

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

[2024] SGHC 138

Originating Claim No 256 of 2023

Between

- (1) Pioneer Energy Holdings Pte
Ltd
- (2) Xu Jinsong

... Claimants

And

Zhu Yimin

... Defendant

JUDGMENT

[Companies — Directors — Duties — Duties expected of a nominee director]
[Companies — Directors — Liabilities — Whether nominee director liable to
account for withdrawals made from company accounts during her tenure]
[Evidence — Proof of evidence — Onus of proof — Onus or burden of proof
on party seeking to depend on existence of fact]

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Pioneer Energy Holdings Pte Ltd and another
v
Zhu Yimin

[2024] SGHC 138

General Division of the High Court — Originating Claim No 256 of 2023
Kwek Mean Luck J
13, 14 May 2024

27 May 2024

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 Mr Xu Jinsong (“Mr Xu”) is the sole director and a shareholder of Pioneer Energy Holdings Pte Ltd (“Pioneer”). In Originating Claim 256 of 2023 (“OC 256”), Pioneer and Mr Xu (the “Claimants”) seek the recovery of various sums and orders to account from Ms Zhu Yimin (“Ms Zhu”), a former director of Pioneer. Ms Zhu, in turn, counterclaims for accounting fees and for additional interest payments that she had to make on a company loan for her own business.

Background

Parties to the dispute

2 Pioneer is a private limited company incorporated in Singapore. It is in the business of renting industrial machinery.¹ Mr Xu is the 50% shareholder of Pioneer. He was a director of Pioneer (a) from 28 May 2018 to 14 January 2019 and (b) from 15 August 2019 to date.² The other 50% of Pioneer’s shares are held by Mr Zheng Chunmu (“Mr Zheng”), also known as “Allen”. Mr Zheng, a Chinese national, held all the shares of Pioneer at the time of its incorporation on 23 November 2016.

3 Ms Zhu was a director of Pioneer (a) from 23 November 2016 to 25 September 2019, and (b) from 30 July 2020 to 1 January 2021.³ She was the sole director of Pioneer from 23 November 2016 to 27 May 2018, and from 15 January 2019 to 14 August 2019, that is, excluding the periods when Mr Xu was also a director of Pioneer.⁴ Mr Xu claims that Ms Zhu was negligent during her tenure as a director, particularly as sole director.

4 Ms Zhu runs a corporate services company, Express Corporate Services Pte Ltd (“ECS”). It is in the business of providing accountancy and secretarial services, and incorporating companies.⁵ According to Ms Zhu, in 2016, Mr Zheng requested her services to incorporate Pioneer. ECS provided Pioneer with

¹ Statement of Claim dated 28 April 2023 (“SOC”) at para 1.

² SOC at para 2; ACRA profile of Pioneer directors dated 25 November 2022 and filed by Pioneer on 25 October 2023 (“ACRA Profile of Pioneer”) at p 2; Transcript 13 May 2024 at p 6 lines 16–29.

³ SOC at para 3.

⁴ ACRA Profile of Pioneer.

⁵ Ms Zhu’s Defence and Counterclaim filed 12 September 2023 (“Defence and Counterclaim”) at para 1b.

accountancy, secretarial and tax services for varying periods from 2018 to 2021. As Mr Zheng was a foreigner, ECS also provided nominee director services to Pioneer, with Ms Zhu appointed as a nominee director of Pioneer.

Background facts and prior court proceedings

5 On 13 April 2018, Mr Zheng and Mr Xu entered into a “Cooperation Agreement”, in which Mr Zheng agreed to sell 50% of the shares in Pioneer to Mr Xu for \$100,000, while Mr Xu would provide \$200,000 of interest-free working capital for Pioneer’s use.⁶ A total of 250,000 shares of Pioneer’s initial 500,000 shares were accordingly transferred to Mr Xu.⁷

6 Around 3 July 2018, Mr Xu and Mr Zheng, on behalf of Pioneer, took out two loans from United Overseas Bank (“UOB”): (a) an “SME Working Capital Loan” of \$259,000 and (b) a “Bizmoney Loan” of \$100,000.⁸ Mr Xu was the personal guarantor of both loans. The relationship between the parties broke down later. On 14 January 2019, a “Withdrawal Agreement” was signed.⁹ Amongst other things, it provided that from the date of the Withdrawal Agreement, Mr Zheng would control all the business activities of Pioneer, and own all profits and losses of Pioneer. Mr Xu would also resign as Pioneer’s director and would not be “legally responsible”.¹⁰ However, Mr Xu would retain his 50% equity in Pioneer.

