

Scintronix Corp Ltd (formerly known as TTL Holdings Ltd) v Ho Kang Peng and another
[2013] SGHC 34

Case Number : Suit No 207 of 2009
Decision Date : 08 February 2013
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Tony Yeo, Rozalynne Asmali, Fong King Man (Drew & Napier LLC) for the plaintiff;
Alvin Tan Kheng Ann (Wong Thomas & Leong) for the defendants.
Parties : Scintronix Corp Ltd (formerly known as TTL Holdings Ltd) — Ho Kang Peng and
another

Companies – Directors – Duties

8 February 2013

Judgment reserved.

Quentin Loh J:

1 These proceedings involve claims brought by the plaintiff Scintronix Corporation Ltd, which was formerly named TTL Holdings Limited, against the first defendant Ho Kang Peng (“Ho”) for breach of fiduciary, statutory and contractual duties as a director and against the second defendant Chow Weng Fook (“Chow”) for breach of his duties of fidelity and contractual duties as an employee. As matters covered by these proceedings occurred while the plaintiff was named TTL Holdings Limited, I will refer to the plaintiff as TTL.

The parties

2 TTL is a company listed on the mainboard of the Singapore Exchange Securities Trading Limited (“SGX”) and is involved in the plastics industry.

3 Ho was formerly an Executive Director of TTL and was also appointed the Chief Executive Officer (“CEO”) on 1 November 2005 and Executive Chairman of TTL on 23 November 2007. Ho resigned from his position as the CEO and Executive Chairman on 28 March 2008, but remained a non-executive director from 29 March 2008 to 23 October 2008. Ho joined one Fu Yu Manufacturing Limited (“Fu Yu”) as the CEO and an Executive Director on 31 March 2008.

4 Chow was formerly an Executive Director and the Executive Chairman of TTL from 24 November 2005 to 23 November 2007. After Chow stepped down from his positions as Executive Director and Executive Chairman on 23 November 2007, he remained in the employment of TTL as an Advisor from 23 November 2007 to 14 April 2008. According to Chow, he subsequently became an Advisor to Fu Yu on 3 December 2007 and the Acting General Manager of Nano Technology Manufacturing Pte Ltd (“Nano Technology”) – a Singapore based subsidiary of Fu Yu – in December 2007. Chow also claimed that he was appointed Acting General Manager (Southern China) of Fu Yu sometime in March 2008.

TTL’s pleadings

5 TTL’s Statement of Claim (Amendment No 2) (“Statement of Claim”) alleged that Ho owed the following duties to TTL:

(a) duties of honesty, diligence and fidelity under an express term of Ho's employment contract with TTL;

(b) fiduciary duties as a director:

(i) to act *bona fide* and in good faith in the interests of TTL;

(ii) to act for proper purposes;

(iii) to ensure that the affairs of TTL are properly administered; and

(iv) to ensure that contracts and transactions are entered into at arm's length in fulfilment of TTL's corporate objectives; and

(c) duties under s 157(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act") to exercise reasonable care, to act honestly and use reasonable diligence in the discharge of the duties of his office as director; and

(d) express contractual duties under TTL's Employee Handbook ("Employee Handbook"), viz, a duty of fidelity and a duty not to incite other employees to commit breaches of TTL's rules and regulations.

6 TTL's pleaded case was that Ho had allegedly breached the above duties by:

(a) employing Chow and one Ng Hock Ching ("Ng") as Advisors to TTL on the same terms that they had received when they were Executive Directors, without obtaining formal approval from TTL's board of directors ("the Board");

(b) entering into a consulting agreement with a company incorporated in Taiwan, Bontech Enterprise Co Ltd ("Bontech") without the formal approval of the Board, and authorising payments to Bontech although the details of Bontech's services under the consulting agreement were unspecified; and,

(c) planning to remove and relocate employees who held key appointments at TTL to Fu Yu and/or its subsidiaries, a company which was allegedly in competition with TTL.

The Statement of Claim set out a litany of claims that were not all pursued at trial. For this reason, I have relied to some extent on TTL's written submissions to identify the relevant duties that corresponded to each particular instance of impugned conduct and have focused on these claims specifically.

7 In relation to Chow, TTL pleaded that Chow owed the following duties to TTL as an employee:

(a) implied duties of fidelity not to act in conflict of TTL's interests, not to work for a competitor and not to persuade other employees to work for a competitor;

(b) an express contractual duty under the Employee Handbook not to have a second job which interferes with the efficient performance of his duties to TTL; and,

(c) express contractual duties under the Employee Handbook, viz, a duty of fidelity and a duty not to incite other employees to commit breaches of TTL's rules and regulations.

I note at the outset that TTL did not plead that Chow was in the position of a shadow director or that he owed TTL fiduciary duties by virtue of the seniority of his employment.

8 Chow allegedly breached the above duties by:

- (a) planning to relocate employees who held key appointments at TTL to Fu Yu or its subsidiaries; and
- (b) having a second job which interfered with the efficient performance of his duty to TTL.

9 As an order for bifurcation had been made (see *Scintronix Corporation Ltd (f.k.a TTL Holdings Limited) v Ho Kang Peng and another* [2011] SGHC 28), the only issue before me in these proceedings was liability for breach.

Claims against Ho

10 TTL's case against Ho falls into three main categories:

- (a) allegations relating to Ho's employment of Chow and Ng as Advisors to TTL;
- (b) allegations relating to certain payments made pursuant to the agreement entered into with Bontech; and
- (c) allegations relating to Ho's involvement in the poaching of TTL's employees to Fu Yu.

Preliminary issue: Was Fu Yu a competitor?

11 A number of the allegations above revolve around the defendants' involvement with Fu Yu, which was purportedly a competitor of TTL. It is therefore appropriate for me to set out, as a preliminary issue, my findings on whether Fu Yu was a competitor in order to deal with the factual premise of TTL's allegations.

12 The plaintiff and the defendants had two divergent views on whether Fu Yu was a competitor. TTL argued that Fu Yu was a competitor of TTL for customers, suppliers and employees. Tan Kee Liang ("Tan"), the present CEO of TTL, claimed that TTL and Fu Yu had overlapping customers such as Bosch, Flextronics, Philips and Sonim Technologies. [\[note: 1\]](#) In his oral evidence, Tan stated that Fu Yu was much bigger than TTL and had a much wider range of equipment; he was of the opinion that Fu Yu was potentially capable of doing any business that TTL had the capacity and machinery to pursue. [\[note: 2\]](#) Tan further categorised the relevant segment of TTL's business as "consumer products" (ie, remote controls, DVD players) and "telecommunications" (ie, handphone casings). [\[note: 3\]](#) Fu Yu purportedly made handphones in its Dongguan factory, as well as television and DVD player parts [\[note: 4\]](#) and was involved in the same consumer and telecommunications segment of the market. TTL and Fu Yu also apparently competed for suppliers as there were only a few key suppliers in the plastics industry, [\[note: 5\]](#) and for staff that had the same sort of experience, qualifications and skill sets. [\[note: 6\]](#) Fu Yu was also identified as a competitor in TTL's listing documents in 2001, [\[note: 7\]](#) and Ho confirmed that Fu Yu and TTL both had factories in Dongguan, Shanghai and Johor Bahru. [\[note: 8\]](#)

13 Ho claimed that TTL and Fu Yu were not competitors in the following aspects. First, Fu Yu used

much more raw material than TTL, but accounted for less than 0.1% of the available material in the market. It was therefore difficult to characterise TTL and Fu Yu as competing for the supply of such materials. [\[note: 9\]](#) Secondly, Tan's evidence on overlapping customers was misleading as these customers were large multi-national corporations with a wide range of products and TTL and Fu Yu served different entities and were involved in different products. For example, Fu Yu was involved in Philip's television operations and TTL was involved in producing mobile phone displays. [\[note: 10\]](#) Ho also stated that he was not aware that Flextronics or Borsch were major customers of TTL at the material time. [\[note: 11\]](#) Fu Yu would seek customers who matched the category of business appropriate to their present investment and facilities, and would not pursue every possible business opportunity. [\[note: 12\]](#)

14 I do not think that TTL has discharged the burden of proving that Fu Yu was its direct competitor. I find TTL's assertion that both companies were in the "plastics industry" unhelpful. Unlike other specialised industries where only a limited range of products or services are offered, the label "plastics industry" is a very broad and generic description and could cover a huge range, from raw materials supplies, injection moulding, equipment or manufacturing a host of products, all the way from housing for monitors to moulding for vehicle parts to tourist souvenirs like key chains. The range of products offered and the customer bases or markets served could differ vastly within this single industry. While it is not disputed that TTL and Fu Yu were both involved in the injection moulding business, the evidence before me was vague, impressionistic and proceeded from two different starting points. Tan based his assessment on the *hypothetical* level (*ie*, that Fu Yu could potentially compete for the same business) while Ho considered competition from a *factual* level (*ie*, whether the two companies had actively sought the same types of contracts).

15 In the majority of cases, the issue of whether two companies are competitors is usually conceded, but in this case, this was strongly disputed by the defendants. TTL did not provide any information on what should be the appropriate yardstick for assessing competition, nor did it attempt to provide the evidence to show that TTL and Fu Yu could provide substitute products or services or instances where the companies competed for the same business from the same customers (save for a single contract involving a particular contract manufacturer, which I will consider in detail below). The question of whether there was competition cannot, of course, be answered in simple binary terms as 'competition' especially in an industry as wide and diverse as the plastics industry. I find and will therefore proceed on the basis that TTL has failed to prove that Fu Yu was a direct competitor in that Fu Yu had regularly competed in the same immediate market segments as TTL at the material time, and I will not assume a high or self-evident degree of competition in my assessment of whether Chow or Ng had breached their duties to TTL.

(a) Allegations of breach relating to the employment of Chow and Ng as advisors

Background facts

16 Chow and Ng were previously employed as the Executive Chairman and an Executive Director of TTL respectively. Sometime in 2006, Ng and Chow were under investigation by the Commercial Affairs Department ("CAD") in relation to their involvement in the management of another company, SNF Corporation Ltd ("SNF"). Ng and Chow were directors of SNF at the material time. [\[note: 13\]](#) As a result of the investigation, Ng and Chow had to surrender their passports and could not travel to oversee TTL's overseas factories and facilities. [\[note: 14\]](#) Ho claimed that Ng and Chow therefore decided to step down as directors so that they could post bail and have their passports returned without having to make a public announcement under the SGX rules. [\[note: 15\]](#)

17 Ng resigned from his position as Executive Director with effect from 27 April 2007, and was employed as Advisor to TTL on the same day. Chow subsequently tendered his resignation on 23 November 2007, and similarly continued in the employment of TTL as an Advisor.

