Lee Seng Eder *v* Wee Kim Chwee and others
[2015] SGHCR 2

Case Number : Suit No 134 of 2014 (Summons No 4833 of 2014 and Summons No 4860 of 2014)

Decision Date : 06 January 2015

Tribunal/Court : High Court

Coram : Justin Yeo AR

Counsel Name(s) : Mr Ong Ying Ping (OPT Law Corporation) for the Plaintiff; Mr Lai Swee Fung and Mr Liu Kam Ward (Unilegal LLC) for the 1st and 2nd Defendants; Mr Nedumaran Muthukrishnan (M Nedumaran & Co) for the 3rd and 4th Defendants.

Parties : Lee Seng Eder — Wee Kim Chwee and others

Civil Procedure – Striking Out

6 January 2015

Justin Yeo AR:

1 The Defendants, namely Wee Kim Chwee ("the 1st Defendant"), Tien Shin ("the 2nd Defendant"), Goh York Quee Bernard ("the 3rd Defendant") and N M Solution Pte Ltd ("the 4th Defendant"), applied to strike out the Plaintiff's Statement of Claim (Amendment No 1) ("the Statement of Claim"). Summons No 4833 of 2014 was taken out by the 3rd and 4th Defendants, while Summons No 4860 of 2014 was taken out by the 1st and 2nd Defendants (collectively, the "Summonses"). The Summonses are identical for all intents and purposes and may be dealt with together.

2 I rendered judgment for both Summonses on 1 December 2014, and ordered that the time for the taking out of any appeal on my decision would commence from the date of this written decision.

Facts

3 The Plaintiff is a shareholder of Neu-Movers Logistics Pte Ltd ("the Company"), and presently holds 40% of the shares in the Company. The Company is in the business of logistics, and provides customers with transport, storage, manpower, equipment and machinery for moving physical items from one place to another. The Plaintiff was a founder of the Company, and was its managing director until sometime in February 2012 when he was removed from that position at an extraordinary general meeting.

4 The 1st and 2nd Defendants are the directors and shareholders of the Company who approved the removal of the Plaintiff as managing director. [note: 1] The 2nd Defendant is effectively the controlling shareholder of the Company while the 1st Defendant manages its day-to-day operations and activities. [note: 2] The 3rd Defendant is a former employee of the Company, and is the sole director and shareholder of the 4th Defendant. [note: 3] The Company had allegedly assigned its goodwill and assets to the 4th Defendant.

5 The present suit is related to earlier proceedings instituted by the Plaintiff against the Defendants in Originating Summons 407 of 2013 ("OS 407"). The proceedings and decision in OS 407 formed a significant bulk of the arguments raised on the Summonses. OS 407 was the Plaintiff's application for leave under s 216A of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") to commence a derivative action in the name and on behalf of the Company against, *inter alia*, the four Defendants. Subsequently, the Plaintiff discontinued OS 407 against the 3rd and 4th Defendants and OS 407 proceeded without their attendance or involvement.

6 On 31 December 2013, Andrew Ang J ("Ang J") issued a judgment dismissing OS 407. The learned Judge's written decision is found in *Lee Seng Eder v Wee Kim Chwee and others* [2014] 2 SLR 56 ("*Lee Seng Eder*"). In gist, Ang J found that the requirements for leave to bring a derivative action under s 216A of the Act were not made out, for the following reasons:

(a) First, the Plaintiff had failed to give 14 days' notice to the directors of the Company of his intention to apply to the Court under s 216A(2) of the Act despite having ample time and opportunity to do so (*Lee Seng Eder* at [8]).

(b) Second, it would not be in the interests of the Company to expend considerable sums of money to bring the action before liquidation (*Lee Seng Eder* at [15]). On this last mentioned point, Ang J noted that the precarious state of the Company's financial position meant that liquidation of the Company is "more than likely", and that even if leave were granted to the Plaintiff to commence the action, the liquidator "may well choose to discontinue the action upon liquidation" (*Lee Seng Eder* at [15]). The issue of bringing an action against the directors of the Company "should more appropriately be raised for the liquidator's consideration after the Company is in liquidation" (*Lee Seng Eder* at [15]).

