

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

[2021] SGHC 262

Suit No 912 of 2019

Between

Prime Cars Leasing Pte Ltd

... Plaintiff

And

(1) Zenith Automobile Pte Ltd

(2) Lim Siew Ling

... Defendants

And

(1) Supreme Leasing & Limousine
Pte Ltd

(2) Heng Hong Hing

(3) Neo Choon Sian

(4) Neo Yan

... Third Parties

JUDGMENT

[Contract] — [Breach]

[Companies] — [Directors] — [Duties]

[Companies] — [Directors] — [Remuneration]

[Tort] — [Conspiracy] — [Unlawful means conspiracy]

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Prime Cars Leasing Pte Ltd
v
Zenith Automobile Pte Ltd and another
(Supreme Leasing & Limousine Pte Ltd and others, third parties)

[2021] SGHC 262

General Division of the High Court — Suit No 912 of 2019
Tan Siong Thye J
13–16, 19, 21 July, 31 August, 1 September, 8 October 2021

19 November 2021

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The present dispute involves members of the Neo family and their sister-in-law, the second defendant, Ms Lim Siew Ling (“Ms Lim”) regarding their family-run car business. Central to the dispute is that the Neo family alleges that Ms Lim, the sole director and purported sole shareholder of the plaintiff, Prime Cars Leasing Pte Ltd (“PCL”), breached her fiduciary duties as a director. Ms Lim sold 14 cars belonging to PCL to the first defendant, Zenith Automobile Pte Ltd (“Zenith”) at undervalued prices and thereafter requested Zenith to transfer the balance of the sale proceeds for 13 of the 14 cars into her personal account.

2 PCL is a Singapore-incorporated company in the business of leasing cars.¹ Zenith is a Singapore-incorporated company and its business is to buy and sell used cars.² Ms Lim is the wife of the late Mr Neo Nam Kah, who died in October 2013.³ The third and fourth third parties, Ms Neo Choon Sian and Ms Neo Yan respectively (collectively, the “Neo Sisters”),⁴ as well as one Mr Neo Nam Heng (“Mr Neo”),⁵ are the late Mr Neo Nam Kah’s siblings. The second third party, Mr Heng Hong Hing (“Mr Heng”), is Ms Neo Choon Sian’s husband⁶ and the sole director of the first third party, Supreme Leasing & Limousine Pte Ltd (“Supreme Pte Ltd”).⁷

3 Supreme Pte Ltd had leased 23 cars from PCL since 2017.⁸ However, from the middle of 2018, Supreme Pte Ltd ceased paying the monthly rentals of the cars leased from PCL.⁹ Ms Lim, who was PCL’s sole director and shareholder at that time, directed the repossession of 13 of the 23 cars.¹⁰ She then directed PCL to sell 11 of the 13 repossessed cars and three other cars belonging to PCL to Zenith, *ie*, a total of 14 cars.¹¹ The present dispute concerns the sale of these 14 cars (the “14 Cars”). I note that PCL sold a total of 18 cars

¹ Statement of Claim (Amendment No 1) (“SOC”) at para 1; First Agreed Statement of Facts dated 9 July 2021 (“ASOF”) at para 1.

² Affidavit of Evidence-in-Chief of Tan Teck Ann (“TTA”) at para 3, see also Singapore UEN No stated under parties’ names.

³ Affidavit of Evidence-in-Chief of Lim Siew Ling (“LSL”) at para 15.

⁴ Plaintiff’s Opening Statement (“POS”) at para 10.

⁵ Defendant’s Opening Statement (“DOS”) at para 27.

⁶ DOS at para 12.

⁷ Affidavit of Evidence-in-Chief of Heng Hong Hing (“HHH”) at para 7.

⁸ Transcript (15 July 2021) at p 28 lines 24 to 28.

⁹ ASOF at paras 9 and 12.

¹⁰ ASOF at para 13.

¹¹ ASOF at para 14.

during the relevant period. Four cars were sold to SKL Automobile Pte Ltd (“SKL”) and Fu Ee Cars Pte Ltd (“Fu Ee”), but these four cars are not the subject matter of the present proceedings. Returning to the sale of the 14 Cars, a portion of the sale proceeds of the 14 Cars was used to pay off the outstanding loans to Maybank Banking Berhad (“Maybank”) and DBS Bank Ltd (“DBS”) (collectively, “the Banks”) on these cars. The balance sale proceeds for one of the 14 Cars was paid to PCL. Thereafter, Ms Lim requested Zenith to transfer the balance sale proceeds for the remaining 13 of the 14 Cars, which amounts to \$289,700.47 (the “13 Cars’ Balance Sale Proceeds”), to her personal bank account.¹²

4 The Neo Sisters became PCL’s directors on 14 December 2018 and took over its management. On 16 January 2019 they removed Ms Lim as a director.¹³ Thereafter, they commence the present proceedings in Suit No 912 of 2019 on 13 September 2019 and make the following allegations against Ms Lim, through PCL, that: (a) she had no authority to cause PCL to sell the 14 Cars; (b) she sold the 14 Cars at undervalued prices to Zenith; and (c) she unlawfully directed Zenith to transfer the 13 Cars’ Balance Sale Proceeds to herself. Thus, the Neo Sisters, through PCL, allege that Ms Lim had breached her director’s fiduciary duties owed to PCL.¹⁴ The Neo Sisters, through PCL, also allege that Zenith had acted dishonestly in assisting Ms Lim to commit these breaches of fiduciary duties and had benefitted from the sale of the 14 Cars as they were sold to Zenith below market value.¹⁵ In addition, they claim, through PCL, that Zenith had benefitted from the sale of the 14 Cars as Zenith knew that the sale

¹² ASOF at paras 17 to 19.

¹³ ASOF at paras 4 and 5.

¹⁴ SOC at paras 4, 5 and 19; POS at para 33.

¹⁵ SOC at para 21.

was below market value.¹⁶ PCL further alleges that by the acts stated in (b) and (c) above, Ms Lim and Zenith had engaged in a conspiracy to cause loss to PCL by unlawful means.¹⁷ Hence, PCL claims that Ms Lim and Zenith are jointly and severally liable for the 13 Cars' Balance Sale Proceeds after payment to the Banks, less the expenses Ms Lim had paid to PCL, which is \$242,486.83.¹⁸

5 Ms Lim's defence is as follows: (a) she, as the sole director of PCL had the authority to sell the 14 Cars;¹⁹ (b) the sale of the 14 Cars to Zenith was not at an undervalued price;²⁰ (c) she was acting in PCL's best interests when she directed the repossession of 13 of the 23 cars and the sale of the 14 Cars; and (d) it was not unlawful to request Zenith to transfer the 13 Cars' Balance Sale Proceeds to her personal bank account. Ms Lim explains that PCL had outstanding bank loans at that time because the Neo Sisters had instructed Mr Heng to stop Supreme Pte Ltd from making monthly payments for the 23 cars leased from PCL.²¹ This caused a financial crisis for PCL, as the monthly payments for the 23 cars by Supreme Pte Ltd were used to offset what PCL owed the Banks. Therefore, if the 13 Cars' Balance Sale Proceeds had been deposited into PCL's bank accounts, the moneys would not have been available to make withdrawals to pay operating expenses such as insurance premiums, road tax, repairs, and other expenses.²² Hence, Ms Lim transferred the 13 Cars'

¹⁶ SOC at para 22.

¹⁷ SOC at para 24; POS at para 44.

¹⁸ SOC at pp 8 to 9; Transcript (16 July 2021) at p 88 lines 25 to 31; Affidavit of Evidence-in-Chief of Yeo Kah Wee Alex ("YKWA") at p 11.

¹⁹ Ms Lim's Defence and Counterclaim Amendment No 1 ("DCC") at para 12.

²⁰ DOS at para 79.

²¹ DOS at para 46.

²² DOS at para 80.

Balance Sale Proceeds to her personal bank account so that she could make payments on behalf of PCL. She also alleges that the 13 Cars' Balance Sale Proceeds were used to reimburse her for salary and transport allowance as director of PCL.²³ From the time of PCL's incorporation, Ms Lim had only been drawing a salary from a related company, Prime Cars Credit Pte Ltd ("PCC") and not PCL.²⁴ The Neo Sisters stopped this salary from May 2018.²⁵ Ms Lim claims that, on top of the aforementioned salary owed by PCC, she is also entitled to a salary due from PCL.²⁶ Hence, this forms part of Ms Lim's counterclaim against PCL.²⁷ Her expenditure on behalf of PCL and the sums she claims that PCL owes her exceed the quantum of the 13 Cars' Balance Sale Proceeds. Thus, Ms Lim counterclaims the sum of \$169,721.30.²⁸

6 Ms Lim has a third party action against Supreme Pte Ltd, Mr Heng and the Neo Sisters as, according to her, they had intentionally caused Supreme Pte Ltd to withhold the monthly rental payments due to PCL and thereby caused PCL's losses. Thus, she alleges that the acts complained of by PCL were the consequences of the third parties' actions and the third parties should be responsible for PCL's losses, if proven.²⁹

²³ DOS at para 81.

²⁴ Transcript (1 September 2021) at p 73 lines 13 to 16.

²⁵ Transcript (1 September 2021) at p 14 line 26 to p 15 line 4; p 16 line 23 to p 17 line 7.

²⁶ Transcript (31 August 2021) at p 32 lines 29 to 32.

²⁷ DCC at Annex C.

²⁸ DCC at para 11.

²⁹ Third Party Notice in Set Down Bundle ("SDB") at p 49; HC/ORC 4693/2020 in SDB at p 46.

7 I shall now pause to explain the background surrounding the disputes between Ms Lim and the Neo Sisters for a better appreciation of this case.

Background to the dispute

8 Ms Lim and the Neo Sisters had a host of long-standing disputes with several court actions, including their dispute regarding share ownership in PCL. Most of the disputes are not relevant to the present proceedings and the parties attempted to inundate this court with those disputes. I shall briefly set out the various companies that the parties had incorporated.

The management of the Prime Cars Group

9 The Prime Cars Group comprises four entities. The principal entity is PCC. The three other entities are PCL, Supreme Pte Ltd, and Supreme Leasing and Limousine Services (“Supreme Services”).³⁰ Ms Lim and the Neo Sisters were involved in all four entities to some degree by direct or indirect ownership and/or by management.³¹ The parties, being lay persons, have loosely regarded PCL, Supreme Pte Ltd and Supreme Services as “subsidiaries” of PCC and the former three entities used funds from PCC for their activities.³² In respect of PCL, since its incorporation in 2015, its business was conducted at PCC’s office and all its files and records were kept at PCC’s office and in PCC’s office computers.³³ PCL had no staff of its own and used PCC’s staff for its business operations.³⁴ The four entities largely did not operate strictly as separate

³⁰ DCC at Annex A; DOS at para 21.

³¹ DCC at Annex A.

³² DOS at para 21.

³³ ASOF at para 6.

³⁴ Transcript (15 July 2021) at p 32 lines 19 to 25.

companies as there were sharing of resources and staff. The funds also moved easily within the Prime Cars Group.

10 PCC was incorporated in 2006 with the late Mr Neo Nam Kah (Ms Lim's husband), Ms Neo Choon Sian and Ms Neo Yan holding its shares in the ratio of 40:35:25 respectively.³⁵ The late Mr Neo Nam Kah was PCC's sole director at that time. After Mr Neo Nam Kah's demise in October 2013, Ms Lim inherited his shares in PCC³⁶ and was appointed a director along with the Neo Sisters.³⁷

11 In 2014, Supreme Services was incorporated as a sole proprietorship.³⁸ The parties agree that although Supreme Services was registered under Mr Heng's sole name, Mr Heng informally held his interest in Supreme Services for the benefit of Ms Lim and the Neo Sisters.³⁹

12 In 2015, Ms Lim informed the Neo Sisters that PCC needed to increase its share capital by issuing 300,000 shares so that it could secure additional finance facilities.⁴⁰ They agreed that the new shares would be issued to Ms Lim, Ms Neo Choon Sian, and Ms Neo Yan in the ratio of 40:35:25.⁴¹

³⁵ POS at para 10; DOS at para 11.

³⁶ POS at para 11; DOS at para 15.

³⁷ DOS at para 14.

³⁸ DOS at para 21(ii).

³⁹ Transcript (13 July 2021) at p 30 lines 21 to 24; DOS at para 21(ii).

⁴⁰ POS at para 12; DOS at para 39.

⁴¹ POS at para 14; DOS at paras 39 and 58.

13 PCL was incorporated on 27 March 2015 with Ms Lim as its sole director and sole shareholder of 1,000 shares.⁴² A few months later, PCL issued an additional 100,000 shares in Ms Lim's name.⁴³ Ms Lim acknowledges that at the time of incorporation, there was an internal understanding that the shareholding in PCL for Ms Lim, Ms Neo Choon Sian and Ms Neo Yan would be 40:35:25 respectively. However, for convenience, Ms Lim was registered as the sole shareholder. Ms Lim claims that this follows the same arrangement as Supreme Services where Mr Heng was registered as a sole proprietor, but he was nevertheless holding the interest in Supreme Services for the benefit of Ms Lim and the Neo Sisters (see [11] above). She further claims that the Neo Sisters were aware of the foregoing.⁴⁴

14 In 2017, Supreme Pte Ltd was incorporated with Mr Heng as its sole director. Ms Lim, Ms Neo Choon Sian and Ms Neo Yan held shares in Supreme Pte Ltd in the ratio of 40:35:25 respectively. Supreme Pte Ltd leased cars from PCL at rates that were cheaper than the market rates.⁴⁵ PCL had taken out loans from Maybank (the "Maybank Loan Facility") and DBS (the "DBS Loan Facility") (collectively, the "Loan Facilities") to fund the purchase of the cars that were leased to Supreme Pte Ltd and other customers.⁴⁶ Ms Lim was the sole guarantor for the Maybank Loan Facility and she was a joint guarantor with Neo Nam Heng for the DBS Loan Facility.⁴⁷ When leasing the cars, Supreme Pte Ltd would take possession of them but the ownership of the cars would remain with

⁴² ASOF at paras 1 and 3; DOS at para 21(i).

⁴³ DOS at para 21(i).

⁴⁴ Transcript (1 September 2021) at p 80 line 24 to p 81 line 26.

⁴⁵ DOS at para 21(iii).

⁴⁶ LSL at para 30; DOS at para 47.

⁴⁷ ASOF at para 11; DOS at para 47.

PCL.⁴⁸ There was a back-to-back arrangement in that all payments that Supreme Pte Ltd received from its hirers were paid to PCL and PCL, in turn, paid Maybank and DBS (collectively referred to as the “Banks”) for the mortgage on the cars. PCL also had to pay for other operating expenses such as road tax, insurance premiums, and other expenses for maintenance of the cars. Hence, Ms Lim alleges that PCL did not profit from this arrangement.⁴⁹

Disputes regarding the issuance of the additional shares in PCC and PCL

15 In February 2018, there were disputes regarding the issuance of the additional shares in PCC and PCL. The Neo Sisters alleged that the additional shares in PCC and PCL were not issued in accordance with the earlier understanding of 40:35:25, *ie*, 40% to Ms Lim, 35% to Ms Neo Choon Sian, and 25% to Ms Neo Yan. Instead, all the additional shares were in Ms Lim’s name.⁵⁰ The Neo Sisters discovered that Ms Lim had (a) unilaterally issued the 300,000 shares in PCC to herself such that she then owned a 62.55% interest in PCC; and (b) issued the 100,000 shares in PCL to herself.⁵¹ The Neo Sisters, subsequently, confronted Ms Lim on 6 March 2018.⁵² Ms Lim agreed to regularise the shares according to the ratio of 40:35:25 and this was done a few months later.