18 Ng and Chow both received letters of employment signed by Ho that stated that their salary and all other terms and conditions of employment would remain unchanged. Under Ng and Chow's respective employment contracts as Executive Chairman and Executive Director, each received a basic monthly salary of \$15,000, and was further entitled to an Annual Variable Bonus of 2% of the net profit before tax at the group level [\[note: 16\]](#) and an option to subscribe for 2,000,000 new ordinary shares under TTL's Employee Share Option Scheme ("ESOS"). [\[note: 17\]](#)

19 Ng gave evidence that he subsequently became an Advisor to Fu Yu on 3 December 2007 [\[note: 18\]](#) and the Acting Group General Manager (Northern China) of Fu Yu on 10 March 2008. [\[note: 19\]](#) Chow claimed that he was employed as an Advisor to Fu Yu on 3 December 2007 and subsequently became the Acting Group General Manager (Southern China) of Fu Yu sometime in March 2008. [\[note: 20\]](#) He also gave evidence that he was appointed as the Acting General Manager of Nano Technology Manufacturing Pte Ltd ("Nano Technology"), a subsidiary of Fu Yu, sometime in December 2007. [\[note: 21\]](#) These dates of appointment were disputed by TTL.

20 During a Board meeting held on 5 February 2008, a Non-Executive Director Seow Poh Leok ("Seow") enquired about the role and responsibility of the Advisors and the terms of their employment contracts. [\[note: 22\]](#) Paul Lai ("Lai"), an Independent Director, also commented during a Board meeting held on 18 March 2008 that Ng and Chow's employment contracts were "done when they were directors of [TTL] and may not be appropriate in the current context". [\[note: 23\]](#) On 14 April 2008, the Board – comprising Tan, Lai, Petrus Huang ("Huang"), Teo Seng Chee ("Teo") and Seow – resolved that Ng and Chow would be given the opportunity to resign by the end of the day of 14 April 2008, failing which their services as Advisors would be terminated the following day. [\[note: 24\]](#) TTL issued letters of termination to Ng and Chow on 15 April 2008. [\[note: 25\]](#)

21 TTL alleged that:

- (a) Ho had breached his duty to ensure that contracts with the Advisors had been entered into at arm's length by employing Ng and Chow on the same employment terms as they had when they were directors, without obtaining the approval of the Board;
- (b) Ho had breached his duty to act in the best interests of TTL as Ho had approved of unjustifiable remuneration packages for Ng and Chow and had no reason to grant the Advisors the same packages that they had received as directors when they no longer held the same liabilities and responsibilities; and
- (c) Ho had breached his duty to act in the best interests of TTL by retaining Ng and Chow as Advisors even after they had been subsequently appointed to various positions at a competitor company (*ie*, Fu Yu) and were thus in a position of conflict of interest.

Alleged breach in relation to Ho's failure to seek the Board's approval for the remuneration packages

22 TTL submitted that the Board had not formally approved of the Advisors' remuneration packages and that the terms of employment had not been disclosed to the Board. In order to grant either profit

sharing or share options under the ESOS, Ho had to obtain the approval of either the Remuneration Committee or the Board but had failed to do so. Ho had thereby breached his duty to ensure that the contracts with the Advisors had been entered into at arm's length.

23 Ho's defence was that the Board had been fully apprised of the circumstances of Ng and Chow's appointments as Advisors and had given Ho the authority to decide on their remuneration packages. The Board had purportedly impliedly approved of Ng's terms of remuneration at a lunch meeting on 25 April 2007. The authority to decide on Ng's remuneration package as an Advisor was therefore either expressly delegated by the Board or was a matter within Ho's general authority as the CEO. In relation to Chow's remuneration package, Ho submitted that he had implied authority to decide on this issue or that this was a matter falling within the scope of his general authority.

24 I find that the evidence given by Ho does not bear out his claim that the Board had impliedly approved the Advisors' remuneration packages. Although there was some dispute between Ho and Huang over what had been specifically said during the two informal lunch meetings when Ng and Chow's resignations as Executive Chairman and Executive Director respectively were announced, there is less divergence over what was said (and not said) than what the respective parties claim to have understood.

25 Ng's resignation as executive director and proposed appointment as an Advisor to TTL was announced at an informal lunch gathering on 25 April 2007. Ho, Chow, Ng, Teo, Huang and one Sze Man Kuen ("Sze") were present. The only director not present was Lai. Ho gave evidence that he had mentioned that Ng would receive the same package as an Advisor and that Huang had commented that he would "leave it to the management to decide". [\[note: 26\]](#) Ho conceded that the details of the remuneration packages were not set out at the lunch gathering as Huang "did not even want to discuss". [\[note: 27\]](#) Following from Huang's remark, Ho appeared to assume that the management – which effectively comprised of Ho, Chow and Ng at that time – would decide on the remuneration and there was no need to continue to discuss the issue with the rest of the Board. [\[note: 28\]](#) Huang gave evidence that he had made a vague comment [\[note: 29\]](#) that it could be left to the management, but averred that the terms of the remuneration package had not been disclosed. [\[note: 30\]](#) Accordingly to Chow, he had subsequently spoken to Lai about Huang's comment, and Lai did not raise any objection. [\[note: 31\]](#) TTL did not challenge Chow's evidence directly, apart from raising a more general point on the drawing of adverse inferences from Ho's failure to call Lai as a witness.

26 Chow's resignation from his position as Executive Director was similarly announced at an informal lunch meeting on 23 November 2007. Agnes Leong ("Leong"), TTL's former Director of Corporate Communications, gave evidence that only a few directors were present at the meeting, namely Chow, Huang and Lai. Tan Puay Chuan, who was about to be appointed as an Executive Director of TTL, was also present. [\[note: 32\]](#) There was no mention in Ho's Affidavit of Evidence in Chief ("AEIC") that the issue of Chow's remuneration was raised at the said lunch meeting; Ho only stated that the Terms of Reference for TTL's Remuneration Committee had been amended on 6 July 2007 (the "amended Terms of Reference") to exclude executive officers. [\[note: 33\]](#) The amended Terms of Reference provided as follows: [\[note: 34\]](#)

Item 3.1: "To review and recommend to the Board in consultation with the Chairman of the Board, a framework of remuneration and to determine the specific remuneration packages and terms of employment for each of the executive directors and CEO including those employees related to the executive directors and controlling shareholders of the Group."

Based on Ng's "precedent" and the amended Terms of Reference, Ho assumed that he did not have any obligation to refer Chow's remuneration to the Board for determination. [\[note: 35\]](#)

27 I accept and find that some vague remark was made by Huang at the lunch meeting on 25 April 2007 that the management could decide on Ng's remuneration package as an Advisor, and that the details of the proposed package were not disclosed to the Board. Neither issue was really in dispute. However, even on Ho's account, it is clear that the Board as a whole had not impliedly approved of Ng's remuneration package. Huang's casual comment, or the absence of any dissent from the other directors, at an informal lunch meeting is at most equivocal in representing the Board's approval of any remuneration package given to an Advisor. This is *a fortiori* for Chow's remuneration package, which was not even expressly raised at the lunch meeting on 23 November 2007. The absence of any mention of this purported Board approval in the subsequent Board meetings held on 5 February 2008, 18 March 2008 and 14 April 2008 also undermines Ho's contention. If Ho had subjectively believed that the Board had impliedly approved of Ng or Chow's remuneration packages, this would have been raised at the meetings. I disbelieve Ho's claim, made only after much prevarication, that he had raised this issue during the Board meeting held on 14 April 2008 but it was not recorded in the minutes. [\[note: 36\]](#)

28 As I have found that the Board had not impliedly approved of the Advisors' remuneration packages, Ho's defence of Board approval is clearly untenable.

29 I now turn to consider whether Ho had general or implied authority to decide on the Advisors' remuneration packages. It is clear, as a broad proposition of company law, that there is no general legal requirement that the employment or remuneration of a normal employee must be formally approved by the board of directors. Ho was the CEO of TTL and would have had, in the usual course of events, the general authority to decide on this issue. I nonetheless find that this *general* authority was qualified by the circumstances and terms on which the Advisors were appointed; this was not broadened by any purported *implied* authority from Huang's remark or the amended Terms of Reference.

30 Ho must have also known that there would have been a possible conflict of interest if he were to decide on the Advisors' remuneration packages personally. The only three members of the executive management during the relevant period in 2007 were effectively Ng, Chow and Ho [\[note: 37\]](#) and the decision for Ng and Chow to step down and be re-employed as Advisors was made collectively by all three. [\[note: 38\]](#) I do not think that Ho was in a position to decide this in an entirely disinterested manner, and Ho acknowledged implicitly that the discussion with Chow and Ng included prior agreement on their terms of employment as Advisors. [\[note: 39\]](#) Any general management authority to decide on the terms of employment of an employee must be qualified where a position of conflict of interest exists.

31 Ho also conceded that profit sharing or share options under TTL's ESOS had to be approved either by the Remuneration Committee or the Board. [\[note: 40\]](#) These additional aspects of an employee's salary package are typically offered to the upper management, and are put before an independent body precisely to avoid issues of conflict of interest. I am not convinced by Ho's claim that he did not see the need to refer this issue to the Board because Ng and Chow had received such benefits as Executive Directors and he had construed Huang's remark as conferring on him implied authority to decide on the matter. I accept Huang's evidence that based on the context in which the remark had been made, a general delegation of authority to Ho to decide on the Advisors' remuneration could not have been understood as conferring authority to Ho to independently decide

on exceptional terms such as profit sharing or share options under the ESOS. [\[note: 41\]](#) In these specific circumstances, I also do not see anything in the amended Terms of Reference that would have changed the position in relation to the procedure that should have been followed for Chow's remuneration package. I therefore reject Ho's defence of general or implied authority.

32 In the light of the position that Ho had found himself in, I am of the view that Ho had not discharged his duty to avoid conflicts of interest by obtaining Board approval with full disclosure. The least that he should have done was to put the Advisors' terms and remuneration before the Board at the earliest opportunity for their information and endorsement. The duty to ensure that transactions with the company are entered into at arm's length is one aspect of the broad fiduciary duty to avoid conflicts of interest. It is trite law that the rules on conflict of interest in a fiduciary context extend beyond *actual* conflict to encompass *potential* conflict. This was explained by the Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and others* [2009] 3 SLR 109 at [137]–[138]:

137 The duty to avoid conflicts of interest is a facet of the duty of fidelity. It is "an inflexible rule of a Court of Equity" (see *Bray v Ford* [1896] AC 44 at 51) that a fiduciary may not place himself in a position or enter into a transaction in which his personal interest may conflict with his duty to his principal, unless his principal, with full knowledge of all the material circumstances and of the nature and extent of the fiduciary's interest, consents. This general rule has, in its specific applications, given rise to several recognised sub-rules (which are not relevant for our purposes today), for example: the rule against dealing with the principal (see *Fiduciary Obligations* ([110] *supra*) at paras 516–521); the rule against obtaining financial benefits beyond one's authorised remuneration (see *Fiduciary Obligations* at paras 475–515); and the rule against acquiring a benefit to the exclusion of one's beneficiary (eg, *Keech v Sandford* (1726) Sel Ca t King 61; 25 ER 223 and see *Fiduciary Obligations* at para 535).