7 The Plaintiff did not appeal against the decision in *Lee Seng Eder*. Instead, less than a month after the decision, the Plaintiff took out the present suit against all four Defendants, raising various allegations against them. The allegations are contained in the Statement of Claim, to which I now turn.

The Statement of Claim

8 The Statement of Claim is a relatively short document comprising 14 paragraphs. However, despite its brevity, the document was unclear and it was uncertain as to how the different complaints and claims raised interfaced with each other. I raised numerous queries to counsel for the Plaintiff, Mr Ong Ying Ping ("Mr Ong"), seeking clarification on various aspects of the Statement of Claim. In brief, there were five fundamental uncertainties concerning the Statement of Claim.

(a) The first major uncertainty stemmed from the fact that the Statement of Claim was unclear about what acts of the Defendants were being alleged to result in the Plaintiff suffering loss and damage. Paragraph 13 of the Statement of Claim purported to provide the particulars of all the loss and damage suffered by the Plaintiff. It indicated that as a result of the matters set out "particularly [in] paragraphs 10, 11 and 12A [of the Statement of Claim]", the Plaintiff suffered the losses that he is now claiming for. No specific reference, however, was made to paragraphs 7, 8, 9 and 12 of the Statement of Claim, and it was uncertain what loss or damage the Plaintiff alleged had arisen *vis-à-vis* those paragraphs. Mr Ong clarified upon my query that paragraph 13 of the Statement of Claim was erroneous, and that it should have referred to paragraphs 7 to 12A of the Statement of Claim.

(b) The second major uncertainty was that paragraph 13 of the Statement of Claim, which

purported to list the loss and damage suffered by the Plaintiff, did not specify that the Plaintiff had suffered any loss and damage from the 2nd Defendant's alleged breach of contract. The Plaintiff's claim for "damages for breach of contract" was somewhat confusingly contained in a separate paragraph. Upon my query, Mr Ong clarified that the loss and damage from the breach of contract should have been pleaded in paragraph 13 of the Statement of Claim, and applied to amend the Statement of Claim to indicate the same.

(c) The third major uncertainty stemmed from paragraph 14(b) of the Statement of Claim. In this paragraph, the Plaintiff purported to claim "[d]amages against [*sic*] the [1st and 2nd] Defendants' breach of fiduciary duties". This paragraph appeared to be related to paragraph 6 of the Statement of Claim, which confusingly stated that "the 1st and 2nd Defendant and [*sic*] each of them owed a duty to the Plaintiff to discharge his [*sic*] fiduciary duty [*sic*] to the Company in order to preserve the value of the Plaintiff's shares in the Company". There was some confusion as to how the Plaintiff could seek damages for breaches of fiduciary duties, when he had expressly pleaded in paragraph 5 of the Statement of Claim that these fiduciary duties were owed to the Company rather than to him. Upon my query, Mr Ong clarified that the "duty" owed to the Plaintiff was a duty on the part of the 1st and 2nd Defendants to discharge their fiduciary duties to the Company, as this would have an impact on the value of the Plaintiff's shares in the Company. He further characterized the nature of the "duty" as a duty not to oppress a minority shareholder, and suggested that it was a duty that correlated with s 216 of the Act. To this end, he suggested that their alleged breach of fiduciary duties had resulted, *inter alia*, in the 1st and 2nd Defendants causing the Company to assign or transfer the Company's assets at an undervalue or nominal value ("the Suspect Transactions"), which in turn resulted in: [note: 4]

(i) The Plaintiff losing his employment with the Company.

(ii) The Company becoming insolvent and hence being unable to pay the Plaintiff the sum of $36,000.

(iii) The diminution of the value of the Plaintiff's shares in the Company.

(d) The fourth major uncertainty related to the oppression claim against the 1st and 2nd Defendants as stated in paragraph 12A of the Statement of Claim. It was unclear as to where the oppression claim featured in the summary of claims stated by the Plaintiff in paragraph 14 of the Statement of Claim. On my query, Mr Ong clarified that the oppression claim in paragraph 12A was subsumed under the claim against the 1st and 2nd Defendants for breaches of their fiduciary duties, and that this should have been made clearer. He therefore applied to amend the Statement of Claim accordingly.