⁴⁸ ASOF at para 9.

⁴⁹ ASOF at para 10; LSL at para 31.

⁵⁰ POS at para 14; LSL at para 70.

⁵¹ POS at para 14.

⁵² POS at para 16.

Supreme Pte Ltd stopped payment of the monthly rentals of leased cars to PCL

16 Meanwhile in May 2018, Supreme Pte Ltd was in possession of 23 cars that it had previously leased from PCL, and which it rented out to private-hire car drivers.⁵³ At that time, Supreme Pte Ltd stopped paying PCL the monthly rentals on these 23 cars leased from PCL.⁵⁴ This was done pursuant to the Neo Sisters’ instructions to Mr Heng, the sole director of Supreme Pte Ltd, without informing Ms Lim.⁵⁵ Ms Neo Choon Sian explained that, according to the records of the Accounting and Corporate Regulatory Authority (“ACRA”), Ms Lim was the sole shareholder of PCL. Thus, the Neo Sisters did not wish to pay PCL as they did not know whether “after paying her the money” Ms Lim would “do something that will damage the interest of the company”.⁵⁶ Despite several reminders from PCL, Supreme Pte Ltd refused to pay the monthly rentals for the 23 cars leased from PCL. Prior to this, Supreme Pte Ltd had made monthly payments under the lease agreements with PCL.⁵⁷ As a result of Supreme Pte Ltd’s non-payment, PCL was unable to pay its debts under the Loan Facilities and was also unable to pay other expenses such as insurance premiums in respect of the 23 cars leased from PCL.⁵⁸ The Neo Sisters and

⁵³ ASOF at para 9; Transcript (15 July 2021) at p 28 lines 19 to 28.

⁵⁴ ASOF at para 12; Transcript (15 July 2021) at p 24 lines 7 to 10 (Neo Choon Sian); p 41 lines 25 to 28 (Mr Heng); p 42 lines 13 to 19 (Mr Heng).

⁵⁵ Transcript (13 July 2021) at p 28 lines 11 to 30; HHH at para 11.

⁵⁶ Transcript (13 July 2021) at p 29, lines 8 to 10.

⁵⁷ Transcript (13 July 2021) at p 28 line 31 to p 29 line 3.

⁵⁸ DOS at para 46.

Mr Heng were fully aware of the implications of not paying PCL.⁵⁹ Ms Lim had to pay these outstanding sums with her own moneys.⁶⁰

The sale of PCL's cars

17 Subsequently, in August 2018, Ms Lim, as director of PCL, repossessed 13 of the 23 cars leased to Supreme Pte Ltd.⁶¹ Between 26 July 2018 and 23 August 2018, Ms Lim, through PCL, sold the 14 Cars to Zenith for a sum of \$1,085,000. These 14 Cars comprise 11 of the 13 cars that were repossessed from Supreme Pte Ltd and three other cars that were previously leased to other lessees. A list of cars sold by PCL from July to October 2018 is set out in Annex A of this Judgment.⁶² From the sale of the 14 Cars, a sum of \$291,373.22 was supposed to be paid by Zenith to PCL after deduction of the outstanding loans to the Banks for these cars. However, Ms Lim requested Zenith to only transfer \$1,672.75 to PCL for the sale of vehicle SLK7529X and to transfer the remaining sum of \$289,700.47 (*ie*, the 13 Cars' Balance Sale Proceeds) to herself.⁶³

The Neo Sisters took control of PCL from Ms Lim

18 On 12 October 2018, Ms Lim transferred her shares in both PCC and PCL to the Neo Sisters so that they held PCL shares in the ratio of 40% for Ms Lim, 35% for Ms Neo Choon Sian and 25% for Ms Neo Yan.⁶⁴ On

⁵⁹ Transcript (13 July 2021) at p 38 line 30 to p 39 line 3; Transcript (15 July 2021) at p 43 line 31 to p 44 line 17.

⁶⁰ DCC at para 10.

⁶¹ ASOF at para 13.

⁶² ASOF at para 14.

⁶³ POS at para 23; ASOF at paras 18 to 19,

⁶⁴ ASOF at para 2; POS at para 4; DOS at para 58.

14 December 2018, the Neo Sisters became PCL's directors.⁶⁵ They then removed Ms Lim as a director of PCL on 16 January 2019.⁶⁶

19 On 28 August 2019, Ms Neo Choon Sian discovered that the 13 Cars' Balance Sale Proceeds of \$289,700.47 was not transferred to PCL.⁶⁷ Consequently, the Neo Sisters, through PCL, commenced the present proceedings.⁶⁸

The parties' cases

The plaintiff's case

20 In essence, PCL's case is based on three claims.

21 Firstly, PCL alleges that Ms Lim had no authority to sell the 14 Cars to Zenith and to thereafter request Zenith to transfer the 13 Cars' Balance Sale Proceeds to her personal bank account. The 13 Cars' Balance Sale Proceeds constitute the remaining sum after due payments were made to Maybank and DBS to discharge the loans taken out on each of the 14 Cars.⁶⁹ PCL alleges that Ms Lim only owned 40% of the shares in PCL, notwithstanding that the ACRA records reflected that she was a 100% shareholder in PCL. Thus, Ms Lim did not have the authority to dispose of the 14 Cars which were PCL's assets, without the consent of the Neo Sisters whose combined shares made them the majority shareholders.⁷⁰

⁶⁵ ASOF at para 4.

⁶⁶ ASOF at para 5.

⁶⁷ Transcript (15 July 2021) at p 25, lines 8 to 12.

⁶⁸ Writ of Summons at SDB at p 3.

⁶⁹ SOC at para 19(b).

⁷⁰ POS at para 42.

22 Secondly, PCL alleges that Ms Lim sold the 14 Cars to Zenith at a “significant[ly] undervalue[d]” price that was approximately 10% lower than the cars’ market value.⁷¹

23 Thirdly, after paying off the outstanding loans on the 14 Cars to the Banks, Ms Lim should not have directed Zenith to transfer the 13 Cars’ Balance Sale Proceeds to herself.⁷²

24 PCL alleges that by the above actions, Ms Lim has breached her fiduciary duties owed to PCL as a director.⁷³ PCL further alleges that Zenith had failed to conduct itself as a reasonable and honest buyer of PCL’s cars given the suspicious request of Ms Lim to transfer some of the balance sale proceeds of the 14 Cars, which was substantial, to her personal account.⁷⁴

25 With reference to the second point above, PCL claims in the alternative that Zenith knew that the 14 Cars were sold at significantly undervalued prices.⁷⁵

26 With reference to the second and third points above, PCL claims in the alternative that Zenith and Ms Lim had, wrongfully and with intent to injure PCL and/or to cause loss to PCL, conspired to defraud PCL by unlawful means.⁷⁶

⁷¹ SOC at paras 13 and 19; POS at para 33.

⁷² SOC at para 19.

⁷³ POS at paras 33 to 36.

⁷⁴ POS at paras 31 and 32.

⁷⁵ SOC at para 22; POS at para 33.

⁷⁶ SOC at para 24; POS at para 44.

27 At the commencement of the trial, PCL claimed that the defendants are jointly and severally liable for the 13 Cars’ Balance Sale Proceeds of \$289,700.47 that was transferred to Ms Lim’s personal bank account and the loss arising from the difference in value between the sale prices of the 14 Cars and the market value at the time of sale.⁷⁷ During the trial, PCL’s counsel acknowledged that PCL’s expenses that were incurred and paid by Ms Lim, ie, \$47,213.64, should be deducted from PCL’s claim.⁷⁸ Thus, instead of claiming \$289,700.47, PCL lowers its claim to a sum of \$242,486.83.⁷⁹

The defendants’ case

28 In its defence, Zenith does not dispute that Ms Lim owed PCL fiduciary duties during the period that she served as PCL’s director.⁸⁰ However, Zenith claims that it purchased the 14 Cars at fair market value and that “there is no basis for [PCL] to make a claim for any other value”. Zenith also claims that it transacted with PCL *through* Ms Lim. The transfer of the 13 Cars’ Balance Sale Proceeds to Ms Lim’s personal bank account was done pursuant to Ms Lim’s instructions and after Zenith checked with ACRA records which showed that Ms Lim was PCL’s sole director and shareholder.⁸¹

29 Ms Lim’s defence is that, as the sole director of PCL at the material time, she had the authority to sell the 14 Cars belonging to PCL to Zenith⁸² as PCL at that time was facing financial difficulties. This dire liquidity problem was

⁷⁷ SOC at pp 8 to 9 paras (1)(a)–(e).

⁷⁸ Plaintiff’s Closing Submissions (“PCS”) at para 137(a).

⁷⁹ Transcript (16 July 2021) at p 88 lines 25 to 31; YKWA at p 11.

⁸⁰ Zenith’s Defence (“ZD”) at para 2.

⁸¹ TTA at paras 8, 9 and 16.

⁸² DCC at para 12.

caused by the Neo Sisters who had instructed Mr Heng to cease the monthly payments of the 23 cars that Supreme Pte Ltd had leased from PCL. The sale of the 14 Cars to Zenith was transacted at arm's length. The sale prices of these cars were the market dealers' price and not an undervalued price.⁸³

30 Ms Lim claims that she acted in the best interests of PCL when she repossessed 13 cars from Supreme Pte Ltd and sold the 14 Cars. She also acted in the best interests of PCL when she transferred the 13 Cars' Balance Sale Proceeds of \$289,700.47 to her personal bank account instead of PCL's bank accounts after making the relevant payments to the Banks. At that time, PCL was facing serious financial difficulties as PCL had taken out the Loan Facilities for the cars that were leased to Supreme Pte Ltd. When Supreme Pte Ltd stopped the monthly rental payments to PCL on the 23 cars, PCL suffered heavy losses. Consequently, PCL had no funds to service the Loan Facilities granted by the Banks. Thus, Ms Lim alleges that she had no alternative but to repossess those 13 cars and sell the 14 Cars in order to obtain funds to pay the Banks and other operating expenses. However, because of PCL's debts to the Banks, any deposit of moneys into the said Banks would be used by the Banks to offset the debts. The Banks would not allow PCL to make withdrawals to pay for operating expenses such as insurance premiums, road tax, etc. Hence, Ms Lim arranged for the 13 Cars' Balance Sale Proceeds of \$289,700.47 to be transferred to her personal bank account instead.⁸⁴ Therefore, Ms Lim argues that she was not in breach of her fiduciary duties owed to PCL as its director. Zenith also denies that it had dishonestly assisted Ms Lim to commit such breach. Ms Lim and Zenith argue that they did not conspire to defraud and injure PCL.⁸⁵

⁸³ DOS at para 79.

⁸⁴ DOS at para 80.

⁸⁵ DOS at paras 79 and 80.

31 Ms Lim has a counterclaim against PCL. She alleges that after using the sale proceeds of the 14 Cars to service the Loan Facilities of the Banks and to pay various other expenses owed by PCL,⁸⁶ PCL still owes her a sum of \$169,721.30 which includes her director's remuneration and transport allowance. She alleges that from 20 July 2018 to 28 February 2019, she had paid for PCL's Loan Facilities and other expenses using her own moneys.⁸⁷ In addition, PCL has not paid Ms Lim her director's salary from the beginning of 2017 to February 2019.⁸⁸ This sum exceeds the 13 Cars' Balance Sale Proceeds of \$289,700.47 that she had received from the sale of the 14 Cars. Hence, Ms Lim counterclaims for the sum of \$169,721.30 allegedly owed to her by PCL.⁸⁹ In Ms Lim's original defence and counterclaim, she claimed for \$163,721.30.⁹⁰ However, parties' counsel acknowledged at the trial that there was a shortfall of \$6,000 which should be added to Ms Lim's counterclaim.⁹¹

Third party action

32 Ms Lim also commenced a third party action against Supreme Pte Ltd, Mr Heng and the Neo Sisters. She alleges that the Neo Sisters instructed Mr Heng, who is the director of Supreme Pte Ltd, to withhold the monthly rental payments for the 23 cars leased from PCL knowing that it would cause PCL financial difficulties and losses. Hence, PCL had tremendous difficulties in meeting its financial obligations to the Banks and other creditors. Ms Lim also claims that, in respect of the remaining 10 cars that PCL leased to Supreme Pte

⁸⁶ DOS at para 82(ii).

⁸⁷ DCC at para 11 and Annex C; Exhibit D1.

⁸⁸ Exhibit D1.

⁸⁹ Transcript (14 July 2021) at p 51 lines 4 to 16, p 65 lines 19 to 29.

⁹⁰ Ms Lim's Defence and Counterclaim at p 12.

⁹¹ Transcript (16 July 2021) at p 10 lines 10 to 21; p 11 lines 23 to 30.

Ltd, she could not repossess those cars as their location was concealed by Mr Heng and the Neo Sisters.⁹² As a result, PCL suffered further losses. Ms Lim claims that the acts complained against her by PCL (see [21]–[23] above) were the consequences of Supreme Pte Ltd's, Mr Heng's and the Neo Sisters' actions. Thus, Ms Lim alleges that they should be held responsible for PCL's losses, if proven.⁹³

Issues to be determined

33 The following are the issues in this case:

(a) Did Ms Lim breach her fiduciary duties owed to PCL as a director when she repossessed the 13 cars from Supreme Pte Ltd and sold the 14 Cars to Zenith? The sub-issues are:-

(i) Did Ms Lim sell the 14 Cars at undervalued prices to Zenith?

(ii) Did Ms Lim act honestly and discharge her duties with reasonable diligence as PCL's director when she requested Zenith to transfer the 13 Cars' Balance Sale Proceeds, *ie*, \$289,700.47, to her personal bank account instead of PCL's?

(iii) If Ms Lim is not entitled to any part of the 13 Cars' Balance Sale Proceeds in her counterclaim, was she in breach of her fiduciary duties when she retained the 13 Cars' Balance Sale Proceeds prior to the commencement of the present proceedings?

⁹² SDB at p 59.

⁹³ Third Party Notice in SDB at p 49; HC/ORC 4693/2020 in SDB at p 46.

- (b) Did Zenith dishonestly assist Ms Lim in committing the alleged breach of her fiduciary duties?
- (c) Did Zenith buy the 14 Cars from PCL at substantially undervalued prices, knowing that Ms Lim was in breach of her fiduciary duties?
- (d) Were Ms Lim and Zenith engaged in a conspiracy to defraud and injure PCL by unlawful means?
- (e) Is Ms Lim entitled to her counterclaim?

34 I shall consider each of these issues in turn.

My decision

Did Ms Lim breach her fiduciary duties owed to PCL as a director when she repossessed the 13 cars from Supreme Pte Ltd and sold the 14 Cars to Zenith?

The fiduciary duties of a director

- (1) The applicable law

35 Section 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) stipulates the duties and responsibilities of a director. It states that “[a] director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.” This means that a director has to, at all times, act honestly *and* use reasonable diligence. Thus, the director has to act *bona fide* to promote or advance the interests of the company: see *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 (“Scintronix”) at [35], citing *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1994] 1 SLR(R) 513 (“Multi-Pak”) at [22] with approval.

