

Ho Seow Wan v Ho Poey Wee and others
[2015] SGHC 235

Case Number : Suit No 195 of 2012 and Suit No 1267 of 2014 (Summons No 5518 of 2013)
Decision Date : 07 September 2015
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Lynette Chew, Gadriel Tan and Leonard Chew (Morgan Lewis Stamford LLC) for the plaintiff; Anna Oei (Tan, Oei & Oei LLC) for the first and second defendant; Ravi Chelliah (Chelliah & Kiang) for the third defendant.
Parties : HO SEOW WAN — HO POEY WEE — HO SEOW BAN — GUAN HO CONSTRUCTION CO (PTE) LTD

Contempt of Court – civil contempt

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 5 of 2013 was dismissed by the Court of Appeal on 14 January 2016. See [\[2015\] SGCA 70.](#)]

7 September 2015

Judgment reserved.

Chan Seng Onn J:

Introduction

1 The plaintiff, Ho Seow Wan, seeks an order for committal of the 1st defendant, Ho Poey Wee, and the 2nd defendant, Ho Seow Ban (collectively, “the defendants”) for contempt of court pursuant to O 52 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“ROC”), alleging a deliberate breach of an order of court dated 1 August 2012 (“the 1 August 2012 Order”).

2 The plaintiff sought leave to apply for an order of committal on 18 January 2013 *vide* Summons No 413 of 2013 (“SUM 413/2013”). The plaintiff’s statement in relation to O 52 r 2(2) of the ROC, which set out the grounds on which committal was sought, alleged numerous breaches of orders of court made on 13 March 2012 and 1 August 2012 (collectively, “the 2012 Orders”). Both these orders were made pending the resolution of two minority oppression claims, *viz*, Suit No 195 of 2012 (“S 195/2012”) and Suit No 1267 of 2014 (“S 1267/2014”), that have been consolidated. I granted the plaintiff leave on 7 October 2013. On 21 October 2013, the plaintiff filed Summons No 5518 of 2013 (“SUM 5518/2013”), alleging that the defendants had breached the 2012 Orders. On 5 May 2014, I directed the plaintiff to file a list of selected breaches that he would be proceeding on. The plaintiff filed a list of selected and prioritised breaches (“the List of Breaches”) pursuant to my directions. The List of Breaches focused only on breaches of the 1 August 2012 Order by the defendants (see [19] below).

Background

3 The plaintiff and defendants are brothers. As will be discussed below, the relationship between the plaintiff and the defendants fell apart sometime before February 2012. At that time, the plaintiff and defendants (“the Brothers”) were the only shareholders and directors of the 3rd defendant, Guan Ho Construction Co (Pte) Ltd (“Guan Ho”), which is engaged primarily in the business of building and

construction. Guan Ho was set up as a sole proprietorship by the father of the Brothers and was subsequently incorporated in 1972 as a private limited company. It continues to be run as a family business, with the 1st defendant as its Managing Director. Guan Ho flourished under the joint stewardship of the Brothers, undertaking significant construction projects such as the erection of the National University Hospital, the Singapore Indoor Stadium and the Singapore Sports School.

4 However, the relationship between the plaintiff and the defendants soured. This culminated in a director's meeting held on 16 February 2012, during which a resolution was passed to strip the plaintiff of his executive and administrative powers in relation to Guan Ho ("the 16 February 2012 Resolution"). Additionally, an extraordinary general meeting of the members of Guan Ho was slated to be convened on 15 March 2012 ("the 15 March 2012 EGM") to consider the removal of the plaintiff as a director of Guan Ho.

5 In response, the plaintiff commenced S 195/2012 on 9 March 2012 for minority oppression. I pause to note that the plaintiff also commenced S 1267/2014 in respect of further acts of oppression. S 195/2012 and S 1267/2014 were consolidated on 17 February 2015. After the commencement of S 195/2012, the plaintiff applied for an interlocutory injunction on 12 March 2012 by way of an *ex parte* application in Summons No 1228 of 2012 ("SUM 1228/2012"). I heard SUM 1228/2012 on 13 March 2012 and granted prayers 1 to 5, which sought to prevent the defendants from proceeding with the 15 March 2012 EGM. However, I ordered that prayers 6 to 8, which sought to restore the plaintiff's powers as a director pending the minority oppression claim, be heard *inter partes* at a later date. The hearing was conducted on 1 August 2012 and I allowed the plaintiff's remaining prayers. These remaining prayers, as originally drafted by the plaintiff ("the Draft Order"), required, *inter alia*, that: [\[note: 1\]](#)

(a) the defendants "reinstate or otherwise grant the [plaintiff] the executive and administrative power of the [plaintiff] over *all* administration and operations matters of [Guan Ho]" (see para 3.1 of the Draft Order); and

(b) the [defendants and Guan Ho] be restrained from "removing the [plaintiff] as an executive director with powers over *all* administration and operations matters of Guan Ho" (see para 4.1 of the Draft Order).

6 The defendants registered their objections to the Draft Order, contending that it would give the plaintiff *greater* powers than he had prior to the 16 February 2012 Resolution. [\[note: 2\]](#) The parties then sought clarification on the 1 August 2012 Order. What was quite clear and unambiguous was that the 1 August 2012 Order would definitely have covered the reinstatement of the *pre-existing* executive and administrative powers that the plaintiff was already exercising prior to the 16 February 2012 Resolution. No clarification was needed by the defendants on this aspect. What was allegedly unclear to the defendants was whether the 1 August 2012 Order would *also* grant to the plaintiff any executive and administrative powers by virtue of being an executive director that he was *not* already exercising prior to the 16 February 2012 Resolution. Thus, the defendants needed clarification (and subsequently sought clarification) only in relation to those powers the plaintiff never exercised previously as an executive director. At a hearing on 3 September 2012, I clarified the effect the 1 August 2012 Order was supposed to have and accepted the defendants' proposed amendments to the Draft Order.

7 The 1 August 2012 Order, having been clarified, was then extracted on 19 September 2012 and served on the plaintiff on 20 September 2012. Paragraphs 3 and 4 of the extracted 1 August 2012 Order read as follows:

3. The [defendants] whether by themselves, their officers servants agents or employees or any of them or otherwise howsoever do by 24 September 2012 pass resolutions:

3.1 to reinstate or otherwise grant the [plaintiff] the executive and administrative power of the [plaintiff] over *such* administration and operations matters of [Guan Ho] with immediate effect which was withdrawn by way of the resolution of [Guan Ho's] board of directors passed at the directors' meeting held on 16 February 2012;

3.2 to reinstate or otherwise reappoint the [plaintiff] to manage, on behalf of [Guan Ho], the projects known as "Proposed NUS University Town development, Khaya & Angsana residential colleges" (hereinafter called 'the NUS University Town [P]roject') and/or "Proposed Upgrading works to existing Kong Hwa school at 350 Guillemard road (hereinafter called 'the Kong Hwa School Project') with immediate effect, which was withdrawn by way of the resolution of [Guan Ho's] board of directors passed at the directors' meeting held on 16 February 2012 and for the cessation and withdrawal of the [defendants] from managing the said projects with immediate effect;

3.3 to reinstate or otherwise grant the [plaintiff] access to [Guan Ho's] office, emails and documents as enjoyed by the [plaintiff] as [Guan Ho's] director and executive director; and

3.4 to grant the [plaintiff] the authorisation to issue notices in the manner as he deems fit and such other notices which he deems necessary in relation to the above reinstatement and cessation.

4. The [defendants] and [Guan Ho] whether by themselves, their officers, servants agents or employees or any of them or otherwise howsoever, be restrained and an injunction be granted restraining them until after the final judgment of this action or until further order in the meantime from doing any acts or things whatsoever that purport to or have the effect of:

4.1 removing the [plaintiff] as an executive director with powers over *such* administration and operations matters of [Guan Ho] or curtailing or diminishing his powers, rights or privileges in such a capacity; and

4.2 appointing any person or persons to manage the NUS University Town Project and/or the Kong Hwa School Project in addition or substitution of the [appellant].

[emphasis added]

8 From this point onwards, any reference to the 1 August 2012 Order in this judgment refers to the 1 August 2012 Order as extracted on 19 September 2012 unless otherwise mentioned.

9 As noted at [2] above, the plaintiff has chosen to focus only on breaches of the 1 August 2012 Order in support of his application for an order for committal under SUM 5518/2013. Therefore, the primary question that falls for determination in SUM 5518/2013 is whether the defendants have breached the 1 August 2012 Order. I heard SUM 5518/2013 for a total of eight days, during which the plaintiff and defendants gave evidence. Additionally, five employees and two subcontractors of Guan Ho ("the minor witnesses") filed affidavits for the defendants in these proceedings but were not cross-examined by counsel for the plaintiff, Ms Lynette Chew ("Ms Chew").

Preliminary question

10 As noted at [7] above, the 1 August 2012 Order was only served on the defendants and Guan Ho on 20 September 2012. This raises a preliminary question of whether the acts of the defendants between 1 August 2012 and 20 September 2012 can be taken into account in deciding if the 1 August 2012 Order had been breached.