138 ***It is important to note that these proscriptive duties are targeted against potential (not merely actual) conflict. A fiduciary should not even contemplate procuring a personal advantage, let alone secure one. The law has thus focused essentially on whether the performance of a duty by the fiduciary may be influenced or tainted by a conflict of interest*** . As it is virtually impossible to know what considerations have gone into an act or a decision of the fiduciary, the law sensibly does not require proof of an actual conflict of interest where such an allegation is made (see [142] below). ***The law only requires that there is a reasonable perception of a conflict of interest arising, since it is impossible to conduct an inquiry into the subjective motives which influenced a fiduciary's conduct to determine whether a genuine conflict of interest occurred*** .

[emphasis added in bold italics]

33 It is clear that Ho's conduct in putting himself in a position where he was in effect the sole decision-maker in relation to Ng and Chow's terms of employment of Advisors – as part of a prior agreement that he had made with Ng and Chow – gives rise to a reasonable perception of a conflict of interest. Ho could reasonably be regarded as being influenced, whether consciously or unconsciously, by ulterior considerations of Ng and Chow's interests. The most prudent course for Ho would have been to refer the issue to the Board and make full disclosure, but Ho made little more than cursory attempts to seek Board approval. I therefore find that Ho was in breach of his fiduciary duty to avoid a conflict of interests; whether losses were in fact caused by this *particular* breach is, however, a different matter that must be proved subsequently.

Alleged breach in relation to Ho's failure to act in TTL's best interests by offering the Advisors the same remuneration packages that they had enjoyed as directors

34 Ho justified his decision to continue employing Ng and Chow as Advisors on the same terms (despite the formal change in title) on the basis that they had continued to undertake the same duties that they previously discharged as directors. [\[note: 42\]](#) TTL's position was that Ng and Chow's liabilities and responsibilities had clearly been reduced when they stepped down as Executive Directors, and relied on Ng and Chow's formal job descriptions, dated 27 April 2007 and 23 November 2007 respectively ("the Job Descriptions"), as evidence that their duties as Advisors were different. According to TTL, Ho had therefore acted against its interests by overpaying Ng and Chow.

35 It cannot be disputed that Ng and Chow were no longer subject to the same *legal* fiduciary duties owed to the company once they stepped down as directors of TTL. This was conceded by Ho. [\[note: 43\]](#) However, TTL's evidence glossed over the issue of whether Ng and Chow's day-to-day duties remained the same, and on a balance of probabilities, I prefer Ho's evidence that there was no material change in the functions performed by Ng and Chow after they stepped down as directors.

36 Ho stated that the advisors were to have oversight of TTL's facilities [\[note: 44\]](#) and gave evidence – albeit somewhat vague – of Ng and Chow's connections in the industry and how they had helped TTL to raise \$5 million for future expansion needs while they were acting as Advisors. [\[note: 45\]](#) TTL did not deny that Chow was still involved in meetings on the operations of TTL's Dongguan factory; to the contrary, TTL relied on Chow's continued participation to allege that there must have been a conflict of interest because Chow was simultaneously involved in the operational aspects of both TTL and Fu Yu. [\[note: 46\]](#) Chow also claimed that by stepping down, he would be able to travel on behalf of TTL, [\[note: 47\]](#) and gave a list of trips that he had purportedly made on behalf of TTL. [\[note: 48\]](#) This was challenged during cross-examination by TTL, but I do not consider that TTL dented Chow's evidence sufficiently to show that Chow had failed to perform his duties with TTL even if the trips were for multiple purposes. Similarly, Ng gave a list of instances when he had travelled on behalf of TTL. [\[note: 49\]](#) While Ng acknowledged on the stand that he did travel concurrently for the business of Watson Plastics Industries Pte Ltd ("Watsons Plastics") and SNF (two major corporate shareholders of TTL), he denied that he was neglecting the interests of TTL. [\[note: 50\]](#) I do not find that TTL has managed to prove otherwise.

37 I also believe the evidence given by a number of former TTL employees that they did not notice any change in the duties carried out by Ng and Chow after they had resigned as Executive Directors. One Shanmugam s/o Thangaveloo ("Shanmugam"), who was in charge of TTL's factory in Tangkak, Johor Bahru, stated that he met up regularly with Ng and Chow to brief them on the operations at the Tangkak factory from mid-2007. [\[note: 51\]](#) Leong also gave evidence that the functions performed by Ng and Chow were the same after they had stepped down as directors [\[note: 52\]](#) and that they continued to sit in TTL's Board meetings even after stepping down. [\[note: 53\]](#)

38 I pause to observe that there was a notable lack of comparison between the functions exercised by Ng and Chow before and after they resigned from the Board. TTL did not attempt to show how Ng and Chow's actual functions, as distinct from their legal liabilities and responsibilities or the purported responsibilities set out in the Job Descriptions, were vastly different. While TTL quite correctly pointed out that Ng and Chow had presented a somewhat obfuscating picture of their "overseas travel duties" conducted on behalf of TTL, I consider that it would be rather unrealistic – contrary to Tan's assertions on the expected responsibilities of an executive director [\[note: 54\]](#) – to believe that Ng and Chow ever dedicated a substantial bulk of their time *solely* to the business of TTL even when they were Executive Directors. Ng and Chow held multiple directorships with TTL and other

companies in the same or related industries. The fact that they were simultaneously acting as Advisors to Fu Yu after December 2007 does not lead to a necessary conclusion that they spent less time on their duties with TTL or that their responsibilities and duties must have been reduced. It could well be – and in fact this does seem to be the general impression conveyed to me – that Ng and Chow were never full-time managers of TTL.

39 TTL unfortunately directed very little attention to the specific question of whether the scope of Ng and Chow's duties as Advisors was much attenuated from their management functions as Executive Directors. The only evidence that TTL relied on to show that Ng and Chow did less work as Advisors were the announcements made to TTL shareholders (in accordance with SGX regulations) and Chow's email stating that he was resigning for health reasons. [\[note: 55\]](#) The apparent implication was that Ng and Chow had resigned as Executive Directors precisely because they had wished to reduce their workload. In my opinion, this is nothing more than an unsupported conjecture. I express no view on whether the genuine unofficial reason why Ng and Chow stepped down was related to their directorships with SNF, but nevertheless find that the overall evidence adduced by Ho on the day to day participation of Ng and Chow in the management of TTL's affairs is more credible than TTL's speculations.

40 TTL further alleged that Ho was motivated by a desire to promote Ng and Chow's interests even if this was at the expense of TTL. In particular, TTL sought to adduce evidence that:

- (a) Ho, Ng and Chow often moved in and out of the management of various companies together and thus shared a close personal relationship; and
- (b) Ho owed Ng and Chow personal favours as a result of an investment by SNF in Watson Plastics.

41 The former point, viz, that Ho, Ng and Chow were often involved in the management of the same company at the same time, is neither here nor there in so far as it is used as circumstantial support for a finding that Ho had an improper or personal reason for retaining Ng and Chow as Advisors. This evidence could equally illustrate that Ho recognised Ng and Chow's capabilities or experience and was keen to secure competent management for TTL at the material time. I therefore attach only minimal weight to this point.

42 I also find that TTL has not proved its case that Ho owed Ng and Chow personal favours. In summary, TTL alleged that Ho had received a disproportionate "finder's fee" of almost 11% of the shareholdings in Watsons Plastics in exchange for either \$300,000 or \$103,401.30 – the parties disputed the precise figure, but this divergence is inconsequential in percentage terms – when SNF purchased a 40% stake in Watsons Plastics for the sum of \$11,128,000 in 2005. Watson Plastics was 100% owned by the members of Seow family ("the Seow family"). Ng was the CEO and Chow was the Chief Operations Officer ("COO") of SNF at the material time. TTL thus sought to show that the 11% shareholding acquired by Ho was conferred on him gratuitously through some arrangement with Ng and Chow. Ho claimed that the discount was a "finder's fee" given to him by the Seow family. [\[note: 56\]](#)

43 What seems to emerge from the cross-examination on this point [\[note: 57\]](#) is that there was some kind of arrangement entered into between SNF, Ho and the Seow family which appeared at that time to be mutually beneficial to all the parties concerned. I do not think that the evidence shows on a balance of probabilities that Ho owed a personal favour to Ng and Chow *because* of the advantage that he received from SNF's investment. Ho had offered some form of a *quid pro quo* through the

exercise of his voting rights in tandem with SNF [\[note: 58\]](#) – this part of his evidence was not challenged by TTL – and I am unable to view this single instance as establishing a self-evident motive for why Ho would prefer Ng and Chow’s interests. It does show that there is some element of prior professional or friendly relationship between them, but TTL’s case on this particular point is pitched at a level that cannot be supported by the objective evidence before me. This is not a case where there was a strong familial relationship or where the parties had known each other for a very considerable period. I find that TTL has failed to demonstrate that Ho had a strong motive, stemming from personal favours owed to Ng and Chow, to benefit Ng and Chow at the expense of TTL.

44 I now consider whether Ho had breached his duties to act for proper purposes or *bona fide* in TTL’s interest.

45 I preface my discussion with the observation that TTL framed its claim in its written submissions under the proper purposes doctrine by eliding it with a *broad* test of whether the director’s powers had been exercised with a *bona fide* purpose in the interests of the company. TTL submitted that the test for the proper purpose doctrine was set out by Lord Wilberforce in the Privy Council case of *Howard Smith Ltd v Ampol Petroleum* and others [1974] AC 821 (“*Howard Smith*”) at 835F–G:

In their Lordships’ opinion it is necessary to start with a consideration of the power whose exercise is in question, in this case a power to issue shares. Having ascertained, on a fair view, the nature of this power, and having defined as can best be done in the light of modern conditions the, or some, limits within which it may be exercised, *it is then necessary for the court, if a particular exercise of it is challenged, to examine the substantial purpose for which it was exercised, and to reach a conclusion whether that purpose was proper or not. In doing so, it will necessarily give credit to the bona fide opinion of the directors, if such is found to exist, and will respect their judgment as to matters of management*; having done this the ultimate conclusion has to be as to the side of a fairly broad line on which the case falls.