36 In this regard, the Court of Appeal has clarified in *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 that the applicable test is partly objective and partly subjective: at [35]–[36]. The court elaborated as follows:

35 ... The subjective element lies in the court’s consideration as to whether a director had exercised his discretion *bona fide* in what he considered (and not what the court considers) is in the interests of the company: *Re Smith & Fawcett Ltd* [1942] Ch 304 at 306, as accepted by this court in *Cheong Kim Hock v Lin Securities (Pte)* [1992] 1 SLR(R) 497 at [26] and in *Ho Kang Peng v Scintronic Corp Ltd* [2014] 3 SLR 329 (“*Ho Kang Peng*”) at [37]. Thus, a court will be slow to interfere with commercial decisions made honestly but which, on hindsight, were financially detrimental to the company.

36 The objective element in the test relates to the court’s supervision over directors who claim to have been genuinely acting to promote the company’s interests even though, objectively, the transactions were not in the company’s interests. The subjective belief of the directors cannot determine the issue: the court has to assess whether an intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company. This is the test set out in *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62 (at 74) and it has been applied here since adopted by this court in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 (at [28]). Thus, “where the transaction is not objectively in the company’s interests, a judge may very well draw an inference that the directors were not acting honestly”: *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) (“*Walter Woon*”) at para 8.36, referred to in *Ho Kang Peng* at [38]. It is thus observed in *Walter Woon* at para 8.36 that in practice the courts often apply a more objective test although the test is theoretically subjective.

37 Section 157(1) of the Companies Act further provides that a director has to use reasonable diligence in the discharge of his director’s duties. As explained in *Scintronic* at [42], this provision is in turn based on the director’s fiduciary duties at common law: see *Cheam Tat Pang and another v Public Prosecutor* [1996] 1 SLR(R) 161 at [19]. With regard to the standard required for the

director's discharge of his duties, the Court of Appeal in *Scintronix* (at [42]) approved of the position in *Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848 at [28]:

... [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. However, it is important to note that, unlike the traditional approach, this standard will not be lowered to accommodate any inadequacies in the individual's knowledge or experience. The standard will however be raised if he held himself out to possess or in fact possesses some special knowledge or experience.

[emphasis in original]

38 Further, in *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) ("*Walter Woon*") at para 8.21, the learned authors state as follows:

In a modern context, this rule is possibly better stated as a duty to ensure that whatever transactions are authorised by the board or by individual directors must be commercially justifiable from the company's point of view. 'Commercially justifiable' does not mean that profits must be maximised in all cases. Directors are allowed to take a wider view of what the company's interests are. Thus, a transaction that seems on the face of it to be a bad one may be commercially justifiable if it leads to other intangible benefits for the company. ...

39 Section 157(1) is not an exhaustive statement of a director's duties as s 157(4) provides that s 157 is "in addition to and not in derogation of any other written law or rule of law relating to the duty or liability of directors or officers of a company". At common law, a director, being a fiduciary to a company, must account to the company for any unauthorised benefit or profit he obtained through his fiduciary position: see *Wyno Marine Pte Ltd (In Liquidation) v Lim Teck Cheng and Others (Koh Chye Heng and Others, Third Parties)*

[1998] SGHC 332 at [33], citing *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 with approval.

(2) Did Ms Lim have the authority to sell the 14 Cars to Zenith?

(A) THE APPLICABLE LAW

40 It is trite that the management of a company principally rests with its *board of directors* and not its shareholders.

41 This legal position is clearly stipulated under s 157A of the Companies Act which provides that “[t]he business of a company shall be *managed* by, or under the direction or supervision of, the directors” [emphasis added]. Section 157A(2) provides that “[t]he directors may exercise all the powers of a company except any power that [the Companies Act] or the constitution of the company requires the company to exercise in general meeting”. Indeed, case law elucidates that s 157A(1) “hands the directors a general right of management” and encapsulates “a basic principle of company law that a company’s powers of management are reserved to its board of directors, and not its shareholders”: see *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2020] SLR 200 (“*PNG Sustainable Development*”) at [31] and *TYC Investment Pte Ltd and others v Tay Yun Chwan Henry and another* [2014] 4 SLR 1149 (“*TYC SGHC*”) at [1].

42 However, I note that s 157A does not provide for a *statutory* division of powers as it “establishes a default rule which may be varied by the company’s articles”: *TYC SGHC* at [86]–[87], citing *Walter Woon* at p 150 with approval. Hence, the division of powers between the board of directors and the shareholders in a general meeting is governed by *contract*, ie, by the company’s constitution: *Chan Siew Lee v TYC Investment Pte Ltd and others and another*

appeal [2015] 5 SLR 409 at [36]. Nevertheless, the language of s 157A “is mirrored in the model constitutions for private companies limited by shares and companies limited by guarantee in the First and Second Schedules to the Companies (Model Constitutions) Regulations 2015 (S 833/2015)”: *PNG Sustainable Development* at [31]. Accordingly, in most cases, the division of powers contemplated under s 157A would apply as a matter of contract. It thus follows that, generally, the management of a company rest with its board of directors.

(B) MY FINDINGS

43 Ms Lim sold a total of 18 cars to Zenith, SKL and Fu Ee between July and October 2018 (see Annex A of this Judgment). Three cars were sold to SKL and one car to Fu Ee. These four cars are not the subject matter of the present proceedings and PCL is not taking issue with Ms Lim as regards the sale of these four cars. The subject matter of the present proceedings relates to the sale of the 14 Cars to Zenith. The main and, perhaps, the sole reason why the Neo Sisters, through PCL, take objection to the sale of the 14 Cars to Zenith is that the 13 Cars’ Balance Sale Proceeds (*ie*, the remaining sum after payment to the Banks) were transferred to Ms Lim’s personal bank account. Without a satisfactory explanation, this may appear suspicious and improper. As a corollary, PCL alleges that the 14 Cars were sold at substantially undervalued prices and that there was a conspiracy between Ms Lim and Zenith to defraud and injure PCL. I shall deal with these allegations in detail below.

44 I shall now consider the issue of whether Ms Lim had the authority to sell the 14 Cars to Zenith. It should be noted that PCL did not allege that Ms Lim did not have the authority to sell the four cars to SKL and Fu Ee although it alleges that she had no authority to sell the 14 Cars to Zenith. The balance of

the sale proceeds of the four cars were deposited into PCL's bank accounts. This is why PCL is not questioning Ms Lim's authority to sell the four cars and only questions her authority to sell the 14 Cars to Zenith. What is sauce for the goose is sauce for the gander.

45 Be that as it may, PCL contends that because Ms Lim only held a *de facto* 40% share in PCL since its incorporation (which Ms Lim accepts),⁹⁴ against the Neo Sisters' combined shares of 60% in PCL, Ms Lim did not have the authority to dispose of PCL's assets without their consent as they were the majority shareholders.⁹⁵ However, at the time the PCL cars were sold to Zenith, Ms Lim was the sole director of PCL. Therefore, she had the authority to sell the 14 Cars to Zenith. As I have stated above, the operation, management and running of PCL rests with its director and not its shareholders (see [40]–[42] above). Furthermore, the share ownership in PCL (where Ms Lim received 40%) was only regularised in October 2018, after the 14 Cars were sold.

46 At the trial, PCL's counsel argued that if Ms Lim wanted to do something that was not in PCL's interests, she should have sought the Neo Sisters' consent as they were the *de facto* majority shareholders.⁹⁶ Unlike the argument above, this argument is not premised on the issue of authority or on the ratification of a contract made by an agent acting without authority. Rather, it is premised on the shareholders' release of a director from his fiduciary duties either by prior agreement or subsequent ratification.

⁹⁴ Transcript (19 July 2021) at p 67 lines 2 to 6.

⁹⁵ POS at para 42.

⁹⁶ Transcript (19 July 2021) at p 68 lines 6 to 8.

47 In the first place, this suggestion by PCL’s counsel is absurd and unfeasible. At the time of PCL’s sale of the 14 Cars, there was a deep-seated animosity between Ms Lim on the one hand and the Neo Sisters and Mr Heng on the other hand. Mr Heng and the Neo Sisters deliberately directed Supreme Pte Ltd to stop the monthly rental payments with the intention to cause concomitant financial problems to PCL. Hence, it is ludicrous to expect Ms Lim to seek the Neo Sisters’ consent when she knew that such consent, in all likelihood, could not have been obtained.

48 Nevertheless, if a director commits an illegal act, shareholders of a company *cannot*, by a resolution passed by the majority of shareholders, release a director from his fiduciary duties pertaining to that act by prior agreement or by subsequent ratification: *Walter Woon* at paras 9.18, 9.19 and 9.21. The statutory duty of a director is embodied in s 157(1) of the Companies Act. Section 157(3) of the Companies Act prescribes criminal penalties for a director who commits a breach of the provisions of s 157:

...

An officer or agent who commits a breach of any of the provisions of this section shall be —

- (a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and
- (b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

Hence, if Ms Lim had breached the statutory duty and acted against the interests of PCL by failing to act honestly and with reasonable diligence, the consent of the Neo Sisters could not have ratified Ms Lim’s breach notwithstanding that they were the *de facto* majority shareholders.

49 I, therefore, find that Ms Lim, as the sole director of PCL at the material time, had the authority to sell the 14 Cars and she did not breach any director's fiduciary duties owed to PCL.

Did Ms Lim sell the 14 Cars at undervalued prices?

50 PCL claims that if the 14 Cars were sold to direct buyers in the open market instead of Zenith, they would have fetched better prices (approximately 10% more).⁹⁷ Mr Heng provided his calculations of the market prices for sales to direct buyers for each of the 14 Cars to support this claim.⁹⁸ He compared the total sale proceeds of the 14 Cars sold to Zenith at a total sum of \$1,085,000 (see Annex A of this Judgment) with his total direct sale prices of the 14 Cars, which was \$1,192,726.⁹⁹ Mr Heng's figure is approximately 10% above the aggregate of Zenith's purchase sum of \$1,085,000.

51 Mr Heng admitted that when cars were sold to car dealers instead of individuals in the open market, the sale price would generally be 5% to 10% lower.¹⁰⁰

Q: Now, witness, do you agree that a dealer's price is not equivalent to the open market price, correct?

A: Yes.

Q: So when a dealer buys, he would of course want---it won't be the market price but it will be substantially lower, 10% you mentioned earlier on. You recall? Do you confirm how much lower it will be?

A: Depend on what type of car.

Q: Right.

⁹⁷ SOC at para 13; Transcript (15 July 2021) at p 65 lines 14 to 19.

⁹⁸ HHH at p 38.

⁹⁹ HHH at p 38.

¹⁰⁰ Transcript (16 July 2021) at p 33 line 24 to p 36 line 4.

- A: Depend on what type of car.
- Q: Would you be able to tell us?
- ...
- A: Smaller car normally is ... mainly is 5 to 10 percent sometime. If bigger car, maybe 10%. 5 to 10 percent also, around there.
- ...
- Q: Now, you have said that for smaller cars, it's 5 to 10 percent. So what is the percentage for the bigger cars?
- A: It's around there also, about 5 to 10 percent, depend on the market.
- Court: Depend on the?
- A: They made---depend on the market supply.
- ...
- Court: 5 to 10 percent lower than the market price, is it?
- ...
- Court: Mr Heng?
- A: Yah, correct.

Furthermore, he agreed that a dealer's price had to be lower because a dealer had to bear the costs of repairing and refurbishing the used car, so that it can then resell it.¹⁰¹ The dealer also had to factor in his profit. Mr Tan Teck Ann ("Mr Tan"), the sole director and shareholder of Zenith, also said the dealers' price had to be about 10% lower than the open market price.¹⁰² Given the evidence of Mr Heng and Mr Tan, PCL's case that Ms Lim sold the 14 Cars at a "significant[ly] undervalue[d]" price to Zenith cannot stand.

52 Indeed, Ms Lim explained that she did not sell PCL's cars to members of the public because she would have to incur additional costs and time to groom

¹⁰¹ Transcript (16 July 2021) at p 41 lines 13 to 31.

¹⁰² Transcript (19 July 2021) at p 26 lines 1 to 8.

the cars before the public would buy the second-hand cars. Most customers also could not pay the full price of the car upfront and they had to take loans; however, Ms Lim urgently needed to settle PCL's liabilities with the Banks before the car could be transferred to the buyer.¹⁰³ Hence, it would not have been feasible for Ms Lim to sell PCL's cars on the open market. I find her explanation to be reasonable.

53 Mr Heng suggested in cross-examination that Ms Lim should have procured the sale of the 14 Cars to PCC instead of Zenith.¹⁰⁴ Given the acrimonious and unique circumstances, this is an inane suggestion. As I have already noted (see [47] above), Mr Heng and the Neo Sisters created PCL's financial problems when they intentionally caused Supreme Pte Ltd to stop the monthly rental payments knowing full well that this would cause concomitant financial problems to PCL. Since there was such a rancorous relationship between the parties, it is absurd to expect Ms Lim to sell the 14 Cars to PCC, a company which was largely under the Neo Sisters' control. Even if Ms Lim had done so, it is plausible that the 14 Cars would have been concealed by PCC in the same way that the Neo Sisters had concealed the 10 cars from PCL and no payment would have been made to PCL, given the animosity and distrust between Ms Lim and the Neo Sisters.

54 I am satisfied that the sale of the 14 Cars was transacted at arm's length. Mr Tan of Zenith¹⁰⁵ did not know Ms Lim prior to the sale of the 14 Cars to Zenith.¹⁰⁶ Mr Tan claims that the first three cars sold to Zenith (see S/N 1–3 in

¹⁰³ Transcript (1 September 2021) at p 75 line 7 to p 76 line 1.

¹⁰⁴ Transcript (15 July 2021) at p 64 lines 7 to 18.

¹⁰⁵ Transcript (19 July 2021) at p 10 lines 26 to 28.

¹⁰⁶ Transcript (19 July 2021) at p 20 lines 1 to 6.

Annex A of this Judgment) were not repossessed cars (although PCL disputes this)¹⁰⁷ and thus he negotiated the price with Ms Lim after he had examined and test driven the cars.¹⁰⁸ For the 11 repossessed cars, there were no car keys. Hence, there was no test drive and inspection of the interior of the cars. In this situation, he made an offer and there was no bargaining involved. I find Mr Tan's testimony credible since it accords with common commercial practices. There is also nothing to suggest that there was dishonesty or impropriety in the sale transactions of the 14 Cars. On the first sale transaction of SJQ8877B (see S/N 1 in Annex A of this Judgment), Ms Lim requested Mr Tan to prepare two cheques to be issued to her personally. Mr Tan did not immediately accede to her request as he wanted to satisfy himself as to whether it was proper to do so. He did an ACRA search and found that she was the sole director and shareholder of PCL and there was no charge on PCL. It was after Mr Tan's due diligence search with ACRA that he was satisfied and acceded to her request. Accordingly, he issued the cheques to Ms Lim in her name.¹⁰⁹

55 Moreover, Ms Lim testified that for the first three cars sold to Zenith (see S/N 1–3 in Annex A of this Judgment), she asked a banker friend to assist in checking for the best price as she did not know many car dealers.¹¹⁰ She also obtained a quote from Fu Ee. It was only after she compared the various quotes that she decided on selling the three cars to Zenith. For the rest of the cars that were eventually sold to Zenith, she testified that she checked the prices offered by other dealers as well, which explains why three cars were subsequently sold

¹⁰⁷ Transcript (21 July 2021) at p 17 lines 22 to 30.

