

The Wellness Group Pte Ltd and another v OSIM International Ltd and others and another suit
[2016] SGHC 64

Case Number : Suit No 187 of 2014 and Suit No 545 of 2014
Decision Date : 22 April 2016
Tribunal/Court : High Court
Coram : Chua Lee Ming JC
Counsel Name(s) : Prakash Pillai, Koh Junxiang, Yip Tai Meng Marcus and Debby Ratnasari (Clasis LLC) for the plaintiffs in S187/2014 and S545/2014; Davinder Singh SC, Jaikanth Shankar, Loh Hsiu Lien, Tan Liyun Samantha, Teo Meijie Cheryl and Tham Yeying Melissa (Drew & Napier LLC) for the 1st to 6th defendants in S187/2014 and the defendants in S545/2014; Siraj Omar and Chew Liying Joanna (Premier Law LLC) for the 7th defendant in S187/2014.
Parties : The Wellness Group Pte Ltd — Manoj Mohan Murjani — OSIM International Ltd — Ron Sim Chye Hock — Taha Bou Qdib — Paris Investment Pte Ltd — Khor Peng Soon — Lee Hwai Kiat — TWG Tea Company Pte Ltd — Teo Chay Lee — Leow Lian Soon — Teo Sway Heong — Tan Soo Nan @ Tan Soo Nam — Colin Low Tock Cheong — Sin Boon Ann

Contract – Contractual terms – Implied terms

Companies – Oppression – Minority shareholders

Tort – Conspiracy – Unlawful means conspiracy

Tort – Defamation – Defamatory statements

Tort – Defamation – Publication

Tort – Defamation – Qualified privilege

Tort – Defamation – Fair comment

22 April 2016

Judgment reserved.

Chua Lee Ming JC:

Introduction

1 The TWG Tea Company Pte Ltd (“TWG Tea”) brand is well known for its fine luxury teas and features the letters “TWG” as well as the year “1837” on its logo. One would be forgiven for thinking that TWG Tea was established in 1837. However, according to TWG Tea, the reference to 1837 actually celebrates the year Singapore became a trading post for teas, spices and fine epicurean products. TWG Tea was established only in 2007 but by 2010, it had already achieved some measure of success in Singapore. This led TWG Tea to look for investors so that it could expand its business beyond Singapore. In 2011, OSIM International Ltd (“OSIM”), itself a successful brand for healthy lifestyle products, invested in TWG Tea. Unfortunately, disagreements soon started brewing between the two men at the helms of TWG Tea and OSIM. These disagreements have boiled over and spilled into this court.

2 The plaintiffs in both Suit 187 of 2014 ("S187/2014") and Suit 545 of 2014 ("S545/2014") are the same. The defendants in S187/2014 and S545/2014 are not all the same but both actions are connected to each other. These proceedings involve four separate claims – three in S187/2014, and one in S545/2014.

3 In S187/2014, the 1st plaintiff, The Wellness Group Pte Ltd ("TWG") is suing the 1st to 6th defendants for oppressive conduct under s 216 of the Companies Act (Cap 50, 2006 Rev Ed), conspiracy to injure and breach of contract. The 2nd plaintiff, Mr Manoj Mohan Murjani ("Manoj") is suing the 1st to 3rd defendants for conspiracy to injure. The 1st to 6th defendants have a counterclaim against the plaintiffs for defamation.

4 S545/2014 is a separate defamation claim by the plaintiffs against OSIM and its directors. It is related to S187/2014.

5 Both suits were heard before me at the same trial, with evidence led in S187/2014 being treated as evidence led in both suits.

The parties in S187/2014

6 The 2nd plaintiff, Manoj, is the chairman of the 1st plaintiff, TWG. TWG is a shareholder of TWG Tea.

7 The 1st defendant is OSIM. OSIM was established in 1980 and was listed on the Singapore Stock Exchange in 2000. The 2nd defendant, Mr Ron Sim Chye Hock ("Ron Sim") is its founder, chairman and Chief Executive Officer ("CEO"). He is also a director of TWG Tea and the 4th defendant, Paris Investment Pte Ltd ("Paris"). Paris is wholly owned by OSIM [\[note: 1\]](#) and is also a shareholder of TWG. [\[note: i\]](#)

8 The 3rd defendant, Mr Taha Bou Qdib ("Taha") is a director and CEO of TWG Tea, and a former director of Paris. The 5th defendant, Mr Khor Peng Soon ("Peng Soon") is a former director of OSIM and is presently a director of Paris and TWG Tea. The 6th defendant, Mr Lee Hwai Kiat ("Peter Lee") is a director of OSIM, Paris and TWG Tea. He is also the Chief Financial Officer ("CFO") of OSIM.

9 TWG Tea is the 7th defendant in S187/2014.

The parties in S545/2014

10 The 1st and 2nd plaintiffs are TWG and Manoj respectively.

11 The 1st defendant is OSIM. The 2nd defendant is Ron Sim. The 3rd defendant, Mr Teo Chay Lee, is an executive director and the Chief Operating Officer (South Asia) of OSIM. The 4th defendant, Mr Leow Lian Soon, is an executive director and the Chief Operating Officer (China) of OSIM. The 5th defendant is Peter Lee. The 6th defendant, Ms Teo Sway Heong, is a non-executive director of OSIM. The 7th defendant (Mr Tan Soo Nan @ Tan Soo Nam), 8th defendant (Mr Colin Low Tock Cheong), and 9th director (Mr Sin Boon Ann) are independent non-executive directors of OSIM.

12 The 2nd to 9th defendants form the board of directors of OSIM ("the OSIM Board").

The undisputed facts

13 TWG was incorporated in 2003 by Manoj to invest in and promote spas and products relating to

health and wellness. Taha and his wife, Maranda Barnes Bou Qdib (“Maranda”), joined TWG in February 2007. Taha was employed as CEO of TWG’s newly-formed tea division. Maranda was employed as director of TWG’s tea division.

14 In October 2007, the tea division was corporatized. TWG Tea was incorporated as a wholly-owned subsidiary of TWG. In June 2008, TWG transferred about 20% of its shares in TWG Tea to Taha, Mr Rithyrith Aum-Stievenard (“Rith”), and Mr Philippe Gerard Langlois (“Philippe”). Rith and Philippe were employees of TWG Tea. Taha, Rith and Philippe each paid a nominal consideration of \$1 for the shares. Taha transferred some of his shares in TWG Tea to Maranda.

15 In July 2008, the first TWG Tea salon opened at Republic Plaza in Singapore. In August 2008, TWG invested an additional \$1,742,000 in TWG Tea. In return, TWG was allotted an additional 8,710 shares (which worked out to \$200 per share). Subsequently, TWG Tea allotted additional shares to Taha, Maranda, Rith and Philippe at \$0.10 per share.

16 In 2008, Ron Sim invested US\$4,500,005 [\[note: ii\]](#) in TWG by subscribing for shares in TWG through EQ Capital Investments Ltd (“EQ Capital”). [\[note: iii\]](#) Ron Sim is the principal of EQ Capital.

17 On 8 February 2010, Paris was incorporated. The shareholders of Paris were as follows: [\[note: iv\]](#)

Taha 68.2%
Rith 22.7%
Philippe 9.1%.

Taha, Maranda, Rith and Philippe transferred their shares in TWG Tea to Paris. With this, the shareholders of TWG Tea were TWG (84.2%) and Paris (15.8%). [\[note: v\]](#)

18 Between late 2010 and mid-February 2011, TWG Tea was in negotiations with the Unilever Group (“Unilever”) in relation to a potential investment by Unilever into TWG Tea. In a letter of intent dated 8 February 2011, Unilever made an indicative non-binding offer to invest US\$51m (or S\$65.3m) in TWG Tea in return for a 51% equity stake in TWG Tea and a licence to use the TWG trademark.

19 Whilst negotiations with Unilever were still ongoing, Manoj and his team started discussions with Ron Sim and his team in January 2011 in relation to an investment by OSIM into TWG Tea. Profit projections for TWG Tea were presented to Ron Sim and his team (“the Original Projections”), showing projected Earnings Before Interest, Taxes, Depreciation and Amortization (“EBITDA”) of \$34.4m for the financial year ending 31 March 2013 (“FY2013”). At some point in the discussions, the parties switched to using profit before tax and minority interests (“PBT”) instead of EBITDA in the Original Projections. Manoj’s projection was that TWG Tea would achieve PBT of \$29m for FY2013.