⁶ Mr Xu’s affidavit dated 21 August 2023 at p 63 and Setdown Bundle filed 12 April 2024 (“SDB”) at p 63.

⁷ ACRA Profile of Pioneer.

⁸ Statement of Claim for MC/MC 17007/2019 (“MC 17007 SOC”) at para 3.

⁹ MC 17007 SOC at para 4 and SDB at pp 59–61.

¹⁰ Mr Xu’s affidavit dated 21 August 2023 at p 61.

7 On 20 November 2019, Mr Xu brought MC/MC 17007/2019 (“MC 17007”) against Mr Zheng for the sum of around \$55,000, for alleged breaches of the Withdrawal Agreement by Mr Zheng. MC 17007 was dismissed as the Withdrawal Agreement was found to be null and void.¹¹ Mr Xu’s appeal HC/DCA 17/2021 was dismissed by the High Court on 3 August 2021.

Claims

8 In OC 256, the Claimants make various claims against Ms Zhu, which I address below. Before I do so, it would be useful to set out the law on the burden of proof. This is provided for in the following provisions of the Evidence Act 1893 (2020 Rev Ed):

Burden of proof

103.—(1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which the person asserts, must prove that those facts exist. ...

On whom burden of proof lies

104. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Burden of proof as to particular fact

105. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person.

9 In other words, the burden of proof is on the parties to prove the facts that they assert and rely on, for their claims and counterclaims. This must necessarily be done by way of evidence and not bare assertions. The parties

¹¹ Defendant’s Bundle of Documents (“DBD”) at pp 11–12; Notes of Evidence for MC 17007/2019 on 19 May 2021 at p 4.

were reminded by court correspondence dated 24 April 2024 that if they intend to rely on any evidence at trial that is not currently in their affidavits of evidence-in-chief (“AEIC”), they should do so by filing a supplementary affidavit to adduce such evidence by 29 April 2024. Parties were, in the same correspondence, directed to set out the legal basis for their claims and the evidence supporting each specific claim. Even though the parties were self-represented, they were aware of the need to provide evidence to support their claims.

10 Parties did not file supplementary affidavits to adduce further evidence. In the course of the trial, both parties referred to documents set out in the Claimants’ Set Down Bundle (“SDB”) and Defendant’s Bundle of Documents (“DBD”), but which were not in Mr Xu’s or Ms Zhu’s AEIC. I allowed both parties to adduce these documents.

Ms Zhu’s involvement in Pioneer as a director

11 A central issue that cuts through the various claims brought forth by the Claimants is the extent of Ms Zhu’s involvement in Pioneer as a director. The Claimants allege that Ms Zhu was the managing director of Pioneer.¹² This underpins their claims that (a) Ms Zhu issued cheques on behalf of Pioneer to Mr Xu, which were later dishonoured; (b) that she be ordered to explain 89 withdrawals from Pioneer’s bank account; (c) that she account for a purchase order signed by a Pioneer staff; (d) that she account for Pioneer’s payment made to a Samsung staff allegedly for equipment from Samsung; (e) that she account for Pioneer’s payment of sums to WKS Welding Products Pte Ltd (“WKS”); (f) that she account for the alleged collection of cheques by Lin Duan, who is an

¹² SOC at paras 3 and 8.

employee of Pioneer; and (g) more generally, that Ms Zhu breached her duties as a director.¹³

12 Ms Zhu, on the other hand, asserts that she was only a nominee director. Ms Zhu’s evidence is that after she helped Mr Zheng to incorporate Pioneer, she was asked to serve as a nominee director in return for an annual fee of \$1,200.¹⁴ She testified that she was appointed because Mr Zheng was an Employment Pass holder¹⁵ and she was asked to be a director so as to fulfill Pioneer’s obligation under s 145(1) of the Companies Act 1967 (2020 Rev Ed) (“Companies Act”) for at least one director of the company to be ordinarily resident in Singapore.¹⁶

13 In *Prima Bulkship Pte Ltd (in creditors’ voluntary liquidation) and another v Lim Say Wan and another* [2017] 3 SLR 839 (“*Prima Bulkship*”), Kannan Ramesh JC (as he then was) noted at [45] that it is common practice for companies to appoint a “nominee” director to fulfil the requirement under the Companies Act of at least one director who is ordinarily resident in Singapore. Such directors “typically do not play an active or executive role in the company, and their main function is to ensure that the company complies with the statutory requirements of local resident director”: *Prima Bulkship* at [45]. Such nominee directors also do not engage in or shoulder responsibility for commercial decision-making and discharge the role of a director more in form than in substance. Ultimately, whether a director is a nominee director that plays a non-executive role is a question of fact.