[emphasis added]

TTL contended that the proper test in law was whether a power was exercised for a proper purpose and whether the exercise of the power was in the interest of the company. [\[note: 59\]](#) The conceptual basis of the proper purpose doctrine remains uncertain and there is no Singapore authority that has dealt comprehensively with the doctrine. The proper purpose doctrine may have its genesis in the historical transplant of the rules governing the fiduciary powers of a trustee and could hence be viewed as an independent duty not to exercise powers for *collateral* purposes. Alternatively, the doctrine may be concerned with broader questions of *ultra vires* or *bona fides*. The English case law, including *Howard Smith*, adopts the latter view that the proper purpose rule is not concerned solely with the best interests of the company; the *bona fides* of a director is not in and of itself the yardstick of the propriety of a director’s action. In my view, the proper purpose doctrine is not conventionally understood in the manner which TTL has advanced, *viz*, as a proxy for assessing *bona fides*, but is instead concerned with whether a particular power conferred for specific purposes has been exercised for the correct and intended ends.

46 I therefore consider that TTL’s claim is more appropriately framed in terms of the broader director’s duty to act *bona fide* in the interests of the company. This flows from a director’s time-honoured duty of loyalty, and in assessing whether a decision is in the interest of the company, the court will view the decision in the proper commercial context: see *Multi-Pak Singapore Pte Ltd v Intraco Ltd* [1994] 3 SLR(R) 1064 (“*Multi-Pak*”) at [22]. The following instructive dicta of Lord Wilberforce in *Howard Smith* was also cited with approval by the Court of Appeal in *Multi-Pak* at [30]:

Their lordships accept that such a matter as the raising of finance is one of management, within the responsibility of the directors: *they accept that it would be wrong for the court to substitute its opinion for that of the management, or indeed to question the correctness of the management decision on such a question, if bona fide arrived at*. There is no appeal on merits from management decisions to courts of law: nor will courts assume to act as a kind of supervisory board over decisions within the powers of management honestly arrived at.

[emphasis added]

It is accordingly not for the court to sit in judgment of the objective correctness or commercial merits of a management decision.

47 Having considered and weighed the evidence, it is apparent to me that TTL has failed to prove the factual background which could lead to the inference that Ho had been motivated by a desire to promote Ng and Chow's interests at the expense of TTL.

48 Further, in my view, the commercial context in which the decision was made also does not, without more, support a finding that Ho's decision to hire Ng and Chow as Advisors on the same remuneration package was clearly prejudicial to TTL and could not have been made in good faith. I am unable to accede to TTL's submissions that the remuneration package for the Advisors was inappropriate and unjustified, *inter alia*, as TTL was barely making a profit and Ng and Chow should not have been given the same terms of remuneration as they no longer fulfilled the duties and responsibilities of an Executive Director. I have found above that TTL has failed to prove that the scope of duties performed by Ng and Chow as Advisors was vastly different from their nature of work as Executive Directors. TTL also did not produce cogent evidence to explain why Ng and Chow's remuneration as Advisors was out of proportion to the functions and responsibilities they held or the standard market rate in the industry for employees in senior management positions. While TTL pointed to evidence that Tan Puay Chuan was only paid a basic salary of \$5,000 a month when he was appointed as an Executive Director in November 2007 after Chow resigned, [\[note: 60\]](#) Tan Puay Chuan has stated that he performed only very limited management functions for TTL. [\[note: 61\]](#) I do not see any reason for me to dismiss his evidence as unreliable. I note that Tan also acknowledged that Tan Puay Chuan was working full-time for another company even after he was appointed acting CEO when Ho stepped down. [\[note: 62\]](#) I do not consider that Tan Puay Chuan's salary is an appropriate yardstick of what someone performing the general functions of an Executive Director would usually receive, and I do not think that the disparities in the salaries received must mean that Ho had prioritised Ng and Chow's interests over that of TTL.

49 In these circumstances, I am hesitant to question the correctness of what is essentially a management decision or form a judgment as to the level of adequate but not excessive remuneration which would have been in TTL's commercial interests. I therefore find that TTL has failed to prove its case that Ho was in breach of his duty to act in TTL's best interests.

Alleged breach in relation to Ho's continued retention of Ng and Chow as Advisors when they were subsequently placed in a position of conflict of interest

50 TTL claimed that Ho had failed to act in TTL's best interests or failed to properly administer TTL's affairs by retaining Ng and Chow as Advisors although they were also employed by Fu Yu at the material time and would have been in a position of conflict of interest. Ho contended that there was no basis for alleging that the concurrent employment of Ng and Chow as Advisors to Fu Yu had placed them in a position of conflict of interest as TTL and Fu Yu were not direct competitors; Ng and Chow

had also performed only very limited roles at Fu Yu prior to March 2008.

51 Ng and Chow were appointed as Advisors to TTL in April 2007 and November 2007 respectively. On 3 December 2007, both Ng and Chow became Advisors to Fu Yu. Chow gave evidence that he and Ng were appointed to look at restructuring and to talk to the banks. In his words, “most of [their] activities were on the financial side, looking at the company’s financial account, balance sheet, inventory”. [\[note: 63\]](#) Chow stated that he was subsequently appointed the Acting General Manager (Southern China) for Fu Yu in March 2008 [\[note: 64\]](#) and admitted to being the Acting General Manager of Nano Technology Manufacturing Pte Ltd (“Nano Technology”) sometime by December 2007 [\[note: 65\]](#); however, he maintained that he was “not involved in any operational aspect of the [Fu Yu group] save for [Nano Technology]”. Ng stated that he was appointed Acting General Manager (Northern China) for Fu Yu on 10 March 2008. [\[note: 66\]](#)

52 I find that on balance TTL has failed to prove that Ng and Chow were involved in the operational aspects of the Fu Yu group – save perhaps for Chow’s involvement in Nano Technology – prior to being appointed the Acting General Managers for the two China divisions of Fu Yu. TTL did not adduce any documentary evidence or oral testimony to demonstrate that Ng and Chow were actively involved in procuring customers or contracts on behalf of Fu Yu at the material time. There were only vague suggestions in cross-examination that Ng and Chow could have been travelling to visit Fu Yu’s factories when they visited TTL’s factories in China or Malaysia, and that Chow had made comments to Tan about a potential business opportunity that was more appropriate for Fu Yu than TTL. Neither is really indicative of the fact that Ng and Chow were actively involved in Fu Yu’s business.

53 In the premises, I find that there is only a very weak basis for TTL’s allegations that Ho had acted in breach of his duties by failing to terminate the appointment of the Advisors because the Advisors were clearly in a position of conflict of interest. As considered above at [15], I do not think that TTL has discharged the burden of proving that Fu Yu was a direct competitor; even if Ng and Chow were in conflict in a much broader sense, *viz*, they were working for a company that may *potentially* be a competitor, I am not satisfied that their engagement in Fu Yu’s business went beyond that of an external advisor or consultant. There is therefore insufficient evidence for me to conclude that Ho had been acting against TTL’s best interests or had failed to administer TTL’s affairs with reasonable diligence and competence.

(b) Allegation of breach relating to the payments made to Bontech

Background facts

54 In 1 August 2006, TTL entered into a “Consulting Agreement” with Bontech (“the Bontech Agreement”). The Bontech Agreement was signed by Ho and the relevant terms are set out as follows: [\[note: 67\]](#)

1. Retention of Consultant; Services to be performed. CLIENT hereby retains CONSULTANT for the terms of this Agreement to provide the consulting services set forth in Schedule A for CLIENT (Services).

...

2. Payment. CLIENT shall pay CONSULTANT for work done for that month through Cheque payment. Payment shall usually be made on a quarterly basis for United States Dollar Fifteen Thousand and Five Hundred (USD 15,500) equivalent.

...

4. Term and Termination.

(a) Unless terminated at an earlier date in accordance with Section 5 (b), this Agreement shall commence as of the date first written above and shall continue for one year.

55 TTL made a total of eight payments to Bontech pursuant to the Bontech Agreement from 4 August to 29 February 2008, totalling the sum of \$169,644.97. [\[note: 68\]](#) In particular, three payments were made after the Bontech Agreement expired on 31 July 2007, [\[note: 69\]](#) and there was one double payment made for the period of November 2006 to January 2007. [\[note: 70\]](#) It was not disputed that there was no Schedule A, and Ho admitted – both implicitly in his defence and during cross-examination [\[note: 71\]](#) – that no consulting services had in fact been provided by Bontech.

The payments to procure business from Pioneer

56 TTL claimed that Ho had breached his duties to act in the best interests of TTL and/or had not administered the affairs of TTL properly by causing TTL to enter into the Bontech Agreement for the provision of services that were not specified and for authorising payments under this agreement. TTL's case is straightforward: once it has established that Ho had knowingly entered into the Bontech Agreement for phantom consulting services and had authorised payments despite being aware that no such services were provided to TTL, it must give rise to the inevitable inference that Ho was not acting in the best interests of TTL unless Ho is able to provide a satisfactory explanation.

57 Ho's defence was that the Bontech Agreement was for the purpose of facilitating the transfer of sums to Bontech to be passed on to one Oh Chye Huat ("Oh"), a former director of TTL's Shanghai operations. Oh would then hand over the sums to a Mr Lee, who would allegedly procure RMB 4 million worth of business per month for TTL from Pioneer Technology (Shanghai) Co. Ltd ("Pioneer Technology"). In Ho's words, he would have described the payments as "marketing expenses" if his shareholders had enquired about the Bontech Agreement. [\[note: 72\]](#) Ho claimed that his predecessors had previously approved of these payments to Pioneer Technology through the transfer of "outstation allowances" to Oh and two other directors with TTL's Shanghai operations. Oh gave evidence on the stand that the directors were purportedly given RMB 120,000 quarterly to make these payments to Mr Lee. The three directors then were Oh, Sze and one Lau Che Hung ("Lau"). This arrangement begun sometime around the middle to the end of 2003, and Oh claimed that he had obtained verbal approval from the then CEO of the TTL, one Mr TY Quek, to make these payments. [\[note: 73\]](#) On 22 March 2005, the Remuneration Committee of TTL – comprising Teo, Lee Mun Hooi and Tan Boon Tiong – passed a resolution authorising the payment of a total monthly "outstation allowance" of RMB 40,000 to the three directors of the Shanghai operations for a period of nine months. [\[note: 74\]](#) Oh confirmed that the directors continued to receive these allowances after 31 December 2005, after the original mandate had expired. [\[note: 75\]](#) After Sze purportedly left TTL's Shanghai operations in mid 2005 and Lau left in early 2006, [\[note: 76\]](#) Oh claimed that he had to receive an increasing proportion of the RM 40,000 and complained to Ho that he did not want to pay tax for it. [\[note: 77\]](#) Around August 2006, Oh was informed by TTL's then financial controller Daniel Cheng ("Cheng") and Ho that future payments would be made through Bontech. [\[note: 78\]](#)

58 TTL disputed the veracity of Ho's explanation for the payments. It tendered a list of audited

sales figures that indicated that the sales figures for Pioneer did not reach RMB 4 million monthly and submitted that Ho's account did not correspond with audited sales figures for the period of 2003 to early 2008 when the payments to Pioneer Technology to procure business had purportedly been made. TTL also argued that the audited records for TTL's Shanghai operations indicated overall losses of RMB 5 million despite the RMB 75 million annual revenue in 2006; and overall losses of RMB 280,000 despite an annual revenue of RMB 21 million in 2007. It was therefore illogical why Ho would authorise such payments to procure business if the contracts with Pioneer Technology were not profitable. TTL further contended that the evidence given by Ho and Oh was convoluted and evasive; Oh could not provide any information on the identity of Mr Lee or his contact details, and neither could he provide any documentary evidence or a credible explanation of how the payments were handed over to Mr Lee.

