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

[2026] SGHCR 18

Originating Claim No 967 of 2025 (Summonses Nos 86 and 284 of 2026)

Between

Lateral Solutions Pte Ltd (in liquidation)

… *Claimant*

And

Low Tuck Loong Raymond

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure — Striking out]
[Limitation of Actions — Particular causes of action — Trust property — Section 22(1) of the Limitation Act 1959]

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Lateral Solutions Pte Ltd (in liquidation)
v
Low Tuck Loong Raymond

[2026] SGHCR 18

General Division of the High Court — Originating Claim No 967 of 2025
(Summonses Nos 86 and 284 of 2026)
AR Perry Peh
23 March, 30 April 2026

8 June 2026

AR Perry Peh:

Introduction

1 HC/OC 967/2025 ("OC 967") is a claim by Lateral Solutions Pte Ltd ("LSPL") to recover from the defendant, Mr Raymond Low ("Mr Low"), sums of S$1,269,157.82 and US$765,261.37 ("the Sums"). LSPL is a company in liquidation and the claim in OC 967 is brought by LSPL's liquidator, which I will refer to as "the claimant" in these grounds.

2 The claimant's case is that Mr Low, who was formerly a director of LSPL, had caused LSPL to advance the Sums as loans ("the Loans") to another company, LSW Pte Ltd ("LSW") with no intention of repayment. As the Sums constitute LSPL's property which Mr Low had misappropriated in breach of his director's duties and fiduciary duties to LSPL, Mr Low is therefore liable to repay the Sums to LSPL. In support of its claims, LSPL relied on findings of

fact made by the High Court in HC/S 238/2017 ("Suit 238"). That was an action for minority oppression commenced by one Mr Wei Fengpin ("Mr Wei") (a minority shareholder of LSPL) in which Mr Low (as part of the majority shareholders in LSPL) was found to have acted in a commercially unfair manner by diverting a corporate opportunity belonging to LSPL for LSW's benefit and therefore profited from the opportunity through LSW to the exclusion of Mr Wei, and causing LSPL to advance the Loans with no intention of repayment, all of which constituted a breach of Mr Low's director's duties and fiduciary duties to LSPL. It is common ground that, if the pleaded facts in OC 967 were taken as proven, Mr Low would be a constructive trustee of the Sums *vis-à-vis* LSPL.

3 Before me were: (a) the claimant's applications in HC/SUM 86/2026 ("SUM 86") for summary judgment on its claims; and (b) Mr Low's application in HC/SUM 284/2026 ("SUM 284") to strike out the claimant's claims. I allowed the claimant's application in SUM 86 and dismissed Mr Low's application in SUM 284. Two issues of interest in these applications were: (a) whether/how did the findings in Suit 238 regarding the advancement of the Loans affect Mr Low's defence in OC 967, where that defence was inconsistent with those findings; and (b) whether the claimant's claims in OC 967 (which were based on a constructive trust) came within the scope of the exceptions in s 22(1) of the Limitation Act 1959 ("the Limitation Act") for the purposes of disapplying the six-year time bar for trust claims in s 22(2) of the Limitation Act, and in particular, whether the exception in s 22(1)(*b*) of the Limitation Act applied in these facts even though Mr Low was not a majority shareholder of LSPL and the claimant also did not plead him as having control over LSPL.

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4 Mr Low has appealed against my decision for both applications.[1] These full grounds supplement and supersede the brief reasons which I earlier provided to parties on 30 April 2026.

Background

5 Mr Low was a director and shareholder of LSPL between February 2012 and June 2020.[2] Mr Wei became a shareholder of LSPL in December 2014, and he was also a director of LSPL between January 2015 and September 2017.[3] In May 2020 (five months before the trial of Suit 238), Mr Low and another director of LSPL, Mr Sim Eng Chuan ("Mr Sim"), applied in HC/CWU 130/2020 ("CWU 130"), *qua* directors, for LSPL to be wound up on the basis that it was unable to pay its debts. Mr Wei did not object to the application and on 12 June 2020, a winding-up order was granted in CWU 130.[4] Mr Low and Mr Sim were the majority shareholders of LSPL while Mr Wei was a minority shareholder.

The High Court's findings in Suit 238

6 In March 2017, Mr Wei commenced Suit 238 against LSPL, Mr Low and Mr Sim, seeking relief for minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("the CA (2006 Rev Ed)"). The High Court found that Mr Low and Mr Sim had conducted the affairs of LSPL in a manner that was oppressive and prejudicial to Mr Wei and decided Suit 238 in

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1 HC/RA 118/2026 and HC/RA 119/2026.

2 Statement of Claim ("SOC") at para 1.

3 SOC at para 4.

4 1st affidavit of Raymond Low ("RL-1") at p 524.

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Mr Low's favour (see *Wei Fengpin v Low Tuck Loong Raymond and others* [2021] SGHC 90 ("*Wei Fengpin (HC)*") at [137] and [158]).

7 The findings of minority oppression in *Wei Fengpin (HC)* which are relevant to OC 967, and which the claimant relied on in its pleadings in its Statement of Claim ("SOC"), are those concerning Mr Low's establishment of LSW, his diversion of a corporate opportunity belonging to LSPL, and the advancement of the Loans with no intention of repayment. For context, LSW was incorporated in April 2016, and its directors and shareholders are Mr Low, Mr Low's brother and another Mr Peter Lehmann, who respectively held 40%, 40% and 20% of LSW's shares.[5] The findings which the claimant relied on ("the Findings of Fact") are:

(a) LSW was set up by Mr Low and Mr Sim with funding from LSPL and with no intention of LSPL being repaid, and the purpose was to divert the corporate opportunity of employing liquid injection moulding ("LIM") technology to the exclusion of LSPL and therefore exclude Mr Wei from reaping the benefits of LIM (through his shareholding in LSPL) (see *Wei Fengpin (HC)* at [101]).[6]

(b) As LSW had used the LIM technology to produce parts for sale to other entities, Mr Low had breached his duty to not profit (through LSW) from opportunities which would have gone to LSPL (see *Wei Fengpin (HC)* at [104], [108] and [109]).[7]

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5 SOC at para 12; Defence at para 77.

6 SOC at para 22(a)

7 SOC at para 22(b).

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(c) LSPL's Statement of Affairs ("the LSPL SOA") filed in CWU 130 showed some S$1,269,157.82 and US$765,261.37 (*ie*, the Sums) as owing by LSW to LSPL (at [112]).[8] These "loans or advances from [LSPL]" (*ie*, the Loans) were not secured by any collateral or guarantee from LSW's directors or shareholders, and there was no intention for LSPL to recoup the Loans (see *Wei Fengpin (HC)* at [113]).[9]

(d) By causing LSPL to make the Loans to LSW with no intention to recover them, Mr Low had breached his duty to act *bona fide* in the best interests of LSPL and his duty to act honestly under s 157(1) of the CA (2006 Rev Ed) (see *Wei Fengpin (HC)* at [115]).[10] By entering into these related-party transactions with LSPL, Mr Low had also placed himself in a position of conflict of duty and interest (see *Wei Fengpin (HC)* at [115]).[11]

8 For completeness, in *Wei Fengpin (HC)*, the High Court also found that Mr Low's diversion of the corporate opportunity relating to the LIM technology constituted a breach of his duties to act *bona fide* and in the best interests of LSPL (see *Wei Fengpin (HC)* at [109]), though the claimant did not rely on this specific finding as part of its pleaded case in the SOC. Mr Low appealed against the relief for minority oppression which the High Court granted in Mr Wei's favour, but there was no appeal against the High Court's findings of minority oppression (see *Wei Fengpin v Raymond Low Tuck Loong and others* [2022] 2 SLR 363 ("*Wei Fengpin (CA)*") at [25]–[27]).

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8 SOC at para 22(c).

9 SOC at para 22(d).

10 SOC at para 22(e).

11 SOC at para 22(f).

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The claim in OC 967

9 In the SOC, the claimant pleads that Mr Low, by virtue of his role as LSPL's director, owed various duties, including: (a) to act honestly and to use reasonable diligence in the discharge of his duties as a director pursuant to s 157(1) of the CA (2006 Rev Ed) and common law; (b) to act *bona fide*, honestly and in good faith in the best interests of LSPL in the discharge of all duties as a director of LSPL; and (c) to serve LSPL faithfully and dutifully and not to advance or promote his own or other external interests to the prejudice of and/or in conflict with LSPL's interests. Relying on the Findings of Fact, the claimant pleads as follows:

> 29. In view of the fact that the Findings of Fact were not overturned by the Court of Appeal, the Defendant has breached the director's duties and fiduciary duties owed by him to the Claimant as a director of the Claimant.
>
> 30. As the Defendant had, amongst other things, caused loans [*ie*, the Loans] to be made from the Clamant to LSW Pte Ltd without the intention of recovering these loans, the Defendant breached his director's duties and fiduciary duties owed by him to the Claimant as a director of the Claimant and misappropriated and/or misapplied the Claimant's property.
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> 31. Accordingly, the Defendant is liable to the Claimant for the sum of S$1,269,157.82 and US$765,261.37 [*ie*, the Sums], being the loans made to LSW Pte Ltd, as he breached his director's duties and fiduciary duties owed by him to the Claimant as a director of the Claimant and misappropriated and/or misapplied the Claimant's property.

10 The claimant seeks the following reliefs against LSPL: (a) a declaration that Mr Low had breached his director's duties and fiduciary duties owed to LSPL; (b) recovery of the Sums; and (c) interest on the Sums.