20 On 15 February 2011, the discussions with Unilever were terminated.

21 On 18 March 2011, TWG, OSIM and Paris signed a Sale and Purchase Agreement (“the SPA”) [\[note: vi\]](#), pursuant to which OSIM bought a 35% stake [\[note: vii\]](#) in TWG Tea from TWG and Paris for \$31.36m [\[note: viii\]](#) (“the OSIM Transaction”); \$26,396,435 went to TWG [\[note: ix\]](#) and \$4,963,565 went to Paris [\[note: x\]](#). Thereafter, the shareholding structure of TWG Tea was as follows:

TWG 54.7%

Paris 10.3%

OSIM 35%

22 Under clause 4.4 of the SPA, OSIM undertook to provide a loan of \$12.8m to TWG Tea ("the OSIM Loan"). [\[note: xi\]](#) The OSIM Loan was to be disbursed in one lump sum on closing which took place on 24 March 2011. As events panned out, OSIM disbursed the \$12.8m loan in two tranches, \$7m on 24 March 2011 and \$5.8m a few days later on 29 March 2011. [\[note: xii\]](#)

23 Clause 4.5 of the SPA ("the Profit Swing Clause") provided for the shareholding of TWG and Paris to be diluted in favour of OSIM, or for the shareholding of OSIM to be diluted in favour of TWG and Paris, depending on the audited net PBT for FY2013. [\[note: xiii\]](#) There were some drafting errors in the clause and these are dealt with later at [97] – [106]. In brief, clause 4.5 was intended to operate as follows:

(a) for every \$1m that the PBT for FY2013 fell below \$17m, TWG and Paris would together have to transfer 1% of TWG Tea shares to OSIM, up to a maximum of 10%, at a nominal price of \$1;

(b) conversely, for every \$1m that the PBT for FY2013 exceeded \$27m, OSIM would have to transfer 1% of TWG Tea shares to TWG and Paris, up to a maximum of 10%, at a nominal price of \$1; and

(c) if the PBT for FY2013 fell between \$17m and \$27m, there would be no adjustment.

The Profit Swing Clause was based broadly on the Original Projections.

24 On the same day (18 March 2011), TWG, OSIM, Paris and TWG Tea signed a Shareholders Agreement ("SHA"). [\[note: xiv\]](#) Under clause 4.2.1 of the SHA, it was contemplated that joint ventures between TWG Tea and OSIM would be set up in China, Hong Kong, Taiwan and South Korea within three months or such other period as may be agreed. OSIM would hold 60% and TWG Tea would hold 40% of the shares in each joint venture. OSIM would have management control of each joint venture.

25 At this time, TWG Tea owed The Hongkong and Shanghai Banking Corporation Limited ("HSBC") more than \$7m ("the HSBC Loan"). On 25 March 2011, Manoj informed HSBC of OSIM's investment and told HSBC that TWG Tea was in a position to repay the HSBC Loan. [\[note: xv\]](#) HSBC was surprised that the investor was OSIM as HSBC knew of the negotiations with Unilever but had not been told of the negotiations with OSIM. [\[note: xvi\]](#) HSBC asked TWG Tea to repay the outstanding loan. On 29 March 2011, Manoj committed to repaying HSBC \$3m immediately and the balance by 15 April 2011. [\[note: xvii\]](#) Manoj eventually used \$7m from the OSIM Loan to repay HSBC.

26 At a meeting on 1 June 2011, Manoj informed Ron Sim, Taha, Peng Soon and Peter Lee that TWG Tea was two quarters behind schedule in terms of its projected profits. [\[note: xviii\]](#)

27 On the same day, OSIM and TWG Tea incorporated the first joint venture, OSIM-TWG Tea (North Asia) Pte Ltd ("the JV Co"). [\[note: xix\]](#) As provided in the SHA, OSIM held 60% and TWG Tea

held 40% of the shares in the JV Co. A few days later, disagreement arose between Ron Sim and Manoj over the price that TWG Tea was to charge the JV Co for its products ("the Transfer Pricing Issue"). Manoj wanted to charge the JV Co the same price at which franchisees were charged ("the Franchise Price"). The Franchise Price was equal to 40% of the retail price of the item. This gave the franchisees a margin of 60% of the retail price. For example, if the retail price of the item is \$30.50, a franchisee would be charged \$12.20 (*ie*, 40% of \$30.50). Selling the item at \$30.50 gave the franchisee a 60% margin (*ie*, \$18.30).

28 Ron Sim took the view that the JV Co should not be treated in the same way as franchisees. He reasoned that TWG Tea had a 40% stake in the JV Co and would therefore enjoy a 40% share in the JV Co's profits, whereas it would have no stake in a franchisee and consequently no share in the franchisee's profits. [\[note: xx\]](#) In an email dated 10 June 2011, Ron Sim told Manoj that TWG Tea should sell its products to the JV Co at cost price. [\[note: xxi\]](#)

29 At a meeting in Hong Kong on 22 June 2011, Manoj and Ron Sim agreed that TWG Tea would supply to the JV Co at cost plus 20%. OSIM also agreed to provide an additional loan of US\$5m (*ie*, S\$6.4m) to TWG Tea, and to extend the OSIM Loan to December 2013. [\[note: xxii\]](#) However, Manoj and Ron Sim subsequently disagreed on whether the agreement on the Transfer Pricing Issue was subject to the additional loan of the \$6.4m loan and the extension of the OSIM Loan.

30 Manoj first mentioned that the additional loan of \$6.4m was "in exchange for supplying goods at cost + 20%" in an email dated 15 July 2011. [\[note: xxiii\]](#) In the same email, Manoj informed Ron Sim and Peter Lee that TWG Tea would be drawing on the \$6.4m loan, that HSBC had withdrawn TWG Tea's credit facilities, and that he would be approaching other banks. As it turned out later, the \$6.4m loan did not materialize as the detailed terms could not be agreed.

31 On 19 August 2011, United Overseas Bank Limited ("UOB") offered TWG Tea a facility of \$12m ("the UOB Facility"). [\[note: xxiv\]](#) A condition of the UOB Facility required OSIM to subordinate at least \$10m of the OSIM Loan to the UOB Facility. [\[note: xxv\]](#) OSIM had misgivings about the subordination but subsequently agreed to the subordination in September 2011 and the UOB Facility was granted to TWG Tea. [\[note: xxvi\]](#)

32 In the meantime, acting on a report by Peter Lee, Ron Sim also discussed with Manoj the shortcomings of TWG Tea's business management system which did not have capabilities for data mining and management reporting, and the need to implement proper controls and systems in TWG Tea before expanding further. Manoj acknowledged that he was "aware of the need to enhance [TWG Tea's] finance and inventory systems in line with the business growing." [\[note: xxvii\]](#)

33 On 19 September 2011, Manoj again reiterated that there was no conclusion on the Transfer Pricing Issue [\[note: xxviii\]](#). On 22 September 2011, TWG Tea informed OSIM that "the pricing has now been finalized" and that the JV Co would be charged at Franchise Price. Upset by this turn of events, Ron Sim gave instructions to stop all proceedings in Hong Kong and to inform UOB that OSIM was not prepared to support the UOB Loan. In the same email, Ron Sim told Manoj and Taha: "if this is the way you guys do things so be it, let's thrash the company [*ie*, TWG Tea]." [\[note: xxix\]](#)

34 On 30 September 2011, the TWG Tea Board agreed on a transfer price of cost plus a mark-up of 20%. On 6 October 2011, Peter Lee sent Manoj the minutes of the meeting [\[note: xxx\]](#); there is no evidence that Manoj ever disputed the accuracy of the record.

35 Sometime in September or October 2011, Peter Lee and his team prepared a revised set of profit projections after discussions with Manoj and Taha (“the Revised Projections”). The Revised Projections showed that TWG Tea would not achieve its original projections and that its PBT for FY2013 would only be around \$11m. The Revised Projections also showed that TWG Tea would not achieve its original projected PBT until the financial year ending 31 March 2014 (“FY2014”), which was a year later than originally projected by Manoj.

36 In October 2011, the JV Co opened its first store in Hong Kong. Soon after, TWG Tea and TWG Tea’s subsidiary in Hong Kong received a letter of demand dated 23 November 2011 from the solicitors acting for a company known as Tsit Wing (Hong Kong) Co Ltd (“Tsit Wing”) alleging passing off and trademark infringement against TWG Tea for using the TWG mark in Hong Kong. [\[note: xxxi\]](#) In December 2011, Tsit Wing sued TWG Tea and the JV Co in Hong Kong, and obtained an injunction restraining TWG Tea’s use of the TWG marks in respect of, among other things, beverage products and café services in Hong Kong. Subsequently, in 2013, Tsit Wing obtained judgment against TWG Tea and the JV Co in the Hong Kong High Court.

37 On 8 December 2011, Ron Sim was notified by Manoj’s personal assistant that the next meeting of the board of directors of TWG Tea (“the TWG Tea Board”) would be on 3 February 2012. [\[note: xxxii\]](#) Ron Sim asked for an urgent board meeting in December 2011, saying that it was critically important; Ron Sim suggested a date after 23 December 2011. On 10 December 2011, Manoj replied to say that the scheduled date of the meeting (*ie*, 3 February 2012) was the only date that all parties were available between then and March 2012. [\[note: xxxiii\]](#)

38 On 15 December 2011, Ron Sim called for a TWG Tea Board meeting to be held on 27 December 2011. One of the items in the agenda was to review the suitability of Manoj continuing as CEO of TWG Tea and to remove him as CEO if thought appropriate. Ron Sim also proposed appointing Taha as CEO. [\[note: xxxiv\]](#) Manoj replied on 21 December 2011 to say that he would not be in Singapore and requested that the matters be raised at the board meeting which had been scheduled for 3 February 2012. [\[note: xxxv\]](#) Ron Sim informed Manoj on 27 December 2011 that holding off the matters until 3 February 2012 was unacceptable as the issues were critical. He suggested a date from 3 to 6 January 2012 and sought Manoj’s confirmation. Ron Sim also expressed some of his concerns about Manoj’s performance. [\[note: xxxvi\]](#)

39 Ron Sim did not manage to hold the TWG Tea Board meeting in January 2012. The meeting scheduled by Manoj on 3 February 2012 also did not take place. Ron Sim alleged that Taha told him it had to be cancelled [\[note: xxxvii\]](#) whilst Manoj alleged that Ron Sim decided not to attend the meeting and instead chose to have private discussions with Taha about replacing Manoj as CEO. [\[note: xxxviii\]](#)

40 In January 2012, Ron Sim, Peng Soon and Peter Lee met with Taha to revisit a previous suggestion by Manoj in July 2011 that OSIM buys a majority stake in TWG Tea from TWG and Paris. In the months that followed, negotiations on the proposed transaction proceeded concurrently with everything else that took place. [\[note: xxxix\]](#) In the event, the proposed transaction did not materialize. Discussions terminated sometime in the second half of August 2012.