¹⁰⁸ Transcript (19 July 2021) at p 38 lines 8 to 31.

¹⁰⁹ Transcript (19 July 2021) at p 32 line 14 to p 33 line 12; p 34 lines 14 to 17; TTA at p 58.

¹¹⁰ Transcript (1 September 2021) at p 76 lines 23 to 32.

to SKL and not Zenith.¹¹¹ I am convinced by her explanation since there were indeed cars that were sold to SKL and Fu Ee (see S/N 4–6 and S/N 18 in Annex A of this Judgment). If there was a suspicious arrangement between Ms Lim and Zenith, one would expect *all* of PCL’s cars to be sold to Zenith.

56 On a balance of probabilities, there is, therefore, insufficient evidence to suggest any suspicious circumstances or that there was a special arrangement between Ms Lim and Zenith for the sale transactions of the 14 Cars at undervalued prices. On the contrary, the evidence suggests that the sale transactions were conducted appropriately and above board.

57 I, therefore, find that the sale of the 14 Cars by PCL to Zenith was not at an undervalued price. Accordingly, Ms Lim did not breach her director’s fiduciary duties. She acted honestly and had exercised reasonable diligence in the discharge of her duties as PCL’s director.

Did Ms Lim act honestly and discharge her duties with reasonable diligence as PCL’s director when she requested Zenith to transfer the 13 Cars’ Balance Sale Proceeds, ie, \$289,700.47, to her personal bank account instead of PCL’s?

58 It is undisputed that the Neo Sisters told Mr Heng to stop the monthly rental payments of the 23 cars that were leased from PCL to Supreme Pte Ltd. The total rental for the 23 cars was about \$60,000 per month.¹¹² This was a very significant shortfall to PCL and certainly a liquidity crisis immediately emerged. As a corollary, PCL was, in turn, unable to repay the monthly mortgage loans on the cars to the Banks. Hence, PCL was in default of the Loan Facilities

¹¹¹ Transcript (1 September 2021) at p 77 lines 1 to 24.

¹¹² Transcript (21 July 2021) at p 115 lines 5 to 6.

granted by the Banks sometime in late May to June 2018.¹¹³ In addition, there were other operating expenses to be paid for PCL's fleet of cars, such as insurance premiums, road tax, etc. If all the sale proceeds of the 14 Cars were deposited into PCL's bank accounts, Ms Lim explained that she would not be able to withdraw from PCL's bank accounts to meet the operating expenses of PCL as the Banks would use the sale proceeds to discharge PCL's debts to the Banks. Hence, Ms Lim requested Zenith to transfer the 13 Cars' Balance Sale Proceeds to her personal bank account instead.¹¹⁴

59 I shall now pause and examine PCL's financial situation from July to August 2018.

(1) PCL's financial situation in the middle of 2018

60 In respect of the DBS Loan Facility, PCL's DBS current account statement shows that as of 1 July 2018, PCL had an overdraft of \$35.¹¹⁵ By the end of July 2018, PCL had an overdraft of \$65.¹¹⁶ By the end of August 2018, PCL had an overdraft of \$17.¹¹⁷ In respect of the Maybank Loan Facility, PCL's Maybank current account statement shows that PCL had a balance of \$23,984.74 as of 1 July 2018.¹¹⁸ These moneys were quickly drawn down to an overdraft of \$57.97 as of 24 July 2018¹¹⁹, and by 31 July 2018 PCL had

¹¹³ Transcript (19 July 2021) at p 106 line 32 to p 107 line 2.

¹¹⁴ Transcript (19 July 2021) at p 106 lines 17 to 24; p 107 line 7.

¹¹⁵ Plaintiff's Bundle of Documents ("PBOD") Vol 9 at p 1969.

¹¹⁶ PBOD Vol 9 at p 1973.

¹¹⁷ PBOD Vol 9 at p 1981.

¹¹⁸ PBOD Vol 9 at p 1985.

¹¹⁹ PBOD Vol 9 at p 1986.

\$8,043.03.¹²⁰ While this account had a balance of \$28,008.10 by 31 August 2018,¹²¹ this was only because Ms Lim had managed to sell SMD3931T to SKL on 17 August 2018 (see S/N 4 in Annex A of this Judgment),¹²² and a balance sum of \$14,308.05 was transferred to that account on 24 August 2018.

61 Next, PCL's financial status must be examined in relation to the monthly instalments that were due under the Loan Facilities. As of 26 July 2018, a sum of \$52,123.74 was due under the DBS Loan Facility, and this amount later snowballed to a sum of \$73,127.78 on 23 October 2018.¹²³ For the Maybank Loan Facility, the defendants have adduced WhatsApp correspondence between Ms Lim and a Maybank representative, which shows that PCL was in default of its loan instalments by 24 July 2018.¹²⁴ In this correspondence, Ms Lim informed Maybank as to when PCL could make payments for its loan instalments. On 27 July 2018 she referred to funds obtained from the sale of SJQ8877B.¹²⁵

62 I shall now examine the expenditure Ms Lim incurred on behalf of PCL.

¹²⁰ PBOD Vol 9 at p 1987.

¹²¹ PBOD Vol 9 at p 1993.

¹²² Transcript (19 July 2021) at p 108 lines 28 to 31.

¹²³ DBOD Vol 4 at pp 1151 to 1154.

¹²⁴ DBOD Vol 4 at pp 1098 to 1143.

¹²⁵ DBOD Vol 4 at p 1116.

(2) PCL's expenditure incurred by Ms Lim

63 It is undisputed that Ms Lim made payments for PCL's operating expenses amounting to \$47,213.64 (see [27] above), which include payments towards the Loan Facilities, road tax and other miscellaneous expenses.¹²⁶

64 I shall first turn to Ms Lim's claim that she expended a sum of \$83,190.13 on behalf of PCL, comprising: (a) refunds of security deposits for four cars to lessees (\$51,060); and (b) payment of insurance premiums (\$32,130.13).¹²⁷ I list the various sums in the table below:

S/N	Expense	Quantum
1	Refund of security deposit for SGY900M	\$8,500 (in cash) (disputed)
2	Refund of security deposit for SJQ8877B	\$24,000 (disputed)
3	Refund of security deposit for SLK7529X	\$13,000 (disputed)
Subtotal		\$45,500
4	Refund of security deposit for SDQ6060A	\$5,560 (undisputed)
Subtotal		\$51,060
5	Insurance Premiums	\$32,130.13 (undisputed)
Total		\$83,190.13

¹²⁶ Exhibit D1.

¹²⁷ YKWA at p 11.

65 PCL initially alleged that Ms Lim had provided insufficient evidence to show that she had indeed paid for all the above expenses on behalf of PCL. At the trial, PCL's counsel accepted that there were documents to support the claim that she *did* spend this sum of moneys to meet PCL's expenses.¹²⁸ However, an issue arises as to whether Ms Lim *should have done so* in respect of the refunds of three security deposits. In other words, what is disputed (as indicated in the table above) is not whether these sums were indeed expended, but whether Ms Lim had expended them in derogation of her duties as PCL's director.

66 It is undisputed that Ms Lim did make payment of \$32,130.13 on behalf of PCL for insurance premiums.¹²⁹

67 It is also undisputed that Ms Lim did refund the security deposit of \$5,560 for SDQ6060A on behalf of PCL.¹³⁰ PCL's counsel also agreed that the security deposit for this car was rightfully returned because there was no premature termination of this car's lease. Hence, no issue arises out of this payment.

68 However, PCL claims that Ms Lim should have forfeited three security deposits, instead of refunding them to the lessees, under the lease agreements as these lessees had prematurely terminated the leases.¹³¹ I shall examine each instance in turn.

69 I begin with the refund of the security deposit for SGY900M. The purchase agreement for this car shows that Zenith did pay PCL \$8,500 in cash,

¹²⁸ Transcript (16 July 2021) at p 92 line 8 to p 96 line 5.

¹²⁹ PCS at para 137(b).

¹³⁰ Transcript (31 August 2021) at p 57 line 25 to p 60 line 9; PCS at para 137(d).

¹³¹ PCS at paras 79 to 80.

ostensibly for the purpose of PCL's refund of this amount to its lessee. This is because the purchase agreement shows a handwritten entry "Refund to owner" beside the "Deposit Amount" of \$8,500.¹³² Ms Lim explained during cross-examination that while she was aware that she could forfeit this sum, she did not do so. She knew that the lessee was a long-term repeat customer of the Prime Cars Group since 2006 and that she would risk losing that customer by doing so.¹³³

70 Next, I turn to the refund of the security deposit for SJQ8877B. Ms Lim explained that she did not forfeit this sum of \$24,000 because the lessee was a long-term repeat customer who patronised PCC since its incorporation in 2006. Moreover, this customer even referred other customers to the Prime Cars Group. Ms Lim thus reasoned that she could not risk losing this customer who had generated business for PCL through good word of mouth.¹³⁴

71 Lastly, I turn to the refund of the security deposit for SLK7529X. Ms Lim explained that she did not forfeit this sum of \$13,000 as the lessee was a long-term repeat customer. This customer in particular had bought many cars from the Prime Cars Group. Moreover, Ms Lim explained that she had negotiated with this customer and had tried to refund the minimum, which was \$13,000 out of the total security deposit of \$18,000.¹³⁵ Her explanation is supported by her written correspondence with this customer, which indicates that the refund of \$13,000 was "with an administrative deduction".¹³⁶

¹³² TTA at p 61 (see handwritten entry "Refund to owner").

¹³³ Transcript (21 July 2021) at p 27 lines 23 to 28.

¹³⁴ Transcript (21 July 2021) at p 19 lines 20 to 31.

¹³⁵ Transcript (21 July 2021) at p 29 lines 12 to 24.

¹³⁶ DBOD Vol 4 at p 995.

72 In my view, as PCL’s sole director at the material time, Ms Lim was entitled to exercise her discretion as to whether PCL was to forfeit or to refund the security deposits. More importantly, I find Ms Lim’s explanations for each of the three instances above to be reasonable. They are plainly in line with commercial realities. PCL’s *one-time* loss in refunding a lessee’s security deposit would be much lesser than its *continuing* loss from the loss of the lessee’s repeat business and the loss of potential customer referrals. Although the three disputed security deposits amounted to \$45,500, which is a substantial sum, Ms Lim was also a *de facto* 40% shareholder of PCL when she returned these three security deposits. A loss on PCL’s part would thus affect Ms Lim directly as a major shareholder as well. As a corollary, if Ms Lim was purely concerned about her personal gain, it would have been in her interest to *forfeit* the three disputed security deposits instead. Yet, she did not do so. Hence, Ms Lim’s actions clearly had PCL’s long-term interests in mind. Indeed, this is precisely the situation stated by the authors of *Walter Woon* at para 8.21 (see [38] above): “a transaction that seems on the face of it to be a bad one may be commercially justifiable if it leads to other intangible benefits for the company”. Indeed, a director of a company like Ms Lim must be accorded the flexibility and discretion to “take a wider view of what the company’s interests are”.

73 Moreover, it is not the case that Ms Lim had consistently failed to forfeit security deposits when encountering errant lessees. In contrast to the three instances above, Ms Lim did forfeit the security deposit in respect of SBF28R (see S/N 4 in Annex A of this Judgment), amounting to \$16,700.¹³⁷ She explained that because this lessee defaulted on lease payments and she frequently had to chase him for the same, she decided to terminate the lease

¹³⁷ DBOD Vol 4 at p 1004; Transcript (1 September 2021) at p 55 lines 10 to 14; Transcript (21 July 2021) at p 23 lines 1 to 19.

early and forfeit his security deposit.¹³⁸ Hence, Ms Lim did exercise appropriate judgment in the interests of PCL in every instance, before she decided to forfeit or to refund the security deposit for the lease.

74 I, therefore, find that Ms Lim had discharged her director's duties honestly and had exercised reasonable diligence in the best interests of PCL when she returned the three security deposits to the lessees.

75 Further, in relation to the abovementioned three cars, viz, SJQ8877B, SGY900M and SLK7529X (see S/N 1–3 in Annex A of this Judgment), PCL further argues that Ms Lim should have claimed for the balance lease payments for the early termination of their leases.¹³⁹ These amounted to \$9,988, \$13,160 and \$16,800 respectively.¹⁴⁰

76 I note, parenthetically, that in relation to the first amount of \$9,988 pertaining to SJQ8877B, PCL's counsel put this amount to Ms Lim at trial¹⁴¹ but submitted that the relevant amount is \$10,442 in the plaintiff's closing submissions.¹⁴² Since the lower amount of \$9,988 was put to Ms Lim at trial, this amount will be used for the present analysis.

77 PCL submits that Ms Lim's failure to claim for the balance lease payments was in dereliction of her duties as PCL's director. Consistent with her explanation regarding the refund of security deposits, Ms Lim explained that

¹³⁸ Transcript (1 September 2021) at p 55 lines 20 to 28.

¹³⁹ Transcript (31 August 2021) at p 66 lines 29 to 32; PCS at para 81.

¹⁴⁰ Transcript (31 August 2021) at p 61 line 28 to p 62 line 22; p 63 line 2 to p 64 line 14; p 65 lines 3 to 19.

¹⁴¹ Transcript (31 August 2021) at p 61 line 28 to p 62 line 14.

¹⁴² PCS at para 82.

she did not do so because these customers are long-term repeat customers of the Prime Cars Group.¹⁴³ Again, as I have elucidated above (at [72]), I find her explanation to be commercially sensible. I reiterate that a business such as PCL's is sustained by long-term patronage and not short-sighted gains. Hence, PCL's submission on this point is unmeritorious.

78 There is a further sum of \$6,660 incurred for towing charges in respect of the 13 cars that were repossessed from Supreme Pte Ltd.¹⁴⁴ This sum was initially disputed for lack of supporting documents. At the trial, PCL's counsel accepted that there are supporting documents for the expenditure of this sum, and therefore accepted that this sum was properly incurred.¹⁴⁵ Hence, I shall take this sum into consideration below.

79 I also note that there is a sum of \$6,042 that Ms Lim paid on behalf of PCL for the rental and towing charge for SLP9698B. For this sum, the parties do not dispute that Ms Lim had expended this amount on behalf of PCL and Ms Lim's position is that she had already been paid for this sum.¹⁴⁶ Hence, this sum should be deducted from her expenditure on behalf of PCL.¹⁴⁷ From the above analysis, Ms Lim had paid a total of \$131,021.77 out of the 13 Cars' Balance Sale Proceeds of \$289,700.47. The breakdown of Ms Lim's total expenses is shown in the table below:

¹⁴³ Transcript (31 August 2021) at p 63 lines 24 to 25; p 65 lines 21 to 23.

¹⁴⁴ Exhibit D1.

¹⁴⁵ Transcript (16 July 2021) at p 9 lines 9 to 14, p 93 lines 5 to 21; YKWA at p 11; PCS at para 137(c).

¹⁴⁶ Transcript (1 September 2021) at p 77 line 25 to p 79 line 11.