11 Order 45 r 5(1)(b) of the ROC provides that an order requiring a person to abstain from doing an act may be enforced by an order of committal. However, O 45 r 7(2) provides as follows:

(2) Subject to Order 24, Rule 6(3), Order 26, Rule 6(3) and paragraphs (6) and (7) of this Rule, an order shall not be enforced under Rule 5 unless —

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

12 The above rule is however not immutable and the court may allow the enforcement of an order before it is served by dispensing with service under O 45 r 7(6)–(7). It is apposite to set out those provisions:

(6) An order requiring a person to abstain from doing an act may be enforced under Rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this Rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce *the order has had notice thereof* either —

(a) by being present when the order was made; or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 62, Rule 5, the Court may dispense with service of a copy of an order under this Rule if it thinks it just to do so.

13 As noted by the court in *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2005] 3 SLR(R) 60 ("*OCM Opportunities*") at [23], O 45 r 7(7) gives the court "unfettered discretion to dispense with personal service and the discretion can be exercised whenever the court thinks it is just to do so". Therefore, the criteria in O 45 r 7(6) are useful but not exhaustive circumstances under which the court may exercise its discretion to dispense with service. In deciding whether to dispense with personal service, the court ultimately has to assess all the circumstances of the case and in particular, the state of the defendant's knowledge of the terms of the order at the material time. In essence, the court is concerned with whether the defendant was already aware of or ought to be aware of the terms of the court's order at the time he failed to comply with it so as to determine whether he had deliberately disobeyed or defied the court's order and whether enforcement by way of committal should be allowed to follow.

14 In *OCM Opportunities*, the court had to decide whether it should exercise its discretion to dispense with personal service of an order for cross-examination, a peremptory order, a permanent injunction and a penal notice in a mareva injunction. The court observed at [25] that the defendants in that case "would be hard-pressed to deny that they were unaware of what was required of them under the Mareva injunction and the consequences of non-compliance" given the applications taken

out and the affidavits filed by them. The court dispensed with personal service of the orders (at [25]). It observed that a number of the defendants in that case did not file affidavits in the committal proceedings to explain their lack of knowledge of the orders they had breached, and a defendant who did file an affidavit in the committal proceedings did not deny knowing the contents of the orders and the consequences of non-compliance.

15 The primary inquiry therefore relates to whether the defendants were aware of what was required of them under the 1 August 2012 Order, as extracted on 19 September 2012, before it was served on them on 20 September 2012. I note that the 1st defendant has stated in his affidavit filed in these proceedings that the scope and terms of the 1 August 2012 Order were not clear to both him and the 2nd defendant. I pause to note that the 1st defendant's affidavit dated 4 July 2014 does not state when the 1 August 2012 Order was communicated to the defendants. However, the defendants confirmed in their respective cross-examinations that they were informed of the 1 August 2012 Order in a meeting with their then solicitors on 2 August 2012. [\[note: 3\]](#) I would discuss the significance of this meeting below. The alleged lack of clarity in the 1 August 2012 Order resulted in the parties' respective solicitors attending the clarification hearing on 3 September 2012. [\[note: 4\]](#)

16 The clarification of the 1 August 2012 Order sought by the defendants and made by me on 3 September 2012 was, however, only in relation to *certain* terms *viz*, paras 3.1 and 4.1, and whether those terms further accorded the plaintiff new powers in addition to those he was already exercising. It was not in relation to whether the scope of paras 3.1 and 4.1 of the 1 August 2012 Order included reinstatement of the plaintiff's powers that he had already been exercising before the 16 February 2012 Resolution. That was already clear to the defendants even without any clarification. Indeed, the 1st defendant stated unequivocally in his evidence that the defendants were orally informed by their then counsel that the 1 August 2012 Order would so apply on 2 August 2012: [\[note: 5\]](#)

COURT: ... On 2 August, what did Michael Khoo explain to you?

A. He explained that we had to give him back his salary, as well as the petrol card, the credit cards, and whatever he had done previously. We would have to give it back to him for him to continue running the business. Of course, with regard to the work scope, he could not disrupt the entire operations of the company.

COURT: Did Michael Khoo tell you that you are to restore to him his powers and authority which [the plaintiff] had as of 16 February 2012?

A. Yes.

COURT: Okay. Carry on.

MS CHEW: Mr Ho, did Mr Michael Khoo also tell you that you need to pass resolutions to give effect to orders 3.1, 3.2, 3.3 and 3.4 of the 1 August order of court?

A. Yes.

17 The consequence of this is that the defendants should not be allowed to rely on the need for clarification to avoid reinstating the plaintiff with the powers that he was already exercising before the 16 February 2012 Resolution once they were made aware of the terms of the 1 August 2012 Order. The other parts of the 1 August 2012 Order were already clear to the defendants and accordingly, no clarification was sought in relation to those other parts.

18 Furthermore, the 1st defendant admitted in his evidence that the then counsel of the defendants had orally explained to them the scope and substance of the 1 August 2012 Order on 2 August 2012. This is confirmed by the defendants having passed a resolution to revoke the 16 February 2012 Resolution on 11 September 2012 in compliance with paras 3.1 and 3.2 of the 1 August 2012 Order. Based on the totality of the evidence, I find that the defendants were aware of the terms of the 1 August 2012 Order on 2 August 2012 although they needlessly entertained a doubt that the order I made might possibly have included a requirement to grant additional “new powers” over and above what the plaintiff was already exercising prior to the 16 February 2012 Resolution, which I subsequently clarified had not been included. I further find that the defendants understood that the 1 August 2012 Order would certainly have covered the reinstatement of the powers that the plaintiff was already exercising prior to the 16 February 2012 Resolution. As such, I am dispensing with the need for service of the extracted order of court for the period between 2 August 2012 and 20 September 2012 (the date the order was served) in relation to those allegedly contemptuous acts of the defendants that occurred during this period.

The alleged breaches

19 As noted at [2] above, the plaintiff decided to proceed on the List of Breaches pursuant to my directions. As the acts listed therein took place on or after 2 August 2012, I accept that they can be considered for the purposes of the current proceedings. The material acts listed in the List of Breaches are as follows:

- (a) The failure to pass a resolution by 24 September 2012 to authorise the plaintiff to issue notices in relation to his reinstatement in breach of para 3.4 of the 1 August 2012 Order;
- (b) The instructions given by the 1st defendant to Ms Ong Guat Ho (also known as “Kristie Ong”) in an email dated 6 August 2012 not to give any written statement of the status of the final accounts to the plaintiff in breach of paras 3.3 and 4.1 of the 1 August 2012 Order (“the 6 August 2012 Email”);
- (c) The issuance of a memorandum by the 1st defendant to the staff of Guan Ho on 6 October 2012 instructing them to disregard the plaintiff’s instructions regarding project, final account, defects and project tender matters (“the 6 October 2012 Memorandum”);
- (d) The instructions given by the 1st defendant to Ms Koh Kim Bee (also known as “Cindy Koh”) in an email dated 19 October 2012 to keep all tender information between the defendants, one Mr Ho Seow Pheng and herself, and exclude the plaintiff from receiving this information (“the 19 October 2012 Email”);
- (e) The issuance of a notice to the staff of Guan Ho by the 1st defendant on 9 November 2012 instructing them not to accede to the plaintiff’s requests for information in relation to Guan Ho’s matters (“the 9 November 2012 Notice”);
- (f) The issuance of a notice to certain external parties on 22 August 2012 asking them to direct the settlement of the final accounts to the 2nd defendant and one Mr Ho Seow Pheng (“the 22 August 2012 Notice”);
- (g) The sending of emails to the clients, suppliers and subcontractors of Guan Ho by the 1st defendant on 23 October 2012 stating, *inter alia*, that many of the plaintiff’s actions were not endorsed by the 1st defendant or the management of Guan Ho (“the Emails to External Parties”);

(h) The sending of an email to Woodwater Integrated Pte Ltd on 9 November 2012 by the 1st defendant stating *inter alia*, that many of the plaintiff's actions were not endorsed by the 1st defendant or the management of Guan Ho ("the Woodwater Email");

(i) The approval of a new company organisation chart ("New Org Chart") which excluded the plaintiff ("the Approval of the New Org Chart"); and

(j) The reduction of the plaintiff's privileges as an executive director in breach of para 4.1 of the 1 August 2012 Order.

20 I will consider the acts listed at points (b)-(e) together as "the Internal Communications", and the acts listed at points (f)-(h) as "the External Communications". I pause to note that it is amply clear in both the hearing and the affidavit filed by the 2nd defendant that the 2nd defendant had adopted and acquiesced in the 1st defendant's actions even though all the Internal Communications and External Communications were signed off by the 1st defendant. Therefore, should I find beyond a reasonable doubt that any of acts in [19] above to be in deliberate disobedience or defiance of the 1 August 2012 Order, I would hold both the defendants to be guilty of contempt. Of course, the 2nd defendant is still entitled to submit separately at the next hearing on his culpability relative to the 1st defendant and the effect that it should have when I deal with the appropriate punishment to be imposed.