¹³ SOC at p 8.

¹⁴ Claimants’ Setdown Bundle (“SBD”) at p 94.

¹⁵ Transcript 14 May 2024 at p 6 line 21.

¹⁶ Transcript 14 May 2024 at p 6 lines 15–24.

My decision: Ms Zhu is a nominee director, not a managing director

14 I find that Ms Zhu’s testimony that she was only a nominee director, exercising little executive function, is supported by the other evidence before the court.

15 First, it is consistent with what is stated in Ms Zhu and Mr Xu’s WhatsApp exchanges, which Ms Zhu adduced¹⁷ and which Mr Xu accepted as an accurate record of their WhatsApp exchanges, albeit in his view it is only “a little bit of the chat history”.¹⁸ This can be seen from the following exchanges:

(a) On 25 September 2019, Mr Xu asked Ms Zhu through WhatsApp for her help with a “power of attorney for debt collection”, which he intended to present to the court.¹⁹ Mr Xu confirmed that this was for the purposes of his suit with Mr Zheng in MC/MC 17007/2019.²⁰ Ms Zhu said that she would then need Mr Xu to bring the bank statement and if Mr Xu did not “bring accounting documents”, then “how [would they be able to] to figure it out[?]” She also told him that “[j]ust because you all said the other side took the money” “I can’t believe you”.²¹ In my view, if Ms Zhu had access to the bank documents and statements of Pioneer, she would not have had to press Mr Xu for them, and Mr Xu would have queried why Ms Zhu did not access the bank statements herself, if he was of the view that Ms Zhu already had access to the bank

¹⁷ Ms Zhu’s AEIC dated 21 December 2023 at pp 17–31.

¹⁸ Transcript 13 May 2024 at p 3 lines 21–29.

¹⁹ DBD at p 14.

²⁰ Transcript 13 May 2024 at p 17 line 19 to p 18 line 6.

²¹ DBD at pp 14–15.

documents. This exchange therefore suggests that both Ms Zhu and Mr Xu were aware that Ms Zhu had no access to Pioneer’s bank statements.

(b) On 11 October 2019, Mr Xu stated in his WhatsApp message to Ms Zhu that Mr Zheng, referred in the message to as “Allen”, “is the actual controller, responsible for the operation and profit and loss”.²² This suggests that Mr Xu himself was aware that it was Mr Zheng, and not Ms Zhu, who had control over Pioneer’s operations.

(c) Around 8 July 2020, Ms Zhu told Mr Xu that she is a “nominee director”, that she provided “[j]ust service”, was “not [the] real boss” and maintained that “I am different from you two [*ie*, Mr Xu and Mr Zheng]”.²³ This was not refuted by Mr Xu in the exchange.

16 Second, Ms Zhu’s testimony that she was only a nominee director is supported by an email dated 18 October 2018 sent to a “Jason” in Pioneer. Mr Xu confirmed on the stand that he is “Jason”.²⁴ The email is from one Xiao Ru whom Ms Zhu testified was a staff of ECS.²⁵ The email seeks information from Pioneer about bank statements, loan details, the recipients of certain payments and the purpose of such payments. That ECS had to request for bank statements and payment information from Mr Xu, suggests that Ms Zhu herself did not have access to Pioneer’s bank related information.

17 Third, Ms Zhu’s evidence that she was just a nominee director and that her main involvement was through the provision of corporate services to

²² DBD at p 17.

²³ DBD at p 28.

²⁴ Transcript 13 May 2024 at p 18 lines 7–12.

²⁵ DBD at p 6; Transcript 14 May 2024 at p 7 lines 2–9.

Pioneer is consistent with the document that she produced for her counterclaim, namely an invoice to Pioneer from ECS dated 18 December 2019 for fees accruing from accounting and tax services.²⁶

18 Fourth, Ms Zhu’s position is also supported by a tax invoice dated 22 March 2018, as adduced by the Claimants, which shows ECS charging Pioneer a fee of \$1,200 for “one year [of] nominee director fee” from 23 November 2017 to 22 November 2018.²⁷

19 On the other hand, the Claimants have not provided any evidence that shows that Ms Zhu was anything more than a nominee director in Pioneer.