¹⁴⁷ See Exhibit D1: "Total of Items, B,C,D,E LESS ... \$6,042"

S/N	Expense	Quantum
1	PCL's operating expenses, comprising payments for: • Loan Facilities • Road tax • Miscellaneous expenses	\$47,213.64
2	Refund of security deposits and payment of insurance premiums	\$83,190.13
3	Towing charges	\$6,660
	Less reimbursement from PCL	–\$6,042
Total		\$131,021.77

80 Ms Lim alleges that the remaining balance of \$289,700.47, ie, $\$289,700.47 - \$131,021.77 = \$158,678.70$ comprises her salary and transport allowance owed to her from PCL. This forms a large part of her counterclaim as she claims that PCL owes her a sum of \$328,400 for her salary and transport allowance.¹⁴⁸ The breakdown of this sum is shown in the table below:

S/N	Expense	Quantum
1	Salary for Year 2017	\$156,000
2	Salary for January 2018 to April 2018	\$52,000
3	Salary for May 2018 to December 2018 (\$8,800 per month)	\$70,400
4	Transport allowance for May 2018 to February 2019 (\$3,000 per month)	\$30,000

¹⁴⁸ DCC at pp 15 to 18; Exhibit D1.

5	Salary for January 2019 to February 2019 (\$10,000 per month)	\$20,000
Total		\$328,400

Evidently, the counterclaim amount exceeds the 13 Cars' Balance Sale Proceeds. I shall address this issue in my analysis of her counterclaim below.

81 In this regard, the total expenses which Ms Lim incurred for PCL was \$131,021.77 and this sum is less than half of the total sum of \$289,700.47 (*ie*, the 13 Cars' Balance Sale Proceeds) that was transferred to Ms Lim's personal bank account. Hence, this raises the issue of why Ms Lim transferred a large sum from the proceeds of sale to her personal bank account.

82 I shall, therefore, turn to examine Ms Lim's use of the 13 Cars' Balance Sale Proceeds transferred to her personal bank account in meeting PCL's financial obligations.

(3) Ms Lim's expenditure on behalf of PCL in relation to PCL's financial situation

83 An examination of Ms Lim's actions must take into consideration her perception of PCL's immediate potential financial obligations from July 2018 onwards which she had to deal with at that time. As shown above, from July to August 2018, PCL was teetering on the edge of insolvency (see [59]–[60] above). This was solely due to Supreme Pte Ltd's non-payment of the monthly car rentals to PCL. Ms Lim could only repossess 13 cars out of the 23 cars leased to Supreme Pte Ltd. Fourteen cars were sold to Zenith and she then applied the sale proceeds of the 14 Cars to redeem the Bank loans of these cars. This temporarily eased the financial obligations to the Banks. However, as PCL was unable to repossess the 10 cars from Supreme Pte Ltd, the mortgage instalments

under the Loan Facilities for these 10 cars would still be payable by PCL to the Banks. Indeed, if these monthly mortgage instalments were left unpaid, PCL's debts would immediately snowball and compound very quickly. The monthly rentals of these 10 hidden cars was \$27,184¹⁴⁹ and PCL paid the Loan Facilities using the rental payments on a back-to-back basis. PCL would have thus owed the Banks approximately \$27,184 for every month that these 10 cars remained hidden by Supreme Pte Ltd. At this time, Ms Lim also did not know how long PCL would have to pay for the monthly mortgage instalments for these 10 cars. Moreover, other payments such as insurance premiums and road tax were quickly falling due. Furthermore, Ms Lim was also a guarantor for the Loan Facilities, so she would be personally liable for PCL's debts should PCL fail to pay the Banks the monthly mortgage instalments.

84 Faced with the mounting pressure over PCL's dire financial situation and the increasing possibility of incurring personal liability on the guarantees to the Banks, I accept Ms Lim's explanation that she had to sell the 14 Cars and to arrange for the 13 Cars' Balance Sale Proceeds to be transferred to her personal bank account. I also emphasise that it was reasonable for her to transfer the substantial balance of the sale proceeds to her personal bank account. At that time, she would not have known the total sum that PCL would have to pay for its expenses. Hence, it was reasonable for her to anticipate that, should the 13 Cars' Balance Sale Proceeds be transferred to *PCL's bank accounts*, it would not be available to meet PCL's expenses. Hence, she transferred a substantial sum to *herself* out of prudence to serve as an adequate buffer to meet PCL's potential expenses. By assiduously trying to keep PCL financially afloat during

¹⁴⁹ DCC at Annex B.

this crisis, she had discharged her director's duties honestly and had exercised reasonable diligence in PCL's best interests.

85 PCL submits that there were two instances where Ms Lim could not reasonably explain why she had transferred sums from PCL's bank account to her personal bank account. These were: (a) a sum of \$5,516 from PCL's DBS account on 1 August 2018; and (b) a sum of \$4,000 from PCL's DBS account on 10 August 2018.¹⁵⁰ While it is true that PCL's bank accounts were being drawn down to meet its financial obligations at that time (see [60]–[61] above), Ms Lim was also making substantial payments on behalf of PCL from her personal bank account then (see [79] above). Hence, I find PCL's submission on this point to be unmeritorious.

86 The irony of this case is that the Neo Sisters knew the circle of financial dependency, *ie*, Supreme Pte Ltd had to pay the rentals monthly to PCL for the leased cars so that PCL could pay the Banks as PCL had taken mortgage loans for those cars. The Neo Sisters deliberately stopped Supreme Pte Ltd from making payment of the monthly rentals of the cars leased from PCL. This caused a catastrophic financial effect on PCL's cash flow as the 23 cars out of a total of 64 cars¹⁵¹ constituted about 40% of PCL's fleet of rental cars.¹⁵² The Neo Sisters knew these serious implications but nevertheless hid the remaining 10 cars to prevent them from being repossessed by PCL. This further increased the financial pressure on PCL. Ms Lim was left with little choice but to sell the available cars to repay the bank loans and to meet the operating expenses. In

¹⁵⁰ PCS at paras 65 and 66; Transcript (31 August 2021) at p 70 lines 30 to 32 and p 74 lines 10 to 19; DCC at p 15.

¹⁵¹ DBOD Vol 5 at p 1583 para 5(a).

¹⁵² Transcript (15 July 2021) at p 29 lines 20 to 30.

order to pay for the operating expenses of PCL, Ms Lim, as its director, had to channel the 13 Cars' Balance Sale Proceeds to her personal bank account. The Neo Sisters, now in control of PCL, sue Ms Lim for impropriety and breach of her director's duties when they orchestrated the crisis in the first place. Thus, the conduct of the Neo Sisters is indeed deplorable.

87 The Neo Sisters' explanation for stopping Supreme Pte Ltd from making the monthly car rental payments was that Ms Lim was the sole shareholder at that time and they would not know what Ms Lim would do with the moneys if Supreme Pte Ltd had continued to make monthly payments.¹⁵³ There is no evidence to support this suspicion as Ms Lim had been managing PCL since its incorporation in 2015. Furthermore, when the Neo Sisters confronted Ms Lim regarding the share ownership in PCC and PCL, she agreed to transfer the shares in PCC and PCL to them according to their understanding, *ie*, 40:35:25. Ms Lim's assurance to regularise the share ownership was documented by their respective lawyers' letters.¹⁵⁴ Ms Lim was partly responsible for the mistrust as, in the first place, she should not have registered the additional 300,000 shares for PCC in her name and incorporated PCL with herself as the sole shareholder.

88 I also notice that, although the Neo Sisters were only shareholders, they wielded significant powers and stopped Ms Lim's director's salary in May 2018 and the use of the company's car in August 2018.¹⁵⁵ The evidence shows that the Neo Sisters had a personal vendetta against Ms Lim when they stopped

¹⁵³ Transcript (13 July 2021) at p 28 lines 5 to 17.

¹⁵⁴ PBOD Vol 1 at pp 78 to 83 (see p 78 at para 6 and p 82 at paras 25) and pp 84 to 86 (see p 85 at para 11).

¹⁵⁵ Transcript (1 September 2021) at p 14 line 26 to p 15 line 4; p 16 line 23 to p 17 line 7; p 72 line 24 to p 73 line 4 (Salary); Transcript (1 September 2021) at p 10 lines 10 to 28; p 73 line 5 to line 12 (Use of car).

Supreme Pte Ltd from making monthly rental payments to PCL knowing that it was seriously detrimental to PCL. Their conduct was clearly against the best interests of PCL.

Conclusion on breach of fiduciary duties

89 For the above reasons, I find that Ms Lim did not breach any fiduciary duties (a) by procuring PCL to sell the 14 Cars to Zenith; (b) by arranging for the 13 Cars' Balance Sale Proceeds of \$289,700.47 to be transferred to her personal bank account; and (c) by not forfeiting three security deposits where the leases were prematurely terminated.

Did Zenith dishonestly assist Ms Lim in committing the breach of her fiduciary duties?

The applicable law

90 As the Court of Appeal elucidated in *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 (“*Ho Chi Kwong*”) at [20], the elements of a claim in dishonest assistance are:

- (a) the existence of a trust;
- (b) a breach of that trust;
- (c) assistance rendered by the third party towards that breach; and
- (d) a finding that the assistance rendered by the third party was dishonest.

91 While the first and second elements refer to a “trust”, it is clear that they encompass the existence and breach of a fiduciary obligation as well (see

Banque Nationale de Paris v Hew Keong Chan Gary and others [2000] 3 SLR(R) 686 at [136] and *Swiss Butchery Pte Ltd v Huber Ernst and others and another suit* [2010] 3 SLR 813 generally). With regard to the third element, “the plaintiff must at least show some causative significance in the acts by the defendant (although he need not show the precise causative significance nor is it appropriate for the court “to become involved in attempts to assess the precise causative significance of the dishonest assistance”): *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 at [297]. In other words, there must be proof of at least some degree of nexus between the assistor’s act and the breach of fiduciary duty by the person being assisted. As for the last element, the assistor “must have such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them”: *Ho Chi Kwong* at [22]. In this regard, the assistor “does not need to know exactly what is going on so long as he suspects that something dishonest might be going on: *Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2013] 1 SLR 173 at [81].

My findings on dishonest assistance by Zenith

92 Did Zenith dishonestly assist Ms Lim to breach her fiduciary duties to PCL (a) by assisting her to cause PCL to sell to Zenith the 14 Cars at undervalued prices;¹⁵⁶ and (b) by assisting her in arranging for the 13 Cars’ Balance Sale Proceeds due to PCL to be transferred to her personal bank account instead of PCL’s?¹⁵⁷

¹⁵⁶ SOC at para 21(a).

¹⁵⁷ SOC at para 21(b).

93 I wish to reiterate that I have explained above (at [58]–[89]) that Ms Lim had discharged her director’s duties honestly and she had exercised them with reasonable diligence regarding the sale of the 14 Cars and the management of the sale proceeds. Since Ms Lim had not breached her director’s fiduciary duties, Zenith could not have assisted her to breach her fiduciary duties.

94 Be that as it may, the conduct of Mr Tan does not suggest that he assisted Ms Lim in any way. Firstly, he did not know Ms Lim prior to the purchase of the 14 Cars. Secondly, the sale of the 14 Cars were transacted at arm’s length. Thirdly, he paid for the 14 Cars at the market dealers’ price. Ms Lim did not offer the 14 Cars to Zenith at a reduced rate or offer a special discount as alleged by PCL. In fact, Mr Tan’s evidence showed that the 14 Cars were sold at about the market dealers’ price.¹⁵⁸ There is thus no sufficient degree of nexus between Mr Tan’s actions on behalf of Zenith and Ms Lim’s actions that were alleged to be in breach of her director’s fiduciary duties. Hence, the evidence shows that Mr Tan did not even render assistance to Ms Lim on behalf of Zenith.

95 Moreover, Mr Tan’s conduct does not suggest that he had knowledge of the irregular shortcomings of the transactions with Ms Lim such that they were contrary to the conduct of ordinary honest people. Mr Tan did a due diligence search with ACRA when Ms Lim requested him to transfer the 13 Cars’ Balance Sale Proceeds to her personal bank account. He was satisfied that Ms Lim was the sole shareholder and director of PCL and there were no charges against PCL.¹⁵⁹ As a *layperson*, Mr Tan was satisfied that it was permissible to transfer the 13 Cars’ Balance Sale Proceeds to Ms Lim’s personal bank account. The

¹⁵⁸ Transcript (19 July 2021) p 26 lines 1 to 8.

¹⁵⁹ Transcript (19 July 2021) p 32 line 28 to p 33 line 12.

evidence, therefore, does not reveal any dishonesty on Mr Tan's part in his dealing with Ms Lim on the sale of the 14 Cars.

96 I, therefore, find that PCL has not proven its case against Zenith for dishonest assistance.

Did Zenith buy the 14 Cars from PCL at substantially undervalued prices, knowing that Ms Lim was in breach of her fiduciary duties?

The applicable law on knowing receipt

97 As stated by the Court of Appeal in *Ho Chi Kwong* at [23], the elements of knowing receipt are:

- (a) a disposal of the plaintiff's assets in breach of fiduciary duty;
- (b) the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and
- (c) knowledge on the part of the defendant that the assets received are traceable to a breach of fiduciary duty.

98 With regard to the third element, the Court of Appeal clarified (at [32]) that "actual knowledge of ... a breach of fiduciary duty is not invariably necessary to find liability, particularly, when there are circumstances in a particular transaction that are so unusual, or so contrary to accepted commercial practice, that it would be unconscionable to allow a defendant to retain the benefit of receipt". This is because "[t]he test for unconscionability should be kept flexible and be fact centred": *Ho Chi Kwong* at [32].

My findings on knowing receipt

99 PCL claims that Zenith had benefitted from the sale of the 14 Cars which Zenith knew were sold by PCL to Zenith at a significantly undervalued price,¹⁶⁰ in breach of Ms Lim’s director’s fiduciary duties to PCL.¹⁶¹

100 As with PCL’s claim against Zenith for dishonest assistance, this claim for knowing receipt is premised on its claim that Ms Lim had breached her director’s fiduciary duties. Again, I reiterate that I have explained above (at [58]–[89]) that Ms Lim had discharged her director’s duties honestly and that she had exercised them with reasonable diligence regarding the sale of the 14 Cars. The evidence of Ms Lim and Mr Tan shows that the sale was done at arm’s length and was not at an undervalued price (see [92]–[96] above). Hence, on Ms Lim’s part, she had not breached her director’s fiduciary duties. The first element of knowing receipt is thus not satisfied. Moreover, on Zenith’s part, since the sale of the 14 Cars was at market value, Zenith could not have benefitted from the difference in the market price and the prices that the 14 Cars were actually sold. Zenith also could not also have known that the sale could have been in breach of Ms Lim’s fiduciary duties as PCL’s director, since there was nothing suspicious about selling the 14 Cars at market value.

101 I, therefore, find that PCL’s claim against Zenith for knowing receipt fails.

¹⁶⁰ SOC at para 22; POS at para 33.

¹⁶¹ SOC at para 22.

Were Ms Lim and Mr Tan of Zenith engaged in a conspiracy to defraud and injure PCL by unlawful means?