41 Despite the agreement reached on 30 September 2011, the Transfer Pricing Issue continued to resurface. On 13 July 2012, Taha sent an email to Ron, copying Manoj, Peng Soon and Peter Lee, recording Manoj’s and his confirmation of, among other things, the agreement to supply goods to the JV Co at 20% above cost. [\[note: xl\]](#)

42 At a TWG Tea Board meeting on 14 August 2012. Manoj announced that he would be stepping down as CEO of TWG Tea with effect from 15 September 2012. [\[note: xli\]](#) The TWG Tea Board appointed Taha as CEO. On 28 September 2012, Manoj resigned from his directorships in TWG Tea and the JV Co. [\[note: xlii\]](#) TWG and TWG Tea did not appoint anyone else to replace Manoj on the boards of TWG Tea and the JV Co respectively.

43 TWG Tea's audited accounts for FY2013 were signed off by Ron Sim and Taha (as directors of TWG Tea) and the company's auditors on 11 June 2013 [\[note: xliii\]](#). The PBT for FY2013 was \$5,576,508. Pursuant to the Profit Swing Clause, OSIM acquired an additional combined total of 10% of TWG Tea shares from TWG and Paris for a nominal consideration of \$1 to each of them ("the Profit Swing Clause Transaction"). As a result, the shareholding structure in TWG Tea became as follows: [\[note: xliv\]](#)

OSIM 45%

TWG 46.3%

Paris 8.7%.

44 On 18 October 2013, OSIM purchased all the shares in Paris from Taha, Rith and Philippe for US\$7.2m or approximately S\$8.9m ("the Paris Transaction"). [\[note: xlv\]](#) Thereafter, Paris became wholly owned by OSIM. With this acquisition, OSIM took control over 53.7% of the shares in TWG Tea. Peng Soon and Peter Lee were appointed as directors of TWG Tea on the same date.

45 On 25 November 2013, the TWG Tea Board passed a resolution to hold an Extraordinary General Meeting ("EGM") for the purpose of approving a rights issue of up to 77,000 new shares in TWG Tea at \$325 per share to the existing shareholders in proportion to their shareholdings as at 25 November 2013 ("the Rights Issue"). [\[note: xlvi\]](#) On the same day, Ron Sim, as a director of TWG Tea, gave notice of an EGM to be held on 10 December 2013. [\[note: xlvii\]](#) TWG objected to the notice and alleged, among other things, inadequate notice. [\[note: xlviii\]](#)

46 On 10 December 2013, Ron Sim, on behalf of the TWG Tea Board, gave notice that the EGM would be adjourned to 17 December 2013. [\[note: xlix\]](#) At the adjourned EGM on 17 December 2013, the Rights Issue was approved by the shareholders present, *ie*, OSIM and Paris. [\[note: li\]](#) TWG and Manoj chose not to attend the EGM.

47 On 18 December 2013, TWG was informed that 35,647 new shares at the issue price of \$325 per share were allocated to TWG. [\[note: li\]](#) The deadline for TWG to accept the letter of offer was 18 January 2014. Manoj responded on 13 January 2014, on behalf of TWG, by repeating his objections to the notice of the EGM, and alleging that the directors and other shareholders of TWG Tea had acted unfairly and oppressively against TWG's interests by convening the EGM and approving the Rights Issue. [\[note: lii\]](#)

48 By way of a letter from its solicitors dated 14 January 2014, EQ Capital informed TWG's directors that it wanted TWG to subscribe to the Rights Issue and asked the directors to take immediate steps to do so. [\[note: liii\]](#)

49 TWG did not accept the new shares allocated to it pursuant to the Rights Issue. On 18 January 2014, OSIM and Paris together subscribed for the entire 77,000 shares in the Rights Issue. Subsequent to the Rights Issue, the shares in TWG Tea were held as follows: [\[note: liv\]](#)

OSIM 58.6%

Paris 11.3%

TWG 30.1%

OSIM now controlled 69.9% of the shares in TWG Tea.

50 On 17 February 2014, TWG and Manoj commenced the action in S187/2014. On the same day, Manoj issued a press statement about S187/2014 on behalf of TWG ("the TWG Press Statement"). [\[note: lv\]](#) The TWG Press Statement is attached as Annex A. The Straits Times approached Manoj for a copy of the writ of summons and statement of claim in S187/2014, and Manoj obliged.

51 On the same day, the writ of summons and statement of claim in S187/2014 were served on the defendants. Later on in the day, the OSIM Board published an announcement about S187/2014 ("the OSIM Announcement") [\[note: lvii\]](#). The OSIM Announcement is attached as Annex B. The announcement stated the OSIM Board's views that the claim in S187/2014 was "unmeritorious and groundless". The claim by TWG and Manoj for defamation in S545/2014 is based on the OSIM Announcement.

52 On 22 February 2014, the Straits Times published an article ("the ST Article") about the case. [\[note: lviii\]](#) The ST Article is attached as Annex C. The counterclaim for defamation in S187/2014 is based on the ST Article.

TWG's claims in S187/2014

53 As the plaintiffs' Affidavits of Evidence-in-Chief ("AEICs") and closing submissions have tended to stray from their pleaded case, it is important to first set out the plaintiffs' pleaded case.

54 TWG's pleaded case is that:

(a) the 1st to 6th defendants have acted oppressively against TWG's interests, and/or have acted in a manner which unfairly discriminates against or is otherwise prejudicial to TWG as a member of TWG Tea ("the s 216 Claim"); and/or

(b) the 1st to 6th defendants conspired to injure TWG:

(i) by unlawful means and with intent to injure TWG; and/or

(ii) with the sole or predominant intention of injuring TWG

("the Conspiracy Claim"); and/or

(c) OSIM breached an implied term of the SPA to cooperate and/or act in good faith towards maximizing TWG Tea's PBT for FY2013 ("the Contract Claim").

55 The s 216 Claim, the Conspiracy Claim and the Contract Claim are founded on the following pleaded facts:

(a) That OSIM, Ron Sim, Peng Soon and Peter Lee acted to damage the profitability of TWG Tea. The plaintiffs further alleged that in doing so, Ron Sim failed to act *bona fide* in the best interests of TWG Tea and/or acted for an improper purpose and/or in breach of his fiduciary duties; and

(b) That the 1st to 6th defendants acted wrongfully to enable OSIM to take control of TWG Tea.

Whether OSIM, Ron Sim, Peng Soon and Peter Lee acted to damage the profitability of TWG Tea

56 TWG alleged that OSIM, Ron Sim, Peng Soon and Peter Lee acted to damage the profitability of TWG Tea by:

(a) obstructing TWG Tea's efforts in obtaining financing from UOB;

(b) acting in concert to procure TWG Tea to supply products to the JV Co at a price substantially lower than the Franchise Price; and

(c) reneging on assurances, representations or understandings that, *inter alia*, OSIM would assist TWG Tea to expand locally and internationally, and that OSIM would provide shareholder's loans to TWG Tea for such expansion.

Whether TWG Tea's financing efforts were obstructed

57 As stated at [31], it was a condition of the UOB Facility that OSIM subordinated \$10m of the OSIM Loan to the UOB Facility. OSIM agreed to and complied with this condition. In its statement of claim, TWG relied on the following facts in support of its allegation that TWG Tea's financing efforts were obstructed: [\[note: lviii\]](#)

(a) On 22 September 2011, Ron Sim stated in an email to *inter alios* Manoj, Taha, Peng Soon and Peter Lee that OSIM was not prepared to support the UOB Facility and further stated "let's thrash [TWG Tea]"; and

(b) On 27 December 2011, Peter Lee wrote to UOB stating *inter alia* that:

we are concerned with the lack of financial discipline and transparency in [TWG Tea] though the day to day business is doing well. This letter is to reiterate that we are no longer prepared to support [TWG Tea's] UOB credit facility and are withdrawing our subordination of S\$10 million.

58 However, it is indisputable that TWG Tea's financing efforts were not in fact obstructed. OSIM eventually agreed to the subordination required by UOB even though it was under no legal obligation to do so. Peter Lee's subsequent 27 December 2011 letter to UOB did not cause UOB to cancel the UOB Facility because UOB refused to agree to OSIM withdrawing its subordination and that was that. [\[note: lix\]](#) The UOB Facility remained in place.