(e) The fifth major uncertainty stemmed from the fact that although the Plaintiff sought an account of monies "misappropriated or recovered by the Defendants", as well as the monies received by the Defendants "which were secret profits received in fraud on the Company" (see paragraphs 14(c) and 14(d) of the Statement of Claim), the body of the Statement of Claim was entirely silent on any form of fraud or misappropriation. Mr Ong could not explain why this was so, and asked to be given an opportunity to amend the Statement of Claim.

9 With Mr Ong's clarification and corresponding application to amend, I classified the Statement of Claim into three main categories of claims so that the parties and the court could proceed on a common understanding. The three categories were as follows:

(a) The first category was a contractual claim against the 2nd Defendant ("the Category One Claim"). The Plaintiff alleged that, in consideration of his agreement to relinquish his position as managing director, the 2nd Defendant had agreed that the Company would pay to the Plaintiff a sum of $36,000, being a sum equivalent to four and a half months of the Plaintiff's last drawn salary at that time; [note: 5] and that the 2nd Defendant would purchase the Plaintiff's shares in the Company. [note: 6] It should be noted that the contractual claim against the 2nd Defendant is limited to the latter point, *viz* an alleged breach of the contract to purchase the Plaintiff's shares. [note: 7] It did not extend to the former point, *viz* the agreement that the Company would pay the Plaintiff a sum of $36,000.

(b) The second category of claim concerned the Plaintiff's seeking of damages against the 1st and 2nd Defendants for their breach of their fiduciary duties owed to the Company ("the Category Two Claim"). As mentioned in [8(c)] above, the Plaintiff contended that the breach of fiduciary duties resulted in his loss of employment, his loss of $36,000, and the diminution of the value of his shares. The oppression claim also fell within this category (see [8(d)] above).

(c) The third category concerned the Plaintiff's claim against all four Defendants ("the Category Three Claim"). The claims were for:

(i) An account of all sums misappropriated or received by the Defendants and an order for payment to the Company of all sums found due on the taking of the account for the purposes of valuing the Plaintiff's shares in the Company. [note: 8]

(ii) An account of all sums received by the Defendants which were secret profits received in fraud on the Company and an order for payment to the Company of all sums found due on the taking of the account for the purposes of valuing the Plaintiff's shares in the Company. [note: 9]

(iii) Alternatively, for damages to be assessed. [note: 10]

At the second hearing before me, Mr Ong clarified that the claim against all four Defendants also included claims for loss and damage occasioned by an alleged "conspiracy by unlawful means to cause damage to the Plaintiff's interest as shareholder of the [Company]". He stated that the Plaintiff's position was that the matters pleaded in paragraphs 10 to 12 of the Statement of Claim, which resulted in the Plaintiff's alleged loss of employment, loss of $36,000, and the diminution of the value of his shares, were also claims against the 3rd and 4th Defendants. However, this position was somewhat confusingly omitted from the summary of claims in paragraph 14 of the Statement of Claim. Mr Ong applied to amend the Statement of Claim to clarify this point.

Issues before this court

10 The three issues before the court, in the order in which they were raised in the parties' submissions, were as follows:

(a) First, whether the Statement of Claim should be struck out as an abuse of process of the court under O 18 r 19(1)(d) of the Rules of Court, given that the issues raised were *res judicata*.

(b) Second, whether the Statement of Claim should be struck out for disclosing no reasonable cause of action, under O 18 r 19(1)(a) of the Rules of Court.

(c) Third, whether the Statement of Claim should be struck out for being scandalous, frivolous or vexatious, under O 18 r 19(1)(b) of the Rules of Court.

Issue One: Abuse of Process – *Res Judicata*

11 Counsel for the 1st and 2nd Defendants, Mr Lai Swee Fung ("Mr Lai") and counsel for the 3rd and 4th Defendants, Mr Nedumaran Muthukrishnan ("Mr Nedumaran") argued that the Plaintiff was seeking to re-litigate issues that had been addressed in OS 407. As such, the Plaintiff's bringing of the Statement of Claim was a breach of the *res judicata* rule, and constituted an abuse of process.