21 Apart from the acts listed at [19] above, the plaintiff also highlighted certain other communications with the staff of Guan Ho that he alleges to be in breach of the 1 August 2012 Order. As these communications were very brief, I have not set them out separately and would deal with them in the round when discussing the Internal Communications.

22 Before I proceed to analyse if the plaintiff has established beyond a reasonable doubt that the acts set out at [19] above each amount to a deliberate disobedience or defiance of the 1 August 2012 order, and consequently, a contempt of court, I note that the defendants have disputed whether the plaintiff was even an executive director of Guan Ho to begin with. The 1 August 2012 Order highlights at paras 4.1 and 4.2 respectively that the plaintiff was an executive director and was to be in charge of certain projects (*ie*, project director) of Guan Ho. Further, the defendants have never once hitherto contended that the plaintiff was not an executive or project director of Guan Ho prior to the extraction of the 1 August 2012 Order. Indeed, they could have raised this contention at the clarification on 3 September 2012 or at the hearing of SUM 1228/2012, but they did not do so. In any event, this belated argument of the defendants that the plaintiff was never an executive director of Guan Ho is contrary to the objective evidence. In this regard, the 1st defendant has referred to the plaintiff as an executive director in official documents such as his communications to the Immigration Checkpoint Authority and Guan Ho's IR8A forms for the plaintiff. In a notice dated 22 August 2012, the 1st defendant also stated that "[the plaintiff] shall remain as the executive director of [Guan Ho]". In addition, the plaintiff has been signing off on Guan Ho's letters and contracts as executive director before the 16 February 2012 Resolutions. Lastly, the curriculum vitae of the plaintiff submitted in Guan Ho's tenders states that he is an executive director of Guan Ho. In the face of such evidence, it is unmeritorious for the defendants to contend that the plaintiff was never an executive director of Guan Ho. As for the plaintiff's role as a project director, I note that the External Communications highlight that the plaintiff would be so appointed on an ad hoc basis. I would comment on this point when discussing my decision on the External Communications.

23 I now proceed with the analysis proper. In order to establish contempt, it is sufficient for a plaintiff to show that a defendant had committed a deliberate act that was intentionally in breach of an order of court. Motive of disobedience is not relevant in determining if a defendant is liable for

contempt; however, motive of disobedience is relevant in determining mitigating circumstances for the purposes of punishment for contempt: see *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 at [52] and [53] and *OCM Opportunities* at [27].

The failure to pass a resolution

24 The plaintiff's complaint in relation to the failure to pass a resolution is related to his complaints in relation to the External Communications. The plaintiff highlights in the List of Breaches that the defendants sent out certain communications to external parties "[i]nstead of passing a resolution to authorise the [plaintiff] to issue notices in relation to his reinstatement". The plaintiff highlights that this is a breach of para 3.4 of the 1 August 2012 Order. Notably, the resolution relating to para 3.4 of the 1 August 2012 Order was to be passed by 24 September 2012.

25 It is undisputed that the defendants have not passed this resolution to date. The 2nd defendant concedes to this in the hearing: [\[note: 6\]](#)

[MS CHEW]. So would you accept that to date, you have still not caused any resolutions to be passed by the company in compliance of orders 3.3 and 3.4 of the August order of court?

A. Based on resolutions, right?

Q. Yes, but you are ordered under order 3, it says: "The 1st Defendant and 2nd Defendant whether by themselves, their officers, servants, agents or employees or any of them or otherwise howsoever do by 24 September 2012 pass resolutions ..." Yes? It's not unclear, right?

A. Yes.

Q. But you still have not done it to date, yes? Do you agree?

A. I think so, yes.

Q. I will go on.

COURT: Just to complete the picture, can you explain why, since you know that's the case, why was it not done?

MS CHEW: Please explain why you have not done so.

A. Seriously, it's not an excuse or anything, your Honour, if we really never follow strictly to the order, I don't know why. But at that time we are busy trying to get jobs. There are a lot of works. And when he come back, there's a lot of disruptions. There is also -- as far as action wise, we have granted him, and there is a lot of confusion there.

26 The reasons for not passing a resolution that complied with para 3.4 of the 1 August 2012 Order are not relevant in order to establish that the 1 August 2012 Order has been breached, and, for the present purposes, I comment no further on this point save for my observations at [28] below.

27 I note that counsel for the defendants, Ms Anna Oei ("Ms Oei"), argues that a resolution that was passed on or about 11 September 2012 ("the 11 September Resolution") [\[note: 7\]](#) to revoke the 16 February 2012 Resolution would sufficiently comply with para 3.4 of the 1 August 2012 Order. This

argument is flawed. The revocation of the 16 February 2012 Resolution pursuant to the 11 September 2012 Resolution would only restore the status quo to that before the 16 February 2012 Resolution by which the defendants (i) withdrew the administrative and executive power of the plaintiff and (ii) withdrew the plaintiff from managing two projects *viz*, development of the Khaya and Angsana residential colleges in NUS University Town ("the NUS University Town Project") and upgrading works to Kong Hwa School ("the Kong Hwa School Project") (collectively, "the Projects"). The revocation of the 16 February 2012 Resolution therefore only goes towards compliance with paras 3.1 and 3.2 of the 1 August 2012 Order. Paragraph 3.4 however requires the defendants in no uncertain terms to pass resolutions "to grant the [p]laintiff authorisation to issue notices in the manner as he deems fit and such other notices which he deems necessary in relation to the above reinstatement and cessation." The revocation of the 16 February 2012 Resolution by way of the 11 September 2012 Resolution does not *ipso facto* satisfy para 3.4 of the 1 August 2012 Order. The defendants have to pass a resolution empowering the plaintiff to issue such notices as provided for in para 3.4 of the 1 August 2012 Order.

28 It has not escaped my notice that the 16 February 2012 Resolution positively authorised the 1st defendant to issue "notices in the manner as he deems fit and such other notices which he deems necessary in relation to [the removal of the plaintiff's executive and administrative powers and management of the Projects]". The defendants therefore thought it necessary to provide for and authorise in positive terms the 1st defendant's power to issue notices in the 16 February 2012 Resolution. Yet, they now argue that the revocation of the 16 February 2012 Resolution without more is sufficient for the purposes of complying with para 3.4 of the 1 August 2012 Order, which requires that the plaintiff be similarly authorised in positive terms to issue notices. I reject this self-serving argument of the defendants and hold that the defendants have deliberately breached the 1 August 2012 Order by failing to pass a resolution in compliance with para 3.4 of the 1 August 2012 Order.

The Internal Communications

29 In this section, I will deal with the following acts that are said to be in breach of the 1 August 2012 Order:

- (a) The sending of the 6 August 2012 Email;
- (b) The issuance of the 6 October 2012 Memorandum;
- (c) The sending of the 19 October 2012 Email; and
- (d) The issuance of the 9 November 2012 Notice

(together, "the sending of the Internal Communications").

30 According to the plaintiff, the sending of the Internal Communications would be in breach of para 4.1 of the 1 August 2012 Order while, the sending of the communications listed at [29(a)] and [29(c)] above would also breach para 3.3 of the 1 August 2012 Order. As there are significant overlaps in the parties' arguments in relation to the Internal Communications, I will set out all these communications chronologically before addressing the parties' arguments.

The 6 August 2012 Email

31 On 5 August 2012, the plaintiff called for a meeting for the site personnel and instructed Kristie Ong, a Senior Quantity Surveyor ("SQS") at Guan Ho, to "report and submit to [him] the status of the

final account with any Sub-con during [the] meeting". The 1st defendant replied to the plaintiff's email to Kristie Ong on 6 August 2012 in the following manner:

...

By copy of this email, Ms Kristie Ong can report to you the status of the accounts verbally but no written statement is to be given as the final account is not delegated to you. These final accounts have been the purview of the Contract Director, Mr Ho Seow Ban and any conflicting instructions will affect the contract division and cause disruption to the company's operation.

32 It is therefore clear from the 6 August 2012 Email that the plaintiff was, at the very least, entitled to a verbal report on the status of the final accounts.

The 6 October 2012 Memorandum

33 The 1st defendant issued the 6 October 2012 Memorandum to "all [s]taff" of Guan Ho. The said memorandum, which was entitled "Clarification of Works", stated as follows:

Dear all Staff,

Further to my memo dated 21 September 2012 regarding the recent passed Company Resolution which confirms the director, *Ho Seow Wan is allowed by the Court to return to work.*

Since his return on 2 August 2012, I have received emails from the staff as they are confused by his instruction and sudden interest in departments and areas of work that he had never been involved. Regretfully, he even went to the extent of trying to change our Company's usual practice and ignored my instructions as the Managing Director of the Company that resulted in the disruption of our daily operations.

With these daily disruptions, I realized that there were a lot of confusion on the ground and internal unrest caused by his conflicting instructions which I shall elaborate herein:

1. Adhoc Meetings

Ho Seow Wan had time and again requested for meetings, which I trust the staff would concur, are unnecessary, as the projects that were originally under his charge had achieved TOP status. The projects are under Defects Liability period.