59 In any event, I accept Ron Sim's explanation that his remark to "thrash" TWG Tea had been

quoted out of context in the statement of claim. In his email on 22 September 2011, Ron Sim had said: "Taha n Manoj, if this is the way you guys do things so be it, let's thrash the company." The events leading to this email have been set out earlier at [27] – [33]. According to Ron Sim, his e-mail meant that if Manoj was determined to continue his unreasonable behaviour, then he was prepared to call Manoj's bluff and let TWG Tea go down. [\[note: lx\]](#) I accept Ron Sim's explanation that there was no intent to obstruct TWG Tea's financing efforts.

60 I agree with the defendants that at its highest, the plaintiffs' case was that OSIM and Ron Sim *threatened* to withdraw the subordination. In its closing submissions, TWG described this as an attempt by OSIM/Ron Sim to sabotage the UOB Facility. In any event, the fact remains that the threat was more illusory than real. OSIM could not withdraw the subordination unilaterally and whatever pressure this may have caused to TWG Tea very quickly dissipated when UOB did not agree to the subordination being withdrawn. The subordination remained in place, as did the UOB Facility. The threat to withdraw the subordination therefore did not obstruct TWG Tea's financing from UOB; neither did it affect TWG Tea's FY2013 PBT.

61 In its closing submissions, TWG submitted that OSIM breached the SPA by disbursing the OSIM Loan in two tranches instead of one as required under the SPA. [\[note: lxi\]](#) It will be recalled that OSIM disbursed the first tranche of \$7m on 24 March 2011; this was used to repay the HSBC Loan. Ron Sim wanted to understand how the balance \$5.8m was to be used before disbursing the balance. Manoj confirmed that the money would not be used until Ron Sim and Manoj went through the plans. On 29 March 2011, the balance \$5.8m was disbursed to TWG Tea (see [22] above).

62 This submission is not part of the plaintiffs' pleaded case on the alleged obstruction of TWG Tea's financing efforts. In any event, there was no evidence that the fact that OSIM disbursed the OSIM Loan in two tranches (the second tranche being a mere five days late) obstructed TWG Tea's financing efforts in any way. In my view, this desperate eleventh-hour submission added nothing to TWG's case on the alleged obstruction of TWG Tea's financing efforts.

63 In his AEIC, Manoj had also alleged that at a TWG Tea Board meeting on 26 August 2011, Ron Sim, Peter Lee and Peng Soon stated that OSIM would only agree to the subordination to UOB if TWG Tea agreed to supply to the JV Co at 20% above cost. [\[note: lxii\]](#) However, under cross-examination, Manoj admitted that what he stated in his AEIC was false. [\[note: lxiii\]](#)

64 I find that the plaintiffs have failed to prove their allegation that the defendants obstructed TWG Tea's financing efforts.

Whether OSIM, Ron Sim, Peng Soon and Peter Lee acted in concert to procure a price substantially lower than the Franchise Price for the JV Co

65 TWG alleged that when the SPA and SHA were signed, there was an oral agreement or understanding that TWG Tea would supply products to the intended joint venture company at the Franchise Price. TWG alleged that this was a material factor in managing TWG Tea's projection of profits. [\[note: lxiv\]](#) OSIM, Ron Sim, Peng Soon and Peter Lee disputed the allegation. Ron Sim's view was simple: there would not have been much point in having a joint venture if the joint venture company had to purchase products from TWG Tea at the Franchise Price. TWG Tea might as well have engaged a franchisee. Further, if the joint venture company had to purchase products from TWG Tea at Franchise Price, its profit margins would be driven down and this would affect its ability to finance TWG Tea's expansion. [\[note: lxv\]](#)

66 There is no objective evidence supporting TWG's claim. In my judgment, TWG has failed to prove the alleged oral agreement or understanding. First, the contemporaneous evidence was consistent with the fact that there was no agreement to pay the Franchise Price. In his email dated 10 June 2011 to Manoj, Ron Sim said "I have just been informed that the cost given for our JV is 60pct margin. This is unacceptable, the spirit of JV is cost to cost and I don't expect any marked up..." [\[note: lxvi\]](#) It is also telling that Manoj's reply on the same day made no reference at all to the alleged agreement that the JV Co would pay the Franchise Price. [\[note: lxvii\]](#)

67 Second, clause 4.2 of the SHA deals with a few material terms relating to joint ventures (*ie*, shareholding, investment commitment, grant of intellectual property rights, and funding), leaving other details to be resolved subsequently. Clause 4.2 is silent on the Transfer Pricing Issue. If there had indeed been agreement that the JV Co was to be charged at Franchise Price, one would have expected this to be reflected in clause 4.2 especially given TWG's allegation as to its importance.

68 Third, Ron Sim's reasons make sound commercial sense. TWG had a stake in, and therefore a share of, the JV Co's profits. It did not make sense to treat the JV Co in the same way as franchisees in which TWG had no stake. I find it highly unlikely that Ron Sim would have agreed to the JV Co being charged Franchise Price had this issue been discussed when the SPA and SHA were being signed.

69 In my judgment, there was no prior agreement or understanding that the JV Co would pay for products at Franchise Price. Ron Sim, Peng Soon and Peter Lee did try to procure a price substantially lower than the Franchise Price. However, they did so because they honestly held the view that it was unreasonable to expect the JV Co to pay Franchise Price. Their negotiations over the Transfer Pricing Issue were for commercial reasons and not aimed at damaging TWG Tea's profits. It is relevant to also note that OSIM had a significant stake in TWG Tea; this point will be dealt with in greater detail later.

Whether OSIM, Ron Sim, Peng Soon and Peter Lee reneged on assurances that OSIM would assist in TWG Tea's business expansion

70 TWG alleged that during the negotiations between January and March 2011, Ron Sim, Peng Soon and Peter Lee made the following representations on behalf of OSIM to the plaintiffs and TWG Tea, and/or the parties reached the following understandings: [\[note: lxviii\]](#)

- (a) OSIM would assist TWG Tea in expanding its business both locally and internationally;
- (b) OSIM would provide shareholder's loans for such expansion;
- (c) OSIM had extensive experience and knowledge of the markets in North Asia, and was interested in forming a joint venture with TWG Tea to expand TWG Tea's business in North Asia;
- (d) If OSIM were allowed management control of the joint venture entity, it would procure a rapid expansion of TWG Tea's business in North Asia;
- (e) The expansion of TWG Tea's business would result in increased profits for TWG Tea; and
- (f) OSIM would not take a majority stake in TWG Tea and the expansion of TWG Tea would be financed by debt.

71 The alleged understanding in [70(b)] can be immediately disposed of. Manoj conceded under cross-examination that that alleged understanding was a reference to the OSIM Loan. The OSIM Loan

is expressly provided for in the SPA, and as Manoj conceded, there was no breach in any event since the loan was given by OSIM. [\[note: lxxix\]](#)

72 The alleged understanding in [70(f)] that OSIM would not take a majority stake in TWG Tea can also be disposed of at once. The statement of claim originally pleaded that OSIM “*had no interest in taking* a majority stake in TWG Tea” [emphasis added]. It was amended in May 2015 (more than a year later, and just about three months before the trial started) to plead that OSIM “*would not take* a majority stake in TWG Tea” [\[note: lxx\]](#) [emphasis added]. Manoj conceded under cross-examination that the amendment is incorrect and that Ron Sim had merely said OSIM had no interest in taking a majority stake in TWG Tea. [\[note: lxxi\]](#) Manoj also conceded that clause 3 of the SHA expressly contemplated rights issues and that it would have been “perfectly proper” for OSIM to become a majority shareholder by way of a rights issue if it was properly done. [\[note: lxxii\]](#)

73 Manoj’s concession that clause 3 of the SHA expressly contemplated rights issues also puts paid to the alleged understanding in [70(f)] that the expansion of TWG Tea would be financed by debt.

74 As for the rest of the alleged oral representations and/or understandings ([70(a), (c)-(e)]), the only evidence was Manoj’s testimony. In my view, it is likely that during the course of negotiations, representations of some sort (though not necessarily as alleged by TWG) would have been made about OSIM’s experience in North Asia and how OSIM could contribute to TWG Tea’s expansion plans. It would be unrealistic to suggest otherwise. TWG Tea was looking to expand and OSIM did have the experience and expertise in North China. Clause 4.2 of the SHA also provided that OSIM would hold 60% in and have the management control of joint ventures to be set up in China, Hong Kong, Taiwan and South Korea. That is consistent with the parties’ recognition that OSIM has more experience and capabilities in doing business in those countries. However, I do not think it is necessary to decide what exactly was said during the negotiations. In my view, the crucial question is whether TWG can rely on any of the alleged representations and/or understandings even if they were made.

Whether TWG is entitled to rely on the alleged representations in any event

75 In my view, TWG is not entitled to rely on the alleged representations in any event. First, any such representation and/or understanding would have been superseded by the SPA and SHA in view of the entire agreement clauses in those agreements. Under cross-examination, Manoj agreed that the SPA and SHA were comprehensive and contained all the terms that the parties had understood or agreed or represented or given each other assurances about. [\[note: lxxiii\]](#) In my view, the parties have agreed that their relationship and rights and obligations *inter se* will be governed only by the terms of the SPA and SHA. In addition, clause 4.2 of the SHA expressly dealt with the parties’ agreement as to the joint ventures. I agree with the defendants that this reinforces the point that the parties specifically reduced into writing what they had agreed to in relation to expansion into North Asia using joint ventures.