The law

12 The law on *res judicata* and issue estoppel is well established and does not have to be rehearsed at length. *Res judicata* is a means through which the law discourages re-litigation of the same issues except by means of an appeal (*Arthur JS Hall v Simmons, Barratt v Ansell (t/a Seddon (a firm)*), *Harris v Scholfield Roberts & Hill (a firm)* [2000] 1 AC 615 at 701). The rationale for the doctrine is clear: it is not in the interests of justice to permit repeated litigation on the same facts, as this could result in collateral challenges to judicial decisions, and/or potentially result in conflicting judicial decisions.

13 There are three aspects of the umbrella doctrine of *res judicata*, namely "cause of action estoppel", "issue estoppel" and "abuse of process" (see *Burgundy Global exploration Corp v Transocean Offshore International Ventures Ltd and another appeal* [2014] 3 SLR 381 ("*Burgundy*") at [36], citing *Goh Nellie v Goh Lian Teck* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [17]):

(a) Cause of action estoppel is the principle that "prevents a party from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties" (*Thoday v Thoday* [1964] P 181 at 197-198).

(b) Issue estoppel prevents the re-litigation of an issue which the court has already determined on the merits in previous proceedings between the same parties (*Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 ("*Wing Joo Loong*") at [165]). The following four requirements have to be met in order to establish issue estoppel (*ibid*, and also see *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 at [14]):

(i) First, there must be a final and conclusive judgment on the merits of the issue which is said to be subject to estoppel. Issue estoppel "cannot begin to be established unless it can be ascertained with some degree of precision what it was that the dominant judgment… decided" (*Wing Joo Loong* at [169]).

(ii) Second, the judgment must be by a court of competent jurisdiction;

(iii) Third, there must be identity of parties to the two actions being compared; and

(iv) Fourth, there must be identity of subject matter in those two actions. In this

regard, three distinct points must be considered (*Wing Joo Loong* at [167], citing *Goh Nellie* at [34], [35] and [38]):

(A) The prior decision must traverse the same ground as that in the subsequent proceeding, and the facts and circumstances giving rise to the earlier decision must not have changed;

(B) The previous determination in question must have been fundamental and not merely collateral to the previous decision; and

(C) The issue which is said to be subject to estoppel should be shown in fact to have been raised and argued.

(c) The doctrine of "abuse of process" has been called the "extended doctrine of *res judicata*". It prevents, *inter alia*, a litigant from mounting a collateral attack on a previous decision (*Burgundy* at [36]).

Parties' arguments

14 Mr Lai argued that the Plaintiff's claim constituted all three aspects of the umbrella doctrine of *res judicata*:

(a) First, on cause of action estoppel, Mr Lai argued that Ang J had already refused to grant leave to the Plaintiff to bring a derivative action against the Defendants for breaching their duties as directors, and therefore, it must be inferred that the Plaintiff no longer has a valid cause of action against the Defendants. [note: 11]

(b) Second, on issue estoppel, Mr Lai argued that the Plaintiff was effectively bringing a "sequel action" that was "premised on the same factual matrix as the earlier decided action". [note: 12] The Plaintiff had filed a voluminous affidavit in OS 407 detailing several actions of the 1st and 2nd Defendants which he claimed constituted breaches of directors' duties. [note: 13] The issue of whether the 1st and 2nd Defendants had breached their duties as directors thus "formed the entire platform for the Plaintiff's s 216A Application". [note: 14] In the Statement of Claim, the Plaintiff had relied on the same grounds raised before Ang J, "merely repeat[ing] the same allegations *and bring[ing] nothing new to the table*" (emphasis in original). [note: 15] The Plaintiff had also included the same allegations concerning the sale of the Company's assets at undervalue; he was simply re-branding his claim as one based on an alleged conspiracy, and relying on the same grounds which Ang J had considered did not merit the s 216A application. [note: 16] Furthermore, paragraph 11(c) of the Statement of Claim made reference to OS 407, thus indicating that the Plaintiff was simply re-hashing the points he had already raised in OS 407. [note: 17]