59 TTL's list of audited sale figures for Pioneer Technology for 2004, 2005 and 2006 were RMB 35,100,000, RMB 39,000,000 and RMB 31,300,000 respectively. [\[note: 79\]](#) The figures recorded by the finance department of TTL for the months of 2004, 2005 and 2006 indicated the sums of RMB 28,577,987, RMB 46,958,804 and RMB 50,898,926 respectively. [\[note: 80\]](#) The unaudited figures reflect that sales were about RMB 4 million monthly whilst the alleged payments were made, and the audited figures indicate monthly sales of around RMB 3 million. In terms of the sales trend from 2002 to 2008, there is a marked increase from 2002 to 2003, and a subsequent decline from 2008 to 2009. I do not think that the audited figures directly contradict Ho's evidence, but there is no necessary correlation either that fortifies Ho's case. In relation to the profitability of the contracts with Pioneer Technology, in the absence of a detailed breakdown of the contracts entered into by TTL at the material time, I find that there is insufficient evidence for me to make any conclusive determination on whether the contracts had in fact been unprofitable or whether they had mitigated against greater losses that might otherwise have been incurred.

60 However, on an overall evaluation of the evidence, I find that Oh and Ho's account has left crucial gaps that I am unable to disregard or gloss over, *viz*, TTL's remuneration accounts did not gel neatly with Ho's story of the "outstation allowances" being given to the three directors; there was no satisfactory evidence of receipt of payments made; Ho and Oh were not able to provide more than cursory information on Mr Lee and the surrounding circumstances of the payments; and no explanation was proffered on why Ho chose the circuitous option of making payments in USD to a company located in Taiwan to be subsequently converted to RMB and transferred to a person located in Shanghai.

61 The evidence does not conclusively tip the balance in either direction. However, once TTL has proved that the Bontech Agreement was fictitious and that the payments made pursuant to the agreement were in fact not made for the named provision of consultancy services, I consider that it is incumbent on Ho to establish an affirmative defence that the payments were instead made for another purpose that was in fact in TTL's interests. As Ho is unable to satisfy me of the factual basis of his defence, I find that TTL has established its claim that Ho has breached his duties to act in TTL's best interests and to administer the affairs of TTL properly by entering into a fictitious agreement and by authorising payments for services that were not rendered.

(c) Allegations of breach in relation to Ho's involvement in the poaching of employees to Fu Yu

Background facts

62 TTL's claim in relation to the alleged poaching of employees concerns five named individuals, *viz*, William Toh ("Toh"), Yeung Tak Fong ("Yeung"), Shanmugam, Tony Ling Yang Hang ("Ling") and

Yang Fan ("Yang"). Toh was the General Manager and Yeung was the Operations Manager at TTL's Shanghai operations. Shanmugam was the General Manager of TTL's manufacturing plant in Tangkak, Johor. Ling and Yang were both Project Managers in TTL's subsidiary TTL Technology (Dongguan) Co Ltd.

63 At the commencement of the trial, TTL's only claim was in relation to the alleged relocation of Toh and Yeung. TTL subsequently obtained documents during the course of the proceedings that purportedly supported their case that Ho had also been involved in poaching Shanmugam, Ling and Yang. I allowed TTL to amend its pleadings accordingly.

Alleged breach in relation to Toh

64 TTL alleged that Ho had made plans with Chow to deliberately terminate Toh's employment with TTL so as to facilitate Toh's move to Nano Technology, and had thereby breached his duty to act in TTL's best interests and had acted in conflict of interest.

65 Toh commenced his position as General Manager of TTL's Shanghai operations in March 2006. Chow, who was then the Acting General Manager of Nano Technology, had heard from Ho that Toh would not be retained with TTL. Yeo See Joo ("Yeo"), who was about to join Nano Technology as its Business Development Director, suggested that Chow hire Toh in a technical role, and Chow subsequently entered into negotiations with Toh and offered Toh a position with Nano Technology in December 2007. A letter of cessation of employment was signed by Ho on 18 February 2008, and Toh's last day of employment was to be 29 February 2008. [\[note: 81\]](#) The period of notice was therefore effectively only two weeks. Toh's letter of appointment with Nano Technology was dated 15 January 2008, and he was to commence employment with effect from 11 February 2008.

66 Ho explained that Toh was performing poorly at work and that Toh was released as TTL had already found a successor for Toh and it was necessary to facilitate a smooth transition between management teams. According to Ho and Koo Wai Sum ("Koo") – the then Assistant General Manager of TTL's Shanghai operations – Toh had difficulties coping soon after his appointment, and by the end of 2006, Koo had taken over the *de facto* running of two of the business operations, *ie*, the manufacturing operations, while Toh was only in charge of the remaining tool room operation and the human resource and finance aspects. [\[note: 82\]](#) Toh was allegedly unable to communicate or work with his colleagues due to his bad temper and also had difficulties in dealing effectively with customers as he had hearing problems. [\[note: 83\]](#) Koo left in September 2007 and was replaced by Lim Han Seng ("Lim"). Lim gave evidence that Toh's managerial style impaired his ability to carry out his job effectively, [\[note: 84\]](#) and he confirmed that Koo had already taken over some areas of Toh's responsibilities when Lim joined TTL. [\[note: 85\]](#) Lim took over from Toh as General Manager in end January 2008.

67 TTL disputed Ho's account of Toh's work performance. TTL argued that Toh was performing his duties competently as he had managed to achieve a turnaround in the performance of the Shanghai subsidiary from a loss of RMB 12 million in 2006 to a profit of RMB 6.8 million in 2007. [\[note: 86\]](#) TTL submitted that this was the appropriate period to assess Toh's performance as he was the General Manager for almost two years and had made changes in the Shanghai operations during the second half of his term. It was also argued that if Toh had been performing so badly, there was be no reason why Toh had not been released earlier or why he was released almost six months after his successor had been identified.

68 Based on the accounting evidence, I accept that in so far as the profit and turnover for a company is a key performance indicator for a General Manager, Toh was not performing badly in a limited sense. I am, of course, not in a position to substitute my own opinion for the management's decision of whether an employee should be retained. I see little reason to doubt the consistent and cumulative evidence given by his co-workers – Koo, Lim, Shanmugam – and associates from other companies (one Chang Cheng Ann, who had referred customers to TTL and received complaints from customers that they doubted Toh's abilities) that Toh was not an easy person to work with and was unable to handle the customer and marketing side of the business due to his temperamental personality and his hearing impairment. Moreover, Toh was also recovering from a brush with nasal cancer. Ho was entitled to assess Toh's long term suitability for a high level management position, and I am unable to infer, without more, that the decision to cease Toh's employment as General Manager was made with an ulterior motive instead of being a genuine decision on what was in the interests of TTL. I also do not think that there was anything amiss in Ho's decision not to release Toh even after Lim had been identified as Lim's successor. Ho explained that he was trying to give Toh a chance and to see whether they could find a role for him or give him time to find a new job. [\[note: 87\]](#) In my view, a transition or grace period is not something that calls out for explanation, and again, it is a business decision that I cannot impute bad faith to unless it defies commercial logic by any measure.

69 TTL also alleged that Ho had deliberately planned Toh's departure from TTL, and pointed to an announcement made at TTL's Dinner and Dance in January 2008 and Ho's waiver of the six month notice period under Toh's employment contract as evidence of Ho's premeditated plans to poach Toh to join Nano Technology. I now consider these arguments.

70 First, TTL claimed that during Ho's speech at the said Dinner and Dance, he had said in Mandarin that Toh had resigned from TTL two months ago, *ie*, in November 2007, and had returned to Singapore. [\[note: 88\]](#) This translation was vehemently disputed by Ho, who asserted that he had only said that Toh would be going back to Singapore in one or two months as it was not appropriate to talk about resignations during the company's annual Dinner and Dance. [\[note: 89\]](#) Ho did not obtain an independent translation of the speech, but in any event, I find the dispute over what was actually said inconsequential. Ho claimed that he already made the decision to replace Toh with Lim sometime in October to November 2007 and had communicated this plan to Toh. [\[note: 90\]](#) This would also explain why Toh had purportedly spoken to Yeo in late 2007 inquiring about possible job opportunities. [\[note: 91\]](#) It is therefore common ground that by late 2007, both Ho and Toh were aware that Toh would be leaving his position at TTL's Shanghai operations, although Toh had not formally or officially tendered his resignation. Even if I were to accept TTL's translation of the speech, the apparent "pre-mature" announcement of Toh's departure neither advances nor undermines either party's case because Ho's awareness that Toh would be replaced does not logically suggest that Ho must therefore have made plans to transfer Toh to Nano Technology.

71 Secondly, TTL contended that the abrupt manner in which Toh left TTL indicated that Ho had intended to facilitate Toh's move to Nano Technology by waiving Toh's six month notice period under his employment contract. Tan gave hearsay evidence on the stand that Toh had informed him that he had been compelled to move to Nano Technology. I do not give any weight to this evidence as TTL had the option of calling Toh as a witness but chose not to. The only circumstantial evidence before me is that Toh was only required to serve a notice period of only two weeks and that he was concurrently employed with Nano Technology even before his last day with TTL. Ho claimed that he had discussed this early termination of the contract with Toh, and that he was not aware of why Toh had commenced work with Nano Technology even before terminating his employment with TTL. [\[note:](#)

[92\]](#) In my view, it is certainly not implausible for a director to waive a six month notice period under an employment contract if he is of the opinion that the services of the employee are no longer required and he does not see the need for the company to continue paying the employee's salary for the entirety of the notice period. There is insufficient evidence to support a *positive* finding that Ho's predominant motive in waiving the notice period was to to facilitate Toh's move to Nano Technology.