Mr Low's defence

11 Mr Low pleads the following in his defence:

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(a) OC 967 is a "continuation of Mr Wei's longstanding campaign" against him following the breakdown of their commercial relationship.[12] Mr Low claimed that Mr Wei had engaged in conduct which led to LSPL's insolvency, and following LSPL's liquidation, Mr Wei had the "largest voice" in LSPL's Committee of Inspection because Mr Wei controlled and managed a company, SK Lateral Rubber and Plastic Technologies (Suzhou) Co Ltd ("SKL"), which held 80% of LSPL's debt and was its largest creditor.[13] Mr Low also cited the various proceedings which were commenced following the deterioration of the relationship between Mr Wei (on the one hand) and the other shareholders of LSPL, which included Suit 238.[14]

(b) Mr Low denies that the incorporation of LSW was contrary to LSPL's interests. Mr Low cited certain findings which the High Court had made in HC/OS 1350/2018 and HC/OS 1409/2018 ("OS 1350 and OS 1409"), which were proceedings commenced for the court to determine a valuation reference date for the purposes of a buyout order made by consent in HC/S 236/2018 ("Suit 236"). For context, Suit 236 was a minority oppression action commenced by Retrospect Investment (S) Pte Ltd ("Retrospect") in respect of the affairs of Sei Woo Technologies Pte Ltd ("Sei Woo Technologies").[15] Based on Mr Low's pleaded defence, Sei Woo Technologies is one of the companies featuring in the broader commercial dispute between himself and Mr Wei. Mr Low pleads that in OS 1350 and OS 1409, the High Court

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12 Defence at para 66.

13 Defence at para 48.

14 Defence at paras 49–65.

15 Defence at paras 50–51.

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had observed that LSW was set up to maintain a stable supply of products following the deterioration in the parties' commercial relationship, and that LSW was not incorporated to compete with, among others, LSPL.[16] Mr Low therefore denies that the incorporation of LSW was wrongful or improper, and in fact, it was intended to play a role in helping LSPL maintain its income stream where its supply chain was in jeopardy.[17]

(c) Mr Low denies that the Loans were advanced with no intention of repayment to LSPL. To the contrary, the Loans were made in the honest belief that they were for legitimate commercial and/or *bona fide* purposes which directly and materially benefited LSPL.[18]

(d) While Mr Low accepts that the Sums were indeed recorded in the LSPL SOA, Mr Low highlights that a separate sum of S$19,998.84 was recorded in the LSPL SOA as *owing by LSPL* to LSW, and so the quantum of the Sums to be recovered from him should be adjusted.[19] Additionally, LSW was entitled to *charge LSPL* for its use of LSW's machinery and premises, and these sums are in the region of approximately S$550,800 and US$800,000, and the management of LSW and LSPL had understood that the difference between the Loans and these sums were to be repaid by LSPL via surpluses generated by

16 Defence at para 73.

17 Defence at para 77.

18 Defence at paras 79–80.

19 Defence at para 83.

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LSW's sales to LSPL.[20] The claimant ought to have accounted for these sums in its claims against him.[21]

(e) The claimant is not entitled to rely on the Findings of Fact as if they were dispositive of the issues in OC 967, as the causes of action in OC 967 were not in issue in Suit 238.[22] In particular, no finding was made in Suit 238 that he had misappropriated and/or misapplied LSPL's property in the manner alleged in OC 967.[23]

(f) Mr Low denies having acted in breach of his director's duties and fiduciary duties to LSPL.[24] Mr Low pleads that he had at all material times acted honestly and reasonably having regard to all the circumstances, and he seeks relief under s 391 of the Companies Act 1967 ("the Companies Act").[25]

The previous proceedings in OC 271

12 Prior to OC 967, LSPL (through its liquidator) had commenced another action against Mr Low and Mr Sim, HC/OC 271/2022 ("OC 271"). Like OC 967, OC 271 was also brought based on certain findings of fact made by the High Court in *Wei Fengpin (HC)* ([6] above) regarding Mr Low's oppressive conduct *vis-à-vis* Mr Wei. The findings which the claimant relied on in OC 271 were:

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20 Defence at paras 81–82.

21 Defence at para 91.

22 Defence at para 87.

23 Defence at para 90.

24 Defence at para 88.

25 Defence at para 94.

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(a) That a resolution which Mr Low and Mr Sim had relied on to cause dividends of $800,000 ("the Dividends") to be paid by LSPL to each of them was invalid as it was not signed by all members of the company as required by Art 54 of LSPL's Articles of Association. Mr Low and Mr Sim's conduct pertaining to the Dividends had been commercially unfair to Mr Wei. Although the payment of the Dividends was a wrong to the company, Mr Wei was entitled to rely on this in his action for minority oppression because the injury which he seeks to remedy is the oppression caused to him by the issuance of the Dividends (see *Wei Fengpin (HC)* at [39]–[41], [43] and [48]).

(b) That certain bonus payments of $793,597 (paid to Mr Low) and $695,898 (paid to Mr Sim) ("the Big Bonuses") had been made in breach of Art 75 of LSPL's Articles of Association. Mr Low and Mr Sim had decided to declare the Big Bonuses to themselves without Mr Wei's knowledge or consent, and there was also no commercial justification for the Big Bonuses. As such, Mr Low and Mr Sim had also acted in an oppressive manner to Mr Wei in relation to the Big Bonuses (see *Wei Fengpin (HC)* at [64]).

13 Relying on these findings, the claimant brought the following claims in OC 271: (a) a declaration that Mr Low had acted in breach of his fiduciary duties in connection with the payment of the Dividends and the Big Bonuses; and (b) claims for recovery of the Dividends and the Big Bonuses. The claimant pleaded that Mr Low and Mr Sim, as directors of LSPL and as trustees of LSPL's property, had wilfully caused LSPL to make payments of the Dividends and the Big Bonuses in breach of LSPL's Articles of Association, and they had therefore breached their fiduciary duties owed to LSPL and misappropriated

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and/or misapplied LSPL's property, and in these circumstances, they were liable to return the Dividends and Big Bonuses to LSPL.[26]

14 In HC/SUM 2040/2023 ("SUM 2040"), an Assistant Registrar ("AR") granted the claimant's application for summary judgment of the claims in OC 271 to recover the Dividends and the Big Bonuses.[27] The AR's decision was upheld on appeal. In submissions before me, the claimant stressed that the approach taken in SUM 2040 would inform the approach that the court should take in respect of the present applications. While there is obviously an overlap in the underlying factual matrix, it goes without saying that the present applications, which concern a *distinct* set of claims, should be scrutinised and determined afresh based on the material currently before the court.

The applications – SUM 86 and SUM 284

15 SUM 86 is the claimant's application for summary judgment of its claim to recover the Sums and interest (reliefs (2) and (3) of the SOC). The claimant does *not* seek summary judgment in respect of the declaration that Mr Low had acted in breach of his director's duties and fiduciary duties to LSPL (relief (1) of the SOC). SUM 284, on the other hand, is Mr Low's application to strike out the claims in OC 967 against him.

16 Broadly, Mr Low made the following submissions:

(a) The claimant should have pursued the claims in OC 967 as part of the previous proceedings in OC 271, because the facts which the claimant now relies on were already in existence when OC 271 was

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26 1st affidavit of Ng Kian Kiat ("NKK-1") at Tab 10.

27 NKK-1 at pp 829–830.

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brought. The present claims therefore could have and should have brought in OC 271, and the repeated litigation is an abuse of process.[28]

(b) The claimant's claims are time barred under s 6(1)(*a*) of the Limitation Act, which states that "actions founded on a contract or on tort" shall not be brought after the expiration of 6 years from the date on which the cause of action accrued. In so far as the claimant relies on the exception to this limitation period in s 22(1) of the Limitation Act, that is inapplicable.[29]

(c) The claimant has not established a *prima facie* case for summary judgment. The claim to recover the Sums rests entirely on the LSPL SOA, but that was not prepared as an accounting of debts due and thus does not by itself establish that the Sums were conclusively due and payable.[30] Further, in Suit 238, the Court was not presented with the underlying invoices or debit notes evidencing the Loans to validate the figures stated in the LSPL SOA.[31]

(d) He has a real and *bona fide* defence to the claims. The Loans had been extended for *bona fide* commercial purposes to establish LSW as an alternative production hub to safeguard LSPL's operational continuity, and triable issues are raised as to whether he had acted in breach of his director's duties and fiduciary duties to LSPL in connection with the Loans.[32] Alternatively, even if were found to be in

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28 Notes of Arguments, 23 March 2026, p 7.

29 Defendant's written submissions at paras 15–27.

30 Defendant's written submissions at para 57.

31 Defendant's written submissions at para 59.

32 Defendant's written submissions at para 66.

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breach of his director's duties and fiduciary duties to LSPL, he had acted in good faith and in what he believed was the best interests of LSPL, and so he is entitled to rely on the defence under s 391 of the Companies Act which operates to protect company directors who have acted honestly and reasonably.[33]

17 Broadly, the claimant's submissions were:

(a) Mr Low has omitted to identify in SUM 284 or in his supporting affidavit which of the grounds provided under O 9 r 16(1) of the Rules of Court 2021 ("ROC 2021") he relies on to strike out OC 967, and that alone warrants the dismissal of SUM 284.[34] In any case, the reasons for striking out OC 967 which Mr Low relied on are without merit.

(b) Issues relating to whether LSW was incorporated in good faith, the purpose of the Loans and whether Mr Low had acted in breach of his duties, which Mr Low canvassed as part of his pleaded defence in OC 967, have already been determined in Suit 238 and Mr Low is precluded by the doctrine of issue estoppel from relitigating these issues.[35]

(c) The Findings of Fact make clear that Mr Low had breached his director's duties and fiduciary duties in relation to the advancement of the Loans with no intention of repayment. The other defences which Mr Low has articulated to resist summary judgment are without merit. First, the claimant's claims are not time barred as they come within the

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33 Defendant's written submissions at para 67.