The applicable law

102 Regarding the claim for conspiracy by unlawful means, the plaintiff must establish the following (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 (“*EFT Holdings*”) at [91] and [112]):

- (a) there was a combination of two or more persons to do certain acts;
- (b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;
- (c) the acts were unlawful (such acts include those which are actionable civil wrongs);
- (d) the acts were performed in furtherance of the agreement; and
- (e) the plaintiff suffered a loss as a result of the conspiracy.

103 As recently stated by the Court of Appeal in *Crest Capital Asia Pte and others v OUE Lippo Healthcare (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337 at [128(a)] (affirming *EFT Holdings* at [96]), the *raison d’être* for unlawful means conspiracy is the defendants’ combination, accompanied by the intention to injure. Where there is no evidence of an express agreement, the court can infer this combination from the circumstances and acts of the alleged conspirators: *EFT Holdings* at [113]. While there is neither a requirement that the conspirators joined in the scheme at the same time nor a requirement that each conspirator

knew what the others have agreed to do, the plaintiff has to show that the alleged conspirators were sufficiently aware of the surrounding circumstances and shared the same object: see *EFT Holdings* at [113] and *New Ping Ping Pauline v Eng's Noodles House Pte Ltd and others* [2020] SGHC 271 at [60].

104 As for the element of unlawful means, it is uncontentioned that this element “covers both a criminal act or means, as well as an intentional act that is tortious”: *Beckett Pte Ltd v Deutsche Bank AG and another and another appeal* [2009] 3 SLR(R) 452 at [120]. Hence, a conspiracy may arise in relation to a breach of a director’s fiduciary duties to his company: *Chew Kong Huat and others v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167 at [35].

My findings on conspiracy

105 As explained above (at [58]–[89]), I have found that Ms Lim did not breach her fiduciary duties owed to PCL. Thus, there is no unlawful act on which the alleged conspiracy can be founded.

106 For any allegation of conspiracy there must be an agreement, express or implied, to do any unlawful act. In this case, there is a complete absence of an agreement between Ms Lim and Mr Tan of Zenith. They were not known to each other before the sale of the 14 Cars. The sale transactions were above board and Zenith did not get a preferential price for the 14 Cars. As for the 13 Cars’ Balance Sale Proceeds, Mr Tan transferred these sums to Ms Lim only after he had done a due diligence search with ACRA and was satisfied that it was alright to do so. It is clear that if Mr Tan was not satisfied, he would not have acceded to Ms Lim’s request to transfer the 13 Cars’ Balance Sale Proceeds to her personal bank account. On all counts, the allegation of conspiracy between

Ms Lim and Zenith to do an unlawful act is completely baseless and unmeritorious.

Conclusion on the plaintiff's claim and Ms Lim's third party claim

107 For the above reasons, I dismiss PCL's claim. Consequently, it is unnecessary for me to examine the merits of Ms Lim's claim against Supreme Pte Ltd, Mr Heng and the Neo Sisters as third parties.

108 I shall now deal with Ms Lim's counterclaim against PCL.

Counterclaim

109 Ms Lim claims that PCL owes her a sum of \$169,721.30. This sum is the difference between the 13 Cars' Balance Sale Proceeds, *ie*, \$289,700.47, which was transferred to her personal bank account and the sum total of (a) her salary and transport allowance as PCL's director; and (b) her expenses incurred on behalf of PCL. As for (b), I have stated above that this comprises moneys paid out for the servicing of the Loan Facilities, insurance premiums, road tax, and other miscellaneous expenses. I have further found that Ms Lim paid a sum of \$131,021.77 on behalf of PCL for these expenses (see [79] above). However, while she had paid this sum, there are items within that sum that PCL contends she is presently not entitled to, *viz*, sums paid to PCL's lessees for the return of the security deposits in respect of three cars (totalling \$45,500).¹⁶² Ms Lim also claims that PCL owes her a sum of \$328,400, which is her salary and transport allowance as PCL's director. PCL denies owing her this sum.¹⁶³ Hence, her counterclaim sum of \$169,721.30 is derived as follows: (\$131,021.77 +

¹⁶² Exhibit D1.

¹⁶³ Reply and Defence to Counterclaim at para 13.

\$328,400) – \$289,700.47 = \$169,721.30. I summarise the derivation of her counterclaim in the table below:

S/N	Item	Quantum
1	PCL's operating expenses, comprising payments for: • Loan Facilities • Road tax • Miscellaneous expenses	\$47,213.64 (undisputed)
2	Refund of four security deposits	\$51,060 (\$45,500 disputed; \$5,560 undisputed)
3	Insurance Premiums	\$32,130.13 (undisputed)
4	Towing charges	\$6,660 (undisputed)
	Less reimbursement from PCL	–\$6,042 (undisputed)
Subtotal (Expenses on behalf of PCL)		\$131,021.77
5	Director's salary and transport allowance	\$328,400 (disputed)
Subtotal		\$459,421.77
Less balance of sale proceeds from of the 13 cars (<i>ie</i> , the 13 Cars' Balance Sale Proceeds)		–\$289,700.47
Counterclaim		\$169,721.30

110 PCL does not dispute the quantum of these sums. However, PCL submits that Ms Lim is not entitled to (a) the refund of three security deposits; and (b) her director's salary and transport allowance.¹⁶⁴ I shall first compute the undisputed sum that Ms Lim is entitled to claim and deal with these two categories of expenses thereafter.

Undisputed expenses incurred on behalf of PCL

111 From the table showing the breakdown of Ms Lim's counterclaim (see [109] above), PCL does not dispute that Ms Lim had paid PCL's operating expenses, insurance premiums for its cars, and towing charges.

S/N	Item	Quantum
1	PCL's operating expenses, comprising payments for: • Loan Facilities • Road tax • Miscellaneous expenses	\$47,213.64 (undisputed)
2	Insurance Premiums	\$32,130.13 (undisputed)
3	Towing charges	\$6,660 (undisputed)
Less reimbursement from PCL		-\$6,042 (undisputed)
Total		\$79,961.77

¹⁶⁴ PCS at paras 79 and 91.

112 After factoring in Ms Lim's reimbursement of \$6,042 which she is not claiming from PCL, the undisputed sum that Ms Lim is entitled to claim is \$79,961.77.

Security deposits

113 Ms Lim did refund the security deposits for SJQ8877B, SGY900M, SLK7529X, and SDQ6060A (see S/N 1–3 and S/N 18 in Annex A of this Judgment) to PCL's lessees using her own moneys (see [63] above).¹⁶⁵ These sums are \$24,000, \$8,500, \$13,000 and \$5,560 respectively.¹⁶⁶ The issue here is whether Ms Lim is entitled to be reimbursed by PCL for paying these moneys on PCL's behalf.

114 As stated above, in respect of SDQ6060A, I noted that there was no premature termination of its lease, hence the security deposit was rightfully returned to the lessee. Therefore, Ms Lim is entitled to claim for the \$5,560 that she returned to this lessee on behalf of PCL.

115 In contrast, the security deposits for the remaining three cars could have been forfeited by PCL as a penalty for premature termination of the leases.¹⁶⁷ PCL contends that Ms Lim ought to have forfeited the security deposits, *ie*, not refund the lessees on their return of the cars, as PCL would lose this sum which it was entitled to.¹⁶⁸ I have examined each of the three instances that Ms Lim refunded the security deposits to the lessees. Ms Lim's explanation was reasonable, aligned with commercial sensibilities and in the best long-term

¹⁶⁵ DCC at pp 15 and 17.

¹⁶⁶ Exhibit D1.

¹⁶⁷ Transcript (21 July 2021) at p 24 line 6 to p 25 line 12.

¹⁶⁸ Transcript (21 July 2021) at p 27 lines 11 to 17.

interests of PCL (see [64]–[72] above). Hence, I find that Ms Lim is entitled to claim from PCL for the refund of the security deposits to the three lessees as well.

116 Adding the four sums of \$8,500, \$24,000, \$13,000 and \$5,560, Ms Lim is entitled to a total sum of \$51,060 under this head of claim.

Director’s salary and transport allowance

117 Ms Lim claims that she is entitled to her director’s salary and transport allowance owed by PCL to her from January 2017 to February 2019.¹⁶⁹ It is undisputed that Ms Lim had been receiving a director’s salary of \$10,000 a month¹⁷⁰ and the use of a company’s car, a Toyota Alphard (the “Alphard”), from PCC. Ms Lim’s remuneration of \$10,000 a month and the use of the Alphard were similar to Mr Heng, who also received \$10,000 a month and the use of a company’s car for his work in the Prime Cars Group.¹⁷¹ The Neo Sisters stopped Ms Lim’s salary of \$10,000 a month in May 2018 and her Alphard was towed away from her in August 2018.¹⁷² Ms Lim claims that in addition to the aforementioned salary and the use of the company’s car from PCC, she is *also* entitled to a salary of \$13,000 a month and transport allowance from PCL.¹⁷³ It is the latter set of sums that forms her present counterclaim. She is not claiming from PCC for the loss of her salary of \$10,000 a month from May 2018 to

¹⁶⁹ DCC at pp 16 to 18; Exhibit D1.

¹⁷⁰ PCS at para 91.

¹⁷¹ Transcript (15 July 2021) at p 11 lines 23 to 26; Transcript (16 July 2021) at p 75 line 3 to p 78 line 17; Transcript (1 September 2021) at p 72, lines 24 to 28.

¹⁷² Transcript (1 September 2021) at p 14 line 26 to p 15 line 4; p 16 line 23 to p 17 line 7; p 73, lines 5 to 9.

¹⁷³ Transcript (31 August 2021) at p 32 lines 12 to 32; p 48 lines 2 to 29; Transcript (1 September 2021) at p 74 lines 23 to 32.

February 2019 and the use of the company's car from August 2018 to February 2019 as she had already reimbursed herself from the 13 Cars' Balance Sale Proceeds.

118 I shall now deal with her claim for salary and transport allowance from PCL.

(1) Director's salary

119 Ms Lim testified that since her husband's demise in 2013, she had been drawing a salary from PCC.¹⁷⁴ From early 2017 to the middle of 2017, she drew \$8,000 a month from PCC. Thereafter, this amount was increased to \$10,000 a month from PCC.¹⁷⁵ Although she did not seek the agreement of the other directors of PCC, viz, the Neo Sisters, she acknowledges that they would have known that she drew a salary from PCC as Mr Heng and Ms Neo Yan were signatories of the cheques for her salary.¹⁷⁶ As stated above, this salary of \$10,000 a month was stopped by the Neo Sisters in May 2018.

120 Ms Lim claims that the above salary was only in respect of her work done for PCC. In respect of her work done for PCL, she claims that she is entitled to a further director's salary of \$13,000 a month from 2 January 2017.¹⁷⁷ In support, she adduced a director's resolution from PCL dated 5 January 2017 ("Director's Resolution"), which I reproduce below:¹⁷⁸

¹⁷⁴ Transcript (31 August 2021) at p 26 lines 9 to 16.

¹⁷⁵ Transcript (31 August 2021) at p 23 lines 30 to 31.

¹⁷⁶ Transcript (31 August 2021) at p 25 line 19 to p 26 line 11; p 27 lines 8 to 15.

¹⁷⁷ Transcript (31 August 2021) at p 23 lines 12 to 21.

¹⁷⁸ DBOD Vol 1 at p 79.

PRIME CARS LEASING PTE LTD

Company Registration No: [xxx]

(Incorporated in the Republic of Singapore)

**DIRECTOR'S RESOLUTION BY CIRCULATION PURSUANT TO
THE CONSTITUTION OF THE COMPANY**

RESOLVED THAT –

Director's Salary, CPF contributions, Car Allowance and
Yearly Bonus

That the sole director of the company Lim Siew Ling be paid
the following :

- (i) Monthly Salary of \$13,000 commencing on 2nd
January 2017
- (ii) Monthly Employer's Central Provident Fund
contributions.
- (iii) Monthly Car Allowance inclusive of petrol
- (iv) Yearly Bonus

Dated this 5 January 2017

[signature]

LIM SIEW LING

Director

Ms Lim passed this resolution as the sole director of PCL in January 2017. Despite her purported entitlement to these director's benefits from PCL, Ms Lim testified that she never took these entitlements from PCL before the Neo Sisters stopped her salary of \$10,000 a month from PCC in May 2018.¹⁷⁹

121 However, in October 2018, Ms Lim physically withdrew \$50,000, being \$10,000 a month for the salary due to her from May to September 2018, from the 13 Cars' Balance Sale Proceeds. She claims that this total sum of \$50,000 is

¹⁷⁹ Transcript (1 September 2021) at p 68 lines 10 to 27; p 73 lines 13 to 18.

her salary owed by *PCL*.¹⁸⁰ I pause to note that *PCL* submits that Ms Lim had “immediately applied” the 13 Cars’ Balance Sale Proceeds to “claim for her salaries” for the year 2017 and for the months of January 2018 to April 2018.¹⁸¹ This is untrue. Ms Lim had merely noted these entries in her personal record. As she rightly submits, if she had actually withdrawn the salaries for these periods, the 13 Cars’ Balance Sale Proceeds that remained in her personal account would have immediately fallen to \$18,401.69 and she would not have had sufficient moneys to make the payment of \$24,107.86 for insurance premiums on 24 September 2018 and subsequent payments for *PCL*’s expenditure thereafter.¹⁸²

122 The basis of Ms Lim’s claim for her salary of \$13,000 a month from *PCL* is the authenticity of the Director’s Resolution. In this regard, *PCL* alleges that the Director’s Resolution was procured by fraud.¹⁸³

123 During Ms Lim’s cross examination, she testified that the Director’s Resolution regarding her salary came about after she had spoken to the company secretary in January 2017, who then prepared it on her instructions. *PCL*’s counsel challenged Ms Lim’s account and subsequently produced a letter from the company secretary at that time, *LTN Management Services Pte Ltd* (“*LTN*”).¹⁸⁴ *LTN*’s letter states that *LTN* has no records of instructions from *PCL* to prepare this resolution or any other evidence to suggest that *LTN* did

¹⁸⁰ Transcript (31 August 2021) at p 44 lines 4 to 8 and p 99 lines 23 to 26; Transcript (1 September 2021) at p 4 lines 18 to 31; p 13 lines 8 to 11; PCS at para 130; DCS at para 44.

¹⁸¹ PCS at para 128.

¹⁸² Defendant’s Closing Submissions (“DCS”) at para 43; DCC at p 17; YKWA at p 11.

¹⁸³ Transcript (1 September 2021) at p 42 line 30 to p 43 line 10.

¹⁸⁴ Transcript (1 September 2021) at p 31 lines 29 to 31.

prepare this resolution.¹⁸⁵ In addition, the Director's Resolution was made in a format that was different from the one generally used by PCL. The layout and formatting of the text were different. Also, while PCL's resolutions were usually dated with a date stamp, the date in the Director's Resolution was typewritten.¹⁸⁶ However, PCL did not call anyone from LTN to testify. Thus, the contents of LTN's letter are inadmissible hearsay.

124 Ms Lim explained that the Director's Resolution was not prepared by LTN. She testified that one Mr Liow, who is the boss of LTN, advised her that it was permissible for PCL to use PCL's internal company secretary, one Mr Lee Yee Hong ("Mr Lee"), to prepare the Director's Resolution.¹⁸⁷ The ACRA searches on PCL show that Mr Lee was PCL's secretary.¹⁸⁸

125 In the light of Ms Lim's explanation, I find that there is insufficient evidence to show that the Director's Resolution was procured by fraud. I must emphasise that, as regards proof of fraud, there is a high threshold to be met. Nevertheless, for the reasons below, the genuineness of this resolution is seriously in doubt.