(c) Third, on abuse of process, Mr Lai argued that Ang J had considered the evidence and the written submissions of all the parties, and only dismissed OS 407 after carefully examining all the evidence and arguments. [note: 18] Ang J had clearly held that in the prevailing circumstances it would be better to wait for the likely situation in which the Company would be liquidated, and for the liquidators to bring the action against the allegedly errant directors. If the Plaintiff was dissatisfied with Ang J's decision, he should have appealed against it, but failed to do so. [note:

[19] He should not be permitted to pursue a collateral attack on Ang J's decision.

15 Mr Nedumaran agreed with Mr Lai's submissions, and added that the Plaintiff had voluntarily withdrawn OS 407 as against the 3rd and 4th Defendants, and should not be allowed to re-litigate issues. [note: 20]

Decision

16 I found that the Statement of Claim did not fall foul of any of the three aspects of *res judicata*, for four reasons:

(a) First, OS 407 did not provide a conclusive judgment on the merits regarding the Suspect Transactions. [note: 21]

(b) Second, the parties in OS 407 were not identical to the parties in the present suit because the Plaintiff discontinued OS 407 against the 3rd and 4th Defendants. Furthermore, the 3rd and 4th Defendants were not directors of the Company against whom the Company could have sought remedies in OS 407.

(c) Third, the two proceedings concerned different subject matter. In OS 407, the main issues decided by Ang J related to whether the Plaintiff's failure to give a 14-day notice was fatal to the application, and whether it was in the interests of the Company for leave to be granted for a s 216A action to be brought. Ang J did not evaluate the *prima facie* evidence of the Suspect Transactions in the context of whether they amounted to a conspiracy among the Defendants to injure the Plaintiff. OS 407 was also not concerned with whether there was minority oppression of the Plaintiff. [note: 22]

17 As such, there was no basis to strike out the Plaintiff's Statement of Claim under O 18 r 19(1)(d) of the Rules of Court.

Issue Two: No reasonable cause of action

18 O 18 r 19(1)(a) empowers the court to strike out any pleading on the ground that it discloses no reasonable cause of action. As long as the statement of claim discloses some cause of action or raises some question fit to be decided by the court, the court will not strike out the claim simply because the case might be weak and unlikely to succeed (see *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell Asia, 2014) ("*Singapore Civil Procedure*") at paragraph 18/19/10).

Parties' arguments

19 Both Mr Lai and Mr Nedumaran argued that the Statement of Claim ought to be struck out under O 18 r 19(1)(a) of the Rules of Court as it disclosed no reasonable cause of action. Their arguments may be summarised as follows:

(a) First, for the Category One Claim, the Plaintiff failed to plead the price of the shares and/or the mechanism for determining the price of the shares. [note: 23] The "most crucial ingredient for a contract to exist, the price, is missing", and therefore there is no contract on which the Plaintiff can sue. [note: 24] Furthermore, the Defendants are the wrong defendants in relation to the payment of $36,000, as the Plaintiff had pleaded at paragraph 7 of the Statement

of Claim that "the Company would pay [the Plaintiff]" the sum of $36,000. The proper paying party was the Company, and therefore the cause of action lay only against the Company. [note: 25]

(b) Second, for the Category Two and Category Three Claims, the Plaintiff was not the proper plaintiff. The Plaintiff's claim in the present suit was brought in his capacity as the shareholder of the company, as evident from the fact that he referred to himself as a shareholder of the Company in paragraphs 1, 5, 6, 12 and 12A of the Statement of Claim. [note: 26] The central and *sine qua non* ingredient to all causes of action claimed by the Plaintiff is that the Defendants breached their duties as directors of the Company. [note: 27] It is settled law that the proper plaintiff in a breach of director's duties case is the Company, not the individual shareholder. [note: 28] A shareholder can only commence an action against a company for the breach of duty by a director if he obtains leave pursuant to s 216A of the Act. [note: 29] In this regard, the Plaintiff's act of applying for leave under s 216A of the Act constituted a clear acknowledgement that the proper plaintiff for the alleged breaches of directors' duties is the company, and that the Plaintiff did not have *locus standi* to bring an action premised on the breach of directors' duties. [note: 30]