76 Second, the SHA provided for a deed of ratification to be signed by future shareholders. This undermines the claim that there were enforceable understandings that were not contained in the written agreements. Manoj conceded to this on the stand. Manoj also conceded that the deed of ratification was to ensure that a new shareholder would be bound by the agreement and that such a new shareholder would know his rights and obligations only by referring to the written terms of the agreement. A new shareholder would not know of the oral representations and/or understandings. [\[note: lxxiv\]](#)

77 TWG is therefore not entitled to rely on any of the alleged representations and/or understandings alleged in [70] even if they were made.

Whether OSIM reneged on the alleged representations and/or understandings in any event

78 In any event, even *assuming* that OSIM did make any of the alleged representations and/or understandings and that TWG is entitled to rely on them, TWG would still have to prove that OSIM reneged on these representations and/or understandings. TWG alleged that OSIM, Ron Sim, Peng Soon and/or Peter Lee reneged on the representations in that OSIM failed to assist TWG Tea in expanding its business particularly through the JV Co in North Asia [\[note: lxxv\]](#). TWG pleaded the following particulars of the alleged breaches:

- (a) By 31 March 2013, the JV Co failed to open as many new TWG Tea outlets in Hong Kong, Taiwan, China, and South Korea as OSIM's management team had projected; and
- (b) Ron Sim wrongfully exercised clause 5.5 of the SHA to obstruct TWG Tea's attempts to implement an annual budget and/or strategic plan that involve TWG Tea expanding internationally, including in the UK, USA and Morocco.

Opening of outlets in North Asia

79 In my judgment, the JV Co had good reasons for its inability to open as many new outlets in North Asia as it had planned to. First, it was reasonable for the JV Co not to start opening stores before the Transfer Pricing Issue was resolved. Manoj tried to suggest otherwise but his testimony in this regard was unconvincing, to say the least. During cross-examination, Manoj agreed, after some hesitation, that the JV Co should not expand and take on commitments without first settling the Transfer Pricing Issue. [\[note: lxxvi\]](#) He subsequently changed his position and said that the JV Co could continue to expand and could pay TWG Tea a deposit pending resolution of the Transfer Pricing Issue. When asked what would happen if the issue was not resolved, Manoj's reply was that TWG Tea would then deduct the Franchise Price from the deposit! [\[note: lxxvii\]](#) Clearly, this was neither a reasonable nor a practical solution. Manoj also admitted that as CEO of TWG Tea, he would not open new stores without having settled the price of the supplies, but could not explain why he expected the JV Co to do so. [\[note: lxxviii\]](#) Further, Manoj could not explain why he did not table a resolution (as a director of the JV Co) to open stores. [\[note: lxxix\]](#)

80 Second, the JV Co encountered trademark issues after opening its first store in Hong Kong in October 2011, as discussed at [36] above. As a result, it was not possible for the JV Co to open outlets in Hong Kong.

81 The trademark problems extended to China and Taiwan as well. It was not until August 2012 that Ron Sim felt sufficiently comfortable, based on legal advice, to proceed with operations in China and Taiwan although even then there were still some risks. [\[note: lxxx\]](#)

82 Manoj had not informed Ron Sim and his team that there were outstanding trademark issues, in particular in Hong Kong. A schedule to the SPA that was supposed to contain a list of intellectual property was left blank. [\[note: lxxxii\]](#) There is no evidence that a completed list was given to Ron Sim or his team. There is also no evidence that TWG or Manoj told OSIM that objections had been filed against TWG Tea's registration of its trademarks in some countries although it is not disputed that Manoj was aware of the objections.

Clause 5.5 of the SHA

83 TWG alleged that Ron Sim wrongfully exercised clause 5.5 of the SHA to obstruct TWG Tea's attempts to implement an annual budget and/or strategic plan that involve TWG Tea expanding internationally, including in the UK, USA and Morocco. Clause 5.5 of the SHA provided that TWG Tea's annual budget and strategic plans required the unanimous approval of the Board. However, there is no evidence that any annual budget and/or strategic plan was ever presented to Ron Sim, much less any evidence that unanimous approval of any such budget/plan was held back by Ron Sim.

The allegation that Ron Sim would act to damage TWG Tea's profitability is counter- intuitive

84 It bears reminding that OSIM's initial investment in TWG Tea, at 35%, was substantial. The allegation that Ron Sim acted to damage TWG Tea's profitability is, *without more*, counter-intuitive. TWG therefore argued that Ron Sim wanted to damage TWG Tea's profitability for purposes of triggering the Profit Swing Clause so that OSIM could acquire an additional 10% of TWG Tea shares from TWG and Paris for a nominal sum of \$1.

85 In my judgment, the evidence does not support TWG's argument. In an email to Manoj and Taha dated 5 September 2011, Ron Sim made it clear that with respect to the Profit Swing Clause, OSIM would rather TWG Tea perform well than have more shares in TWG Tea because TWG Tea performs badly. [\[note: lxxxii\]](#) More importantly, the plaintiffs' own expert witness agreed that it would have been in OSIM's interest for the profit projections of TWG Tea to be met even though that would result in OSIM's stake in TWG Tea being diluted under the Profit Swing Clause. [\[note: lxxxiii\]](#) The plaintiffs' expert agreed that if TWG Tea achieved the profits projected by Manoj, the value of OSIM's stake in TWG Tea (which would be diluted to 25% under the Profit Swing Clause) would still be worth more than the value of OSIM's enlarged 45% stake in the scenario where PBT fell below \$7m. Therefore, TWG's argument that Ron Sim damaged TWG Tea's profitability in order to trigger the Profit Swing Clause is still counter-intuitive. I can see no reason why an experienced businessman like Ron Sim would have acted in such a counter-intuitive manner.

TWG Tea's profit projections for FY2013 were unreliable

86 TWG's case is that but for the defendants' wrongful acts in driving down TWG Tea's profitability, TWG Tea would have achieved its profit projections. Manoj testified that the projections were "realistically achievable, even the upper-end targets of between \$27 million and \$37 million". [\[note: lxxxiv\]](#) During the trial, Manoj agreed that TWG's case is premised on the profit projections being accurate and reliable. TWG Tea's profit projections had been presented to Ron Sim and his team during the pre-investment discussions.

87 TWG Tea's finance executive, Mr Aloysius Cheang ("Aloysius") helped prepare the accounts for the financial years ending 31 March 2009 and 31 March 2010 and for the period from January to December 2010. Aloysius also helped Manoj in preparing the profit projections for TWG Tea. Contemporaneous emails between Manoj and Aloysius showed Aloysius cautioning Manoj on numerous occasions in no uncertain terms that the accounts and projections contained inaccuracies.

88 In an email dated 1 December 2010 to Manoj and Taha, Aloysius said that he had prepared the April-November 2010 income statement by "*working backwards* to arrive at the Gross Margins of 70%" [emphasis added]. [\[note: lxxxv\]](#) The 70% gross margin figure subsequently appeared in a set of profit projections for December 2010 to March 2013 which Aloysius sent to Manoj. Aloysius also said that the accounts were "in a complete mess", and that there was "no way to tie these numbers back to

the system in the event anyone requests for details to support the numbers”.

89 In an email dated 17 January 2011, Aloysius sent Manoj and Taha the balance sheets for financial years ending 31 March 2009 and 31 March 2010 and for the period from January to December 2010. [\[note: lxxxvii\]](#) Aloysius said that it had been “very difficult to construct” the balance sheets as the information in TWG Tea’s system was “all junk”. Aloysius pointed out that “in the event a due diligence or audit is performed many of these numbers may not be corroborated or validated”. Aloysius also emphasized that TWG Tea did not have “sufficiently reliable information to come up with a set of reliable numbers or basis for [its] projections as there [were] many assumptions and ‘gut feelings’”. Despite Aloysius’ strongly worded qualifications, Manoj sent the balance sheets to Peter Lee on the same day. [\[note: lxxxviii\]](#) Manoj did not mention Aloysius’ reservations.

90 In an email dated 18 January 2011, Aloysius reminded Manoj and Taha that TWG Tea was “in survival mode right now and we are on critical life support systems until we receive a massive capital injection into the company”. [\[note: lxxxviiii\]](#) In his email dated 19 January 2011, Aloysius explained that many of the assumptions used in the cash flow forecast that he prepared in December 2010 had been delayed or did not materialize. [\[note: lxxxix\]](#)

91 In an email dated 24 February 2011, Aloysius reminded Manoj that he was “unable to provide any accurate numbers and the Balance Sheet given to OSIM [had] a lot of inaccuracies and guesstimates which if challenged, [he] will not be able to provide any details”. [\[note: xc\]](#)

92 In March 2011, Manoj presented the Original Projections to OSIM which projected TWG Tea’s FY2013 EBITDA to be \$34.3m. Manoj knew his own finance executive had said the numbers were unreliable. Manoj did not inform OSIM about Aloysius’ reservations. Instead, Manoj told OSIM that TWG Tea was “poised for rapid expansion” and would be able to achieve profits of around \$30m in two years. [\[note: xci\]](#) During cross-examination, Manoj insisted that Aloysius’ views were not correct because he did not understand the business. However, Manoj was unable to substantiate this assertion.