20 First, Mr Xu referred to an invoice from ECS dated 28 November 2018, where Pioneer was charged \$80 for Ms Zhu going to the bank to sign as a director.²⁸ He claims that this shows that Ms Zhu had authority over the bank accounts. Ms Zhu’s evidence is that she was asked by Mr Zheng to go to Standard Chartered bank to open a bank account for Pioneer.²⁹ I found no basis to reject her evidence. I do not find that this, in itself, shows that Ms Zhu had the authority or extensive role in Pioneer alleged by Mr Xu.

21 Second, Mr Xu also referred to a WhatsApp exchange where Ms Zhu said “[y]ou quit” as an example of how she forced him to quit.³⁰ Ms Zhu contended that Mr Xu had left out some prior lines in his production of the

²⁶ “Evidence Supporting The Counterclaim” filed 29 April 2024 at p 1.

²⁷ SDB at p 94.

²⁸ Claimants’ Defence to Counterclaim dated 27 September 2023 (“Defence to Counterclaim”) at p 2.

²⁹ Transcript 14 May 2024 at p 12 lines 23–29; p 13 lines 3–9.

³⁰ SDB at p 64; Whatsapp message of 22 December 2018 at 9:47am.

record of this exchange, as there is no context to why Ms Zhu would say “[y]ou quit”. She also testified that she did not have any power to force Mr Xu to quit. I find that Mr Xu has not shown how Ms Zhu could forcibly make Mr Xu quit. In any event, Mr Xu accepted in court that he quit as a director of Pioneer, not because Ms Zhu forced him to, but as part of the agreement he had with Mr Zheng, in return for Pioneer continuing to pay the bank loan taken out by Mr Xu for Pioneer.³¹ This is consistent with what he had pleaded in his Statement of Claim in MC 17007 regarding the Withdrawal Agreement. On his own evidence in this suit, Mr Xu quit because of an agreement he had with Mr Zheng, not because Ms Zhu forced him to.

22 I therefore find that taking into account the evidence on the whole, Ms Zhu was only serving as a nominee director in Pioneer, taking on a non-executive role. I now turn to the specific claims brought by the Claimants.

Cheques amounting to \$276,876.65

23 First, the Claimants allege that Ms Zhu issued a series of 13 cheques from 15 October 2018 to 12 March 2019, in the total amount of \$276,876.65, to Mr Xu. According to the Claimants, Ms Zhu borrowed these sums from Mr Xu and none of these cheques were honored when presented for payment.³² There is however no evidence that Ms Zhu borrowed these sums from Mr Xu.

24 In any event, the claim is not for a debt owed by Ms Zhu to Mr Xu, but in respect of the cheques not being honored. The cheques are issued to Mr Xu

³¹ Transcript 13 May 2024 p 13 line 28 to p 14 line 2.

³² SOC at para 4.

by Pioneer, not Ms Zhu.³³ Mr Xu confirmed this on the stand.³⁴ As the cheques are issued by Pioneer, the claim for the dishonoured cheques should be made against Pioneer, rather than Ms Zhu. Consequently, Pioneer, as the first Claimant, is not the right party to make this claim. It would be making a claim against itself. Mr Xu should also, on the face of the cheques, be making a claim against Pioneer, not Ms Zhu.

25 I turn next to analyse if there is a basis to claim against Ms Zhu (rather than Pioneer) in relation to these cheques. Ms Zhu's evidence is that she has never authorised any cheque from Pioneer's account and that it was Mr Xu and Mr Zheng who could sign cheques on behalf of Pioneer.³⁵

26 There is no evidence that it was Ms Zhu who signed these cheques. In support of Ms Zhu's counterclaim for accounting fees owed by Pioneer to ECS, she produced an invoice from ECS dated 18 December 2019, which she testified was signed by her. Mr Xu also adduced a company resolution of Pioneer, which contains Ms Zhu's signature.³⁶ Ms Zhu's signature is consistent in these two documents and are clearly different from the two signatures in the cheques referred to by Mr Xu. The signatures on the Pioneer cheques appear similar to those of Mr Zheng and Mr Xu made in a "Withdrawal Agreement", that Mr Xu adduced.³⁷ Indeed, Mr Xu testified in court that the signatures on the cheques

³³ SDB at pp 9–12.

³⁴ Transcript 13 May 2024 at p 19 line 19 to p 20 line 1.