34 Claimant's written submissions at para 139.

35 Claimant's written submissions at para 53.

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exceptions to the statutorily-prescribed limitation period in ss 22(1)(*a*) and 22(1)(*b*) of the Limitation Act.[36] Secondly, Mr Low is not entitled to rely on any defence under s 391 of the Companies Act, as there is no basis on which it could be contended that he had acted honestly and/or reasonably.[37]

The issues

18 The parties' submissions raised the following issues for determination:

(a) As a preliminary issue, whether in OC 967, Mr Low is precluded by the doctrine of issue estoppel from relying on a defence which is inconsistent with the findings in Suit 238.

(b) In connection with Mr Low's application for striking out in SUM 284:

(i) What is the significance (if any) of Mr Low's omission to identify the limb of O 9 r 16(1) of the ROC 2021 which he relied on to strike out OC 967.

(ii) Whether the claimant has acted in abuse of process by failing to pursue the claims in OC 967 as part of the previous proceedings in OC 271.

(iii) Whether the claimant's claims in OC 967 are time barred.

(c) In connection with the claimant's application for summary judgment in SUM 86:

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36 Claimant's written submissions at para 74.

37 Claimant's written submissions at para 70.

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(i) Whether the claimant has established a *prima facie* case for its claim to recover the Sums.

(ii) Whether Mr Low has shown that he enjoys a real or *bona fide* defence to the claim.

Whether Mr Low is precluded by the doctrine of issue estoppel from relying on a defence which is inconsistent with the findings in Suit 238

19 The doctrine of issue estoppel forms part of the umbrella doctrine of *res judicata*, the objective of which is to ensure finality and conclusiveness of judicial decisions and protect individuals from vexatious and duplicitous litigation (see *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [39]). Issue estoppel applies where a previous decision had determined, as an essential step in its reasoning, an issue that proves relevant in a later case and therefore forecloses further consideration of that issue in subsequent litigation (see *Goh Nellie* at [18]). The paradigm case in which the doctrine of issue estoppel is engaged is where a claimant's claim engages issues that had already been decided in previous proceedings (see, for example, *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd and others* [2020] 5 SLR 665 ("*CKR Contract Services*")). However, the doctrine of issue estoppel is equally applicable to a defendant's defence, since its underlying policy applies with equal force to defendants who rely on defences that traverse issues already decided against them in previous proceedings.

20 The starting point of the analysis is to consider *what* issues were decided as part of the findings in Suit 238, and how they relate to the issues raised by Mr Low's defence in OC 967. For this, I first consider the parties' pleadings in Suit 238, before turning to the relevant findings in *Wei Fengpin (HC)* ([6] above).

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21 In Suit 238, Mr Wei's pleaded case regarding LSW and the Loans may be summarised as follows:

(a) Mr Low and Mr Sim caused LSPL to enter related party transactions with LSW (by virtue of Mr Low's interest in LSW) for various expenses. Mr Low, among other things, (i) failed to discharge his fiduciary duty to avoid a conflict of interest in those related party transactions and/or failed to make full disclosure of all material facts of these transactions;[38] and (ii) breached s 157 of the CA (2006 Rev Ed) by failing to act honestly and use reasonable diligence in the discharge of his duties and/or by making improper use of his position as a director to gain an advantage for himself and/or LSW to LSPL's detriment.[39] In particulars, Mr Wei pleaded that the ledger records of LSW show that LSW owed LSPL over US$1.1m under accounts receivable invoices.[40] These correspond to the Loans, which are the subject matter of OC 967.

(b) Mr Low breached his fiduciary duties to LSPL by wrongfully diverting to LSW the corporate opportunity in the commercial exploitation of the LIM technology.[41]

22 Mr Low pleaded the following in his defence in Suit 238:

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38 Statement of Claim (Amendment No 5) in HC/S 238/2017 ("Suit 238 SOC") at paras 31–32.

39 Suit 238 SOC at para 32A.

40 Suit 238 SOC at para 32(c).

41 Suit 238 SOC at paras 32G–32W.

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(a) LSW was incorporated to manufacture and supply products to LSPL, and not to compete with LSPL's business.[42]

(b) The account receivables owing from LSW in LSPL's ledger arose from sums paid by LSPL on LSW's behalf.[43]

(c) Mr Low had discussed with Mr Wei the possibility of incorporating a new company for the purposes of producing parts with the LIM technology. However, Mr Wei did not agree to become a shareholder or be involved in the setting up or management of LSW.[44]

(d) The LIM process does not involve the use of any proprietary technology. LSW's adoption of the LIM process has benefitted and continues to benefit LSPL by boosting LSPL's reputation in Asia.[45]

23 Based on the pleadings, it is Mr Low's defence that the incorporation of LSW and the diversion of the LIM technology was for the benefit of LSPL. In relation to the Loans, it is implicit in Mr Low's pleadings – that the various sums owing by LSW arose from payments made by LSPL on LSW's behalf (see [22(b)] above) – that his defence is that the Loans were provided for a legitimate purpose.

24 In Suit 238, it was found that: (a) LSW was incorporated to divert from LSPL the corporate opportunity of exploiting the LIM technology to prevent Mr Wei from reaping the benefits of that opportunity through his shareholding in

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42 Defence (Amendment No 6) in HC/S 238/2017 ("Suit 238 Defence") at paras 32(b)–32(c).

43 Suit 238 Defence at para 32(h).

44 Suit 238 Defence at paras 32I and 32K.

45 Suit 238 Defence at paras 32R(b) and 32R(e).

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LSPL; (b) Mr Low had caused the advancement of the Loans with no intention of repayment, and that the Loans were intended to benefit LSW and not LSPL because pertinently, there was no intention for LSPL to recoup the Loans (see *Wei Fengpin (HC)* ([6] above) at [105]–[108]). It was on the basis of these findings that the High Court found that Mr Low had acted in breach of his director's duties and fiduciary duties to LSPL, and minority oppression was therefore established in connection with the incorporation of LSW and the advancement of the Loans (see *Wei Fengpin (HC)* at [109] and [115]).

25 Based on the pleadings and the findings in *Wei Fengpin (HC)*, in finding that Mr Low had acted in an oppressive manner, the court determined the following issues: (a) whether the incorporation of LSW was intended to benefit LSPL; (b) whether the advancement of the Loans was intended to benefit LSPL; and (c) whether Mr Low's misconduct in relation to the incorporation of LSW and the advancement of the Loans constitute a breach of his director's duties and fiduciary duties to LSPL. In OC 967, central to Mr Low's defence is his characterisation of the incorporation of LSPL and the advancement of the Loans as being for the benefit of LSPL, and therefore, he had not acted in breach of his director's duties and fiduciary duties, or ought to be excused for the same (see [11] above). Quite clearly, there is an inconsistency between the defence which Mr Low relies on in OC 967 and the three issues identified above, which the court in Suit 238 had determined against him.

26 With that in mind, I turn to consider whether the fourfold requirements to establish an issue estoppel are satisfied. These requirements are (see *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15]): (a) there must be a final and conclusive judgment of the merits; (b) that judgment must be of a court of competent jurisdiction; (c) there must be identity

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between the parties to the two actions that are being compared; and (d) there must be an identity of subject matter in the two proceedings.

27 There is no dispute here that the findings and judgment in Suit 238 are those of a court of competent jurisdiction. What Mr Low challenged are the first, third and fourth requirements for establishing an issue estoppel, and he made the following submissions in support:

(a) The issues determined in Suit 238 do not constitute a final and conclusive judgment for the purposes of establishing an issue estoppel with regards to Mr Low's personal liability in OC 967, as the findings in Suit 238 were directed solely at assessing whether Mr Wei had suffered commercial unfairness.[46]

(b) There is no identity of parties because Suit 238 was a minority oppression action commenced by Mr Wei *qua* shareholder. LSPL was merely a nominal party, and it did not sue or defend any claim in its own right. On the other hand, in OC 967, LSPL is suing in its own name and asserting its own corporate rights.[47]

(c) There is no identity of subject matter because the findings made against Mr Low in Suit 238 were merely evidence of Mr Low's oppressive conduct and constitute no more than steps in the court's reasoning process that Mr Wei had suffered commercial unfairness.[48] In fact, the findings relating to LSW and the Loans were not necessary to the reliefs granted in Suit 238, because the court's findings on minority

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46 Defendant's written submissions at para 74.

47 Defendant's written submissions at paras 85 and 87.

48 Defendant's written submissions at para 91.

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oppression could have stood on the basis of other findings not involving LSW and the Loans.[49]

28 The common thread in Mr Low's submissions is that Suit 238 was only an action for minority oppression and the corporate wrongs relating to the establishment of LSW and the advancement of the Loans had not been ventilated in that action. I disagree. A minority oppression action can be premised on facts which disclose a concurrent wrong to the company, provided that the corporate wrong is relied on as *evidence* of the manner in which the wrongdoer had conducted the company's affairs in disregard of the complainant's interest as a minority shareholder and where the complaint cannot be adequately addressed by the remedy provided by law for that wrong (see *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 at [63] and [69]–[70]). Therefore, a corporate wrong can form the subject matter of a minority oppression action provided that the complainant establishes a personal injury *qua* shareholder in respect of that wrong. Where a minority oppression action is premised upon a corporate wrong and the court finds commercial unfairness established on that basis, it follows that the corporate wrong in question would also have been proven to the court's satisfaction.

29 In respect of the first requirement for establishing an issue estoppel, the question is whether the judgment giving rise to the issue estoppel is a final and conclusive judgment on the merits of the issue which is said to be the subject of the issue estoppel (see *Cost Engineers (SEA) Pte Ltd and another v Chan Siew Lun* [2016] 1 SLR 137 ("*Cost Engineers*") at [32(a)]). The test is whether that judgment had fully determined the issue in question with nothing else left to be judicially determined (see *Goh Nellie* ([19] above) at [29]). Mr Low is correct

[49] Defendant's written submissions at paras 92–93.