Several meetings he had held caused confusion to our settlement of final accounts, defects and outstanding works with the subcontractors and suppliers. As per his usual working style, he had often not studied the details of the matters or properly followed up by communicating with the respective person in charge. This had caused the Company to waste our resources when it could have been properly coordinated as per our usual practice.

Further, his fickle change of mind to hold and cancel the meetings at his whims and fancy is wasting our valuable time when it could be better spent on tenders so that all of us can have work continuity.

2. Unethical Behavior

We had debarred a supplier M/s Golden Nugget under the advice of Ho Seow Wan since 2009 but wished to bring to attention that the Managing Director of the said supplier, Thang Cheong Nam

was appointed as a proxy by him to attend the Company's Annual General Meeting on 18 August 2012.

Being a director/shareholder of the Company, he had allowed a debarred Company representative whom the board of directors were told to be unreliable and immediate termination was necessitated. It is unethical to call upon such a person and give him an avenue to view our accounts, probe the Company and etc. Worst, he had even copied an email where he had alleged by the header subject "Total Sub to M/s Woodwater" to this unreliable person, Thang. This sort of untrue accusation and intent to cause disruption by causing internal unrest is clear.

Thereafter, I had warned such actions to be discontinued and he had carried on by forwarding our company emails to his personal email account. His blatant refusal to use our company's email account and continuing usage of his personal email account, I can only assume that the leakage of our company's confidential documents are being carried on by this means.

3. Non working attitude

As all staff are aware since his return, he had increased his frequency of writing emails to question all department's works. I trust that all staff are also aware of his poor habit of working short hours (ie. 10am to 1pm) is evident and can be easily vouched by all of you.

With his lack of knowledge and experience and due to his poor management caused the poor performance of the 2 sites namely Khaya and Angsana project and Kong Hwa Project.

After all these years, he does not even know our Company's Secretary and had mistaken her as a male. Yet in order to prove his case, he had stepped up by writing numerous emails to create disruption to our daily work operations.

4. Disruption

His insistence to meddle and interfere with areas of work that were never handled by him is clear and the following areas are some examples, for instance

- a) Final Accounts Settlements
- b) Defects Settlement
- c) Safety Issue
- d) Tendering

There were numerous conflicting instructions that he had ordered the staff which were clearly under the other Managers and Directors area of expertise and charge. His interference will only cause difficulty for the Company to carry out our daily activities.

5. Accusation Remarks and Harassment

In order to create some form of misunderstanding, Ho Seow Wan had unethically put words into the staff conversations with him by recording his version of events with them through written correspondence.

This had created unrest internally and some of your colleagues had written in and clarify the

actual situation and circumstances. In order to alleviate this problem, *I strictly advise that all staffs are to direct his queries to me so as not to create such disruptive accusations and undue stress to the staff.*

Conclusion

To conclude, the interim injunction was ordered by the Judge and specifically mentioned that his work attitude is to be for the best interest of the Company. Instead, his numerous actions are clearly of ill intent and I have to take steps to protect the interest of the Company and the well being of the staff.

Currently, the Company has only one existing project and with no new projects in hand since the TOP achieved for Kong Hwa and Khaya & Angsana project in June 2012. Most of our staff had returned to the head office and the Company has to procure new projects on an urgent basis to ensure work continuity.

With such internal unrest caused by Ho Seow Wan since his return, I have no choice but to take such drastic steps to fully clarify the work scope and instruct for the benefit and well being of the Company as follow:

a) Consultation with Directors

All along, the success of the company was always the close cooperation of the management and the staff would always consult all works with Ho Seow Ban and Ho Seow Pheng. They would in turn discuss with me to settle any difficult problems. I trust that all staff are well aware of the case brought upon by Ho Seow Wan and we should keep it as per our usual practice. It is important that this shall not affect the Company operations. *As per his usual role of the company, to comply with the court ordered upon the company, he is just a figure head for marketing purpose.*

We had worked hard to finish these 2 projects (Kong Hwa and Khaya & Angsana) and this had been the best way for the company to operate. To recall, I believe the staff still remember the projects such as Singapore Sports School whereby I had personally went down to arrange all the works in order to achieve TOP. So his sudden interest and conflicting instructions for scope of works not under his charge should be disregarded, as I will not condone his disruptive actions.

b) Final Account

I noted that he had called the staff (ie. Quantity Surveyors) to his room so as to demand and instruct for the settlement of the Final account settlement of the subcontractor and suppliers to be handled by him. *As per company practice, all accounts are to be resolved by Ho Seow Ban who shall report to me and not otherwise. Our schedule of works cannot be disrupted and the staff are not to entertain his frivolous demands nor need to report this to him with immediate effect.*

c) Defects

Ho Seow Wan had never cared nor been interested in defects nor been involved in the settlement of it. He had set up meetings with no valuable input or effective settlement resolution as he has insufficient technical knowledge of the matter.

The above had been tasked to Wong Cheng Huat who shall consult Ho Seow Pheng on the technical issues and Ho Seow Ban on the contractual issues. Therefore, please disregard any request from Ho Seow Wan with immediate effect.

d) Tendering

All the while, Ho Seow Wan was never involved in this. Due to the sensitivity of the tender pricing, no written reports is to be given to him as any leakage will be disadvantage to the company's chances of securing new projects.

I look forward to the cooperation of the staff and this clarification is for the best interest of our company interest so that we can move forward as a team

Regards

Sgd

Ho Poey Wee

Managing Director

[emphasis added]

The 19 October 2012 Email

34 Similar to the genesis of the 6 August 2012 Email, the 19 October 2012 Email arose from a request via email on 18 October 2012 from the plaintiff to Cindy Koh, a SQS at Guan Ho, for an update on the "latest tender participating/anticipating list". The plaintiff added in the email that the latest tender list received by him was dated 10 October 2012.

35 The 1st defendant replied to this email via the 19 October Email in the following manner:

Dear Cindy,

I refer to the email from Ho Seow Wan dated 18 October 2012 with regards to the update of our tenders.

As per our latest board of director's meeting held on 12 October 2012. Please take note of the following:

1. We have been trying extremely hard to obtain a project for the continuity of work but no successful award till date.
2. Prior to the closing of the tenders, I will always want to know our competitors and this had been taught to you so that we will know how to gauge the market situation.
3. I further notice and informed that there was an email being sent containing our Company matter to unrelated party and this was brought up in the said board of director's meeting. This is considered a security breach within the Company.
4. In view of the above, all tender information is to be kept between yourself, the Contract Director, D&T Director and me only.

For your necessary action.

Regards,

Ho Poey Wee

Managing Director

Guan Ho Construction Co Pte Ltd

36 I note, once again, that the 19 October 2012 Email does not express that the plaintiff was never entitled to the tender information to begin with; it merely expresses the reasons why the plaintiff was henceforth not to be entitled to the said information.

The 9 November 2012 Notice

37 Another relevant act in relation to the breach of the 1 August 2012 Order arising from the Internal Communications is the 9 November 2012 Notice sent by the 1st defendant to all the staff of Guan Ho in response to a notice sent by the plaintiff to the staff of Guan Ho to notify them of his reinstatement on 18 October 2012.

38 I reproduce only the following portions of the 9 November 2012 Notice that have been highlighted by the plaintiff in his closing submissions, as the 9 November 2012 Notice repeats many points that were made in the 6 October 2012 Memorandum (reproduced in full above):

...

5. Since his return, his numerous actions has caused several disruptions to your work and *I will take stern action so as to curb his actions in making unilateral decisions for the Company* without due consideration of the Company's benefit and basic respect for the fellow directors and managers including myself who had been the Managing Director since the Company's inception.

...

8. The latest email notice dated 18 October 2012 sent by Ho Seow Wan only states half the truth and he had taken steps to cause internal unrest. That email was also extended to external parties, which I had addressed.

I refer to his email notice sent on 18 October 2012 to all staff and clarify the contents as follows:

a. Paragraphs 1 and 2

These had been addressed by our company's memo sent on 21 September 2012 and I do not understand why he chose to send this out when it had been clearly stated in the said memo. I can only surmise that his intention can only be to use the court order to cause undue stress and confusion to you all, as he knows that the said projects had been completed since June 2012. *He even acknowledged that the projects had achieved TOP in the recent Board of Director's meeting and is now under post-contract phase (Defects Liability period) which is under the purview of Ho Seow Ban, our Contracts Director.*

b. Paragraph 3

Since the projects mentioned had been completed and are within the defects liability period, his role as the Project Director of the said projects is completed.

All the while, the defects settlement are handled by Mr Ho Seow Ban and this have been decided by the Board of Directors to be delegated to Mr Wong Cheng Huat.

As per our usual practice, the final account settlement and minor outstanding works are taken care by Mr Ho Seow Ban for the contractual issues and Mr Ho Seow Pheng for the technical aspects. I trust that most of you who have been with the Company for over 20 years are familiar and certain of our procedures. Please do not be confused by his notice and conflicting instructions.

c. Paragraph 4

The court order issued was to allow him to remain as a Director and his area of work is to resume to that before 16 February 2012.