³⁵ Ms Zhu's AEIC filed 21 December 2023 at para 1, 3 and 5.

³⁶ SDB at p 55.

³⁷ SDB at p 61.

were those of Mr Zheng and Mr Xu.³⁸ I find that Ms Zhu was *not* involved in signing the cheques issued by Pioneer.

27 Mr Xu has not raised anything which justifies claiming directly against Ms Zhu. She did not sign these cheques. Furthermore, the Claimants have brought no evidence to show that Ms Zhu authorised the cheques or that she was involved with them. Consequently, I find that Mr Xu's claim for the dishonored cheques are rightfully against Pioneer and not Ms Zhu. I therefore dismiss this claim for the sum of \$276,876.65, which is the sum total of the alleged dishonoured cheques.

Unexplained withdrawals amounting to \$744,737.42

28 Second, the Claimants allege that Ms Zhu made 89 unexplained withdrawals from Pioneer from 1 November 2017 to 5 April 2019, amounting to a total of \$744,737.42.³⁹ The Claimants seek an order that Ms Zhu account for these unexplained withdrawals.

29 Mr Xu was a director of Pioneer for a significant part of this period, from 28 May 2018 to 14 January 2019. However, the Claimants have provided no evidence that any of these withdrawals were actually made or that Ms Zhu was involved in these withdrawals. The only two affidavits produced by the Claimants were a three-page affidavit dated 21 August 2023, and a two-page AEIC of Mr Xu dated 9 April 2024. Both affidavits did not mention the unexplained withdrawals amounting to \$744,737.42. Even where the affidavit dated 21 August 2023 depicted cheques supposedly depicting withdrawals of

³⁸ Transcript 13 May 2024 at p 19 line 19 to p 20 line 1.

³⁹ SOC at para 5.

cash or payments,⁴⁰ there is no explanation from Mr Xu as to how they are relevant to this claim nor how they provide any context or evidence as to Ms Zhu's involvement in these withdrawals.

30 At the same time, Ms Zhu testified that all cheques or fund transfers from Pioneer's bank account had to be signed or approved by Mr Zheng and Mr Xu. The cheques adduced by Mr Xu as part of his claim support Ms Zhu's testimony. They contain the signatures of Mr Zheng and Mr Xu, and not Ms Zhu.

31 As there is no evidence from the Claimants to show that there were such withdrawals or that Ms Zhu was involved in them, and in light of the evidence supporting Ms Zhu's position that she was only a nominee director in Pioneer and that Mr Xu and Mr Zheng were the signatories for the cheques adduced by Mr Xu, I dismiss this claim.

Purchase Order signed by Gao Jie

32 Third, the Claimants seek an accounting by Ms Zhu for a Purchase Order numbered PO180429 dated 29 April 2018 ("PO"), which was allegedly signed by an employee of Pioneer, Gao Jie, who was appointed Admin Manager on 14 May 2018.⁴¹ They allege that Ms Zhu was then the managing director of Pioneer and that she should account for this.⁴² They point to the letter of appointment of Gao Jie, which is signed by Ms Zhu.⁴³ Specifically, the Claimants appear to be alleging some form of misconduct or mismanagement

⁴⁰ Mr Xu's affidavit dated 21 August 2023 at pp 35, 36, 39–50.

⁴¹ SDB at pp 2–3.

⁴² SOC at para 8.

⁴³ SDB at p 2.

on Ms Zhu's part, because the PO was purportedly signed by Gao Jie on 29 April 2018, 15 days before Gao Jie was officially appointed as an employee on 14 May 2018.⁴⁴

33 Ms Zhu accepted that the letter of appointment contains her signature.⁴⁵ She claims that Mr Zheng may have brought Gao Jie into Pioneer earlier, but only gave him formal appointment with effect from 14 May 2018.

34 In the first place, the Claimants have not produced any evidence to show that the signature on the PO is that of Gao Jie. In fact, the position taken in the SOC that the PO was signed by Gao Jie, is inconsistent with the position taken by the Claimants before the learned Assistant Registrar in HC/SUM 2337/2023 which involved Ms Zhu's application to set aside default judgment. There, the Claimants' allegation was that the signature on the PO was forged.⁴⁶ Second, the Claimants do not have any evidence of Ms Zhu's involvement with the PO. The PO does not contain Ms Zhu's signature. On the other hand, as set out above, Ms Zhu's testimony that she was just a nominee director is supported by the documentary evidence before the court. Her consistent evidence is that she was not involved in the operations of Pioneer and that Mr Zheng was the one who was the controller. Mr Xu also stated this in his 11 October 2019 WhatsApp message to Ms Zhu.