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that the judgment in Suit 238 did not result in personal liability against him *vis-à-vis* LSPL, because that judgment concerned Mr Low's liability to Mr Wei for minority oppression. However, that is neither here nor there. The question to be asked is whether the issues involving Mr Low's breaches of duties to LSPL in connection with the incorporation of LSW and the advancement of the Loans had been determined with finality. In my view, that must be so. The court in Suit 238 had found that the incorporation of LSW and the advancement of the Loans were *not* in LSPL's interests, and it relied on that in finding that Mr Low had acted in breach of his duties and therefore concluded, for the purposes of Suit 238, that Mr Low had acted in a commercially unfair manner. In other words, the various findings which the court made regarding LSW, the Loans and Mr Low's breach of duties were in support the conclusion which the court drew with respect to the merits of the action in Suit 238. The judgment in which those findings are contained is therefore "final and conclusive" for the purposes of establishing an issue estoppel.

30 As for the requirement of an identity of parties, the court does not take a narrow or technical view, and the question is whether the principal players in the prior and subsequent litigation are effectively identical (see *Goh Nellie* ([19] above) at [32]; *Cost Engineers* at [58]). The test is whether the relevant parties, in connection with whom the doctrine of issue estoppel is to be applied, were parties to the earlier litigation where an issue affecting their rights or liabilities had been determined. Therefore, in *Cost Engineers*, the court observed that in a personal injury claim arising from a motorcar-motorcycle accident and where the issue in question was the apportionment of liability between the two parties who had caused the accident, the fact that a pillion rider was absent from the previous proceeding did not prevent an identity of parties from being found because the principal players with regards to the question of liability for the accident are the driver of the car and the motorcyclist (at [58]). In *CKR Contract*

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Services ([19] above), the court held that the fact that a subsequent proceeding involved other defendants who were not parties to the previous arbitration did not prevent an identity of parties from being found, because notwithstanding the additional defendants, the central parties to the plaintiff's allegation in the subsequent proceeding were identical to those in the earlier arbitration (at [66]).

31 I acknowledge that in OC 967, LSPL is suing as a claimant in its own right whereas in Suit 238, it was merely a nominal defendant that had been made a party to be bound by the court's orders. However, I do not think this alone prevents an identity of parties from being found. In allowing Mr Wei's claim for minority oppression, the court had determined with finality that the incorporation of LSW and the advancement of the Loans were *not* in LSPL's interests, and further, that these constituted breaches of Mr Low's director's duties and fiduciary duties to LSPL (see [29] above). In other words, the court found the underlying corporate wrongs relating to the incorporation of LSW and the advancement of the Loans, which Mr Wei relied on as evidence of minority oppression, as established. Suit 238 was therefore a proceeding where issues affecting LSPL and Mr Low's rights and liabilities as against each other were determined, even though it did not result in LSPL obtaining any reliefs against Mr Low. Indeed, in *Wei Fengpin (HC)* ([6] above) (at [153]), the court noted that it was open to the liquidators of LSPL to take the appropriate steps to redress any wrongs to LSPL committed by its directors (albeit in the context of justifying the relief for minority oppression that it ordered) and that would presumably encompass the commencement of claims by the liquidators to take advantage of the findings made in Suit 238 to obtain relief against directors found to have acted wrongfully, as the claimant has done here. Thus, for the purposes of the issues relating to the incorporation of LSW, the advancement of the Loans and Mr Low's breach of duties, I was satisfied that there is an identity of parties between Suit 238 and OC 967.

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32 As for the requirement of an identity of subject matter, this is said to encompass a few aspects, namely: (a) the issues must be identical in that the prior decision must traverse the same ground as the subsequent proceeding; (b) the issue said to be previously determined must have been fundamental and not merely collateral to the previous decision; (c) the issue in question must be shown in fact to have been raised and argued in the previous proceeding (see *Goh Nellie* at [34], [35] and [38]). This requirement is clearly satisfied because Mr Low's pleaded defence in OC 967 contradicts the previous decision on the three issues relating to LSW, the advancement of the Loans and Mr Low's breaches of duties, which the court in Suit 238 had relied on in finding Mr Low liable for minority oppression (see [25] above).

33 For the reasons above, I find that Mr Low is precluded by the doctrine of issue estoppel from asserting in his defence that the incorporation of LSW and the advancement of the Loans were for LSPL's benefit and that he had not acted in breach of his director's duties and fiduciary duties by virtue of his conduct in relation to LSW and the Loans, since that defence relitigates the issues which were determined with finality by the court in Suit 238 when it found Mr Low liable for minority oppression. For present purposes, this also limits what Mr Low can rely on in persuading the court that he has a real *bona fide* defence to the claims in OC 967, in so far as any such defence relates to how the incorporation of LSW and the advancement of the Loans are to be characterised and whether Mr Low had acted in breach of his duties to LSPL.

The significance of Mr Low's omission to specify the limb of O 9 r 16(1) relied upon

34 In *Envy Asset Management Pte Ltd (in liquidation) and others v Lau Lee Sheng and others* [2024] 4 SLR 1210 ("*Envy Asset Management*") (at [21]), the High Court held that an applicant for striking out should specify which limb of

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O 9 r 16(1) of the ROC 2021 it is invoking as the basis for striking out, so that the arguments for striking out can be particularised according to the legal standard for that limb. This is because, the court explained, the three grounds for striking out in O 9 r 16(1) are framed in the alternative to each other and hence are separate and distinct (see *Envy Asset Management* at [23]).

35 Therefore, as a matter of practice, an applicant for striking out should state in its supporting affidavit the limb(s) of O 9 r 16(1) relied upon and set out the corresponding factual grounds in support (if any). If not, the latest time at which the relevant limb(s) of O 9 r 16(1) should be specified is when the applicant's written submissions for striking out are filed. However, this is not merely a formal requirement insisted upon for its own sake. Where it is apparent or obvious from the applicant's arguments as to which limbs of O 9 r 16(1) are being relied upon, then the applicant's omission to specify the same should not result in him being penalised. On the other hand, if the applicant's omission had caused overlapping arguments and resulted in unnecessary time and costs being incurred, then that is a factor affecting the quantum of costs, be it the costs which the applicant is entitled to (if it is ultimately successful in the striking out application) or those which the applicant has to pay (if it is fails to obtain striking out).

36 In this case, Mr Low did not specify in SUM 284 or his supporting affidavit which limb of O 9 r 16(1) of the ROC 2021 he was relying on for his striking out application. Mr Low's supporting affidavit placed heavy emphasis on the *facts* of the underlying dispute, which he deposed to in support of his defence that the incorporation of LSW and the advancement of the Loans were for the benefit for LSPL. This would suggest that Mr Low is seeking to strike out OC 967 on the basis that it is factually unsustainable (which is a ground for striking out under O 9 r 16(1)(*c*): see *Iskandar bin Rahmat and others v*

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Attorney-General and another [2022] 2 SLR 1018 ("*Iskandar*") at [19]; *The Bunga Melati 5* [2012] 4 SLR 546 at [39]). In written submissions, Mr Low identified two further grounds on which the claims in OC 967 are to be struck out – first, that the claims for the recovery of the Sums were time barred, and secondly, that LSPL did not have standing to pursue any claim relating to the diversion of the corporate opportunity for the exploitation of the LIM technology, though the second ground was rightly not pursued in oral submissions since it was clear from the SOC that the claims in OC 967 dealt only with the recovery of the Sums. This suggested that Mr Low was also seeking to strike out OC 967 on the basis that it is legally unsustainable (which is a ground for striking out under O 9 r 16(1)(*c*): see *Iskandar* at [19]; *The Bunga Melati 5* at [39]). At the hearing, Mr Low's counsel submitted that OC 967 was an abuse of process because the claimant ought to have pursued claims for the recovery of the Sums as part of the previous proceedings in OC 271. This suggested that Mr Low was also seeking to strike out OC 967 on the ground that it was an abuse of process (which is a ground for striking out under O 9 r 16(1)(*b*): see *Iskandar* at [18]).

37 In my view, it was apparent from the arguments which Mr Low made in support of striking out as to which limb of O 9 r 16(1) he was relying upon, and these arguments were also referable to his pleaded defence. In these circumstances, I do not think Mr Low's omission to specify the limb of O 9 r 16(1) relied upon should result in him being penalised. That said, I do note that the matters which Mr Low had identified as grounds for striking out OC 967 had expanded from the time the supporting affidavit was filed up to the point of oral submissions. While this was undesirable, I do not think the claimant was taken by surprise, and indeed, the claimant was able to put forward extensive arguments on the time bar issue in its written submissions that were filed concurrently with Mr Low's written submissions. Therefore, I did not consider

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Mr Low's omission to specify the limb of O 9 r 16(1) relied upon as well as the way in which his arguments for striking out were made as factors to be held against him for the purposes of the costs orders to be made in these applications.

Whether the claimant has acted in abuse of process

38 Mr Low argued that the claimant has acted in abuse of process because the facts supporting the present claims in OC 967 were known to it at the time when the previous proceedings in OC 271 were brought, and so the claims for the recovery of the Sums ought to have been brought as part of OC 271. Mr Low's submission relies on the extended doctrine of *res judicata* or the doctrine of abuse of process,[50] which operates to bar the re-ligation of a claim or defence that had not been brought to the attention of the court where they were points which properly belonged to the subject matter of earlier litigation and which the parties, exercising reasonable diligence, should have brought forward at the time (see *Goh Nellie* ([19] above) at [52]).