20 Mr Ong responded to the arguments as follows:

(a) In relation to the Category One Claim, Mr Ong argued that the proper remedy for any lack of particulars would be an order for amendment of pleadings rather than striking out. He also clarified that the $36,000 was not claimed as part of the contractual claim, but rather, that it was part of a "conspiracy by unlawful means"; it therefore fell under the Category Two and Category Three Claims, not the Category One Claim.

(b) In relation to the Category Two and Category Three Claims, Mr Ong argued the failure to bring a derivative action did not prevent a shareholder from bringing a claim in his own name, since a shareholder's right of action was distinct from that of the company, even if it flowed form the same wrongful action. [note: 31] The principle that two distinct causes of actions owed to two different parties can arise from the same breach of duty is well established (see *Giles v Rhind* [2003] Ch 618 (CA) ("*Giles*"), *Johnson v Gorewood & Co* [2002] 2 AC 1 (HL) ("*Johnson*")). [note: 32] A shareholder can also bring a claim in his personal capacity even if the company has no cause of action (*Hengwell Development v Thing Chiang Ching* [2002] 2 SLR(R) 454 ("*Hengwell*")). [note: 33]

Decision

The Category One Claim

21 On the Category One Claim, it is true that the Plaintiff has omitted to plead certain details concerning the alleged contract. But this is not fatal to the Statement of Claim. What is required is better particularisation of the claim, rather than striking out the claim altogether. I therefore ordered the Plaintiff to amend the Statement of Claim to properly particularise the contractual claim against the 2nd Defendant.

The Category Two and Three Claims

22 The heart of the parties' dispute was over the Category Two and Three Claims. These claims

related to what is known as the "proper plaintiff" rule. The basis of the "proper plaintiff" rule is that wrongs against a company are efficiently and fairly disposed of by regulating the category of persons who can recover what is effectively the company's loss (*Townsing Henry George v Jenton Overseas Investment Pte Ltd (in liquidation)* [2007] 2 SLR(R) 597 (CA) ("*Townsing*") at [78]). The reflective loss principle is a variant of the "proper plaintiff" rule (*Townsing* at [78]; *Ng Kek Wee v Sim City Technology Ltd* [2014] SGCA 47 ("*Ng Kek Wee*") at [61]).

23 In a situation where the shareholder's loss merely reflects the company's loss that would be made good if the company had enforced its full rights. In such a scenario, the proper party to recover the reflective loss is the company and not the shareholder (*Ng Kek Wee* at [61]). In *Johnson*, Lord Bingham provided an instructive overview of who the proper plaintiff would be in the following three scenarios (see also *Hengwell* at [18]):

(a) First, where a company suffers loss caused by a breach owed to it, only the company may sue in respect of that loss;

(b) Second, where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder may sue in respect of it (if he has a cause of action to do so), even though the loss is a diminution in the value of the shareholding; and

(c) Third, where a company suffers loss caused by a breach of duty to it, and a shareholder suffers a loss separate and distinct from that suffered by the company caused by breach of a duty independently owed to the shareholder, each may sue to recover the loss caused to it by breach of the duty owed to it but neither may recover loss caused to the other by breach of the duty owed to that other.

24 On the Category Two Claim, the damage and loss caused to the Plaintiff was allegedly the loss of employment, the loss of the $36,000 and the diminution of the value of the Plaintiff's shares in the Company. Damage and loss also apparently flowed from the oppression claim.

25 The loss of employment and the loss of $36,000 were losses that were personal to the Plaintiff. While Mr Lai argued that the Company was the proper defendant in relation to the $36,000, the issue concerning the $36,000 must be read in the context that the Plaintiff had also pleaded that as part of a "conspiracy by unlawful means", the Defendants had caused the Company to become insolvent and therefore unable to pay the sum of $36,000 (see paragraph 10 of the Statement of Claim). It therefore cannot be said that there is no reasonable cause of action on the claims for loss of employment and the loss of $36,000.