72 I now turn to consider the email correspondence between Chow and Toh, where Toh had referred to Ho's "plans" for him. TTL submitted that this could only be a clear reference to Ho's plans to relocate Toh to Nano Technology. Ho admitted that Chow had mentioned that he was considering employing Toh at Nano Technology, but denied any further knowledge about this matter. [\[note: 93\]](#) TTL's case is premised directly on the inferences to be drawn from two emails sent by Toh to Chow on 17 December 2007 and 27 December 2007. The relevant portions of the email dated 17 December 2007 read as follows: [\[note: 94\]](#)

Hi Mr Chow,

Attached please find my CV.

As discussed, Mr Ho plan was to have Mr Michael Pang come to Shanghai after the Chinese New Year in mid-Feb. I will then hand-over and leave by 1 March.

In the meantime, I have started to hand-over most of the day-to-day to Mr Andrew Lim. ...

[emphasis added]

Toh sent a subsequent email to Chow on 27 December 2007 which stated: [\[note: 95\]](#)

Tentatively, my schedule is still to leave TTL Shanghai on 29 Feb, 2008, unless Mr Steven Ho has other plans.

[emphasis added]

73 Reading the chain of emails together, I do not think that these two emails can be construed as suggesting that Ho had plans *for Toh*, ie, that Ho had engineered some elaborate plan with Chow to transfer Toh to Nano Technology. The inference that I draw from the emails is that Ho was aware of Toh's plans to move to Nano Technology and that Toh's move depended on Toh first handing over his duties and Ho's agreement to the date on which Toh would officially cease employment with TTL.

74 In the circumstances, I am of the view that TTL's allegation of breach in relation to Ho's role in poaching Toh to join Nano Technology is an arid technical challenge and I do not hesitate to dismiss this claim as unfounded. I do not see a firm evidential basis for concluding that Ho had colluded with Chow to actively procure and facilitate Toh's termination of employment with TTL so that Toh could join Nano Technology to the detriment of TTL. I do not think that TTL has managed to prove any ulterior motive on Ho's part or that Ho was not acting in good faith or against TTL's best interests. To the contrary, I am inclined to consider that Ho was merely trying not to impede Toh in finding alternative employment after deciding that Toh was not suitable for TTL. I accept Ho, Chow and Yeo's evidence that Toh had strong technical knowledge although he had a hearing impairment, a bad temper, and did not have good management acumen. In light of these facts, as well that Toh was recovering from nasal cancer, I find it perfectly understandable if Ho wanted to assist Toh in securing a job with Nano Technology as a sympathetic gesture or one made purely out of goodwill to an

employee.

Alleged breach in relation to Yeung, Shanmugam, Ling and Yang

75 Yeung left TTL and joined Fu Yu's Wujiang plant with less than one month left before his two year contract was due to expire on 20 March 2008. Yeung signed a letter of termination of employment on 29 February 2008, and his last day of employment was the same day. [\[note: 96\]](#) Yeung was therefore released immediately without serving the remaining 20 days of his contract with TTL or any notice period. Yeung's letter of appointment with Fu Yu was signed on 18 February 2008, and he commenced employment on the same day. [\[note: 97\]](#)

76 In an email from Ho to the other directors dated 28 March 2008, Ho explained Yeung's departure: [\[note: 98\]](#)

Before Mr Yang officially left TTL, there was a meeting between Mr Yang, Adrew Lim, Mr Chew our Fianace cum HR and myself in Shanghai. The meeting was also minuted. *In the meeting, Mr Yang informed a few staffs may also resign because they have a problem to work with Mr Poh the new OM.* ... The few main point agreed upon was, Mr Yang should come back TTL to help and support any time if needed. Besides those agreed upon staffs to join Mr Yang, Any other TTL staff resigned from the company, Mr Yang is not allowed to hire them within 6 month. [sic]

[emphasis added]

I consider that there is no indication in the evidence, apart from mere speculation, that Yeung's resignation was related to Toh's move to Nano Technology. The only "coincidence" or oddity that TTL could point to was that Toh and Yeung both had their last day of employment on 29 February 2008 and that Yeung was released prematurely. According to Ho, Yeung was released on Lim's request to facilitate the handing over of responsibilities to the new operations manager Poh Ding Ran. [\[note: 99\]](#) This was not put to Lim as the issue of Yeung's alleged transfer to Fu Yu arose only after TTL's pleadings were amended subsequent to Lim's testimony. I am therefore not able to make any conclusive finding on the circumstances of Yeung's move to Fu Yu simply on the basis of Ho's uncorroborated evidence; but as the onus is on TTL to show that Ho had been involved in poaching Yeung from TTL, I find that TTL has not discharged this on a balance of probabilities. The context of the email above indicates that Ho was aware that Yeung was going to join Fu Yu, but there is nothing otherwise to suggest that Yeung's resignation to join Fu Yu was part of a systematic transfer of TTL's staff to Fu Yu.

77 I now turn to consider TTL's additional claims in relation to Shanmugam, Ling and Yang. Shanmugam tendered his resignation on 1 September 2008, and his last day with TTL was 31 October 2008. [\[note: 100\]](#) He was subsequently appointed Assistant General Manager (Technology Group) in Solid Micron Technologies ("Solid Micron"), a Fu Yu subsidiary, three days after he left TTL on 3 November 2008. [\[note: 101\]](#) Shanmugam claimed that he left TTL because he had been told that he would be redesignated as a marketing director in Singapore and he did not want to take up a marketing role. [\[note: 102\]](#) According to Shanmugam, he did not speak to Chow or Ho before he left TTL. [\[note: 103\]](#) There is no indication of when Ling and Yang left TTL. The only evidence, based on Fu Yu's employee records, was that Ling joined Fu Yu probably sometime in or after October 2008 and Yang joined Fu Yu on 9 September 2008. [\[note: 104\]](#) Ho gave evidence that he was not familiar with Ling and Yang, and I note that TTL did not attempt to challenge this. [\[note: 105\]](#)

78 Shanmugam, Ling and Yang resigned after Ho had left his management position as CEO and Chairman of TTL, and there is no suggestion before me that Ho had any personal discussion or connection with any of these three named individuals. The only common denominator is that they joined Fu Yu after leaving TTL. TTL's claim clearly falls short of the required evidential threshold and I find that there is very little substance to this allegation.

79 As TTL was not able to prove that Ho was involved in the move of any of the above employees from TTL to Fu Yu, I accordingly dismiss TTL's claims in relation to the alleged poaching of Yeung, Shanmugam, Ling and Yang.

Claims against Chow

80 TTL alleged that Chow had breached his implied duties of fidelity to TTL and express contractual duties by poaching Toh to join Nano Technology and by acting in conflict of interest by preferring Fu Yu's interests over that of TTL.

(a) Allegations of breach relating to the poaching of Toh

81 The circumstances of Toh's move from TTL to Nano Technology have been discussed above, and I deal here only with Chow's direct involvement in Toh's move to Nano Technology. TTL claimed that Chow's involvement was proven by the contemporaneous email correspondence between Chow and Toh, and submitted that Chow had breached his implied duties of fidelity by acting in conflict of TTL's interests by seeking to entice Toh to join a subsidiary of Fu Yu.

82 The overall record of the email correspondence between Chow and Toh indicates that the emails exchanged generally had a neutral tone and I do not agree with TTL that Chow was deliberately dangling the carrot of a very favourable employment package to encourage Toh to leave TTL. In my view, however, it is very clear that Chow wanted to conceal his offer to Toh. In an email from Chow to Toh dated 18 December 2007, Chow had written: [\[note: 106\]](#)

Lastly, please DO NOT let anybody know that you are joining Nano Technology Manufacturing. You may tell people that you are joining HP or Singapore Aerospace etc..etc.

I also note Chow's equivocal and strained explanation of the above words in cross-examination; he claimed that he thought that it was "not very nice" [\[note: 107\]](#) for Toh to tell others that he was joining Nano Technology that he feared that people would start talking. [\[note: 108\]](#)

83 Notwithstanding this, I give Chow the benefit of the doubt as I find that TTL has not proven that Chow had positively acted in a manner that was prejudicial to TTL's interests. Yeo, the present Business Development Director of Nano Technology, gave evidence that he had recommended to Chow that Toh could take on a limited technical role at Nano Technology after Toh had approached him in late 2007 enquiring about potential job opportunities. According to Yeo, Chow had initially been doubtful and had informed Yeo that Toh had been released from his position as General Manager of TTL's Shanghai operation due to his poor performance. [\[note: 109\]](#) I have accepted that Toh may have been a problematic manager, and that by late 2007, all relevant parties had decided that Toh would be replaced by Lim. I do not think TTL has managed to show otherwise. On the limited evidence before me, I am thus unable to conclude that Chow had been acting maliciously or in bad faith by instigating Toh to join Nano Technology. I find it equally plausible that Chow was merely offering Toh another opportunity given the impending termination of Toh's services with TTL, even if Chow was of the not unfounded view that it would be a sensitive issue. [\[note: 110\]](#) I also take into account the fact

that Nano Technology was engaged in a different field of high-technology precision manufacturing, [\[note: 111\]](#) and TTL did not argue that Nano Technology was in direct competition with TTL or that there was any likelihood of the transfer of confidential information or processes.

84 In my judgment, on the facts of the present case, Chow's duties of fidelity did not extend so far as to render it disloyal to offer another employee of his employer a job at a company that engages in an entirely different type of business from his employer, after it is clear that the particular employee would not be retained by his employer. For completeness, I observe that as Toh was entitled to terminate his employment contract upon giving due notice, TTL has not proved why Toh's actions should be characterised as a breach of any rule or regulation. Chow accordingly did not induce any such breach by Toh and was not in breach of the express contractual duty not to incite other employees to breach TTL's rules and regulations. I therefore dismiss this part of TTL's claim against Chow.

(b) Allegations of breach relating to Chow's conflict of interest in acting as advisor to both TTL and Fu Yu

85 TTL's claim against Chow is phrased very generally in terms of an alleged conflict of interest while Chow was concurrently wearing the hats of Advisors to both Fu Yu and TTL. In particular, TTL focused on one specific instance, involving the award of a contract from a contract manufacturing company known as Jabil ("the Jabil Contract"). The Jabil Contract was for the production of barcode readers, and the end customer was a company called Zebra. Chow had purportedly diverted this potential business opportunity to Fu Yu and had therefore breached his implied duties of fidelity and the express duties in his employment contract not to have a second job which interfered with the efficient performance of his duties with TTL.