93 The fact that the Original Projections were not reliable was consistent with the following undisputed facts:

(a) At a meeting on 1 June 2011, Manoj informed Ron Sim, Taha, Peng Soon and Peter Lee that TWG Tea was already two quarters behind the profit projections. [\[note: xcii\]](#) This was barely two-and-a-half months after OSIM’s investment in TWG Tea, and before the Transfer Pricing Issue arose;

(b) In July 2011, TWG Tea’s actual results for the period from April to June 2011 showed that TWG Tea had achieved only 1% of the planned profit. As Peter Lee pointed out to Manoj and Taha, the key reasons were that gross profit (the bulk of which came from sales) had fallen behind plan, and monthly back office overheads were more than double the planned budget. [\[note: xciii\]](#) In response, Manoj said he would like to redo the projections to bring them up to date; [\[note: xciv\]](#)

(c) A budget meeting in the early part of September 2011 showed that the franchise business was particularly far behind plan. [\[note: xcvi\]](#) Manoj tried to attribute this to the fact that the original plan did not feature joint ventures. [\[note: xcvi\]](#) However, Manoj would have known before

the SPA and SHA were signed, that the expansion in North Asia would be by way of joint ventures. The fact that he went ahead to sign the agreements shows that he did not believe that the use of joint ventures would adversely affect his projections in any material way. Further, as Peter Lee pointed out in his reply to Manoj, the joint venture was not the issue as the profit contribution from the joint venture was in line with the original plan and the "big miss in projected profit" was due to franchise, corporate and eCommerce profit being lower than in the original plan. [\[note: xcvi\]](#) Instead of focusing on the real issues, Manoj continued to harp on the Transfer Pricing Issue; and [\[note: xcvi\]](#)

(d) A revised set of profit projections ("the Revised Projections") in October 2011 showed that TWG Tea's projected PBT for FY2013 would only be around \$11m. The Revised Projections also showed that TWG Tea's project PBT would only reach around \$27m in FY2014; this meant that TWG Tea was by then an entire year behind the Original Projections.

94 With respect to the shortfall in June 2011 ([93(b)] above) Manoj claimed on the stand that TWG Tea would have been able to catch up with the two quarters shortfall. No evidence was produced to substantiate this but Manoj suggested that TWG Tea could have caught up with the shortfall when the one-off franchise fees (which were normally paid in advance) were received from the franchisees at a later date. The fallacy of this suggestion quickly became apparent. Even if the franchise fees were received at a later date, there would have been a loss of revenue in the meantime because the franchises would have started later. In other words, there was no "catching-up" with the two quarters' shortfall.

95 In my view, TWG Tea failed to achieve its projected profit target for FY2013 because the Original Projections were unreliable in the first place. Manoj knew that Aloysius had massaged the figures in the accounts and that the Original Projections were not reliable. It is clear to me that Manoj had no reasonable basis for believing that TWG Tea could achieve the original projected profits for FY2013. It seems to me that Manoj recklessly disregarded the many warnings by Aloysius in his bid to obtain the OSIM Loan for TWG Tea as well as to cash out his investment in TWG Tea by selling part of TWG's holdings to OSIM.

Whether the 1st to 6th defendants acted wrongfully to enable OSIM to take control of TWG Tea

96 TWG alleged that the 1st to 6th defendants acted to take control over TWG Tea through the following acts: [\[note: xcix\]](#)

- (a) OSIM wrongfully exercised its rights under the Profit Swing Clause to obtain an additional 10% of TWG Tea shares from TWG and Paris;
- (b) Ron Sim and Taha acted to remove Manoj as CEO of TWG Tea;
- (c) Peng Soon and Peter Lee were wrongfully appointed as directors of TWG Tea;
- (d) OSIM purchased all of the shares in Paris;
- (e) Ron Sim proposed the Rights Issue and OSIM and Paris approved the Rights Issue; and
- (f) Ron Sim attempted to further dilute TWG's shareholding in TWG Tea by asking for EQ Capital's proportionate share of TWG Tea shares held by TWG to be transferred to EQ Capital.

Whether OSIM was entitled to exercise its rights under the Profit Swing Clause

97 The Profit Swing Clause is found in clause 4.5 of the SPA. Clause 4.5(a) provided as follows:

In the event where [TWG Tea] achieves audited net profit before tax and minority interests of between S\$7,000,000 to S\$16,999,999 for [FY2013] in accordance with the GAAP, [OSIM] shall increase its shareholding in [TWG Tea] by up to 10% of the total number of Shares via subsequent purchases of Shares from [Paris and TWG] pro rata in accordance with their respective [shareholding percentages in TWG Tea] at that time.

(i) The formulae (*sic*) to be used for calculation of increase in [OSIM's] shareholding is as follows:-

$$\frac{[\text{PBT}] - \text{S\$}7,000,000}{\text{S\$}10,000,000} \times 10\%$$

98 As mentioned at [43], TWG Tea's PBT for FY2013 was \$5,576,508. Consequently, OSIM exercised its right under the Profit Swing Clause and TWG and Paris together transferred 10% of the shares in TWG Tea to OSIM. Thereafter, TWG held 46.3% in TWG Tea, Paris held 8.7% and OSIM held 45%.

99 TWG alleged that OSIM's exercise of its rights under the Profit Swing Clause was wrongful for the following reasons:

- (a) TWG Tea's PBT did not fall within the ambit of the Profit Swing Clause; and
- (b) OSIM's actions had caused TWG Tea's failure to meet the performance targets in the Profit Swing Clause and so OSIM could not rely on its own wrongful actions to exercise its rights under the clause.

Whether TWG Tea's PBT for FY2013 fell within the ambit of the Profit Swing Clause

100 The statement of claim pleaded that TWG Tea's PBT did not fall within the ambit of the Profit Swing Clause. [\[note: c\]](#) However, Manoj admitted on the stand that this was not correct. [\[note: ci\]](#)

101 TWG first contended that the Profit Swing Clause did not apply because TWG Tea's PBT for FY2013 was \$5,576,508 whereas the clause referred to the situation where the PBT was between \$7,000,000 and \$16,999,999. In the defence, the defendants pointed out the error in drafting and pleaded that the agreement was that for every \$1m by which the PBT fell below \$17m, OSIM would be entitled to increase its shareholding in TWG Tea by 1% up to a maximum of 10%. [\[note: ciil\]](#) In their reply, the plaintiffs disagreed with the defendants' position.

102 However, it was abundantly clear that this was an error and that the clause was meant to apply so long as the PBT was less than \$17m. It would be completely illogical for the shareholding to be adjusted where the PBT was between \$7,000,000 and \$16,999,999 but not if the PBT was lower than \$7m.

103 Under cross-examination, Manoj conceded that he knew it was an error but at first claimed that he realized the error only after he had filed the statement of claim. Subsequently, he claimed that he was not sure why he made that allegation in the statement of claim. Finally, after making more of what can only be described as evasive responses, Manoj admitted that he knew of the drafting error in June 2013 when he received a letter from OSIM’s solicitors demanding the transfer of shares pursuant to the Profit Swing Clause. [\[note: cijii\]](#) Manoj finally admitted that he took the position that he did in the statement of claim because he “decided to be technical about it”. [\[note: civ\]](#)

104 By his own admission, it is clear that Manoj decided to make the allegation in the statement of claim knowing very well that it was not true. Manoj continued to maintain in the reply to the defence that there was no error in the drafting of the Profit Swing Clause. The plaintiffs’ opening statement was also silent about the drafting errors. It is clear that the plaintiffs did not act honestly or in good faith in challenging the scope of the Profit Swing Clause in their pleadings. Obviously, Manoj’s conduct in this respect did nothing to help his credibility.

105 TWG also tried to rely on an error in the formula set out in the Profit Swing Clause knowing full well that it was an error. The defendants pleaded in their defence that the formula as set out in the Profit Swing Clause, *ie*

$$\begin{array}{r} \text{[PBT]} - \$7,000,000 \\ \text{-----} \times 10\% \\ \$10,000,000 \end{array}$$

was wrong and that the correct formula should be as follows:

$$\begin{array}{r} \$17,000,000 - \text{[PBT]} \\ \text{-----} \times 10\% \\ \$10,000,000 \end{array}$$

It is patently clear that the original formula stated in the Profit Swing Clause was an error since according to that formula, the lower the PBT, the lower the number of shares to be transferred to OSIM. It is not in dispute that the intent behind the clause was the reverse – the lower the PBT fell below \$17m, the more shares were to be transferred to OSIM, subject to a maximum of 10%.

106 In their reply to the defence, the plaintiffs chose not to admit the error in the formula as stated in the Profit Swing Clause and “specifically denied” that the plaintiffs knew of the error. It was only at the start of the trial that the plaintiffs’ counsel confirmed that the plaintiffs accepted the defendants’ position on this issue.

Whether OSIM caused TWG Tea’s failure to meet the performance targets in the Profit Swing Clause

107 TWG pleaded that OSIM’s wrongful actions had caused TWG Tea’s failure to meet the performance targets in the Profit Swing Clause and so OSIM could not rely on its own wrongful actions to exercise its rights under the Profit Swing Clause. The alleged wrongful actions were that OSIM and some of the other defendants acted to drive down TWG Tea’s profits by obstructing TWG Tea’s financing efforts, driving down the price of products to be supplied to the JV Co, and by preventing the expansion of TWG Tea’s business. I have already found that TWG has not proven its

case on these allegations.