26 The oppression claim, by its very nature, also concerned a loss personal to the Plaintiff. However, as mentioned at [8(d)] above, the relationship between the oppression claim and the claims raised at paragraph 14 of the Statement of Claim was unclear. I therefore ordered the Plaintiff to amend the Statement of Claim to properly particularise the oppression claim stated in paragraph 12A of the Statement of Claim, and how this correlated with the claims in paragraph 14 of the Statement of Claim.

27 The claim for diminution of the value of shares was more properly brought by the Company. Where the breaches of a director's duty results in a diminution in value of a shareholder's shareholding or loss of dividends, this "merely reflects the loss suffered by the company in respect of which the company has its own cause of action" (*Johnson* at 62, cited in *Townsing* at [75]). Paragraphs 12 and 13(c) of the Statement of Claim therefore disclosed no reasonable cause of action, and were accordingly struck out.

28 On the Category Three Claim, the essence of the claim is for monies to be repaid to the company for the purposes of valuing the Plaintiff's shares in the Company. In this regard, it relates directly to the diminution in the value of the shares of the Company. For the reasons mentioned at [27] above, no reasonable cause of action is revealed by this claim. On a related note, I also note that while the Plaintiff has claimed an account of all sums received by the Defendants on the grounds of misappropriation and fraud in paragraphs 14(c) and 14(d) of the Statement of Claim, neither of these grounds were ever pleaded in the body of the Statement of Claim. I therefore ordered that paragraphs 14(c), 14(d) and 14(e) of the Statement of Claim be struck out for revealing no reasonable cause of action.

Issue Three: Scandalous, Frivolous or Vexatious

29 In relation to O 18 r 19(1)(b) of the Rules of Court, Mr Lai argued that the Category One, Two and Three Claims were "legally unsustainable" and/or "factually unsustainable". Mr Lai referred to the fact-law distinction set out in *The "Bunga Melati 5"* [2012] 4 SLR 546 ("*Bunga Melati*"). In gist, a claim is "legally unsustainable" if "it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks" (*Bunga Melati* at [39(a)]). A claim is "factually unsustainable" if it is "possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance…" (*Bunga Melati* at [39(b)]).

30 For the paragraphs of the Statement of Claim that were already struck out under the analysis on "no reasonable cause of action" above, there would no longer be a need to analyse these claims under O 18 r 19(1)(b) of the Rules of Court. In any case, those claims also appeared to be legally unsustainable. It was therefore only necessary to analyse the Category One Claim as well as the parts of the Category Two Claim relating to the loss of employment, loss of the $36,000 and oppression.

31 With regard to the Category One Claim, the lack of particularisation of the price and/or price mechanism in the contract appeared to be the only ground on which 2nd Defendant argued that the claim ought to be struck out. Mr Lai was unable to point me to any evidence which suggested that the claim was factually unsustainable. As mentioned in [21], this was not sufficient to warrant a striking out.

32 As for the relevant parts of the Category Two Claim, Mr Lai argued that the Plaintiff was the managing director of the Company in 2009, and that therefore the Plaintiff should be responsible for the Company losing revenue of more than $2.6 million each year since then. However, there was simply insufficient evidence to strike out these claims summarily on grounds of factual unsustainability.

33 I therefore did not strike out any of the paragraphs of the Statement of Claim under O 18 r 19(1)(b) of the Rules of Court.

Conclusion

34 In summary, I made the following orders:

(a) Paragraphs 12, 13(c), 14(c), 14(d), 14(e) of the Statement of Claim were struck out (see [27] and [28] above).

(b) The Plaintiff was to make the necessary amendments to the Statement of Claim so as to

properly particularise the contractual claim against the 2nd Defendant (see [21] above) and the oppression claim against the 1st and 2nd Defendants (see [9(c)] above);

(c) I also made directions on a number of further amendments required to clarify the Statement of Claim. For completeness, these were as follows:

(i) First, there was an error in paragraph 10 of the Statement of Claim. In particular, the cross-reference to paragraph 5 should be a cross-reference to paragraph 7.