126 To begin with, Ms Lim did not call Mr Lee or Mr Liow to give evidence to corroborate the authenticity of the Director's Resolution. Their testimonies would have helped to ascertain that this resolution was indeed made on that date and in compliance with the requisite formalities.

¹⁸⁵ PBOD Vol 10 at p 2012.

¹⁸⁶ Transcript (1 September 2021) at p 28 lines 10 to 17.

¹⁸⁷ Transcript (1 September 2021) at p 63 line 12 to p 64 line 8.

¹⁸⁸ DBOD Vol 1 at p 20; Transcript (1 September 2021) at p 64 lines 10 to 32.

127 Moreover, it is suspicious that Ms Lim started to claim her purported entitlements from PCL only after the Neo Sisters stopped her salary in May 2018. It is not disputed that Ms Lim did not claim her entitlements from PCL since it was incorporated in 2015. She claims that she did not previously draw a salary from PCL because she wanted “PCL’s accounts to have good earnings” for the purpose of seeking banking facilities for PCL.¹⁸⁹ At the same time she said she was managing PCL single-handedly and thus she is entitled to receive salary and transport allowance from PCL. If that was the situation, she should have received some form of remuneration from PCL since its incorporation in 2015. But this is not the case. The undisputed facts are that she had been receiving \$8,000 a month from PCC since the demise of her husband in 2013, and this was later increased to \$10,000 a month in 2017 and she was allowed the use of a company’s car from PCC, although she was also managing PCL. Mr Heng also received \$10,000 a month and the use of a company’s car for his work in the Prime Cars Group.¹⁹⁰ This appears to be the arrangement between Ms Lim and the Neo Sisters, *ie*, Ms Lim received only one set of remuneration for work done in the Prime Cars Group, like Mr Heng, the husband of Ms Neo Choon Sian.

128 Ms Lim admitted that the Director’s Resolution for her salary of \$13,000 a month, transport allowance, annual bonus and CPF contributions was made unilaterally without the knowledge of the Neo Sisters.¹⁹¹ Ms Lim acknowledged that the Neo Sisters were the other shareholders of PCL although ACRA records show that she was the sole shareholder. The net result of the Director’s

¹⁸⁹ Transcript (1 September 2021) at p 15 lines 1 to 4.

¹⁹⁰ Transcript (15 July 2021) at p 11 lines 23 to 26; Transcript (16 July 2021) at p 75 line 3 to p 78 line 17.

¹⁹¹ Transcript (31 August 2021) at p 30 lines 19 to 22.

Resolution would be that Ms Lim's monthly salary for her work in the Prime Cars Group would be $\$10,000 + \$13,000 = \$23,000$. Furthermore, she would be entitled to an annual bonus and transport allowance even though she already had the use of the Alphard. The aggregate sum would be more than double that of Mr Heng's entitlement from the Prime Cars Group. Furthermore, why should Ms Lim be given a further transport allowance when she already had the use of the Alphard? The shareholders of PCL and the Prime Cars Group, *ie*, the Neo Sisters, would never have agreed to the Director's Resolution. These facts raise a strong suspicion regarding the genuineness of the Director's Resolution.

129 Furthermore, Ms Lim's account of the quantum of her salary from PCL is inconsistent and raised serious contradictions.

130 In her affidavit of evidence-in-chief ("AEIC"), Ms Lim states that "[a]s a director [she] was to be paid \$10,000 a month as [her] salary with transport allowance".¹⁹² She initially took the position that she was referring to her salary from PCC in this sentence, but she later claimed that she was referring to her salary from PCL instead.¹⁹³

131 Even if Ms Lim's salary from *PCL* was \$10,000 a month, that would still contradict the quantum of her salary that she counterclaims from PCL, *ie*, \$13,000 under the Director's Resolution. In her counterclaim, Ms Lim seeks a monthly sum of \$8,800 for her salary and \$3,000 for her transport allowance.¹⁹⁴ She then explained that she recorded her salary as \$8,800 because she paid

¹⁹² LSL at para 44.

¹⁹³ Transcript (1 September 2021) at p 4 lines 1 to 8.

¹⁹⁴ DCC at pp 17 and 18; Exhibit D1.

\$1,200 as her Central Provident Fund (CPF) contributions.¹⁹⁵ In addition, although the \$3,000 monthly sums were recorded by Ms Lim as her transport allowance, she claimed that they were actually part of her director's salary.¹⁹⁶ Adding the sums of \$8,800, \$1,200 and \$3,000, she claims for the total monthly sum of \$13,000. She thus concludes that this quantum of \$13,000 accords with the Director's Resolution. Yet, this quantum contradicts the quantum stated in her AEIC, *ie*, \$10,000.

132 Ms Lim also further explained that she recorded the \$3,000 as transport allowance in Annex C of her Defence and Counterclaim and in Exhibit D1 because she only drew \$10,000 and this was her way of separating the two parts of her salary in her record.¹⁹⁷ Her explanation is far-fetched and completely incredible. If the \$3,000 monthly sums were indeed part of her salary, it is absurd for her to have recorded them as her transport allowance instead. What would then happen to the transport allowance which she alleges that she is entitled from PCL under the Director's Resolution? If her explanation that the transport allowance in her personal records (in Annex C of her Defence and Counterclaim and in Exhibit D1) should be read as part of her salary is accepted, then there is no transport allowance in her claim to begin with. Her lies, therefore, put her in a bind.

133 Lastly, Ms Lim's pleadings regarding her director's salary were plainly insufficient, inadequate and inconsistent with her evidence in court. To begin with, she did not plead any particulars of how she was entitled to her salary from

¹⁹⁵ Transcript (31 August 2021) at p 77 lines 21 to 23.

¹⁹⁶ Transcript (31 August 2021) at p 78 lines 19 to 27.

¹⁹⁷ Transcript (1 September 2021) at p 5 line 26 to p 10 line 8.

PCL, save that PCL was indebted to her for such sums.¹⁹⁸ Indeed, her pleadings consisted mainly of scant entries such as “Salary of Yr 2017 – Lim siew ling”.¹⁹⁹ Moreover, certain entries were recorded as a lump sum: (a) her salary for the year of 2017 was recorded as a sum of \$156,000; and (b) her salary for the months of January 2018 to April 2018 was recorded as a sum of \$52,000. This was in contrast to the months of May 2018 to February 2019, where her salary was recorded as sums of \$8,800 (*ie*, \$10,000 less employee’s CPF contributions of \$1,200). Yet, a simple division of the lump sums in (a) and (b) with the relevant months, *ie*, $(\$156,000 \div 12)$ and $(\$52,000 \div 4)$, yields a monthly sum of \$13,000. That would mean that, according to Ms Lim’s pleadings, her salary from January 2017 to April 2018 was \$13,000 a month but her salary from May 2018 to February 2019 was \$10,000 a month. Ms Lim’s claim for her salary was not pleaded with specificity, if at all. There was no explanation and narrative of how she was entitled to two different sums for her salary from PCL for 2017 and 2018. Ms Lim’s pleaded case on her salary rests entirely on her entries in her personal accounting record at Annex C of her Defence and Counterclaim. Therefore, her pleadings on her claim for her salary are highly unsatisfactory and are highly indicative of a claim that is different from that disclosed by her case at trial.

134 In the light of such ambiguity in her pleadings, I find that her pleadings with regard to her salary were plainly insufficient for PCL to know how to meet her case at trial.

135 For completeness, I shall also address Ms Lim’s other submissions regarding the Director’s Resolution.

¹⁹⁸ DCC at para 11 and Annex C at pp 16 to 18.

¹⁹⁹ DCC, Annex C, at p 16.

136 Her first submission is that PCL’s claim that the Director’s Resolution was a false document was unpleaded.²⁰⁰ However, Ms Lim did not plead the Director’s Resolution as the basis of her claim for her salary in her Defence and Counterclaim.²⁰¹ Since Ms Lim failed to plead this point, PCL cannot be expected to plead its response to the Director’s Resolution.

137 Her second submission is that one of PCL’s witnesses, Mr Alex Yeo (“Mr Yeo”), had seen the Director’s Resolution. Mr Yeo is Ms Neo Yan’s son and had assisted with handling PCL’s accounts.²⁰² On 28 August 2019, a file from PCL’s corporate secretary was handed over to PCL by Ms Lim, and Mr Yeo testified that he saw the Director’s Resolution in that file.²⁰³ In my view, this evidence does not support Ms Lim’s case. The Director’s Resolution is dated 5 January 2017. Mr Yeo’s testimony that he saw this resolution more than two years later clearly does not assist in showing that this resolution was indeed made on that date.

138 Hence, Ms Lim’s account of her salary from PCL is inconsistent and seriously contradictory. She vacillated in material aspects of her evidence regarding her purported salary which raises deep suspicions over her counterclaim for her benefits from PCL based on the Director’s Resolution.

139 In the light of the above, I find that there are cogent reasons to doubt the authenticity of the Director’s Resolution. Having made this finding, it is unsafe to find that Ms Lim is entitled to a salary of \$13,000 a month from PCL. This is

²⁰⁰ DCS at para 125.

²⁰¹ Plaintiff’s Reply Submissions (“PRS”) at paras 26 to 27.

²⁰² YKWA at paras 6 to 7.

²⁰³ DCS at para 125; Transcript (16 July 2021) at p 98 lines 9 to 22 (Mr Yeo); Transcript (31 August 2021) at p 22 lines 23 to 27 (Ms Lim).

especially the case since Ms Lim claims that she is entitled to \$13,000 a month from PCL *in addition to* \$10,000 a month from PCC.

140 I therefore dismiss Ms Lim’s claim for her director’s salary from PCL from January 2017 to February 2019.

141 I observe that, if Ms Lim is claiming two sets of salary, it is unfortunate and peculiar that she did not draw on her entitlement to \$10,000 a month from PCC when the Neo Sisters stopped her salary in May 2018. She could have also drawn on her entitlement to transport allowance from PCC when the Alphard was towed away from her in August 2018. But this was not done.

142 I also observe that the Prime Cars Group is a family-run business and there was no strict delineation between the management of each individual entity. In this regard, Ms Lim was actively involved in the management of both PCC and PCL as a director. The foregoing evidence also suggests that Ms Lim, like Mr Heng, has always been paid \$10,000 a month for her services to the *Prime Cars Group* as a whole, and PCC is the entity that has been paying her the monthly sums. Unfortunately, PCC was not joined as a defendant to Ms Lim’s claim in the present proceedings. If that had been the case, I would have found that PCC was liable to Ms Lim for her salary of \$10,000 a month from May 2018 to January 2019 when she was removed as a director of PCL.

(2) Transport allowance

143 As stated above, Ms Lim claims that she had been using a company’s car till August 2018, when the Neo Sisters caused it to be towed away.²⁰⁴ However, like her claim for her director’s salary, she claims that the use of this

²⁰⁴ Transcript (1 September 2021) at p 73 lines 5 to 9.

car was her entitlement from PCC. *On top of this entitlement*, she also claims that she was entitled to a monthly transport allowance from PCL or a company's car in lieu of such an allowance.²⁰⁵

144 Similar to her case for her director's salary, Ms Lim's case for her entitlement to transport allowance from PCL is also inconsistent and contradictory. On the one hand, in her counterclaim, Ms Lim appears to be claiming that she is entitled to a monthly sum of \$3,000 from PCL, *in addition to her use of the company's car from PCC*.²⁰⁶ In this regard, Ms Lim testified as follows:²⁰⁷

- Q: ... Were you having the use of the car from May 2018 to August 2018?
- A: Yes, that's PCC. Not---you were talking about PCL. I'm talking about PCL and I didn't claim any transport allowance in PCL.
- Q: So your position is you do not have any transport allowance in PCL?
- A: I didn't claim. I'm entitled to but I never take. I didn't--- I didn't even take any transport allowance from PCL. I'm only taking my salary, 13,000 which is rightfully that it's my entitlement after my work.

On the other hand, as stated in my analysis on Ms Lim's director's salary, as regards her entitlement from PCL, Ms Lim conflates her claim for her director's salary with her transport allowance. Thus, it appears that Ms Lim is not claiming for transport allowance as a separate head of claim.

²⁰⁵ Transcript (1 September 2021) at p 10 lines 26 to 32.

²⁰⁶ DCC at pp 17 to 18; Exhibit D1.

²⁰⁷ Transcript (1 September 2021) at p 10 lines 26 to 32.

145 On either version, Ms Lim’s claim for transport allowance cannot stand. I shall address the two versions of Ms Lim’s claim in turn.

146 The first version is that Ms Lim is claiming for transport allowance from PCL in addition to her entitlement to the same from PCC. As regards the former, Ms Lim claims that she has never drawn on this transport entitlement from PCL. As regards the use of the company’s car from PCC, Ms Lim had used it till August 2018. The only evidence Ms Lim has regarding transport allowance from PCL is the Director’s Resolution, which states that Ms Lim is entitled to “Monthly Car Allowance inclusive of petrol”. I have stated earlier that I doubt the authenticity of this resolution (see [139] above). Hence, Ms Lim’s claim cannot stand.

147 The second version is that Ms Lim alleged that when she claimed \$3,000 a month for transport allowance, she meant that this monthly sum of \$3,000 from PCL formed part of her director’s salary. However, she had only labelled this portion of her salary as “transport allowance”. As stated above at [132], I have found her explanation to be incredible and absurd. Since I have dismissed her claim for director’s salary of \$13,000 a month from PCL, the second version of Ms Lim’s claim therefore cannot stand as well.

148 I, therefore, dismiss Ms Lim’s claim for transport allowance from PCL.

Conclusion on counterclaim

149 From the above analysis, Ms Lim is entitled to claim for the expenses she incurred on behalf of PCL and the security deposits that she refunded to the lessees, which amount to \$79,961.77 and \$51,060 respectively. Hence, these amounts should be subtracted from the 13 Cars’ Balance Sale Proceeds retained by Ms Lim, *ie*, \$289,700.47. However, I dismiss Ms Lim’s claims for her

director's salary and transport allowance. Hence, I find that Ms Lim is not entitled to the remaining sum of \$158,678.70. I summarise my findings in the table below:

S/N	Item	Quantum
1	Balance of sale proceeds (<i>ie</i> , the 13 Cars' Balance Sale Proceeds)	\$289,700.47
	Less undisputed expenses incurred on behalf of PCL	-\$79,961.77
	Less security deposits	-\$51,060
	Total due to PCL	\$158,678.70

150 Ms Lim has consistently treated the 13 Cars' Balance Sale Proceeds of \$289,700.47 as part of PCL's funds, even though these proceeds were in her personal bank account. This is evidenced by her record of PCL's expenditure. As a director of PCL, Ms Lim is a trustee of PCL's funds (see *Belmont Finance Corporation v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393 at 405, approved locally in *Multi-Pak* at [19]; see also *Walter Woon* at para 8.76). Hence, Ms Lim has always acknowledged that she holds the 13 Cars' Balance Sale Proceeds on trust for PCL. Therefore, if she fails to prove her entitlement to a portion of the 13 Cars' Sale Proceeds, she *continues* to hold that portion on trust for PCL. Accordingly, Ms Lim holds on trust for PCL the balance sale proceeds that she is not entitled to, *ie*, \$158,678.70.