39 The fact that certain claims or defences could have been advanced as part of the previous litigation is not the end of the inquiry as to whether the extended doctrine applies (see *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another and another appeal* [2022] 1 SLR 1 ("*Beyonics*") at [54]). The question is whether the party who now seeks to advance these claims (which could have been brought earlier) is misusing or abusing the process of the court (see *Beyonics* at [51]). Like the doctrine of issue estoppel, the doctrine of abuse of process serves the same purpose of ensuring finality in litigation and ensuring that parties are not twice vexed in the same matter, and given its policy

[50] Notes of Arguments, 23 March 2026, p 7, lines 1–7.

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objective, its core purpose is to guard against attempts at collateral attack against prior decisions (see *CIX v DGN* [2025] 1 SLR 272 ("*CIX*") at [57]–[58]).

40 In my view, the extended doctrine is clearly inapplicable in this case given the complete absence of any collateral attack by OC 967 on the outcome of the previous proceeding in OC 271. The only overlap between the claims in OC 271 and OC 967 is that they each seek to take advantage of different *aspects* of the findings made against Mr Low in the minority oppression proceedings in Suit 238. Mr Low's submission based on the extended doctrine therefore fails.

41 It is of course open to Mr Low to argue that the proceedings in OC 967 have nonetheless been commenced as an abuse of process, in that the court's process has been used as a means of vexation and oppression and so the action is liable to be struck out under O 9 r 16(1)(*b*) of the ROC 2021. To make good this point, it is insufficient for Mr Low to merely point to the fact that the claims in OC 967 could have been pursued as part of OC 271; he must further show why the commencement of the proceedings in OC 967 constitutes an improper use of the judicial machinery by the claimant. An allegation that a party has brought proceedings for a collateral purpose and to misuse the judicial machinery is a serious one and the party seeking striking out, who also bears the legal burden in the application, must properly support the allegation with the requisite particulars. That Mr Low has not done, save for a bare assertion in the Defence that OC 967 is the continuation of a campaign by Mr Wei following the breakdown of parties' commercial relationship (see [11(a)] above), which in my view is plainly insufficient. Since Mr Low has not even discharged his burden of showing any abuse of process in connection with OC 967, the claimant is not required to justify or explain why it chose to only pursue the claims in OC 967 now and not as part of the previous proceedings in OC 271.

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Whether the claimant's claims in OC 967 are time barred

42 The starting point of whether there is any time bar applicable to the claimant's claims is the issue of how these claims are to be characterised for the purposes of the Limitation Act. The claimant's claims in OC 967 are to recover the Sums, which it says Mr Low had caused LSPL to advance as the Loans with no intention of repayment. The claimant pleads that this was a misappropriation of LSPL's property, and Mr Low's conduct constituted a breach of his director's duties and fiduciary duties to LSPL.

43 Where a director misappropriates company property (over which he has a power of disposal *qua* director) in breach of his fiduciary duties and director's duties owed to the company, he is treated as having acted in breach of trust in connection with that property (see *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 ("*Panweld (CA)*") at [44])). As explained by the English Court of Appeal in *JJ Harrison (Properties) Ltd v Harrison* [2002] 1 BCLC 162 (at [25]–[26]):

> … the property of a company … cannot lawfully be disposed other than in accordance with the provisions of its memorandum and articles of association; … the powers to dispose of the company's property, conferred upon the directors by the articles of association, must be exercised by the directors for the purposes, and in the interests, of the company; … in that sense, the directors owe fiduciary duties to the company in relation to those powers and a breach of those duties is treated as a breach of trust.
>
> It follows from the principle that directors who dispose of the company's property in breach of their fiduciary duties are treated as having committed a breach of trust …

44 The breach of trust renders the director a constructive trustee, and the property which the trust latches on is the company's property that he had misappropriated (see *Panweld (CA)* at [44]). In this scenario, the constructive trust arises pursuant to the trust obligations which had previously been imposed

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on the director *vis-à-vis* that property and which he had breached, and not merely as a relief granted in equity for his fraudulent conduct (see *Panweld (CA)* at [46]; *Panweld Trading Pte Ltd v Yong Kheong Leong and others (Loh Yong Lim, third party)* [2012] 2 SLR 672 ("*Panweld (HC)*") at [65]). The constructive trust imposed against the director is therefore a "class 1" constructive trust and the limitation regime that applies to claims against a "class 1" constructive trustee is the same as that which applies to claims against an express trustee, which is contained in s 22(2) of the Limitation Act (see *Panweld (CA)* at [49] and [51]), which provides as follows:

> Subject to subsection (1), an action by a beneficiary to *recover trust property* or in respect of *any breach of trust*, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.
>
> [emphasis added]

45 Applying the principles above, the claimant's claims against Mr Low are based on a "class 1" constructive trust because the claimant's case is that Mr Low had misappropriated the Sums in breach of the trust obligations that had been imposed on him in his capacity as director and fiduciary steward of LSPL's property. The limitation regime applicable to the claimant's claims is therefore that in s 22(2) of the Limitation Act. I note that in the Defence and in written submissions, Mr Low had stated that the claimant's claims are time barred pursuant to s 6(1)(*a*) of the Limitation Act.[51] In my view, Mr Low's reliance on s 6(1)(*a*) of the Limitation Act is incorrect because quite clearly OC 967 is not an "action[] founded on a contract or tort" (see also *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [41]; *Far East Opus Pte Ltd v Kuvera Properties Pte Ltd* [2025] SGHC 109 at [83]) given what I have described of the claimant's claims.

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[51] Defence at paras 69 and 93; Defendant's written submissions at para 16.

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46 Because the claimant has only sought summary judgment in respect of relief (2) in the SOC (*ie*, the recovery of the Sums), the arguments on time bar have largely focussed on that claim, and not relief (1) in the SOC (*ie*, the declaration that Mr Low had acted in breach of his director's duties and fiduciary duties by virtue of the facts pleaded in the SOC). However, any conclusion drawn regarding the time bar issue applies equally to both reliefs and thus the entirety of the claimant's claims. This is because s 22(2) of the Limitation Act is applicable to "an action by a beneficiary to recover trust property or *in respect of any breach of trust*" [emphasis added]. The claim to recover the Sums clearly comes within the first part of s 22(2), since they constitute LSPL's "trust property". Since it is the claimant's case that Mr Low had breached his director's duties and fiduciary duties by misappropriating the Sums, the claim for the declaration comes within the second part of s 22(2), *ie*, an action brought "in respect of any breach of trust".

47 The six-year time bar in s 22(2) of the Limitation Act is subject to two exceptions in s 22(1), the effect of which is, if a claim could be brought within the scope of either of these exceptions, no limitation period would be applicable to the claim (see *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 ("*AHTC*") at [475]). I reproduce s 22(1) of the Limitation Act below:

> No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —
>
> (*a*) in respect of *any fraud* or *fraudulent breach of trust* to which the trustee was a party or privy; or
>
> (*b*) to recover from the trustee *trust property* or the *proceeds thereof in the possession of the trustee*, or *previously received by the trustee and converted to his use*.
>
> [emphasis added]

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48 In the context of proceedings governed by the Rules of Court (2014 Rev Ed), which provided for the plaintiff's right to file a Reply after the defendant files its Defence, it has been said that the facts which the claimant relies on to defeat any defence of limitation pleaded by the defendant must be pleaded in the Reply, even though the better approach may be to plead such facts in the Statement of Claim in the first place, if possible (see, for example, *Tay Nguang Kee Serene v Tay Yak Ping and another* [2021] SGHC 194 ("*Tay Nguang Kee*") at [68]). Under the ROC 2021, no further pleadings may be filed beyond the Defence or Defence to Counterclaim, except with permission of the court (see O 6 r 10 of the ROC 2021). In my view, for proceedings governed by ROC 2021, a claimant who intends to take advantage of an exception to a limitation period that is otherwise applicable to its claim should generally endeavour to plead in the Statement of Facts the relevant facts which entitle it to invoke the exception. This also invites the claimant to consider from the outset whether there is any limitation period possibly applicable to its claims and is consistent with the underlying philosophy of the ROC 2021 for a claimant to sue and proceed on the strength of its case (see *Civil Justice Commission Report* (29 December 2017) (Chairperson: Justice Tay Yong Kwang) at p 19). This would not impose an unduly onerous requirement because the claimant does not have to identify the specific provision in the Limitation Act which it relies on as an exception, but only needs to plead the relevant facts that are necessary to avail itself of the exception (see *Tay Nguang Kee* at [69]).

Section 22(1)(a) of the Limitation Act

49 For s 22(1)(*a*) of the Limitation Act to apply, the requirement is that the action by the claimant-beneficiary must be "in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy". The two limbs of s 22(1)(*a*) are disjunctive and therefore, a claimant who wishes to take

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advantage of s 22(1)(*a*) must either show that his action is brought in respect of a (a) "fraud" or (b) "fraudulent breach of trust".

50 Where the action is brought in respect of a "fraud" to which the trustee was a party or privy, such "fraud" refers not to common law fraud or deceit but conduct by a defendant that would be against conscience for him to avail himself of the lapse of time, similar to that which results in the postponement of the limitation period on grounds of fraud in s 29 of the Limitation Act (see *Lim Siew Bee v Lim Boh Chuan and another* [2014] SGHC 41 at [112]; Terence Prime and Gary Scanlan, *The Law of Limitation* (2nd Ed, Oxford University Press, 2001) ("*Prime & Scanlan*") at 294). Under Singapore law, it has not been conclusively determined whether such "fraud" must be a necessary element of the cause of action pursued against the trustee (see *Lim Ah Leh v Heng Fock Lin* [2019] 1 SLR 1278 ("*Lim Ah Leh (CA)*") at [11]; *cf* Andrew McGee, *Limitation Periods* (7th Ed, Sweet & Maxwell, 2014) ("*McGee*") at para 14.005; David W Oughton *et al*, *Limitation of Actions* (LLP, 1998) ("*Oughton*") at 373). For present purposes, the first limb of s 22(1)(*a*) is clearly irrelevant because it is *not* the claimant's case that Mr Low had acted unconscionably so that he cannot take advantage of any limitation period available to him as a matter of law.