Since the issuance of my memo dated 21 September 2012, acting on behalf of the Company to inform the court order, I then noted that it had caused great confusion to all staff. *I shall clarify as such that Ho Seow Ban and I are not allowed, in the interim, to remove Ho Seow Wan's directorship and his remuneration until the court case is resolved.*

Despite his poor working attitude, we are unable to do anything under the present condition till the outcome of the trial. So I can only advise that whatever duties that were then delegated to him before 16 February 2012 is to remain unaffected. Thus, as stated in your letter to me, you all are aware that he never handled the departments such as Contracts, Procurement, Defects, Quality, Accounts and Administration. The important thing is that Ho Seow Wan must have the same area of responsibilities as he did before 16 February 2012, nothing more, nothing less. His role as the Project Director was appointed on a case by case basis.

It is wrong for Ho Seow Wan to state that he is the Project Director of the Company when all of us know that he was only assigned some of the projects throughout the Company's history. To elaborate further, even when he was the appointed project Director of certain projects, *he was simply a figurehead and all decisions, problems resolution and etc were carried out by the assigned Project Manager, Ho Seow Pheng, Ho Seow Ban and me.* So if you did not consult him on matters before, this is to be status quo. In view of the above, if he would like more information, he can always approach me or clarify in the Board of Director's meeting so as to streamline and resolve properly. You need not be "put in a spot" to answer his questions when these questions should be answered by the management.

In view of Ho Seow Wan's ill intentions towards the Company, I hereby instruct that nobody is required to accede to his requests for Company matters with immediate effect, not even verbally. I will conduct regular Board of Directors meeting to address his need for information regarding the Company. Therefore, all staff are to direct his requests if any by asking him to write to me or yourself and I shall inform/ reply him accordingly.

Hope that the above clarification is clear and will raise the staff morale. I sincerely apologize for the stress that I had indirectly caused because of my personal tolerance towards this ungrateful family member over the years. I seek your understanding that enough is enough and my actions are always for the benefit of the Company and staff.

Regards,

Ho Poey Wee

Managing Director

Guan Ho Construction Co Pte Ltd

[emphasis added]

39 I note that the 9 November 2012 Notice is at odds with the 6 August 2012 Email, from which it is evident that the plaintiff was, at the very least, entitled to verbal updates from the staff of Guan Ho.

A summary of the parties' arguments

40 As seen above, the Internal Communications deal primarily with the plaintiff's powers as an executive director and his access to emails and documents *qua* director and executive director of Guan Ho.

41 The plaintiff's case in relation to the 6 August 2012 Email and the 19 October 2012 Email is that they curtailed his right to written statements of the final accounts and an update on tender information respectively and therefore were in breach of both paras 3.3 and 4.1 of the 1 August 2012 Order. The plaintiff attempts to highlight certain instances in the past where written statements of final accounts were made available to him. To that end, he adduced an email from him to the staff of Guan Ho where he states that he had vetted through the "tables given to [him]". [\[note: 8\]](#) The plaintiff invites the court to infer that this must mean that he had access to written statements of the final accounts prior to 16 February 2012.

42 The plaintiff argues that many aspects of the 6 October 2012 Memorandum breached para 4.1 of the 1 August 2012 Order as it (i) did not let Guan Ho's staff "know the full import of the 1 August 2012 Order"; (ii) excluded the plaintiff from Guan Ho's operations; (iii) instructed Guan Ho's staff to disregard the plaintiff's instructions in relation to "final accounts" and "defects"; and (iv) denied the plaintiff from receiving information on tenders which he was formerly privy to. The 9 November 2012 Notice took this one step further by asking the staff of Guan Ho to not accede even verbally to any request by the plaintiff in relation to matters of Guan Ho.

43 The defendants on the other hand sought to make good the allegation in the 6 October 2012 Memorandum and 9 November 2012 Notice that "[the plaintiff was] just a figure head for marketing purpose[s]". To that end, the defendants sought to show the low level of executive involvement of the plaintiff in Guan Ho through the evidence of the minor witnesses. Particular reference was made to the affidavit filed by Kristie Ong in these proceedings. Kristy Ong stated in her affidavit that the plaintiff did not handle final accounts and she consulted the 2nd defendant on any difficulties she faced in her work in relation to the final accounts. Kristie Ong's affidavit also highlighted that she would answer the queries of the plaintiff in relation to "subcontractor progress claims" in connection with the final accounts when asked. The defendants thus argued that the plaintiff was not involved in the area of final accounts. In the same vein, the defendants rely on the evidence of Mr Ho Seow Hoo, a facilities manager at Guan Ho, to show that the plaintiff was not involved in "defects rectification". Cindy Koh also highlighted in her affidavit that "[d]espite having worked for Guan Ho for 32 years, [she] still [does] not know what [the plaintiff did] in Guan Ho."

44 In sum, the defendants argue that since the plaintiff was in essence a mere figurehead and had no real powers, the acts and omissions complained of by the plaintiff were not in breach of the 1 August 2012 Order. In their response submissions, the defendants point out, *inter alia*, that they were justified in curtailing access to the tender information pursuant to the 9 November 2012 Email as the plaintiff was not acting in Guan Ho's interests. The defendants also seem to suggest that there was no reason to give any information on the final accounts to the plaintiff as he did not actively participate in any meetings.

My decision

45 I start by observing that as long as the 1 August 2012 Order stands, the plaintiff is entitled to have them respected and obeyed by the defendants. The only course of action available to the defendants if they are concerned with the conduct of the plaintiff and any disruption to operations or damage to economic interests that may be caused to Guan Ho is to seek to have the 1 August 2012 Order discharged, set aside or stayed. Therefore, it is no answer to the plaintiff's allegations to say that the 1 August 2012 Order had to be breached so as to uphold Guan Ho's commercial interests.

46 On the other hand, a plaintiff has to be cognisant of his burden to prove beyond reasonable doubt that an act done by the defendant was in deliberate breach or defiance of an order of court. This requires cogent evidence to be presented.

47 In the present case, I am of the view that the plaintiff can rely on the 6 August 2012 Email to show that there has been a breach of the 1 August 2012 Order. Having analysed an email from the plaintiff to Cindy Koh and one "Mary" on 25 March 2011, it is clear that the plaintiff had vetted through the tables relating to the final accounts and was highlighting certain points. [\[note: 9\]](#) The details set out by the plaintiff in relation to certain specific computations makes it clear that he would and must have had access to written statements of the final accounts. I am of the view that the plaintiff has discharged his burden in proving beyond a reasonable doubt that he had such access before the 16 February 2012 Resolution. The defendants have also not adduced any evidence to *rebut* the plaintiff's evidence that he had access to written statements of the final accounts. The defendants have therefore, pursuant to the 6 August 2012 Email, deliberately curtailed the rights and powers of the plaintiff and his access to documents in defiance of paras 3.3 and 4.1 of the 1 August 2012 Order.

48 The plaintiff has also been able to satisfy me beyond reasonable doubt that the defendants have breached both paras 3.3 and 4.1 of the 1 August 2012 Order by issuing the 6 October 2012 Memorandum and 9 November 2012 Notice and sending the 19 October 2012 Email.

49 As noted at [43] above, the defendants devoted a large part of their submissions to establish that the plaintiff was a mere figurehead. I find the defendants submissions to be misdirected, as the question of breach of the 1 August 2012 Order turns not on whether the plaintiff was a mere figurehead but on whether he had previously been exercising any powers as an executive director without hindrance. Taking the defendants case at its highest and assuming the plaintiff was indeed a figurehead, there remains a question of whether the staff of Guan Ho could be told to disregard any request of the plaintiff and not accede to it (even verbally) after the 1 August 2012 Order when such request previously made by the plaintiff in his capacity as executive director was attended to. Even on Kristie Ong's evidence (see [43] above), it is clear that the staff of Guan Ho would ordinarily answer a question or provide the information required by the plaintiff. [\[note: 10\]](#) That being the case, the 6 October 2012 Memorandum and 9 November 2012 Notice are clearly in deliberate breach of para 4.1 of the 1 August 2012 Order as they instruct the employees of Guan Ho to (i) not report to the

plaintiff and (ii) disregard any requests from him in relation to “final accounts” and “defects” in the case of the 6 October 2012 Memorandum and not accede (even verbally) to the plaintiff’s requests in relation to matters concerning Guan Ho in the case of the 9 November 2012 Notice.