86 The factual basis for TTL's allegation was that Chow had expressly said to Tan that the Jabil Contract should be performed by Fu Yu instead. A board paper circulated for use in a Board meeting on 14 April 2008 by Tan stated as follows: [\[note: 112\]](#)

... TTL and Watson have been fighting for a deal from Jabil (customer). And Jabil's end customer is Zebra (a barcode printer company from USA). According to market information, Fu Yu is providing quotation directly to Zebra recently. Mr KL Tan asked Mr Chow (our advisor) if he knew about this. *Mr Chow replied that he knew about it and he told Mr Tan he found this deal was not suitable for TTL and it was better to leave it to Fu Yu to do it.*

[emphasis added]

Chow did not deny that he may have mentioned to Tan that the Jabil Contract would not be profitable for TTL, [\[note: 113\]](#) but he did not concede that he had made any suggestion to Tan that the Jabil Contract should be left to Fu Yu instead.

87 TTL also submitted that Chow's conflict of interest was evidenced by the fact that he had not instructed Bobby Lee Tee Yang ("Bobby Lee"), the then manager of TTL's factory in Dongguan, to actively pursue the Jabil Contract. [\[note: 114\]](#) Chow denied that he had sought to interfere with the procurement of the Jabil Contract; he stated that he had asked Bobby Lee to pursue the Jabil Contract [\[note: 115\]](#) and had left it to Bobby Lee to run the general business instead of following up with further details. [\[note: 116\]](#) I note at this juncture that it is clear to me that Chow must have had at least some knowledge of the details of the Jabil Contract from his evidence, as he evidently had more than a cursory understanding of the value, nature and production volume involved in the Jabil

Contract.

88 Bobby Lee filed an affidavit directly addressing the issues raised by the Jabil Contract, and his account generally corroborated Chow's evidence. TTL strenuously disputed whether Bobby Lee was an independent or reliable witness and whether his evidence, filed during the course of the proceedings, had been specifically tailored to refute the allegations against Chow that had arisen in the course of the oral evidence. For my part, I do not think that Bobby Lee's evidence should be summarily dismissed as he is the only witness who had personal knowledge. Having heard Bobby Lee, I find his evidence generally consistent and believable. According to Bobby Lee, Watson Plastics – which cooperated with TTL on joint projects – had requested TTL to support Watsons Electroplating ("Watsons EP") for the Jabil Contract in late 2007. Bobby Lee had informed Chow of the Jabil Contract during a weekly meeting and Chow had told Bobby Lee to cooperate with Watsons EP to secure the contract. [\[note: 117\]](#)

89 In January or February 2008, Jabil sent a team to audit TTL's Dongguan factory but Bobby Lee did not hear any further news of the Jabil Contract. [\[note: 118\]](#) Bobby Lee explained in cross-examination that prior to the audit, TTL had given a quotation to Watsons EP, and Watsons EP had consolidated the quotation and sent it to Jabil. [\[note: 119\]](#) Jabil then audited the factories of about five other plastics suppliers before deciding who the contract would be awarded to. Bobby Lee could not recall whether Fu Yu was one of the five suppliers. [\[note: 120\]](#) After the audit, Bobby Lee received an audit report informing him that TTL's factory had over 20 non-conformities, but Jabil purportedly did not send any further response stating that TTL had failed the audit or had not been awarded the contract. [\[note: 121\]](#) According to Bobby Lee, that was the end of the matter; Chow did not make any enquiries about the Jabil deal or give him instructions not to pursue the contract further. [\[note: 122\]](#)

90 I am not persuaded that TTL has managed to demonstrate, on a balance of probabilities, that Chow had deliberately diverted the Jabil Contract to Fu Yu. I note that TTL did not suggest, nor did it adduce any evidence – apart from the board paper above – that Fu Yu had *in fact* submitted a quotation or that the Jabil Contract was eventually awarded to Fu Yu. There is nothing to indicate that TTL was prohibited from submitting a quotation; to the contrary, the evidence appears to evince that TTL had simply lost the bid because it did not satisfy Jabil's required technical specifications. More significantly, TTL did not dispute Bobby Lee's evidence that Watsons EP had initiated contact and coordinated with Jabil on the contract and was responsible for compiling an overall quotation before submitting it to Jabil. It was not explained to me how Bobby Lee could have unilaterally decided not to pursue the contract without accounting to Watsons EP. While I also find that Chow clearly had some knowledge of the Jabil Contract, it is purely speculative whether Chow had used any confidential or pricing information from TTL to assist Fu Yu in its bid (if any). As I have found above, I do not think that Chow was actively involved in the operational or business aspects of Fu Yu during the material time in late 2007. The only incontrovertible allegation appears to be that Chow did nothing, *ie*, he did not press Bobby Lee to pursue the Jabil Contract further or follow up on it. However, this certainly does not give rise to any inference that Chow had deliberately obstructed TTL from actively bidding for the Jabil Contract.

91 It follows from my factual findings above that TTL has not discharged its burden of showing that Chow was acting in actual conflict by diverting the Jabil Contract to Fu Yu. However, TTL framed its submissions on the alternative basis that Chow had put himself in a position where his duty and interest *may* conflict. As I noted earlier, TTL did not plead that Chow, as a *de facto* member of the top management of TTL, owed fiduciary duties to TTL in addition to his duties of fidelity. I am therefore limited by the pleadings to consider TTL's claims solely on the basis of the duties of *fidelity*

that Chow owed to TTL as an *employee*. For this reason, I am unable to agree with the broader basis of liability advanced by TTL, *viz*, liability for potential conflicts of interest, which in my view applies only to situations involving *fiduciaries*.

92 The distinction between the duties of fidelity and fiduciary duties was recently set out by the Court of Appeal in *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 ("*Smile Inc*") at [52], approving the following dicta of Elias J in the English High Court decision of *Nottingham University v Fishel* [2000] IRLR 471 at [96]:

Accordingly, in analysing the employment cases in this field, care must be taken not automatically to equate the duties of good faith and loyalty, or trust and confidence, with fiduciary obligations. Very often in such cases the court has simply been concerned with the question whether the employee's conduct has been such as to justify summary dismissal, and there has been no need to decide whether the duties infringed, properly analysed, are contractual or fiduciary obligations. As a consequence, the two are sometimes wrongly treated as identical ...

[emphasis added]

The content and conceptual basis of the duties of fidelity and fiduciary duties are not identical, and these two duties should not shade so imperceptibly into each other such that the fiduciary concept is used indiscriminately to extend liability to every situation where an equitable remedy is regarded as desirable.

93 With respect, TTL's submissions betray the looseness of thought that Elias J cautioned against – the automatic equation of the duties of fidelity with fiduciary obligations. In this regard, TTL cited the following dicta of Lord Woolf M.R in the Court of Appeal in *Attorney General v Blake* [1998] 2 WLR 805 ("*Blake*") at 814-815, which appears to provide support for the proposition that a *potential* conflict per se would be a breach of an employee's duty of fidelity:

... The employer is entitled to the single-minded loyalty of his employee. The employee must act in good faith; he must not make a profit out of his trust; *he must not place himself in a position where his duty and his interest may conflict*; he may not act for his own benefit or the benefit of a third party without the informed consent of his employer. ...

[emphasis added]

I note that the above passage was in fact preceded by the following sentences (at 814):

There is more than one category of fiduciary relationship...[t]he most important of these is the relationship of trust and confidence, which arises whenever one party undertakes to act in the interests of another or places himself in a position where he is obliged to act in the interests of another. The relationship between employer and employee is of this character. The core obligation *of a fiduciary of this kind* is the obligation of loyalty.

[emphasis added]

Lord Woolf's observations must therefore be read in the context in which they were made; *Blake* involved a servant of the Crown, which is a peculiar form of employment relationship that has been accepted as automatically giving rise to a *fiduciary* relationship. TTL did not cite any other authority which suggests that the duty of fidelity arising in a typical employment relationship would extend as

far as fiduciary duties to encompass potential conflict, and I decline to do so without full argument.

94 In *Smile Inc*, the Court of Appeal observed at [76]-[77]:

76 ... The duty to disclose in *British Midland Tool* was held to be based upon a director's fiduciary duties, not an employee's duty of good faith and fidelity. Indeed, Hart J makes it quite clear that (at [94]):

The employee's duty of fidelity to his employer, although in some respects similar in content to the director's fiduciary duty to the company and although it is itself sometimes described as a fiduciary duty ... is by no means identical. Importantly it does not include, in the usual case, any prohibition as such on being in a position where his duty as employee and his self-interest may conflict.

7 7 *British Midland Tool* is, therefore, good authority centring on the *fiduciary duty of a director, to act loyally and in the best interests of his principal, and not put himself in a position of conflict between his principal's interests and his self-interest. These are considerations that do not apply with equal force in an employee-employer relationship, which is the situation in the present case.*

[emphasis added]

The justification for the *potential* conflict rule has traditionally stemmed from the single-minded duty of loyalty of the fiduciary to the exclusion of the fiduciary's own interest. However, the duty of fidelity to an employee does not require the employee to subjugate his own interests to those of his employer and an unforgiving view of conflict in the employment context is difficult to square with this well-established position in law. I cannot accede to TTL's argument and consider that the prophylactic nature of the conflict rules applying to directors in a fiduciary position should not apply with full rigour in this context, where Chow was merely in the position of an employee. An employee is not *per se* in breach of his duty of fidelity merely because he is in a position where there is a potential conflict of interest. I acknowledge that the scope of the duty of fidelity may vary according to the seniority of the employment, but I do not think the duty of fidelity extends so far as to cover potential, as opposed to actual, dishonest or disloyal behaviour.

95 As TTL is only able to establish, without more, that Chow was merely concurrently acting as an advisor to Fu Yu and TTL, and cannot point to any specific instance where there had been an actual conflict or active preference of Fu Yu's interests over TTL's interests, I find that TTL has failed to establish any liability in relation to an alleged breach of Chow's duty of fidelity.

96 TTL finally submitted that Chow had breached an express term of TTL's Employee Handbook, *viz*, an obligation not to have a second job which interferes with the efficient performance of his duty to TTL. Clause 6.19 of the Employee Handbook states as follows:

As full time employee, he/she is *advised* not to have a second job elsewhere especially if the outside business or employment *interferes with the efficient performance* of his/her duty to [TTL]. [sic]

[emphasis added]

97 I will deal with this claim very briefly as it was premised entirely on the factual basis of Chow actively preferring the interests of Fu Yu over TTL. This was not made out on the evidence, and

neither did TTL seek to further canvass how or why Chow's efficient performance of his duties was compromised by his second job with Fu Yu.

Conclusion

98 For the foregoing reasons, I allow the claim against Ho in part and dismiss the claim against Chow. In summary, I find and hold that Ho was only in breach in the following respects:

- (a) Ho was in breach of his fiduciary duty to avoid potential conflicts of interests by failing to seek the approval of the Board for the remuneration packages offered to the Advisors; and
- (b) Ho was in breach of his fiduciary duty to act in the interests of TTL by authorising payments to Bontech for services that were clearly not rendered.

