver Agreement itself does not make any mention of such consideration and "simply provides for the full amount owed by Mr Karma to MCCS and MCAS to be written off",[268] I know of no rule of law which states that a written contract must make explicit reference to consideration for that consideration to be valid. On the contrary, the question is simply whether legally recognised consideration has in fact moved from a promisee to a promisor: *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 at [66].

120 The question is therefore whether Mr Karma's signing of MCCS' financial statements can be regarded as such consideration for the Waiver Agreement. The Defendants argue that his signing off on the financial

---

268 DCS at para 138.

statements cannot be good consideration, as it was his pre-existing legal obligation to do so as a director of MCCS.[269] However, I am again of the view that the context of the Waiver Agreement cannot be ignored. This context was that of a disagreement between the parties over the inclusion of the purported S$546,015.76 debt in the financial statements.[270] Mr Karma could not have been expected to sign off on financial statements which he believed did not accurately represent the companies' true state of affairs. The Waiver Agreement was signed precisely in order to assure him that the financial statements would be amended to his satisfaction, in order to procure his signature. The Defendants cannot now turn around and say that he was supposed to have done so anyway, and that the Waiver Agreement is thus unenforceable against them.

121 Accordingly, the Waiver Agreement is legally binding on the Defendants, and precludes them from recovering the purported debt of S$546,015.76 which Mr Karma allegedly owed.

Conclusion

122 For the foregoing reasons, I dismiss Mr Karma's claim in minority oppression on all three grounds.

123 As for the Defendants' counterclaim against Mr Karma, I accept that he breached his fiduciary duties in respect of Rose's Salary Agreement, and caused MCCS to suffer a loss of S$11,900. I also find Mr Karma liable for charging his personal expenses amounting to S$12,756.26 to MCCS. However, I do not find Mr Karma liable for claims which had been written off under the Waiver Agreement.

---

269 DRS at para 59.

270 PCS at para 68.

124 Accordingly, I order Mr Karma to make equitable compensation to MCCS amounting to S$24,656.26 (comprising the sums of S$11,900 and S$12,756.26).

125 Parties shall furnish costs submissions within 14 days of the judgment.

Hoo Sheau Peng
Judge of the High Court

Yap Neng Boo Jimmy (Jimmy Yap & Co) for the plaintiff;
Vikram Nair and Ashwin Kumar Menon (Rajah & Tann Singapore LLP) for the defendants.