50 An important point to note here is that the employees of Guan Ho would ordinarily have had the choice of deciding whether to follow the instructions of the plaintiff previously; however, pursuant to the 9 November 2012 Notice, they were directed to disregard any request from the plaintiff. Indeed, I note that Mr Wong Cheng Huat (“Mr Wong”), an employee of Guan Ho in charge of quality assurance, filed an affidavit in support of the defendants. In his affidavit, he stated that in his experience in dealing with the plaintiff he “would consider whether the instructions [given by the plaintiff] were practical.” [\[note: 11\]](#) At the very least, what is clear from Mr Wong’s evidence is that the plaintiff had the right to instruct the staff of Guan Ho and, in turn, have his instructions considered. The 9 November 2012 Notice unashamedly curtails this right by instructing the staff to completely disregard any request of the plaintiff and not accede to it (even verbally). The “sting” of the 9 November 2012 Notice lies in the fact that it mandates that the staff of Guan Ho should totally disregard any request from the plaintiff instead of leaving it to their discretion to decide whether the instructions of the plaintiff should be followed. By the same token, the “sting” of the 6 October 2012 Memorandum lies in the fact that it directs the staff of Guan Ho to simply disregard any requests from the plaintiff in relation to “final accounts” and “defects rectification”. Basically, the defendants have instructed the staff to ignore the plaintiff’s requests.

51 Mr Tan Yew Teng (“Mr Tan”), an architectural manager of Guan Ho, gave evidence that the plaintiff “hardly gave [the staff of Guan Ho] instructions”. [\[note: 12\]](#) To my mind, this is also a clear indication that the plaintiff was allowed to and had the right to instruct and had previously instructed the staff of Guan Ho before 16 February 2012. The fact that he chose to exercise this right rarely does not detract from its existence. This right was rendered nugatory by the 6 October 2012 Memorandum and 9 November 2012 Notice.

52 Lastly, I refer to the 19 October 2012 Email. It is clear that until this email was sent, the plaintiff had access to tender information; the plaintiff pointed out in his email dated 18 October 2012 that the last time he received the said information was 10 October 2012. The 19 October 2012 Email therefore curtailed the plaintiff’s access to documents he previously enjoyed as an executive director and consequently curtailed his power and rights to such information. It was therefore another clear instance where the defendants had deliberately flouted both paras 3.3 and 4.1 of the 1 August 2012 Order.

53 I note that the defendants also highlighted three other communications sent by the 1st defendant to all the staff of Guan Ho (“the Other Internal Communications”) which may be classed together with the Internal Communications *viz*, an email sent on 2 August 2012 to request staff to direct the plaintiff’s instructions to the 1st defendant “[i]n order to avoid confusion and conflicting instructions if any”; an email sent on 6 August 2012 to all staff which implores staff to “not be confused by any other conflicting instructions” and “proceed to carry out the usual company operations”; and an email memorandum sent on 22 August 2012 to all staff to ask them to direct matters relating to subcontractor final accounts, project final accounts and defects to the 2nd defendant and one Mr Ho Seow Pheng. These communications, however, do not expressly instruct the staff to not accede to the requests of the plaintiff or seek to curtail his access to documents, they merely purport to set out the manner in which workflow should be managed in Guan Ho. The Other Internal Communications therefore, cannot be said – beyond reasonable doubt – to be in breach of the 1 August 2012 Order.

External Communications

54 In this section, I would deal with the following acts that are said to be in breach of the 1 August 2012 Order:

- (a) The issuance of the 22 August 2012 Notice;
- (b) The sending of the Emails to External Parties; and
- (c) The sending of the Woodwater Email

(together, "the sending of the External Communications").

55 According to the plaintiff, the sending of the External Communications would amount to a breach of para 4.1 of the 1 August 2012 Order. For the purposes of the ensuing discussion, the Emails to External Parties and the Woodwater Email will be collectively referred to as "the Response External Communications". I will also first discuss the Response External Communications as the plaintiff has raised similar arguments in respect of these communications.

56 It is to be noted that the Response External Communications were sent in response to a notice issued by the plaintiff on 19 October 2012 to external parties who dealt with Guan Ho ("the plaintiff's Notice"). The plaintiff's Notice reads as follows:

Subject: Notice to External Parties

To Whom It May Concern

We are pleased to inform you that Mr. Ho Seow Wan (Jeffrey Ho) remains and is reinstated to his position as DIRECTOR, EXECUTIVE DIRECTOR and PROJECT DIRECTOR of the Company.

Any of our Company's previous notices to you for matters to be referred to our Managing Director, Mr. Ho Poey Wee, or Director, Mr. Ho Seow Ban or any of our Company staff instead of Mr. Ho Seow Wan (Jeffrey Ho) is superseded with immediate effect.

Unless instructed by Mr. Ho Seow Wan (Jeffrey Ho) otherwise, all correspondences to Mr. Ho Seow Wan (Jeffrey Ho) through email are to be sent to [e-mail address redacted]. The mobile phone number of Mr. Ho Seow Wan (Jeffrey Ho) remains unchanged as [phone number redacted].

Thank you and we look forward to your kind cooperation.

We apologize for any inconvenience that may be caused.

Regards

Ho Seow Wan

Executive Director

Guan Ho Construction Co. Pte Ltd

57 In response to the plaintiff's Notice, the 1st defendant sent the Emails to External Parties on 23 October 2012. The said emails were sent to the clients, suppliers and subcontractors of Guan Ho ("the External Parties"). The Woodwater Email was sent on 9 November 2012 to Woodwater

Integrated Pte Ltd, one of Guan Ho's subcontractors. The contents of both the Emails to External Parties and the Woodwater Email are materially similar although they were sent on different dates to different parties. I reproduce one of the Emails to External Parties:

Subject: Clarification of External Notice dated 19/10/12

Dear all,

We refer to the email notice dated 19 October 2012 sent by our director Mr Ho Seow Wan and our earlier letter reference GHC/HQ/LTR-02/12 dated 22 August 2012.

Mr Ho Seow Wan (Jeffrey Ho), a minority shareholder of Guan Ho, had started a court case against Mr. Ho Seow Ban and me as majority shareholders, on an alleged oppression of the minority that will be determined in a court hearing in due course.

In February 2012, Mr. Ho Seow Ban and I had sought to remove Mr. Jeffrey Ho's executive powers and his directorship in Guan Ho. The action had to be taken to ensure the timely completion of the two ongoing projects then, namely Khaya & Angsana University Town Project and Kong Hwa Project.

The Court had subsequently, on a temporary basis until the full court hearing, ordered that the running of Guan Ho reverted to the status prior to the removal of Mr. Jeffrey Ho's executive powers.

I trust that most of you who had been our regular subcontractors, suppliers and business associates should be aware that Guan Ho is accredited by ISO since 1996. As such, I had established procedures and policies for Guan Ho to follow. Mr Jeffrey Ho as of now is a director with no portfolio and will, consistent with previous practice, only be appointed as a Project Director for specific projects on a case by case basis in accordance with the decision of the Board. It is best that you write to check with me if you are in any doubt.

As you all are aware, the final accounts for all projects are handled by the Contracts Director, Ho Seow Ban, who is now assisted by the former General Manager, Mr Ho Seow Pheng, who has been promoted to be a director of Guan Ho and is currently heading our Design & Technology (D&T) Department.

Accordingly, we hereby clarify the areas of responsibilities in Guan Ho as follows:

1. Award of Subcontracts/Supplier

Mr Ho Poey Wee, the Managing Director, upon the recommendation of the Contracts Director, Mr Ho Seow Ban in accordance with previous practice.

2. Project Work

All subcontractors shall deal with the delegated site team. As per our usual practice, our site personnel will report and consult with our D&T Director, Mr Ho Seow Pheng, for technical issues and Contract Director, Mr Ho Seow Ban, for contractual issues with my final decision. I trust all of our regular subcontractors and suppliers are aware of this. This practice should continue to avoid any confusion.

3. Defects Liability Period

The defects settlement is under the purview of the Contracts Director, Mr Ho Seow Ban and will be delegated to Mr Wong Cheng Huat in accordance to past practices.

4. Final account with Subcontractor/Consultant

In accordance to past practices, Mr. Jeffrey Ho was never involved in this area of work as this is undertaken by the Contracts Department under the supervision of the Contracts Director, Mr Ho Seow Ban, subject to my final approval. This is also to be maintained.

I trust that the above is clear and please be reminded that all directors have to report their actions to me for approval so that I can manage the operations. These are all within the ambit of Guan Ho's procedure manual.

Mr Jeffrey Ho has chosen to disregard several of my express instructions. It is, therefore important and necessary to clarify to all that many of his actions are not endorsed by me as the Managing Director or by the management of Guan Ho.

Finally, Mr Jeffrey Ho had insisted on using his personal email instead of Guan Ho issued email. While Guan Ho will not prevent personal correspondences that you may have with him, Guan Ho will not uphold any written agreement or otherwise that may be entered following communication with Mr. Jeffrey Ho if such communication is not authorized by Guan Ho. The only way to communicate with Mr. Jeffrey Ho on Guan Ho's matters is through his office email address [e-mail address redacted] and the relevant project's allocated email in accordance with Guan Ho's procedure.

Regards

Ho Poey Wee

Managing Director

Guan Ho Construction Co Pte Ltd

58 The plaintiff argues that the Response External Communications further curtailed and diminished his powers by (i) referring to him as a "director with no portfolio"; (ii) instructing the External Parties to deal with various persons other than the plaintiff for award of subcontractor/supplier, project work, defects rectification and final accounts; and (iii) stating that many of his actions are not endorsed by the 1st defendant or management of Guan Ho.