51 Turning to the next limb of s 22(1)(*a*), a breach of trust is characterised as "fraudulent" where it is dishonest (see *Panweld (CA)* ([43] above) at [52]). For dishonesty to be found, it must be established that (a) the defendant's conduct was dishonest by *the ordinary standards of reasonable and honest people* and (b) the defendant realised that by *those standards* that his conduct was dishonest (see *Panweld (CA)* at [52], citing *Twinsectra Ltd v Yardley and others* [2002] 2 AC 164). A breach of trust is therefore "fraudulent" where the trustee pursues a course of conduct which he knows would be regarded as contrary to the interests of the beneficiaries by the standards of honest and

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reasonable people, or where the trustee was recklessly indifferent to whether it would be contrary to their interests or not (see *Panweld (CA)* at [52]–[53]).

52 Mr Low submitted that the exception in s 22(1)(*a*) is inapplicable because the claimant has not pleaded in the SOC that he has "committed fraud and/or fraudulent breach of trust" in relation to the Loans.[52] However, for a "fraudulent breach of trust" to be found, there is no requirement for the words "fraud" or "fraudulent breach of trust" to be specifically pleaded. The question is whether, when the pleaded facts are considered as a whole, the defendant's conduct that is relied on by the claimant as giving rise to the breach of trust is contrary to the interests of his principal, and the trustee knew of the same by the standards of honest and reasonable people or was recklessly indifferent to the same (see *Lim Ah Leh v Heng Fock Lin* [2018] SGHC 156 ("*Lim Ah Leh (HC)*") at [201]; see, for example, *AHTC* ([47] above) at [484]).

53 The claimant submits that Mr Low's misappropriation of the Sums (which is the conduct giving rise to breach of trust) is fraudulent because, in connection with that breach of trust, Mr Low had breached his duty to act *bona fide* in the best interests of LSPL and his duty to act honestly under s 157(1) of the Companies Act, *per* the Findings of Fact in Suit 238 (see [7] above). The common law duty to act *bona fide* in the best interests of the company requires that directors exercise their discretion in a manner which they consider to be in the best interests of the company (*Halsbury's Laws of Singapore* (Vol 6) at para 70.247). The director's duty to "act honestly … in the discharge of his duties" under s 157(1) of the Companies Act similarly entails a duty to act *bona fide* in the interests of the company (see *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1994] 1 SLR(R) 513 at [22]). Given that the core of

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[52] Defendant's written submissions at para 21.

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these duties is the requirement that a director exercises his discretion and powers in a manner which furthers the interests of the company, where the conduct of a director giving rise to a breach of trust is coincident with a breach of these duties, such conduct must necessarily also be contrary to the interests of the company. Therefore, based on the claimant's pleaded case, the conduct giving rise to Mr Low's breach of trust is also contrary to LSPL's interests.

54 However, that is not the end of the inquiry, because it is Mr Low's state of mind that is critical to whether he had been "dishonest" and whether the breach of trust could therefore be characterised as "fraudulent". For that to be found, it must be shown that the Mr Low *knew* that his conduct was contrary to the interests of LSPL by the standards of an honest and reasonable director or that he was recklessly indifferent to the same. The facts of *Panweld (CA)* are illustrative – in that case, the company brought a claim for breach of fiduciary duty against one of its directors for placing his wife on the company's payroll and paying her salaries even though she was never an employee. The company sought to recover from the director and his wife the sums wrongfully paid. It was held that the director, by authorising these payments to his wife, had dealt with the company's property in breach of the trust and confidence that had been placed in him as a director and so he was a "class 1" constructive trustee and the limitation period in s 22(2) of the Limitation Act applied to the claim (at [48]). However, the claim came within s 22(1)(*a*) of the Limitation Act because the director could not have possibly believed that he was acting in the interests of the company by authorising these payments to his wife, since these payments would not be countenanced by the ordinary standards of reasonable people (at [55]).

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55 I was satisfied, from the claimant's pleading that Mr Low had caused the advancement of the Loans with no intention of repayment,[53] that Mr Low knew, by the standards of honest and reasonable people in the shoes of a company director like him, that his conduct was contrary to LSPL's interests. An honest and reasonable person in the position of a director would obviously not countenance the advancement of the company's monies to a third party as loans without intention of repayment, which effectively meant the taking of the company's property for the benefit of others. Mr Low's conduct in relation to the Loans therefore constitutes a "fraudulent breach of trust" for the purposes of s 22(1)(*a*) of the Limitation Act. Mr Low has no real defence to this, because the only relevant defence which he has mounted in OC 967 is his claim that the Loans were provided for the benefit of LSPL, and as explained, Mr Low is issue-estopped by the findings made in Suit 238 from relying on this for the purposes of OC 967 (see [33] above).

Section 22(1)(b) of the Limitation Act

56 As I have already found that the claimant's claims against Mr Low in OC 967 comes within the scope of s 22(1)(*a*) of the Limitation Act, the limitation period in s 22(2) does not apply, and the claim is not time barred. However, I go on to consider the applicability of s 22(1)(*b*), since substantial arguments have been made regarding this.

57 For s 22(1)(*b*) of the Limitation Act to apply, the claim by the claimant-beneficiary must be one to recover from the trustee trust property or its proceeds that are either (a) "in the possession of the trustee" or (b) "previously received

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[53] SOC at para 14.

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by the trustee and converted to his use" (see *Lim Ah Leh (CA)* ([50] above) at [20]).

58 The requirement of "in the possession of the trustee" in the first limb s 22(1)(*b*) is satisfied where it is shown that the defendant-trustee had retained possession of the trust property or its proceeds at the time when the action was commenced (see, for example, *Ang Bee Yian v Ang Siew Fah* [2019] SGHC 178 at [130]; *Tia Oon Lai v Tia Sock Kiu Sally (personal representative of Su Ye Chu, deceased) and others* [2025] SGHC 108 at [176]). Where the trust property or its proceeds are no longer in the physical possession of the trustee, the trustee can nonetheless be found to be in retention of the same where it could be readily rendered into his direct possession or actual control, such as if the trust property was held by the trustee's *proxy* (see *Panweld (CA)* ([43] above) at [54]; *Lim Ah Leh (HC)* ([52] above) at [237]; *McGee* ([50] above) at para 14.015). Therefore, on the facts of *Panweld (CA)*, the Court of Appeal was prepared to find the defendant-director as being in "possession" of the monies which he had caused the company to pay his wife on the basis of the trial judge's finding that the wife was merely the defendant's proxy and functioned as a conduit through which the defendant siphoned money out of the company (see *Panweld (CA)* at [54]; *Panweld (HC)* ([44] above) at [39]).

59 However, the claimant cannot avail itself of the exception in the first limb of s 22(1)(*b*) because there is nothing pleaded in the SOC on the issue of who retained possession of the Sums at the time when OC 967 was commenced. The claimant only pleads that the Sums were transferred to LSW as the Loans but there is no pleading as to whether LSW continues to retain the Sums. The fact that the Sums were provided to LSW as Loans does not necessarily mean that they would have been retained by LSW and indeed, based on the findings in Suit 238, the Loans were intended to *fund* LSW's operations (see *Wei*

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Fengpin (HC) ([6] above) at [114]) so presumably the Sums would have been utilised and no are no longer retained by LSW. Given the absence of a pleading as to whether LSW retained the Loans, even assuming *arguendo* that Mr Low exercises control over LSW (which I do not think is made out on the pleadings: see [63] below) and thus could readily obtain into his possession property belonging to LSW, it is not open to the claimant to contend that Mr Low is in *possession* of the Sums for the purposes of s 22(1)(*b*).

60 I now turn to the requirement of "previously received by the trustee and converted to [the trustee's] use" in the second limb of s 22(1)(*b*). There are three elements. First, the trust property or its proceeds must have been "previously received by the trustee". Thus, while the trustee need not be in possession of the trust property or its proceeds when the action was brought, it must have previously received that property or its proceeds in its capacity as trustee, *prior* to the conversion (see *Burnden Holdings (UK) Ltd v Fielding and another* [2018] AC 857 ("*Burnden*") at [18]). Secondly, the trust property or its proceeds must have been "converted", and that involves a taking of the property or its proceeds in defiance of the beneficiary/principal's rights of ownership (see *Burnden* at [22]).

61 Thirdly, the conversion must have resulted in the trustee's "use". This is obviously satisfied where the trustee *directly* takes the benefit of the trust property or its proceeds. Therefore, the claimant's previous claims in OC 271 to recover the Dividends and Big Bonuses would squarely fall within this limb of s 22(1)(*b*) because these sums of monies were paid to Mr Low (and Mr Sim) and so they had directly taken the benefit of them (see [13] above). The fact that the trust property or its proceeds were transferred to a third-party is not an impediment to the application of s 22(1)(*b*). Therefore, a trustee can be found to be in "use" of the trust property or its proceeds if they were received by a

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company through which the trustee could enjoy its economic benefit, such as where it is the majority shareholder of that company (see, for example, *Burnden*) or where the trust property or its proceeds are applied to the benefit of a company which the trustee controlled (see, for example, *South Bank Hotel Management Company Limited v Lodgeshine Limited* [2026] EWCA Civ 56 ("*South Bank*") at [71], where such control was exercised by virtue of the trustee being the sole director, and *Re Pantone 485 Ltd, Miller v Bain and others* [2002] 1 BCLC 266 at [44], where such control was exercised through the trustee's shareholding).