Whether OSIM agreed to suspend the operation of the Profit Swing Clause

108 In its closing submissions, TWG submitted that the exercise of the Profit Swing Clause was wrongful because the parties had agreed on 22 June 2011 to put the question of whether the Profit Swing Clause ought to be deleted or varied, on hold. [\[note: cv\]](#) Implicit in this was the submission that the parties agreed to suspend the operation of the Profit Swing Clause in the meantime. However, it is not part of TWG's pleaded case that the parties had agreed to suspend the operation of the Profit Swing Clause. In any event, this argument is clearly not supported by Manoj's own evidence. In his AEIC, Manoj had said that Ron Sim "deferred all discussion" on the Profit Swing Clause. [\[note: cvii\]](#) I do not see how this can amount to an agreement to suspend the operation of the Profit Swing Clause. Further, it seems to me that this submission was nothing more than an afterthought. Not only has it not been pleaded, TWG raised no objections whatsoever when OSIM invoked the Profit Swing Clause. Instead, TWG had simply transferred the requisite number of shares to OSIM.

Whether Manoj was removed as CEO of TWG Tea

109 At the TWG Tea Board meeting on 14 August 2012, Manoj tendered his resignation as CEO of TWG Tea. However, the plaintiffs alleged that Ron Sim embarked on a course of conduct which made it impracticable for Manoj to continue to discharge his duties as CEO and/or compelled Manoj to resign as CEO. The plaintiffs alleged that Ron Sim did so with the intention of enabling OSIM to take over management control of TWG Tea. The course of conduct relied on by the plaintiffs was the following:

(a) By an email dated 15 December 2011, Ron Sim called for a TWG Tea Board meeting to be held on 27 December 2011 to review the suitability of Manoj continuing as CEO and if thought appropriate to remove him as CEO; and

(b) In an email dated 27 December 2011, Ron Sim stated his view that Manoj had failed to run the business in an effective manner and that it was time that someone else be allowed to move the business forward. Ron Sim expressed the following specific concerns:

(i) No one at the TWG Tea Board seemed to know Manoj's schedule as CEO or what he was doing in relation to the business;

(ii) Manoj had failed to provide the TWG Tea Board with financial budgets; there appeared to be a real lack of financial discipline and failure to control capital expenditure and expenses were unnecessarily high;

(iii) There had been a failure to accurately and reasonably project sales revenue and there had been clear inaccuracies in the estimated costs of expansion; and

(iv) Ron Sim had not seen the accounts of TWG UK to date.

110 I find that the plaintiffs have not proven their allegations. First, in my view, the two emails did not make it impracticable for Manoj to act as CEO and did not compel him to resign. There was a substantial period of more than seven months between the two emails and Manoj's resignation. During this period, Manoj continued in his role as CEO. As the defendants have pointed out, there is not a shred of contemporaneous evidence between December 2011 and August 2012 which suggests that Manoj felt that the two emails made it impracticable for him to carry on as CEO. [\[note: cvii\]](#) Further, during this period, Manoj was legally advised and one would have expected some protest in writing if

he had felt that Ron Sim was wrongfully trying to force him out in order to take over management control.

111 Second, I agree with the defendants that following OSIM's investment in TWG Tea, Ron Sim encountered several issues which caused him concerns about the future of TWG Tea and Manoj. Among other things, these concerns were over (a) the Transfer Pricing Issue and what Ron Sim saw as Manoj reneging on their agreements that TWG Tea would charge the JV Co at 20% above cost, (b) the unreliability of the Original Projections and the fact that TWG Tea had fallen way behind those projections, (c) the fact that Manoj had not appreciated the difference between EBITDA and PBT, (d) the fact that TWG Tea did not have proper financial and inventory systems, and (e) the fact that contrary to what Manoj had led Ron Sim to believe, TWG Tea did not have the necessary trademark registrations to open stores in North Asia. It was in these circumstances that the two emails were sent. Ron Sim wanted to remove Manoj as CEO but in my view, he had genuine and reasonable grounds for wanting to do so.

112 Third, an email sent by Manoj to Ron Sim on 15 August 2012 [\[note: cviii\]](#), a day after he announced his resignation, is telling. In that email, Manoj said:

In terms of TWG Tea Company, I have already communicated to step down as CEO and support the steps necessary to take, for the company to be professionalized. I also believe, like yourself, that this will result in being best for the future growth of the company and in turn, value for all the stakeholders.

These are hardly the words one would have expected from Manoj if indeed the plaintiffs' allegations are true.

113 In his AEIC, Manoj also alleged that Ron Sim wanted to remove him as CEO in order for Ron Sim to have his way on the Transfer Pricing Issue. [\[note: cix\]](#) This allegation is not part of the plaintiffs' pleaded case. In any event, this allegation is not supported by the evidence. Agreement had been reached on 30 September 2011 on the Transfer Pricing Issue. Therefore, the Transfer Pricing Issue could not have been the reason for Ron Sim calling for a TWG Tea Board meeting in December 2011 to, among other things, review Manoj's suitability as CEO. Even though the Transfer Pricing Issue resurfaced in 2012, by an email dated 13 July 2012, Taha confirmed Manoj's and his agreement to several commercial issues including the supply of goods to the JV Co at "cost price + 20". [\[note: cx\]](#) There is no evidence that there was any change to this agreement between 13 July 2012 and 14 August 2012 when Manoj tendered his resignation.

114 The plaintiffs also pleaded that Taha participated and/or aided Ron Sim in the latter's pleaded course of conduct with the intention of removing Manoj as CEO of TWG Tea and benefitting therefrom. As I have concluded that the plaintiffs have failed to prove their case against Ron Sim, it follows that their case against Taha also fails.

115 However, I note that one of the particulars pleaded by the plaintiffs in their case against Taha is that Taha had negotiated his proposed service agreement as CEO before any directors meeting was convened. [\[note: cxii\]](#) According to the plaintiffs, this demonstrated Taha's intention to vote in favour of any proposed resolution to remove Manoj as CEO of TWG Tea.

116 I find this argument rather mischievous. The proposed service agreement was part of discussions that took place in early 2012 for OSIM to buy out TWG and Paris. On 13 January 2012, Peter Lee sent Taha a draft sale and purchase agreement and a service agreement. [\[note: cxiii\]](#) The

draft sale and purchase agreement provided that Manoj would resign as CEO and that Taha would sign a five-year service agreement. The intent was to appoint Taha as CEO to replace Manoj; hence the service agreement for Taha's appointment as CEO. Taha forwarded the drafts to Manoj on the same day. [\[note: cxiii\]](#) Therefore, Manoj knew full well the circumstances under which the service agreement came into existence. Yet, Manoj has intentionally taken the service agreement out of context and attributed it to a motive that he must have known did not exist.

Whether Peng Soon and Peter Lee were wrongfully appointed as directors of TWG Tea

117 Clause 5.2 of the SHA provided that the TWG Tea Board would comprise three directors. Two would be appointed by TWG and Paris, and OSIM could appoint the third director so long as OSIM's shareholding in TWG Tea was at least 25%.

118 The plaintiffs submitted that OSIM's appointment of Peng Soon and Peter Lee to the TWG Tea Board was in breach of the SHA as (a) the TWG Board would exceed three in number and (b) OSIM was not entitled to appoint more than one director.

119 The defendants' case is that it was an implied term of the SHA, alternatively OSIM honestly believed, that (a) the board composition set out in the SHA would no longer apply if the shareholding structure changed, and (b) OSIM would have a right to appoint a majority of the directors if OSIM became a majority shareholder in TWG Tea.

120 In *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [101], the Court of Appeal set out the following three-step process for the implication of terms:

- (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.
- (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.
- (c) Finally the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then the gap persists and the consequences of that gap ensue.

121 The composition of the TWG Tea Board as set out in the SHA corresponded to the fact that OSIM was buying 35% of the shares in TWG Tea, leaving TWG and Paris together holding 65%. In my view, it is obvious that the SHA omitted to address the situation where TWG, whether by itself or with Paris, ceased to be the majority shareholder/s in TWG Tea. Applying *Sembcorp Marine*, I am of the view that:

- (a) the gap arose because the parties did not contemplate it;
- (b) it is necessary in the commercial sense to imply a term in order to give the contract efficacy. This is so because otherwise, TWG and Paris would continue to control the TWG Tea Board even if together they no longer held the majority of the shares and this would continue to be so no matter how small a percentage their combined shareholding in TWG Tea becomes. The parties could not have intended such a result; and

(c) the specific term to be implied is that the majority shareholder(s) (whoever they may be) would be entitled to appoint two directors, and the minority shareholder(s) would be entitled to appoint one director so long as they hold at least 25% of the shares in TWG Tea.

122 In my view, it is not necessary to imply a term increasing the number of directors on the TWG Tea Board. The efficacy of the SHA is not affected if the number of directors is kept unchanged at three. It is also not necessary to imply a term that the majority shareholder(s) can appoint the 3rd director if the minority (holding at least 25% of the shares in TWG Tea) chooses not to appoint any director. The efficacy of the SHA is not affected because the majority shareholder(s) will still control the board.