59 The 1st defendant stated in his affidavit that the Emails to External Parties were sent as the plaintiff's Notice did not make clear what exactly his reinstatement as an executive and project director entailed. According to the 1st defendant, the Emails to External Parties merely set out "the position before 16 February 2012". I also note that two subcontractors of Guan Ho viz, Mr Leo Song Liang ("Mr Leo") of TCB Sports Pte Ltd and Ms Low Choon Lian ("Ms Low") of Getz Bros. & Co (Singapore) Pte Ltd and Getz Contracts (s) Pte Ltd, filed affidavits in support of the 1st defendant's contentions. Ms Low's evidence was that the Emails to External Parties "accord[ed] with [her] understanding of how Guan Ho operated for the past 30 years". [\[note: 13\]](#) Mr Leo's evidence was similar to Ms Low's; he confirmed that the Emails to External Parties conformed to his understanding of how Guan Ho operated for the past 20 years. [\[note: 14\]](#) I accept Ms Oei's submission that the

plaintiff has not tested the evidence of Mr Leo and Ms Low in cross-examination. I also find their evidence to be internally consistent and see no reason not to accord it weight.

60 I also reject the plaintiff's argument that Mr Leo and Ms Low, not being the staff of Guan Ho, would not be privy to the internal arrangements of Guan Ho. Having dealt with Guan Ho for a substantial period of time, they are in a position to comment on how Guan Ho organised its operations and dealings vis-à-vis the External Parties, as set out in the Emails to External Parties. It is also not in the plaintiff's mouth to question the independence of Mr Leo and Ms Low as he chose, through his counsel, not to cross-examine both these witnesses on the contents of their affidavits.

61 I find that the plaintiff has not proven beyond reasonable doubt that the External Communications were in breach of the 1 August 2012 Order. Let me elaborate.

62 First, the reference to the plaintiff as a "director with no portfolio" is not a curtailment of the plaintiff's powers as the 1st defendant has clarified in the Response External Communications that the plaintiff may still be appointed as "a Project Director for specific projects on a case by case basis". The use of the term "no portfolio" also does not *ipso facto* imply that the plaintiff had no executive powers in Guan Ho. Second, as noted earlier, there is no curtailment of the plaintiff's power arising from the 1st defendant's clarification of the allocation of responsibilities in Guan Ho, as the said clarification merely sets out the way Guan Ho functioned vis-à-vis the External Parties. Thirdly, I do not find the statement by the 1st defendant that "many of [the plaintiff's] actions [were] not endorsed by [him or Guan Ho]" to be in breach of the 1 August 2012 Order. On one reading, it appears that the 1st defendant is clarifying that certain acts performed by the plaintiff were not authorised by Guan Ho and advising the External Parties to seek clarification before acting on the plaintiff's instructions/requests. The plaintiff proffers a more cynical reading of this statement *viz*, the statement suggests that "the plaintiff's actions are not endorsed by the management generally". I am of the view that the plain words used in the Response External Communications do not go so far as to curtail the powers of the plaintiff and support his reading. I interpret the said words as suggesting that the plaintiff's powers as an executive director are not expanded by the 1 August 2012 Order, and clarifying that the arrangements that were in place all the while in Guan Ho *ie*, before the 16 February 2012 Resolution, should continue as usual. The Response External Communications are thus not in breach of para 4.1 of the 1 August 2012 Order.

63 I must point out that the key difference between certain Internal Communications among those that I have found to be in breach para 4.1 of the 1 August 2012 Order *viz*, the 6 October 2012 Memorandum and 9 November 2012 Notice, and the Response External Communications lies in the fact that unlike the External Communications, the former goes beyond clarifying the roles of various individuals in Guan Ho and expressly instructs the staff not to accede to the requests of the plaintiff. This, as I have found above, amounts to a curtailment of the plaintiff's powers as the staff of Guan Ho have previously, in the normal course of things, either acceded to the requests of the plaintiff or, at the very least, have had the option of deciding whether to accede to the requests of the plaintiff. In that regard, I note that the Response External Communications leaves open to the clients, suppliers and subcontractors of Guan Ho the option of dealing with the plaintiff with the benefit of understanding the way Guan Ho operates vis-à-vis the External Parties.

64 I deal lastly with the 22 August 2012 Notice that does not make any significant point. The said notice provides as follows: [\[note: 15\]](#)

Dear Whom-in-charge,

RE: CLARIFICATION OF COMPANY USUAL OPERATION

Further to our notice issued previously, Mr Ho Seow Wan shall remain as the executive director of the company and we thank you all for your contribution to the projects namely Khaya and Angsana University Town Project and Kong Hwa Project.

Since then, the above mentioned projects have successfully achieved TOP status and entered into the Defects Liability Period. In order to ensure the proper settlement of your final accounts and as per our usual company practice, kindly forward your final accounts settlement to the Director, Mr Ho Seow Ban or Mr Ho Seow Pheng who will report to me for final approval.

We look forward to your cooperation.

Thank you.

Yours faithfully,

Sgd

Ho Poey Wee

Managing Director

Guan Ho Construction Co Pte Ltd

65 The plaintiff takes objection at the fact that the said notice excludes the plaintiff from final account matters. In my view, like the Response External Communications, the 22 August Notice merely sets out the way Guan Ho operates in relation to External Parties. I am therefore not prepared to find that it is in breach of the 1 August 2012 Order for reasons already discussed in the context of the Response External Communications at [62]-[63] above. The plaintiff also tries to argue that the defendants have breached the 1 August 2012 Order by stating that “[the plaintiff] shall remain as executive director” as opposed to stating that the plaintiff had been “reinstated” as an executive director in the 22 August 2012 Notice. I find this argument to be absurd to say the least. The 1 August 2012 Order does not prescribe (save for the requirement that resolutions be passed by the defendants) that the defendants have to notify External Parties in any specific manner that the plaintiff is an executive director of Guan Ho. In my view, the powers of the plaintiff are in no way curtailed from the defendants’ use of the word “remain” as opposed to “reinstated” in the 22 August 2012 Notice.

The Approval of the New Org Chart

66 The defendants convened a meeting of the board of directors’ on 4 August 2012 and appointed two new directors and approved a new organisational chart of Guan Ho (*ie*, the New Org Chart). The plaintiff takes objection to the New Org Chart and submits that it curtailed his powers as an executive director and project director. In order to analyse whether the plaintiff has established such a breach it would be necessary to analyse the differences between the organisational chart of Guan Ho that was used before the 16 February 2012 Resolution (“the Old Org Chart”) and the New Org Chart.

67 It was not disputed that prior to 16 February 2012, the Old Org Chart was part of Guan Ho’s brochure, which was submitted together with Guan Ho’s tenders for new projects. The differences between the Old Org Chart and New Org Chart are summarised in the table below.

--

S/No.	Old Org Chart [note: 16]	New Org Chart [note: 17]
1	The designation of "Executive Director" is expressly stated under the heading "Board of Directors".	The reference to the designation of "Executive Director" is removed from the heading "Board of Directors".
2	The role of "Project Director" is expressly provided.	The role of "Project Director" is not mentioned but a department called "Projects" has been created and is subordinated under the management of one Mr Ho Seow Pheng, who is now "Head Design and Technology".
3	The chart only listed designations and not names of individuals who held those designations.	The chart lists the names of individuals who headed and were part of various departments.

68 The plaintiff submits that the New Org Chart is in breach of the 1 August 2012 Order as it has the effect of removing the plaintiff as an executive director and "has the effect of curtailing and/or diminishing the [p]laintiff's powers." [\[note: 18\]](#) The plaintiff does not elaborate on this point further.

69 The defendants' main response to the plaintiff's argument is that the plaintiff had already approved the New Org Chart on 29 July 2011. In that regard, the defendants once again referred to Mr Wong's affidavit where Mr Wong states that he had shown an early version of the New Org Chart to the plaintiff ("the July 2011 Version of New Org Chart") when he met him on 29 July 2011 with another staff member of Guan Ho. [\[note: 19\]](#) To that end, Mr Wong adduced a copy of the July 2011 Version of New Org Chart which the plaintiff acknowledged by his signature on 29 July 2011. The defendants point out that the plaintiff "conceded" that he was consulted by Mr Wong in relation to the July 2011 Version of New Org Chart. [\[note: 20\]](#) The defendants also state that the plaintiff approved the July 2011 Version of New Org Chart without asking who would be in charge of the various departments as "[h]e was content [for it] to be implemented as it was presented to him." [\[note: 21\]](#)

70 The critical shortcoming in the defendants' arguments, which are premised on the signed version of the July 2011 Version of New Org Chart, is that the said version did not contain the names of the persons who were given the appointments, while the New Org Chart that was eventually approved at the 4 August 2012 meeting, which excluded any mention of the plaintiff, contained the names of individuals in charge of various departments.