(ii) Second, paragraph 6 of the Statement of Claim should be amended to make clear the nature of the duty being referred to.

(iii) Third, paragraph 9 of the Statement of Claim should be amended to avoid confusion as to who the duties are said to be owed by, as well as the nature of these duties.

(iv) Fourth, paragraph 13 of the Statement of Claim should be amended to make clear that the Plaintiff is claiming for loss and damage occasioned by the 2nd Defendant's alleged breach of contract. It should also be amended to clarify the paragraphs that paragraph 13 of the Statement of Claim was intended to cross-refer to.

35 On the issue of costs, Mr Ong submitted that he was entitled to costs, because the causes of action relating to oppression and conspiracy by unlawful means survived the striking out applications. Mr Lai and Mr Nedumaran argued that their respective clients ought to be entitled to costs as they had, on balance, succeeded in their respective applications.

36 I adopted an issue-based approach to the award of costs. On the one hand, I agreed with Mr Lai and Mr Nedumaran that the Statement of Claim was confusing and presented numerous pitfalls for parties and the court. I also agreed with them that a not insubstantial portion of the Plaintiff's claims were either struck out or ordered to be amended. On the other, I also kept in mind the fact that Mr Ong had succeeded on the issue of *res judicata*, an issue on which a fairly substantial amount of time was expended. Taking all of the above into consideration, I ordered that the Plaintiff pay two sets of costs, one to the 1st and 2nd Defendants and the other to the 3rd and 4th Defendants, with each set of costs fixed at $3,000, all inclusive.

[note: 1] Statement of Claim at paragraph 3, Defence of the 1st and 2nd Defendants at paragraph 8.

[note: 2] Statement of Claim at paragraph 3, Defence of the 1st and 2nd Defendants at paragraph 8.

[note: 3] Statement of Claim at paragraph 4

[note: 4] Statement of Claim at paragraph 13

[note: 5] Statement of Claim at paragraph 7

[note: 6] Statement of Claim at paragraph 8

[note: 7] Statement of Claim at paragraph 14(a)

[note: 8] Statement of Claim at paragraph 14(c)

[note: 9] Statement of Claim at paragraph 14(d)

[note: 10] Statement of Claim at paragraph 14(e)

[note: 11] 1st and 2nd Defendant's Submissions, paragraph 45

[note: 12] 1st and 2nd Defendant's Submissions, paragraph 10

[note: 13] 1st and 2nd Defendant's Submissions, paragraph 4

[note: 14] 1st and 2nd Defendant's Submissions, paragraph 49

[note: 15] 1st and 2nd Defendant's Submissions, paragraph 26

[note: 16] 1st and 2nd Defendant's Submissions, paragraph 35

[note: 17] 1st and 2nd Defendant's Submissions, paragraph 36

[note: 18] 1st and 2nd Defendant's Submissions, paragraph 7

[note: 19] 1st and 2nd Defendant's Submissions, paragraph 51

[note: 20] 3rd and 4th Defendant's Submissions, paragraph 11

[note: 21] Plaintiff's Submissions, paragraph 12(a)

[note: 22] Plaintiff's Submissions, paragraph 12(c)(iii)

[note: 23] 1st and 2nd Defendant's Submissions, paragraph 57

[note: 24] 1st and 2nd Defendant's Submissions, paragraph 57

[note: 25] 1st and 2nd Defendant's Submissions, paragraph 53–54

[note: 26] 3rd and 4th Defendant's Submissions, paragraph 13

[note: 27] 1st and 2nd Defendant's Submissions, paragraph 39

[note: 28] 1st and 2nd Defendant's Submissions, paragraph 40

[note: 29] 1st and 2nd Defendant's Submissions, paragraph 40

[note: 30] 1st and 2nd Defendant's Submissions, paragraph 11

[note: 31] Plaintiff’s Supplemental Submissions, paragraph 3

[note: 32] Plaintiff’s Supplemental Submissions, paragraph 4

[note: 33] Plaintiff’s Supplemental Submissions, paragraph 5