35 It is for the Claimants to prove their case. In the absence of evidence from the Claimants that the PO was signed by Gao Jie or of Ms Zhu's involvement with the PO, I dismiss this claim.

⁴⁴ Transcript 13 May 2024 at p 38 line 21 to p 39 line 27.

⁴⁵ Transcript 14 May 2024 at p 15 lines 1–7.

⁴⁶ SDB at p 107.

Account for payment to Pan Yong

36 Fourth, the Claimants seek an account from Ms Zhu regarding the payment of \$20,000 by Pioneer through Mr Zheng to one Pan Yong around April 2018. The Claimants state that Pan Yong was allegedly the supplies manager of Samsung and that the payment was allegedly to secure Samsung's order for 500 pieces of "heavy duty HDPE mat".⁴⁷ In his AEIC, Mr Xu suggests that Pan Yong was bribed,⁴⁸ but the Claimants do not provide any context or documentary evidence on the alleged bribery, nor any evidence on how Ms Zhu was involved in this. As the Claimants have not produced any evidence to prove this claim, I dismiss it.

Account for payment to WKS Welding Products

37 Fifth, the Claimants seek an account from Ms Zhu for the payment of \$1,070 to WKS Welding Products Pte Ltd.⁴⁹ They allege that Ms Zhu issued a cheque for this amount in favour of WKS on behalf of Pioneer, instead of another company named Pioneer Energy (s) Pte Ltd ("Pioneer (s)").⁵⁰ However, there is no explanation in the Statement of Claim or in Mr Xu's AEIC about this payment or why it should have been issued by Pioneer (s) instead of Pioneer. Neither is there any evidence that Ms Zhu was the one who issued the alleged cheque to WKS. The cheque for the payment of \$1,070 to WKS does not appear to be signed by Ms Zhu.⁵¹ The signature appears similar to that of Mr Zheng. As the Claimants have not explained or provided any evidence as to why the

⁴⁷ SOC at para 9.

⁴⁸ Mr Xu's AEIC dated 9 April 2024 at para 6.

⁴⁹ SOC at para 10.

⁵⁰ SOC at para 10.

⁵¹ SDB at p 7.

issuance of this cheque from Pioneer was wrong, or how Ms Zhu was involved in this, I dismiss this claim.

Disclosure of Ms Zhu’s dealings with Lin Duan

38 Sixth, the Claimants seek a full and frank disclosure from Ms Zhu about her dealings with one Lin Duan. They allege that Ms Zhu issued 30,000 shares to an employee of Pioneer, Lin Duan, around 3 February 2018. The Claimants allege that Ms Zhu also authorised Lin Duan on 15 January 2019 to collect cheques on behalf of Pioneer from its clients. The Claimants seek from Ms Zhu a full and frank disclosure of her dealings with Lin Duan, including but not limited to an account of the monies collected by Lin Duan allegedly on Pioneer’s behalf.⁵²

39 The certificate certifying that Lin Duan holds 30,000 shares in Pioneer has a signature that appears to be similar to Ms Zhu’s.⁵³ Ms Zhu’s defence was that she did not remember issuing these shares to a Lin Duan and that she had never met Lin Duan before.⁵⁴

40 It is not clear if Lin Duan did become a holder of 30,000 shares in Pioneer, as the Accounting and Corporate Regulatory Authority (“ACRA”) profile for Pioneer as of 25 November 2022 only lists Mr Zheng and Mr Xu as shareholders. Ms Zhu testified that Mr Zheng informed her that no action was taken to distribute shares to Lin Duan.⁵⁵ In any event, even if Ms Zhu did sign

⁵² SOC at para 12.

⁵³ SDB at p 4.

⁵⁴ Defence and Counterclaim at para 7.

⁵⁵ Transcript 14 May 2024 at p 10 line 23 to p 11 line 17.

this share certificate, it does not go to show that she authorised Lin Duan to collect cheques for Pioneer.

41 Indeed, the Claimants have produced no evidence to show that Ms Zhu authorised Lin Duan to collect cheques for Pioneer on 15 January 2019, that Ms Zhu was involved in the collection of the cheques or that there was any wrongdoing in such collection of cheques. The letter of authorisation from Pioneer for Lin Duan to collect cheques was signed by Mr Zheng, not Ms Zhu.⁵⁶ Mr Xu did not dispute that it was Mr Zheng’s signature.⁵⁷ In the absence of any supporting evidence from the Claimants, I dismiss this claim.