71 As regards the point on the subordination of the department called "Projects", I note that the plaintiff must have been aware that a department called "Projects" would be subordinated under the "Design and Technical Department" [\[note: 22\]](#) when he signed the July 2011 Version of New Org Chart. However, he would not have been aware that his name was not to be included anywhere in the New Org Chart. I find that it is most unlikely that the plaintiff would have approved an endeavour to completely exclude him from the operations of Guan Ho as a project director.

72 Indeed, the Old Org Chart did not make reference to any specific names and the defendants would not have been in breach of the 1 August 2012 Order solely from subordinating the "Projects" department in the New Org Chart if they have continued to exclude the names of all parties in the New Org Chart. However, the positive act of excluding the plaintiff's name from the New Org Chart in

its current form in the field of "Projects" when he was previously a project director would amount to a curtailment of the plaintiff's "powers over such administration and operations matters of Guan Ho" as set out in para 4.1 of the 1 August 2012 Order. The exclusion of the plaintiff's name from the New Org Chart is also at odds with the defendants' position that the plaintiff was to be appointed as a "Project Director for specific projects" on an ad hoc basis as expressed in the Response External Communications. If that was indeed the case, then one would expect that the potential for ad hoc appointment of the plaintiff as "Project Director for specific projects" should also be reflected in the New Org Chart.

73 Another clear breach arising from the approval of the New Org Chart is the removal of the designation "Executive Director" which was present in the Old Org Chart. In these proceedings, the defendants have argued in a belated manner that the plaintiff was never an executive director of Guan Ho. As noted at [22] above, this argument is unmeritorious. Since the plaintiff was an executive director before the 16 February 2012 Resolution and the Old Org Chart expressly recognises the designation of "Executive Director", I hold that the exclusion of the designation "Executive Director" in the New Org Chart is in breach of para 4.1 of the 1 August 2012 Order as it would have the effect of diminishing the plaintiff's right of having that designation included in the organisational chart of Guan Ho. The defendants most clearly intended to diminish the powers of the plaintiff as an executive director by approving the New Org Chart.

The reduction of the plaintiff's privileges as an executive director

74 The plaintiff highlights certain curtailments to the privileges he had previously enjoyed as an executive director after the 1 August 2012 Order. The plaintiff argues that these curtailments breach para 4.1 of the 1 August 2012 Order. The plaintiff however points out that these breaches are "relatively minor in terms of its effect in the context of the other selected breaches". The alleged curtailment of the plaintiff's privileges are set out in the table below:

S/No.	Before the 16 February 2012 Resolution [note: 23]	After the 1 August 2012 Order [note: 24]
1	The plaintiff had a corporate credit card which had no drawing limit.	The plaintiff was issued with a new corporate credit card on 4 September 2012 with a \$3,000 monthly credit limit.
2	The plaintiff was given two petrol cards with a daily limit of \$500 each which was used by the plaintiff and his family.	The plaintiff was given a single petrol card with a single petrol card with a \$700 monthly limit.
3	The plaintiff could obtain reimbursement of all car related expenses, including maintenance, repair and road tax.	The plaintiff was not reimbursed expenses relating to the maintenance of his Porsche car amounting to \$5,007.86.

75 The defendants argue that the reduction of the corporate credit card and petrol card limits were cost-saving measures that were implemented across the board affecting not only the plaintiff but the defendants and other staff members of Guan Ho. These cost saving measures were implemented as Guan Ho had no new projects other than one at Woodlands Primary School and the industry as a whole was not doing well. The defendants adduced a memorandum dated 23 August 2012, which showed that the reduction of the petrol card limits applied across the board to the

plaintiff, certain staff of Guan Ho and themselves ("Petrol Card Memorandum"). [\[note: 25\]](#) Notably, the Petrol Card Memorandum was signed by the plaintiff. The defendants also adduced a memorandum dated 1 September 2012, which showed that the reduction of the corporate credit card limits applied across the board to the plaintiff, certain staff of Guan Ho and the 2nd defendant ("Corporate Card Memorandum"). [\[note: 26\]](#) The Corporate Card Memorandum was signed by all parties listed therein except the plaintiff. Finally, the defendants adduced an email where the 1st defendant requested for photographs of the plaintiff's claim involving the repair to his car. [\[note: 27\]](#) The plaintiff did not submit the relevant photographs but adduced the repair bills in relation to the repair works of his car.

76 I start by noting that para 4.1 of the 1 August 2012 Order must be interpreted sensibly. It was made in the context where the plaintiff was protecting himself from being ousted from his role as executive director and project director of Guan Ho pending the hearing of his minority oppression action. Therefore, para 4.1 of the 1 August 2012 Order will protect the plaintiff only from any curtailment of privileges that is targeted to prejudice him solely to the exclusion of other directors. A reduction in privileges across the board therefore cannot be said to be a breach of para 4.1 of the 1 August 2012 Order.

77 I note that the plaintiff was aware, at the very least, that the Petrol Card Memorandum was addressed to other staff of Guan Ho as well. [\[note: 28\]](#) Looking at the evidence as a whole, I find that the reductions in the corporate credit card and petrol card limits that applied across the board and equally to staff of Guan Ho were not "curtailment[s]" of the plaintiff's privileges within the meaning of para 4.1 of the 1 August 2012 Order.

78 However, the repair expenses stand on a slightly different footing. The plaintiff's evidence that Guan Ho formerly did not require photographs for reimbursement of repair expenses relating to his car for the past 40 years was not challenged during cross-examination. [\[note: 29\]](#) The 1st defendant's request for photographs before processing the plaintiff's claim for repair expenses therefore imposes an additional hurdle to the plaintiff's claim for repair expenses which hitherto did not exist. I am satisfied that the request for a photograph was aimed at thwarting the plaintiff's claim. The failure to reimburse the plaintiff's repair expenses is therefore a deliberate breach of the 1 August 2012 Order.

Conclusion

79 In conclusion, I find beyond a reasonable doubt that the defendants have deliberately disobeyed the 1 August 2012 Order by the following intentional acts:

- (a) The failure to pass a resolution to authorise the plaintiff to issue notices in relation to his reinstatement;
- (b) The instructions given in the 6 August 2012 Email;
- (c) The issuance of the 6 October 2012 Memorandum;
- (d) The instructions given by the 1st defendant in the 19 October 2012 Email;
- (e) The issuance of the 9 November 2012 Notice;
- (f) The Approval of the New Org Chart; and
- (g) The failure to reimburse the plaintiff's repair expenses for his car.

80 As a consequence of my findings at [79] above, the plaintiff has established beyond a reasonable doubt that the defendants are guilty of contempt of court.

81 I will hear the parties on an appropriate punishment for the 1st and 2nd defendants respectively for their contempt of court.

[\[note: 1\]](#) 2 DBD 691-694.

[\[note: 2\]](#) 2DBD 701-702 (Letter dated 14 August 2012 sent by the defendants' counsel to the court).

[\[note: 3\]](#) Transcript dated 20 May 2015, pp 46-47 and Transcript dated 21 May 2015, pp 17-19.

[\[note: 4\]](#) HPW's affidavit dated 4 July 2014, para 13.

[\[note: 5\]](#) Transcript dated 20 May 2015, pp 46-47.

[\[note: 6\]](#) Transcript dated 21 May 2015, pp 137-138.

[\[note: 7\]](#) 3 DBD 1100.

[\[note: 8\]](#) HSW's affidavit dated 23 October 2013, pp 638-640.

[\[note: 9\]](#) HSW's affidavit dated 21 October 2013, pp 638-640.

[\[note: 10\]](#) Kristie Ong's affidavit dated 4 July 2014, para 28.

[\[note: 11\]](#) Mr Wong's affidavit dated 4 July 2014, para 13.

[\[note: 12\]](#) Mr Tan's affidavit dated 4 July 2014, para 18.

[\[note: 13\]](#) Ms Low's affidavit dated 4 July 2014, para 10.

[\[note: 14\]](#) Mr Leo's affidavit dated 4 July 2014, para 9.

[\[note: 15\]](#) 2 DB 817.

[\[note: 16\]](#) HSW's affidavit dated 21 October 2013, p 77.

[\[note: 17\]](#) HSW's affidavit dated 21 October 2013, p 76.

[\[note: 18\]](#) Plaintiff's Closing Submissions, para 109.

[\[note: 19\]](#) Mr Wong's affidavit dated 4 July 2014, para 23.

[\[note: 20\]](#) Transcripts dated 12 May 2014, pp 116-118.

[\[note: 21\]](#) Defendant's Closing Submissions, para 249.

[\[note: 22\]](#) 2 DBD 600.

[\[note: 23\]](#) See point 7 of the Selected Breaches.

[\[note: 24\]](#) See point 7 of the Selected Breaches.

[\[note: 25\]](#) 2 DB 819-820.

[\[note: 26\]](#) 2 DB 852.

[\[note: 27\]](#) 2 DB 873-874.

[\[note: 28\]](#) Transcript dated 12 May 2015, pp 170-171.

[\[note: 29\]](#) Transcript dated 12 May 2015, pp 185-86.

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