62 In this case, there is no dispute that: (a) the Sums were previously received by Mr Low in his capacity as LSPL's director prior to it being advanced as the Loans to LSW; and (b) the advancement of the Loans with no intention of repayment had involved a conversion of LSPL's property since it effectively meant that the Sums were taken from LSPL for LSW's own use. Whether the claimant can avail itself of the second limb of s 22(1)(*b*) of the Limitation Act turns on whether the Sums could be characterised as having been converted for Mr Low's "use", notwithstanding that they were transferred to LSW and not Mr Low directly. The claimant submits that this be answered in the affirmative because Mr Low *controlled* LSW as his brother was also a 40% shareholder and a director of LSW, which meant that Mr Low effectively held an 80% shareholding in LSW (through both his own and his brother's shareholding) and controlled LSW's board (through the two of three directors on LSW's board, being himself and his brother). The claimant also highlighted that during cross-examination in Suit 238, Mr Low had accepted that he and another director of LSW, Mr Peter Lehmann, were in control of LSW's operations.[54]

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[54] Defendant's written submissions at paras 109–114.

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63 In my view, based on the pleaded facts, the claimant is unable to avail itself of the exception in the second limb of s 22(1)(*b*) of the Limitation Act on the basis that Mr Low was in control of LSW. First, there is no pleading in the SOC that Mr Low exercises control over LSW. Secondly, although the claimant pleaded that Mr Low's brother held 40% of LSW's shareholding, in the absence of a further pleading that Mr Low's brother was merely a nominee shareholder for Mr Low or held that 40% shareholding on trust for Mr Low, there is no basis on which the claimant could contend that Mr Low effectively held an 80% shareholding in LSW through his brother's shareholding. Similarly, there is no pleading that Mr Low's brother was merely a nominee director for Mr Low such that Mr Low could be regarded as being in control of LSW's board. Thirdly, I do not think any weight can be placed on Mr Low's acceptance during cross-examination Suit 238 that he controlled LSW's operations. Mere control over a company's *operations* is not tantamount to control *of the company* for the purposes of engaging the exception in the second limb of s 22(1)(*b*) against a defaulting trustee. In any event, there was no finding made in Suit 238 that Mr Low controlled LSW (see *Wei Fengpin (HC)* at [96]–[115]).

64 However, as mentioned earlier, a defaulting trustee can be found to be in "use" of trust property or its proceeds where they were transferred to a company through which he could enjoy the economic benefit of the same. In *Burnden* ([60] above), the UK Supreme Court found that that was the case because the defaulting trustees were majority shareholders of the company to which trust property or its proceeds were transferred. In *South Bank* (at [69]–[70]), the English Court of Appeal expressed the view that *Burnden* is not intended to lay down a requirement that a defaulting trustee must necessarily hold a majority shareholding in a company before it could be found to derive economic benefits from trust property or proceeds transferred to that company, and depending on the facts of the case, a defaulting trustee with a lesser interest

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in the company can also be considered to have derived a benefit from the trust property or proceeds transferred to that company. Returning to the present case, the fact that Mr Low is merely a 40% shareholder of LSW does not in and of itself preclude the conclusion that he is able to derive an economic benefit from trust property or proceeds transferred to LSW; it is open to the claimant to plead and rely on other facts to show that Mr Low stands to derive an economic benefit.

65 Considering the Findings of Fact, which the claimant relied on as part of its pleaded case, it is quite clear that Mr Low stood to enjoy the economic benefit of any trust property or proceeds which are transferred to LSW. To recap, the claimant pleaded, as determined in the Findings of Fact, that LSW been set up to exploit the LIM technology, a corporate opportunity otherwise belonging to LSPL, and that Mr Low's conduct constituted a breach of his director's duties and fiduciary duties to not *profit* through LSW from opportunities otherwise belonging to LSPL. The foundation of the claimant's case in OC 967, which the Findings of Fact lend support to, is that Mr Low stood to derive an economic benefit from whatever was obtained for LSW, and that would encompass the corporate opportunities diverted from LSPL to LSW, as well as any property of LSPL that was misappropriated for the benefit of LSW. Thus, on the claimant's pleaded case, I find that it can avail itself of the exception in the second limb of s 22(1)(*b*) of the Limitation Act.

Whether *prima facie* case for summary judgment established

66 The purpose of the summary judgment procedure is to enable a claimant to obtain a quick judgment where there is plainly no defence to the claim without trial (see *Horizon Capital Fund v Ollech David* [2023] SGHC 164 ("*Horizon Capital Fund*") at [59]). To obtain summary judgment, the claimant must first

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establish a *prima facie* case for his claims. Once that is shown, the tactical burden shifts to the defendant who, in order to obtain permission to defend, must establish a fair or reasonable probability that he has a real or *bona fide* defence, and that there is a triable issue or question, or for some other reason there ought to be a trial (see *Horizon Capital Fund* at [60]; *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 at [19]).

67 Order 9 r 17(2) of the ROC 2021 provides that, where a claimant applies for summary judgment against a defendant, the claimant's affidavit must contain "all the evidence that is necessary or material to the claim". To establish a *prima facie* case, the claimant must demonstrate, with reference to evidence adduced in its affidavit for summary judgment, that the facts which it offers to prove in the Statement of Claim can be proven at trial.

68 The claimant only sought summary judgment in respect of relief (2) of the SOC (*ie*, that Mr Low repays the Sums to LSPL) but it did not seek summary judgment in respect of relief (1) of the SOC (*ie*, the declaration that Mr Low had breached his director's duties and fiduciary duties as a result of his involvement in procuring the Loans for the benefit of LSW). At the outset, let me state that I see no issue with the claimant only seeking summary judgment in respect of relief (2) but not relief (1). As I have mentioned above, Mr Low is personally liable to repay the Sums as constructive trustee due to his misappropriation of the Sums over which he held trustee-like duties by virtue of his role as a director and fiduciary steward of LSPL's property (see [45] above). Mr Low's liability to repay the Sums as constructive trustee stems from his breach of trust, and while the breach of trust is a consequence of him being a fiduciary *vis-à-vis* LSPL (see [43] above), that finding of liability is not contingent on a declaration that Mr Low had breached his duties as a fiduciary and director.

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69 Mr Low submitted that the claimant has not established a *prima facie* case because it has not exhibited in its affidavit the underlying evidence supporting the claim to recover the Sums. Mr Low highlighted that the claimant had only exhibited an Accounting and Corporate Regulatory search on LSW and the LSPL SOA, and the rest of the documents exhibited in the claimant's supporting affidavit consist of the cause papers and transcripts from previous proceedings like OC 271.[55] Mr Low further submitted that, in so far as the claimant relies on the LSPL SOA to establish its claims, that does not conclusively establish that the Sums are owing by LSW to the claimant, as it was only prepared by LSPL's then directors in discharge of their statutory obligations during insolvency, and is not intended as an accounting of debts due and owing or as an admission of liability.[56] Also, in so far as the claimant places reliance on any of the findings made in Suit 238 regarding the Loans, the court in Suit 238 had not been presented with the underlying invoices or debit notes evidencing the Loans and also did not have an opportunity to independently verify or validate the sums stated in the LSPL SOA.[57] Finally, the LSPL SOA does not account for the substantial set-offs arising from amounts incurred by LSW and chargeable to LSPL, a point which he had pleaded in his defence.[58]

70 I find that the evidence that the claimant has adduced in its affidavit establishes a *prima facie* case for its claim to recover the Sums from Mr Low:

(a) The claimant's *pleaded* case is that Mr Low had caused Sums to be advanced by LSPL to LSW with no intention of repayment by LSW. This is supported by the findings made in Suit 238 regarding the

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55 Defendant's written submissions at para 55.

56 Defendant's written submissions at para 57.

57 Defendant's written submissions at para 59.

58 Defendant's written submissions at para 58.

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advancement of the Loans with no intention of repayment and Mr Low's role in procuring the same, as set out in *Wei Fengpin (HC)* ([6] above).

(b) The claimant's *pleaded* case is that the Loans are in the sums of S$1,269,157.82 and US$765,261.37. This is supported by the LSPL SOA, which records these sums as due from LSW in the section which sets out LSPL's receivables.[59]

71 I do not think the claimant's omission to exhibit the underlying invoices for the Loans prevent a *prima facie* case from being made out. Of course, if the claimant had exhibited the underlying invoices, that would *improve* the quality of the evidence it has put before the court. However, in determining whether a *prima facie* case is made out, the question is simply whether the evidence adduced by the claimant lends support for its claim, such that the tactical burden ought to shift to the defendant to show why it ought to obtain permission to defend. The quality of the evidence adduced by the claimant has a bearing on the evidential burden which the defendant must discharge to obtain permission to defend, in that, if strong evidence is adduced by the claimant to support its claims, then correspondingly, stronger evidence must be adduced by the defendant in rebuttal. In this case, the claimant's omission to exhibit the underlying invoices is neither here nor there given my finding above that the claimant's evidence *already* establishes a *prima facie* case.

72 I disagree with the claimant's characterisation of the LSPL SOA and the submission that it ought to be given little weight. Based on s 141(1) of the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), a company's statement of affairs which is to be submitted to the Official Receiver after a

[59] NKK-1 at pp 123–124.

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winding up order has been made is supposed to show, among other things, "the particulars of the company's assets, debts and liabilities". Pursuant to s 141(2) of the IRDA, the statement of affairs is to be submitted by, among other persons, the directors of the company, and s 141(5) of the IRDA further states that a person who, without reasonable excuse, defaults in complying with the requirements of s 141 shall be guilty of an offence and liable on conviction to a fine not exceeding $10,000 or to an imprisonment term not exceeding 12 months or to both and also to a default penalty. It is apparent from these provisions that the submission of a statement of affairs to the Official Receiver is not an exercise to be taken lightly. It is precisely because the LSPL SOA was prepared by Mr Low and Mr Sim in discharge of their statutory obligations as directors of LSPL during insolvency that it bears weight and can be regarded as an accurate reflection of LSPL's assets, debts and liabilities, including its account receivables from LSW. Of course, Mr Low can argue that there were inaccuracies or errors in the LSPL SOA, or that the LSPL SOA omitted to account for set-offs otherwise chargeable by LSW to LSPL (as he pleaded), but these matters go towards Mr Low's *defence* and they do not prevent the claimant from establishing a *prima facie* case because the LSPL SOA, as it stands, lends support to the claimant's pleaded claim for the Sums.