Explanation from Ms Zhu about being a director of Pioneer

42 Seventh, the Claimants seek an explanation from Ms Zhu as to how she became a director of Pioner between 30 July 2020 and 1 January 2021.⁵⁸ Ms Zhu explained on the stand that after she had first resigned as a director of Pioneer, she was asked by Pioneer to be the corporate secretary. Ms Zhu’s assistant made a wrong filing to ACRA and erroneously put her as a director.⁵⁹ Ms Zhu realised the mistake when checking her company appointments six months later. She then resigned urgently and gave an explanation to ACRA stating this.⁶⁰ Ms Zhu has thus given her explanation. In any event, the Claimants did not provide any legal basis for seeking an explanation from Ms Zhu on this. I therefore dismiss this claim.

⁵⁶ SDB at p 5.

⁵⁷ Transcript 13 May 2024 at p 42 lines 4–12.

⁵⁸ SOC at para 11.

⁵⁹ Transcript 13 May 2024 at p 40 lines 17–32.

⁶⁰ DBD at p 29.

Production of financial statements

43 Eighth, the Claimants seek an order for Ms Zhu to produce the annual financial records of Pioneer for the financial years (“FY”) ending 30 June 2018 and 30 June 2019. The Claimants allege that Ms Zhu is in breach of ss 201(2) and 201(5) of the Companies Act for failing to do so.⁶¹ Section 201(1) states that the directors of a company must lay before the company at its annual general meeting (“AGM”) the financial statement for the financial year in respect of which the AGM is held. Section 204 of the Companies Act provides that if any director of a company fails to comply with ss 201(2) or (5), he shall be guilty of an offence.

44 In *Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd* [2016] 5 SLR 226 (“*Ezion*”), the High Court held at [22] that if the defendant company had not held its AGMs or provided its annual reports for a few years, the remedy was to pursue the penalties for non-compliance with the requirement. The plaintiff’s application for the provision of audited accounts of the defendant outside of an AGM was dismissed: *Ezion* at [11]. In this case, Mr Xu has not provided any evidence to show that AGMs were called in the alleged FYs, and that the obligation to provide annual financial records had arisen. It appears from ACRA’s records that no AGM had been held, as of 25 November 2022.⁶² Following *Ezion*, Mr Xu’s application for the provision of financial statements outside of an AGM would consequently be dismissed.

45 In any event, even if AGMs were held in those FYs and the financial statement were not produced at Pioneer’s AGMs for the stated FYs, Mr Xu has

⁶¹ SOC at para 14.

⁶² ACRA Profile of Pioneer at p 2.

still not shown any legal basis for this claim. The statutory provisions relied on by Mr Xu make it an offence for any director of a company not to lay the financial statements at the AGM. They do not provide a basis for Mr Xu's civil claim against Ms Zhu for the production of financial statements. Moreover, Mr Xu was himself, a director of Pioneer from 28 May 2018 to 14 January 2019. At the very least, Mr Xu was a director of Pioneer at the time that the financial statement for the FY ending 2018 may have been due. However, Mr Xu has no explanation as to why the onus is on Ms Zhu to deliver to Mr Xu the financial statements. In the absence of any legal basis or supporting evidence from the Claimants, I dismiss this claim.

Breach of director's fiduciary duties

46 In reliance on the above alleged incidents, Mr Xu claims that Ms Zhu failed to act in the best interests of Pioneer as a director and that her alleged actions breached her fiduciary duties as a director.⁶³

47 I have found above that Ms Zhu was appointed as a nominee director and did not exercise an executive role in Pioneer. In *Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848, Yong Pung How CJ held at [28] that:

[T]he *civil* standard of care and diligence expected of a director is objective, namely, whether he has exercised the same degree of care and diligence as a reasonable director found in his position. This standard is not fixed but a continuum depending on various factors such as the individual's role in the company, the type of decision being made, the size and the business of the company.

[emphasis in original]

⁶³ SOC at paras 8 and 15.