Ms Lim's disentitlement of her salary is not a breach of fiduciary duties

151 Despite my dismissal of Ms Lim's counterclaim for her director's salary from PCL, she is *not* in breach of her fiduciary duties arising from her retention of the sums pertaining to her director's salary and transport allowance.

152 I emphasise that Ms Lim has consistently segregated the 13 Cars' Balance Sale Proceeds of \$289,700.47 in her possession as part of PCL's funds. She then took steps to tabulate in her own record that she was, *in her view*, entitled to moneys from PCL.

153 However, in October 2018, Ms Lim physically withdrew \$50,000, being \$10,000 a month for the salary purportedly due to her from May 2018 to September 2018, from the 13 Cars' Balance Sale Proceeds (see [121] above). Nevertheless, her actions must be seen, to a substantial extent, from Ms Lim's subjective state of mind when the Neo Sisters stopped her salary in May 2018 (see [117] above).

154 As stated above (at [36]), the applicable test for s 157(1) of the Companies Act is a partly subjective and partly objective one, in which the court has to assess whether an intelligent and honest man *in the position of a director of the company concerned* could in the context of the existing circumstances have reasonably believed that the transactions were for the benefit of the company.

155 The Prime Cars Group functioned as a family business. The entities in the Prime Cars Group operated and were managed in a loose arrangement (see [9] above). Thus, when the Neo Sisters stopped Ms Lim's salary in May 2018, she physically withdrew her salary in October 2018. As I have noted above (at [127]), Mr Heng also received \$10,000 a month and the use of a company's car for his work in the Prime Cars Group. Hence, Ms Lim would have reasonably thought that she would be able to draw her salary and transport allowance from PCL when her salary from PCC had been stopped.

156 In the unique circumstances of the present case, notwithstanding my findings that she is not entitled to her salary from PCL, Ms Lim did not breach her fiduciary duties as PCL's director when she retained the balance sale proceeds pertaining to her salary and transport allowance. She also did not breach her director's duties when she physically withdrew her salary of \$50,000 in October 2018, being \$10,000 a month purportedly due to her from May 2018 to September 2018.

Third party action

157 Ms Lim has commenced a third party action against the third parties, viz, Supreme Pte Ltd, Mr Heng, Ms Neo Choon Sian and Ms Neo Yan.

158 Ms Lim claims for an indemnity and/or contribution against PCL's claims as set out in the relief claimed by PCL's statement of claim and such relief thereof. Because the third parties had withheld the monthly rental payments to PCL on the 23 cars leased to Supreme Pte Ltd by PCL, Ms Lim had to urgently sell the 14 Cars to secure funds necessary to meet PCL's liabilities. Hence, she claims that her actions of (a) selling the 14 Cars at dealers' price to Zenith instead of the open market price; and (b) receiving the 13 Cars' Balance Sale Proceeds in her personal bank account were caused by the third parties' actions.²⁰⁸ As regards (a), the defendants argue that if the court holds Ms Lim liable for receiving the 13 Cars' Balance Sale Proceeds in her own name, the third parties should be held liable to indemnify her and to pay for any losses suffered by PCL. As regards (b), the defendants argue that Zenith had acted on Ms Lim's instructions to make the transfer to Ms Lim's personal bank account and that Ms Lim had made this request in the best interests of

²⁰⁸ DCS at paras 136 to 142.

PCL. Hence, the third parties should be held liable to indemnify both Zenith and Ms Lim for the losses suffered and claimed by PCL.

159 I pause to address two preliminary points.

160 Firstly, Ms Lim was the only defendant who commenced the third party action.²⁰⁹ Hence, any indemnity or contribution by the third parties to the defendants for PCL’s losses can only apply to her and not to Zenith.

161 Secondly, although Ms Lim initially also claimed for “such relief or remedy relating with the original subject-matter of the action and substantially the same as some relief or remedy claimed by [PCL]”, this claim was not pursued in the defendants’ closing submissions.²¹⁰

162 I now turn to Ms Lim’s claim for an indemnity or contribution from the third parties in respect of PCL’s claims in the present proceedings.

163 In my analysis above, I have found that Ms Lim did not commit a breach of her fiduciary duties by (a) selling the 14 Cars at dealers’ price to Zenith instead of the open market price; (b) receiving the 13 Cars’ Balance Sale Proceeds in her personal bank account; and (c) her unsuccessful attempt to claim her salary and transport allowance from PCL. Ms Lim and Zenith were also not engaged in a conspiracy to defraud and injure PCL by unlawful means. Hence, PCL has not suffered any loss from Ms Lim’s actions stated in (a) and (b) above. Further, Ms Lim failed to prove her entitlement to salary, transport allowance and CPF contributions from PCL, and I have found that she is not

²⁰⁹ Third Party Notice in SDB at p 49; 2nd Defendant’s Statement of Claim against the Third Party in SDB at p 55.

²¹⁰ DCS at paras 136 to 142.

entitled to the remaining sum of \$158,678.70 (see [150] above). In the circumstances, there is no longer a need for an indemnity or contribution by the third parties in respect of PCL's claims.

Summary of findings on PCL's claims

164 I shall now summarise my findings in relation to PCL's claims:

(a) Ms Lim was the sole director of PCL and she had the authority to sell the 14 Cars in the best interests of PCL. By doing so, she did not breach her director's fiduciary duties owed to PCL (see [43]–[49] above).

(b) Ms Lim sold the 14 Cars to Zenith at arm's length and at the market dealers' price. Thus, the sale prices of the cars were not undervalued prices (see [50]–[57] above).

(c) Ms Lim transferred the 13 Cars' Balance Sale Proceeds to her personal bank account so that she could meet urgent expenses for PCL during the period when PCL was nearing insolvency. She assiduously tried to keep PCL financially afloat. Thus, she did not breach her director's fiduciary duties when she transferred the 13 Cars' Balance Sale Proceeds to her personal bank account (see [58]–[88] above).

(d) As Ms Lim did not breach her fiduciary duties to PCL, it must logically follow that Zenith could not have dishonestly assisted her to breach her fiduciary duties. The allegation that Zenith had knowingly received the benefits of Ms Lim's breach of her fiduciary duties also cannot stand as the 14 Cars were not bought at undervalued prices (see [93] and [100] above).

(e) In any case, the circumstances and evidence show that Zenith did not assist Ms Lim in any way since the sale was transacted at arm's length. Mr Tan did not know Ms Lim prior to the sale of the 14 Cars and he had also conducted due diligence search with ACRA before he transferred the 13 Cars' Balance Sale Proceeds to her personal bank account (see [94]–[96] above).

(f) PCL's claim on unlawful means conspiracy must fail as there is no evidence to suggest that there was an agreement, implied or otherwise, between Ms Lim and Mr Tan to do an unlawful act. In fact there is no evidence of an unlawful act (see [105]–[106] above).

Summary of findings for Ms Lim's counterclaim

165 I summarise the findings for Ms Lim's counterclaim, as follows:

(a) Ms Lim is entitled to be reimbursed for the sums that she paid on behalf of PCL. The parties accept that Ms Lim had paid PCL's operating expenses, insurance premiums for its cars, and towing charges, which total \$79,961.77 (see [111]–[112] above).

(b) Ms Lim is entitled to be reimbursed for the refund of four security deposits to PCL's lessees. This was done in the best interests of PCL as the lessees were good customers and she hoped to retain or lure these customers back to PCL and the Prime Cars Group. Hence, she had discharged her director's duties honestly and had exercised reasonable diligence when she refunded these security deposits (see [64]–[72] and [115] above).

(c) Ms Lim is not entitled to be reimbursed for her director's salary and transport allowance from PCL. Her case for both heads of claim was

highly inconsistent and completely contradictory. Ms Lim is thus not entitled to the sums under these two heads of claim (see [117]–[148] above).

(d) After setting off Ms Lim’s entitlement to the 13 Cars’ Balance Sale Proceeds in her possession, I find that Ms Lim continues to hold the sum of \$158,678.70 on trust for PCL as PCL’s director and, thus, she has to return this sum to PCL (see [149]–[150] above).

(e) Although Ms Lim is not entitled to the sums pertaining to her director’s salary and transport allowance, in the unique circumstances of the present case where the entities of the Prime Cars Group operated loosely, I find that Ms Lim was not in breach of her fiduciary duties when she retained the 13 Cars’ Balance Sale Proceeds on trust for PCL and physically withdrew her salary for the months of May 2018 to September 2018 from the same (see [151]–[156] above).

Conclusion

166 For the above reasons, I make the following orders:

(a) I dismiss PCL’s claim against Zenith and Ms Lim as it fails to make out a case on the ground of breach of director’s fiduciary duties and conspiracy/dishonest assistance. However, I allow PCL’s partial claim of \$158,678.70 from the 13 Cars’ Balance Sale Proceeds as Ms Lim fails to prove that she is entitled to this sum for her salary and transport allowance from PCL; and

(b) I dismiss Ms Lim’s counterclaim regarding her salary and transport allowance against PCL.

167 I order Ms Lim to return the sum of \$158,678.70 to PCL as her counterclaim against PCL is dismissed. For the avoidance of doubt, PCL's entitlement to this sum did *not* arise from Ms Lim's breach of fiduciary duties and conspiracy by unlawful means with Zenith. Rather, PCL is entitled to this sum because Ms Lim failed to prove her entitlement to her salary and transport allowance from PCL. As I have explained earlier (see [150] above), Ms Lim has always acknowledged that she held the 13 Cars' Balance Sale Proceeds on trust for PCL. I further order Ms Lim to pay the default interest rate of 5.33% *per annum*, which is the rate prescribed by para 77 of the Supreme Court Practice Directions. As for the date on which interest accrues, I note that s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed) vests the court with the discretion to determine the period for which pre-judgment interest should be awarded, for the whole or any part of the period between the date when the cause of action arose and the date of the judgment: *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 at [137]–[138]. In the absence of facts that warrant granting the accrual of interest at an earlier date, I award interest to PCL at the rate of 5.33% *per annum* on the sum of \$158,678.70 from the date on which the writ was filed, *ie*, 13 September 2019.²¹¹

Costs

168 PCL has to pay costs to Zenith to be agreed or taxed as PCL's claim against Zenith is dismissed.

169 I make no order as to costs regarding PCL's claims against Ms Lim although it succeeds in claiming \$158,678.70 from Ms Lim, but it fails in its

²¹¹ SDB at p 3.

main claims against Ms Lim for breach of fiduciary duties and for conspiring with Zenith to defraud and injure PCL.

170 Ms Lim has to pay costs to PCL to be agreed or taxed as her counterclaim is dismissed.

171 I make no order as to costs for the third party action. Since PCL has not proven its main claims against Ms Lim for breach of fiduciary duties or for conspiracy by unlawful means, the issue of an indemnity or contribution for PCL's claims against Ms Lim is no longer relevant.

Tan Siong Thye
Judge of the High Court

Beh Eng Siew, Low Yu Xuan (Lu Yuxuan) and Shaun Sim Yong
Zhao (Shen Yongzhao) (Lee Bon Leong & Co) for the plaintiff and
third parties;
Joseph Ignatius and Suja Susan Thomas d/o B Thomas (Ignatius J &
Associates) for the defendants.

Annex A: Cars sold by PCL from July to October 2018²¹²

S/N	Vehicle Number	Sold to	Date of Agreement	Moneys due to PCL but transferred to Ms Lim's bank account	Total Sale Price
1	SJQ8877B	Zenith	26 July 2018	<u>Disputed</u> PCL's position: \$28,724.41 Ms Lim's position: \$4,724.41 (Ms Lim claims that since PCL refunded the security deposit of \$24,000 to a lessee, this sum is not due to PCL) ²¹³	\$85,000
2	SGY900M	Zenith	26 July 2018	<u>Disputed</u> PCL's position: \$31,970.38 Ms Lim's position: \$23,470.38 (Zenith claims that it paid \$8,500 to Ms Lim ²¹⁴ and Ms Lim refunded this sum to a lessee) ²¹⁵	\$106,000

²¹² SOC at para 15 (Plaintiff's breakdown); TTA at pp 7 and 12 to 67 (Defendants' breakdown); DBOD Vol 4 at pp 1167 to 1170 and p 1242 (sale to SKL and Fu Ee); Transcript (19 July 2021) p 87 line 29 to p 88 line 14; p 88 line 32 to p 89 line 2.

²¹³ DCC at p 15, at entry "7/25/2018 Refund of security deposit – SJQ 8877B"; Transcript (19 July 2021) at p 30 line 19 to p 31 line 10; p 91 lines 6 to 12.

²¹⁴ Transcript (19 July 2021) at p 36 lines 24 to 30; Exhibit D1.

²¹⁵ Transcript (19 July 2021) at p 103 line 9; DBOD Vol 4 at p 988.

3	SLK7529X	Zenith	15 August 2018	N/A; balance sum of \$1,672.75 paid to PCL ²¹⁶	\$103,000
4	SMD3931T / SBF28R ²¹⁷	SKL	16 August 2018	N/A; balance sum of \$14,308.06 paid to PCL ²¹⁸	\$95,000
5	SLL6687Z	SKL	17 August 2018	N/A; balance sum of \$18,304.05 paid to PCL ²¹⁹	\$67,000
6	SLJ7488K	SKL	17 August 2018	N/A; balance sum of \$36,635.62 paid to PCL ²²⁰	\$81,000
7	SLJ4596B	Zenith	20 August 2018	\$36,487.54	\$81,000
8	SLJ7502C	Zenith	20 August 2018	\$34,635.62	\$79,000
9	SLK4439S	Zenith	20 August 2018	\$12,474.66	\$65,000
10	SLK4482R	Zenith	20 August 2018	\$12,729.02	\$65,000
11	SLJ290J	Zenith	20 August 2018	\$32,095.22	\$70,000
12	SLV1290P	Zenith	23 August 2018	\$10,035.75	\$70,000
13	SLV1386Y	Zenith	23 August 2018	\$10,035.75	\$70,000

²¹⁶ SOC at para 16.

²¹⁷ DOS at p 32, Annex 5.

²¹⁸ Transcript (19 July 2021) at p 86 lines 5 to 22; DBOD Vol 4 at p 1167.

²¹⁹ Transcript (19 July 2021) at p 86 lines 5 to 22; DBOD Vol 4 at p 1169.

²²⁰ Transcript (19 July 2021) at p 86 lines 5 to 22; DBOD Vol 4 at p 1170.

14	SLM1934 M	Zenith	23 August 2018	\$14,808.75	\$59,000
15	SLN146Y	Zenith	23 August 2018	\$25,596.05	\$79,000
16	SLR9225Y	Zenith	23 August 2018	\$12,285.75	\$82,000
17	SLN7434U	Zenith	23 August 2018	\$27,821.57	\$71,000
18	SDQ6060A	Fu Ee	19 October 2018	NA; balance sum of \$40,179.20 paid to PCL ²²¹	\$77,500
				PCL's position: \$289,700.47 Ms Lim's position: \$257,200.47	\$1,085,000 (excluding cars sold to SKL and Fu Ee)

²²¹ Transcript (19 July 2021) at p 89 lines 10 to 15; DBOD Vol 4 at p 1242.