73 As for Mr Low's submission that the quantum of the Loans had not been validated or verified by evidence at the trial of Suit 238, I note that the court had determined, as a finding of fact, that the Loans were provided by LSPL, and the LSPL SOA records the Loans as being of a certain amount (see *Wei Fengpin (HC)* at [112]–[115]), which correspond to the Sums. However, even if Mr Low's submission were accepted, I do not think this prevents a *prima facie* case from being found. First, the absence of any such validation or verification goes towards the quality of the claimant's evidence in that, if such an exercise had been undertaken, then the findings in Suit 238 would constitute even stronger

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evidence in support of the claimant's claims but that is still neither here nor there because, for reasons similar to those stated above (at [71]), I have already found the claimant's evidence to surpass the threshold of a *prima facie* case. Secondly, any challenge that Mr Low wishes to make regarding the quantum of the Loans is an issue going towards his *defence* because, as the material before me stands, the LSPL SOA lends support to the claimant's claim for the Sums.

Whether Mr Low has shown a real or *bona fide* defence

74 After a *prima facie* case is shown by the claimant, the tactical burden imposed on the defendant requires him to provide further evidence to *rebut* an inference that would otherwise be drawn from the evidence provided by the claimant (see *Horizon Capital Fund* ([66] above) at [60]). To discharge this burden, the defendant must do more than provide mere assertions, and must support them with some evidence, whether direct or indirect, and the evidence itself must be reasonably capable of belief (see *Barun Electronics Co Ltd v EZY Infotech Pte Ltd* [2020] SGHC 154 at [18]). The fact that proceedings are at the summary judgment stage is no reason for the court to accept anything stated in the affidavits without rational consideration, or to shy away from evaluating the merits of the rival contentions in determining if there is a fair or reasonable probability of a real defence (see *Abdul Salam Asanaru Pillai v Nomanbhoy & Sons Pte Ltd* [2007] 2 SLR(R) 856 at [37] and [39]).

75 Mr Low's case that he has a real or *bona fide* defence rests on three planks:[60]

(a) First, he challenges the quantum of the Loans – he submits that two sums of monies ought to be set off to reduce the amounts owing

[60] Defendant's written submissions at paras 62–70.

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from LSW to LSPL: (i) a sum of S$19,998.84 which had been recorded as owing by LSPL to LSW in the LSPL SOA; and (ii) sums in the region of approximately S$550,800 and US$800,000, which he claims LSW was entitled to charge LSPL for LSPL's use of machinery and premises, and which the management of LSPL and LSW understood were to be repaid from surpluses generated by LSW's sales to LSPL.

(b) Secondly, he disputes personal liability for the Sums. He reiterates that the Loans were made for legitimate commercial purposes and intended to benefit LSPL, and there was no finding made in Suit 238 that he had personally misappropriated or misapplied LSPL's property as alleged, and the court in Suit 238 also did not find him personally liable to repay the Loans.

(c) Thirdly, and in any event, he ought to be relieved from liability pursuant to the operation of s 391 of the Companies Act, because he had at all times acted honestly and reasonably having regard to all the circumstances.

76 For Mr Low's first defence, I accept that his contention regarding the sum of S$19,998.84 is supported by evidence because the section of the LSPL SOA setting out LSPL's accounts payable does record a sum of S$19,998.84 as owing by LSW to LSPL.[61] However, I do not think this discloses any defence for Mr Low. The sum of S$19,998.84 might arguably give rise to some legal or equitable set off as between the monetary cross claims *between LSW and LSPL*. However, OC 967 is not concerned with these monetary cross claims; the action is concerned with the recovery of monies which Mr Low had caused LSPL to advance as loans with no intention of them being repaid (*ie*, the recovery of the

[61] RL-1 at p 426.

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Sums which Mr Low had misappropriated in breach of trust). The Loans are merely *representative* of the Sums which Mr Low had misappropriated, but they themselves are not the subject of any claim in OC 967. The same applies to the other sums of monies which Mr Low claims LSW was entitled to charge LSPL for LSPL's use of LSW's machinery and premises. Any set off affects the liabilities as *between LSPL and LSW* but ultimately has no bearing on the Sums that Mr Low had caused to be misappropriated from LSPL, and it is that which is the subject of OC 967.

77 For Mr Low's second defence, I do not think it is of significance that the court in Suit 238 made no finding regarding his personal liability. Mr Low's personal liability to repay the Sums, which the claimant urges the court to find in OC 967, is the *legal conclusion* to be drawn from the Findings of Fact in Suit 238 – it is those facts which establish that Mr Low stood as a trustee *vis-à-vis* the Sums, which he caused to be misappropriated by advancing them as the Loans to LSW with no intention of repayment, and he therefore became a constructive trustee of the Sums. As I have earlier mentioned (at [33]), Mr Low is issue-estopped by the findings in Suit 238 from contending in his defence that the Loans were for legitimate commercial purposes and for LSPL's benefit.

78 For Mr Low's third defence, the previous litigation in Suit 238 would not in any way preclude him from now relying on s 391 of the Companies Act, since no such defence could have been advanced in that proceeding as it was not brought for "negligence, default, breach of duty or breach of trust" against Mr Low as a director of the company. However, as a matter of issue estoppel, the previous litigation would constrain Mr Low in terms of the facts which he can rely on to establish this defence, where they revisit issues that had been determined with finality in Suit 238 (see [33] above).

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79 For a director of a company to be excused from liability pursuant to s 391 of the Companies Act, there are three cumulative requirements which must be fulfilled: (a) that the director has acted honestly; (b) that he has acted reasonably; and (c) that it is fair to excuse him for his default (*Nordic International Ltd v Morten Innhaug* [2017] 3 SLR 957 ("*Nordic International*") at [86]). In *Long Say Ting Daniel v Merukh Nunik Elizabeth (personal representative of the estate of Merukh Jusuf, deceased) (Motor-Way Credit Pte Ltd, intervener)* [2013] 1 SLR 1428 ("*Long Say Ting*") (at [60]), the High Court endorsed the views in *Australian Securities and Investments Commission v Healey (No 2)* [2011] FCA 1003, where it was held that a person acts "honestly" if his conduct is "without moral turpitude", that is, if he had acted *without* (a) deceit or conscious impropriety, (b) intent to gain an improper benefit or advantage, and (c) carelessness or imprudence that negates the performance of the duty in question. In determining whether a director has acted reasonably, one consideration is whether the director had acted in the affairs of the company as he would have done in relation to his own affairs (see *Long Say Ting* at [64]). Finally, as for the question of whether it is fair for the director to be excused for his default, this is said to entail a number of considerations, the most critical of which is the seriousness of the breach by the director, and where the breach is an egregious or serious one, it would not be fair for the director to be relieved from liability as that would constitute a disservice to the administration of company law (see *Long Say Ting* at [68]).

80 Mr Low submitted that he has acted "honestly and reasonably" for the purposes of s 391 of the Companies Act because he had acted in good faith and in what he believed to be the best interests of LSPL, and that the incorporation of LSW was intended to ensure that LSPL had a stable supply chain and to

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prevent LSPL's operations from being disrupted.[62] Given that it was determined in Suit 238 that the incorporation of LSW was not for the benefit of LSPL, and that its purpose was to divert from LSPL the corporate opportunity of exploiting the LIM technology (see [24] above), I consider Mr Low as being issue-estopped from characterising the incorporation of LSW as being for the benefit of LSPL in support of his reliance on s 391 of the Companies Act. In any event, it is unclear how this provides an answer to the claim in OC 967, which concerns the advancement of the Loans with no intention of repayment. In his affidavit, Mr Low made a bare assertion that the Loans were for the commercial benefit of LSPL and its shareholders,[63] and he is similarly issue-estopped from characterising the provision of the Loans as being for the benefit of LSPL given the finding in Suit 238 that the Loans were intended to benefit LSW and not LSPL (see [24] above). Therefore, on the evidence put forward by Mr Low, I was not satisfied that he has shown a real *bona fide* defence that he had acted "honestly and reasonably" for the purposes of s 391 of the Companies Act.

81 I would also add that, given the nature of the breaches in question (Mr Low's misappropriation of LSPL's property in breach of his director's duties and fiduciary duties to LSPL), it would be an uphill task for Mr Low to satisfy the court that it is fair for him to be excused for his default, given that a director's misappropriation of company property must come within the category of the most serious breaches of company law for which it would be unfair for a director to be excused from liability.

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62 RL-1 at paras 57–60; Defendant's written submissions at para 68.

63 RL-1 at para 61.

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Conclusion

82 For the reasons above, I was not satisfied from the evidence adduced by Mr Low that he has a real *bona fide* defence and I therefore allowed SUM 86, and granted judgment for relief (2) of the SOC (for the repayment of the Sums by Mr Low to LSPL) and interest in favour of the claimant. Mr Low's application for striking out in SUM 284, which is without merit, was also dismissed.

83 For costs, given that there was overlap between both SUM 86 and SUM 284 in terms of the material relied on and arguments, I fixed the costs of both applications at $15,000, and disbursements at $4,300, payable by Mr Low to the claimant. I also fixed the costs of the action in OC 967 and disbursements, which were consequential upon summary judgment being granted, at $5,000 and $1,600 respectively.

Perry Peh
Assistant Registrar

Ng Yeow Khoon, Sherman Ho and Leong Kit Weng (Shook Lin & Bok LLP) for the claimant;
Salem Ibrahim and Wang Tianyi (Salem Ibrahim LLC) for the defendant.

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