48 At the same time, even though Ms Zhu was only a nominee director appointed to fulfil the statutory requirement under the Companies Act, she would as a nominee director still be held to the minimum standard that is required from all directors (*BIT Baltic Investment & Trading Pte Ltd (in compulsory liquidation) v Wee See Boon* [2023] 1 SLR 1648 (“*BIT Baltic*”) at [43]). These include a director’s overriding duty to act in good faith in the interest of the company as a fiduciary of the company. Specific duties that have been recognised in this regard include the duties to: (a) act honestly and in good faith in the best interest of the company; (b) not to exercise powers for improper purpose such as to profit personally from her office; (c) not to place herself in a position which will result in a conflict of interest between her duties to the company and her personal interest: *BIT Baltic* at [31]–[32]. A related but distinct duty is the duty under s 157(1) of the Companies Act to act honestly and use reasonable diligence in the discharge of her office.

49 The Claimants allege that Ms Zhu breached her duties as a director in authorising and performing corporate acts that were not duly approved or not in Pioneer’s best interest, as seen from the alleged incidents, including: (a) the issuance of the PO, (b) the alleged bribery of the Samsung manager, (c) the cheque issued in favour of WKS, (d) the collection of cheques by Lin Duan; and (e) the failure to present financial statements at AGMs.⁶⁴

50 However, the Claimants have not provided any evidence that substantiate such allegations or which may suggest how there was possible wrongdoing. For example, the cheques that Mr Xu raised as part of his claim against Ms Zhu, were in fact signed by him and Mr Zheng, not Ms Zhu.

⁶⁴ SOC paras 8–15.

51 Mr Xu also appears to have raised allegations of wrongdoing to ACRA. Although he does not attach the specific complaints he made to ACRA, I note that ACRA’s response to Mr Xu was that the matters he raised “do not disclose the commission of wrongdoing under the Companies Act” and that he should seek independent legal advice on the options available to him on the debts he referred to.⁶⁵

52 Fundamentally, the Claimants have failed to adduce before the court, any evidence that substantiates their allegations or suggest that Ms Zhu was in breach of her fiduciary or statutory duties as a director. I therefore dismiss this claim.

Counterclaim

Outstanding fees of \$2660

53 Ms Zhu counterclaims for two set of sums. First, for the sum of \$2,660, which is alleged to be the fees for accounting services rendered to Pioneer. She produces an invoice from ECS to Pioneer dated 18 December 2019 for this amount, together with chaser emails for payment dated 19 December 2018, 9 July 2021 and 20 July 2021.⁶⁶ Ms Zhu has not provided any documentary evidence showing her relationship to ECS, and has not applied for permission to represent ECS in these proceedings.

54 As the invoice is from ECS, the counterclaim should be brought by ECS and not Ms Zhu. In addition, Pioneer disputes that such services were rendered by ECS. There is no correspondence from Pioneer acknowledging that such

⁶⁵ SDB at p 1.

⁶⁶ DBD at pp 1–4.

services were rendered and that it owes this amount to ECS.⁶⁷ Ms Zhu has also not adduced any evidence to show that the services were indeed delivered by ECS. I therefore dismiss this counterclaim.

Additional interest paid on loan from UOB

55 Second, Ms Zhu seeks the sum of \$30,000 to \$60,000 from the Claimants. According to her, interest on the loan to ECS from UOB went from 1.9% to 6.25% per year on a monthly basis with effect from 23 October 2023.⁶⁸ She was not able to refinance her loan as bankers did not want to bear the risk from her litigation suit with the Claimants.⁶⁹ The sum she seeks is for the additional interest payments made after UOB increased the loan interest rate.

56 Similar to her other counterclaim, any losses that are suffered would have been those of ECS and not Ms Zhu personally. The counterclaim is therefore brought by the wrong party. In any event, Ms Zhu has not provided any evidence that she was unable to refinance due to this suit, that the refinanced rate would otherwise have been at a lower rate, or that UOB's increase in interest rates was caused by Mr Xu's bringing of this suit. I therefore dismiss Ms Zhu's counterclaim for the additional interest payments.

Conclusion

57 For the reasons above, I dismiss both the Claim and Counterclaim, in their entirety. Ms Zhu is entitled to costs arising from the Claim, while Mr Xu

⁶⁷ Defence to Counterclaim at para 2.

⁶⁸ DBD at p 34.

⁶⁹ Defendant's Opening Statement dated 25 April 2024 at para 10.

is entitled to costs arising from the Counterclaim. Directions will be given to parties on the filing of submissions on costs.

Kwek Mean Luck
Judge of the High Court

2nd Claimant in person and representing 1st Claimant;
Defendant in person.