99 I give judgment for TTL accordingly against Ho with damages to be assessed. As to costs, the parties are to file their skeletal submissions on costs within 10 days from the date hereof and I will hear parties thereafter to give my decision thereon.

[\[note: 1\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [123]-[125].

[\[note: 2\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 3 p 69 lines 14-33.

[\[note: 3\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 4 p 46 lines 21-28, p 47 lines 12-16.

[\[note: 4\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 4 p 50 lines 9-18.

[\[note: 5\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 4 p 52 lines 17-25.

[\[note: 6\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 4 p 51 lines 28-30.

[\[note: 7\]](#) Agreed Bundle Vol 2 at p 333.

[\[note: 8\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 pp 26-27.

[\[note: 9\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 p 20 lines 5-13.

[\[note: 10\]](#) 7th Affidavit of Ho Kang Peng at [2]-[5].

[\[note: 11\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 p 28 lines 11-13; Day 10 p 29 lines 10-16.

[\[note: 12\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 p 35 lines 27-32.

[\[note: 13\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [4].

[\[note: 14\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [6].

[\[note: 15\]](#) Affidavit of Evidence in Chief of Ho Kang at [13]-[14], [22].

[\[note: 16\]](#) Agreed Bundle Volume 1 at pp 94 and 100; Clause 12 of the Employment Contracts entered into by Ng and Chow on 24 November 2005.

[\[note: 17\]](#) Clause 13 of the Employment Contracts entered into by Ng and Chow on 24 November 2005; Agreed Bundle Volume 1 at pp 94 and 100.

[\[note: 18\]](#) Notes of Evidence, XXN of Ng Hock Ching, Day 6 p 129 lines 29-30.

[\[note: 19\]](#) Notes of Evidence, XXN of Ng Hock Ching, Day 6 p 129 lines 18-20.

[\[note: 20\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 118 lines 8-18.

[\[note: 21\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 121 lines 17-19.

[\[note: 22\]](#) Agreed Bundle Volume 1 at p 164.

[\[note: 23\]](#) Agreed Bundle Volume 1 at p 168.

[\[note: 24\]](#) Agreed Bundle Volume 1 at p 172.

[\[note: 25\]](#) Agreed Bundle Volume 1 at pp 74-75.

[\[note: 26\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 61 lines 29-31; Affidavit of Evidence in Chief of Ho Kang Peng at [18].

[\[note: 27\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 62 lines 5-6.

[\[note: 28\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 64 lines 1-21.

[\[note: 29\]](#) Notes of Evidence, XXN of Petrus Huang, Day 4 p 93 lines 27-31; RXN of Petrus Huang, Day 4 p 125 lines 17-21.

[\[note: 30\]](#) Notes of Evidence, RXN of Petrus Huang, Day 4 p 126 lines 15-16.

[\[note: 31\]](#) Affidavit of Evidence in Chief of Chow Weng Fook at [8]-[9].

[\[note: 32\]](#) Statutory Declaration of Agnes Leong at [33].

[\[note: 33\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [23]-[25].

[\[note: 34\]](#) Agreed Bundle Volume 1 at p 161.

[\[note: 35\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [22].

[\[note: 36\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 83-85.

[\[note: 37\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 90 lines 16-20.

[\[note: 38\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [14].

[\[note: 39\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 93 lines 21-29.

[\[note: 40\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 67 lines 12-14, p 68 lines 3-5.

[\[note: 41\]](#) Notes of Evidence, XXN of Huang Yen Sen, Petrus, Day 4 p 94 lines 2-8.

[\[note: 42\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [27].

[\[note: 43\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 97 lines 4-7.

[\[note: 44\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at HKP-12.

[\[note: 45\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 54 lines 9-28.

[\[note: 46\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 49 lines 25-28.

[\[note: 47\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 46 lines 11-17.

[\[note: 48\]](#) Affidavit of Evidence in Chief of Chow Weng Fook at [7].

[\[note: 49\]](#) Affidavit of Evidence in Chief of Ng Hock Ching at [6].

[\[note: 50\]](#) Notes of Evidence, XXN of Ng Hock Ching, Day 6 p 140 lines 23-32.

[\[note: 51\]](#) Affidavit of Evidence in Chief of Shanmugam s/o Thangaveloo at [11], [15]-[16].

[\[note: 52\]](#) Notes of Evidence, XN of Agnes Leong Shiow Wah, Day 14 lines 4-31.

[\[note: 53\]](#) Notes of Evidence, XN of Agnes Leong Shiow Wah, Day 14 lines 12, 28-29.

[\[note: 54\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [88].

[\[note: 55\]](#) Notes of Evidence, XXN of Tan Kee Liang, Day 3 p 109 lines 4-20.

[\[note: 56\]](#) Supplementary Affidavit of Evidence in Chief of Ho Kang Peng at [4].

[\[note: 57\]](#) See generally, Notes of Evidence, XXN of Ho Kang Peng, Day 9 pp 23-41.

[\[note: 58\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 9 p 32.

[\[note: 59\]](#) Plaintiff's Closing Submissions at [23]-[24].

- [\[note: 60\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [106].
- [\[note: 61\]](#) Affidavit of Evidence in Chief of Tan Puay Chuan at [2].
- [\[note: 62\]](#) Notes of Evidence, RXN of Tan Kee Liang, Day 5 p 55 lines 18-29.
- [\[note: 63\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 45 lines 10-18.
- [\[note: 64\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 120 lines 5-19.
- [\[note: 65\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 122 lines 1-3.
- [\[note: 66\]](#) Notes of Evidence, XXN of Ng Hock Ching, Day 6 p 136 lines 13-16.
- [\[note: 67\]](#) Agreed Bundle Volume 1 at pp 119-120.
- [\[note: 68\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [137].
- [\[note: 69\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [139].
- [\[note: 70\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [138].
- [\[note: 71\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 13 p 144 lines 19-20.
- [\[note: 72\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 8 p 146 lines 8-16.
- [\[note: 73\]](#) Notes of Evidence, XXN of Oh Chye Huat, Day 5 p 13 lines 9-17.
- [\[note: 74\]](#) Affidavit of Evidence in Chief of Oh Chye Huat at OCH-1.
- [\[note: 75\]](#) Notes of Evidence, XXN of Oh Chye Huat, Day 5 p 19 lines 7-9.
- [\[note: 76\]](#) Affidavit of Evidence in Chief of Oh Chye Huat at [12].
- [\[note: 77\]](#) Affidavit of Evidence in Chief of Oh Chye Huat at [12]; Affidavit of Evidence in Chief of Ho Kang Peng at [34]-[35].
- [\[note: 78\]](#) Notes of Evidence, XXN of Oh Chye Huat, Day 6 p 61 lines 1-12.
- [\[note: 79\]](#) Affidavit of Evidence in Chief of Lee Dah Kang at [53].
- [\[note: 80\]](#) Affidavit of Evidence in Chief of Lee Dah Kang at [53].
- [\[note: 81\]](#) Agreed Bundle Volume 1 p 13.
- [\[note: 82\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [47]; Affidavit of Evidence in Chief of Koo

Wai Sum at [6]-[8].

[\[note: 83\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [45].

[\[note: 84\]](#) Affidavit of Evidence in Chief of Lim Han Seng at [8]-[11].

[\[note: 85\]](#) Affidavit of Evidence in Chief of Lim Han Seng at [4].

[\[note: 86\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [44].

[\[note: 87\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 13 p 121 lines 2-10.

[\[note: 88\]](#) Affidavit of Evidence in Chief of Tan Kee Liang at [175], TKL-54.

[\[note: 89\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 p 95 lines 22-25.

[\[note: 90\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [50]-[51].

[\[note: 91\]](#) Affidavit of Evidence in Chief of Yeo See Joo at at [15].

[\[note: 92\]](#) Notes of Evidence, XXN of Ho Kang Peng, Day 10 p 124 lines 24-29.

[\[note: 93\]](#) Affidavit of Evidence in Chief of Ho Kang Peng at [52]-[53].

[\[note: 94\]](#) Agreed Bundle Volume 1 p 58.

[\[note: 95\]](#) Agreed Bundle Volume 1 p 57.

[\[note: 96\]](#) Agreed Bundle Volume 1 p 61.

[\[note: 97\]](#) Exhibit P-17.

[\[note: 98\]](#) Agreed Bundle Volume 1 p 71.

[\[note: 99\]](#) Notes of Evidence, XXN of Ho Kang Kang, Day 13 p 130 lines 4-14.

[\[note: 100\]](#) Notes of Evidence, XXN of Shanmugam s/o Thangaveloo, Day 6 p 89 lines 8-21.

[\[note: 101\]](#) Notes of Evidence, XXN of Shanmugam s/o Thangaveloo, Day 6 p 89 lines 26-29.

[\[note: 102\]](#) Affidavit of Shanmugam s/o Thangaveloo at [17]-[18].

[\[note: 103\]](#) Notes of Evidence, XXN of Shanmugam s/o Thangaveloo, Day 6 p 89 lines 1-3.

[\[note: 104\]](#) Exhibit P-17.

[\[note: 105\]](#) Notes of Evidence, FXN of Ho Kang Peng, Day 9 p 4 lines 23-31.

[\[note: 106\]](#) Agreed Bundle Volume 1 p 58.

[\[note: 107\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 91 lines 22-29.

[\[note: 108\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 92 lines 2-21.

[\[note: 109\]](#) Affidavit of Yeo See Joo at [16]-[18].

[\[note: 110\]](#) Affidavit of Evidence in Chief of Chow Weng Fook at [24].

[\[note: 111\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 72 lines 21-24.

[\[note: 112\]](#) Exhibit D-2.

[\[note: 113\]](#) Supplementary Affidavit of Chow Weng Fook at [3].

[\[note: 114\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 48 lines 18-31.

[\[note: 115\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 46 lines 25-28.

[\[note: 116\]](#) Notes of Evidence, XXN of Chow Weng Fook, Day 12 p 46 lines 3-11.

[\[note: 117\]](#) Affidavit of Lee Tee Yang at [4]-[6].

[\[note: 118\]](#) Affidavit of Lee Tee Yang at [10]-[11].

[\[note: 119\]](#) Notes of Evidence, XXN of Lee Tee Yang, Day 13 p 32 lines 14-17.

[\[note: 120\]](#) Notes of Evidence, XXN of Lee Tee Yang, Day 13 p 33 lines 20-32.

[\[note: 121\]](#) Notes of Evidence, XXN of Lee Tee Yang, Day 13 p 35 lines 1-2, lines 16-21.

[\[note: 122\]](#) Notes of Evidence, XXN of Lee Tee Yang, Day 13 p 38 lines 3-10.

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