123 Consequently, I find that OSIM's appointment of Peng Soon and Peter Lee as directors on the TWG Tea Board was in breach of the implied term of the SHA, as set out in [121(c)] above.

124 However, I accept the defendants' evidence that OSIM honestly believed that it had the right to appoint a majority of the directors and that it was no longer limited to a three-man board. I find that OSIM's appointment of Peng Soon and Peter Lee was not made with the objective of enabling OSIM to take control of TWG Tea. OSIM was already in control of the TWG Tea and the Board. OSIM had bought the shares in Paris and therefore controlled 53.7% of the shares in TWG Tea. As Taha had joined OSIM's camp, Ron Sim and Taha together formed the majority on the TWG Tea Board. There was no need for OSIM to appoint more directors for control purposes.

Whether OSIM's purchase of the shares in Paris was wrongful

125 TWG's pleaded case was that OSIM's purchase of the shares in Paris was:

(a) In breach of OSIM's representation that it would not take a majority stake in TWG Tea (see [70(f)]); and

(b) In circumvention of clause 6.1 of the SHA.

126 As set out earlier at [72], there was in fact no representation by OSIM that it would not take a majority stake in TWG Tea.

127 I turn next to TWG's case based on clause 6.1 of the SHA. Clause 6.1 gave non-selling shareholders of TWG Tea a right of pre-emption if any shareholder wishes to sell its shares in TWG Tea. TWG submitted that OSIM's purchase of the shares in Paris was done in bad faith, purely to circumvent clause 6.1. TWG further submitted that Manoj was not told of OSIM's intention to buy the shares in Paris and therefore "TWG never had a chance to acquire Paris' stake pursuant to clause 6.1 of the SHA". In my view, TWG's case is not only perplexing, it is plainly wrong.

128 Clause 6.1 of the SHA applied if a shareholder of TWG Tea intended to sell its shares *in TWG Tea*. What OSIM did was to purchase the shares *in Paris* from the shareholders *of Paris*. Clause 6.1 of the SHA imposed no restrictions on the sale of shares in Paris, or for that matter the sale of shares in OSIM or TWG.

129 It is undeniable that OSIM avoided the pre-emption provisions of clause 6.1 by buying the shares in Paris instead of Paris' shares in TWG Tea. However, there was nothing wrong or unlawful in what OSIM did; nothing in clause 6.1 can be said to have prohibited OSIM from buying the shares in Paris.

130 During cross-examination, Manoj had no choice but to concede that clause 6.1 of the SHA did not prohibit shareholders from buying shares in each other, and that no question of circumventing clause 6.1 arose. [\[note: cxiv\]](#) Manoj also agreed that there was no intention to prevent a sale of the shares in the companies which were shareholders of TWG Tea because no one had thought of that. [\[note: cxv\]](#) I would add that it would have been impossible to have provided a restriction against shareholders in TWG, Paris and OSIM selling their shares in these companies respectively. All the shareholders would have had to be parties to the SHA. Leaving aside whether the other shareholders in TWG and Paris would have agreed to such a restriction, this would have been impossible to achieve in the case of OSIM's shareholders given OSIM's status as a listed company.

131 I reject TWG's claim that OSIM's purchase of the shares in Paris was wrongful. One last note on this issue. In his AEIC, [\[note: cxvii\]](#) Manoj claimed that OSIM's buyout of Paris in October 2013 came as a shock to him because he was surprised that Taha would sell out his entire interest in TWG Tea to OSIM. I do not accept Manoj's assertion. In June 2012, Manoj was already aware that Ron Sim was waiting to conclude a deal with Paris. [\[note: cxviii\]](#)

Whether the Rights Issue was bona fide

132 TWG pleaded that the Rights Issue was not *bona fide* for the following reasons:

- (a) Ron Sim, through EQ Capital, was aware of TWG's inability at the material time and during the stipulated time period to subscribe for its allotment in the proposed Rights Issue;
- (b) Ron Sim, Taha, Peng Soon and Peter Lee were aware from TWG's letter to TWG Tea dated 9 December 2013 of TWG's objections to the proposed Rights Issue and that TWG had no intention of participating in the Rights Issue;
- (c) There was no commercial reason for the proposed Rights Issue;
- (d) The purpose of the Rights Issue was to dilute TWG's shareholding in TWG Tea, acquiring majority shareholding and taking control of TWG Tea; and
- (e) The Rights Issue was priced at an undervalue in that the proposed issue price of \$325 was substantially lower than the price that OSIM paid for its investment in TWG Tea.

133 TWG also pleaded that the Rights Issue was in breach of representations and/or understandings that OSIM would not take a majority stake in TWG Tea and would provide sufficient funds by way of a shareholder's loan.

Whether Ron Sim knew of TWG's inability to subscribe for the Rights Issue

134 In his AEIC, Manoj alleged that Ron Sim, being a shareholder of TWG through EQ Capital, would have been well aware that there was no significant cash in TWG. Manoj also alleged that Ron Sim was aware that TWG did not have the financial capability to take up its allotment of shares in the Rights Issue.

135 Ron Sim denied any such knowledge. Suffice it to say that no evidence was adduced to substantiate Manoj's allegation that Ron Sim was aware of TWG's lack of financial capability. Indeed, Manoj himself testified on the stand that if he considered the Rights Issue to be in the interests of the company, he would have raised the capital and applied for the Rights Issue. [\[note: cxviii\]](#) Manoj

even went so far as to say that raising capital was not the issue. [\[note: cxix\]](#)

136 I find that the plaintiffs have failed to prove that Ron Sim, through EQ Capital, was aware of TWG's inability at the material time and during the stipulated time period to subscribe for its allotment in the proposed Rights Issue. In any event, the mere knowledge of TWG's inability to subscribe in the Rights Issue does not mean that the Rights Issue was therefore not *bona fide*, although such knowledge may be one relevant factor in determining whether the intention behind the Rights Issue was to dilute TWG.

Whether Ron Sim and the others knew TWG had no intention of participating in the Rights Issue

137 On 9 December 2013, Manoj, writing on behalf of TWG, objected to the Notice of EGM dated 25 November 2013 on the grounds that (a) there was inadequate notice, (b) no reasons were given for the Rights Issue, (c) the issue price was substantially lower than the price that OSIM had paid in March 2011, and (d) the deadline for acceptance by shareholders was in breach of the SHA. The letter itself was undated but there was no dispute as to its date. [\[note: cxx\]](#)

138 Contrary to TWG's plea, there was nothing in the letter dated 9 December 2013 that indicated that TWG had no intention of participating in the Rights Issue. In fact, Manoj testified on the stand that he was keeping an open mind before getting the reasons for the Rights Issue. [\[note: cxxi\]](#)

139 I find that TWG has failed to prove that Ron Sim, Taha, Peng Soon and Peter Lee were aware that TWG had no intention of participating in the Rights Issue. In any event, the mere knowledge that TWG did not intend to participate in the Rights Issue does not mean that the Rights Issue was therefore not *bona fide*, although such knowledge may be one relevant factor in deciding whether the intention behind the Rights Issue was to dilute TWG's shareholding.

Whether there were commercial reasons for the Rights Issue

140 The total amount raised pursuant to the Rights Issue was \$25,025,000. The defendants' case was that the Rights Issue was necessary for the following reasons: [\[note: cxxii\]](#)

- (a) Repayment of a shareholder loan of \$5.6m to OSIM;
- (b) Repayment of a bank loan of \$6m to UOB;
- (c) Payment of legal fees and other expenses, amounting to \$3m, associated with the copyright and trademark cases; and
- (d) Funding of expansion plans amounting to \$10.4m.

TWG challenged the validity of these reasons.

Repayment of \$5.6m to OSIM

141 The amount of \$5.6m represented the balance outstanding on the OSIM Loan. The OSIM Loan was made pursuant to clause 4.4 of the SPA which provides as follows:

[OSIM] undertakes to provide finance for the business of [TWG Tea] by means of a corporate loan of S\$12.8 million to [TWG Tea] at an interest rate similar to the rate which [HSBC] may impose for a loan of the same amount to [TWG Tea]. The corporate loan shall be disbursed by

[OSIM] to [TWG Tea] in one lump sum on Closing. The corporate loan shall be payable within two (2) years from the date of Closing. In the event that the corporate loan is not repaid in full within such period of two (2) years, the interest rate of 10% per annum shall be payable on the unpaid amount for each year beyond such period of two (2) years. In the event that the corporate loan is not repaid in full within such period of three (3) years, an additional compounded interest of five hundred (500) basis points on an annual basis shall be payable on the unpaid amount for each year beyond such period of three (3) years. The interest on the corporate loan shall be payable on a half-yearly basis. In the event of an initial public offering or acquisition of [TWG Tea], the corporate loan shall be made immediately payable or within one (1) of the occurrence of such event.

142 The defendants' case was that by 31 March 2013, TWG Tea still owed OSIM \$12m on the OSIM Loan. Under clause 4.4 of the SPA, the interest on the \$12m would increase to 10% per annum. However, OSIM agreed to charge a reduced rate of between 6-10% per annum. As this was still higher than the interest rate charged under the UOB Facility, TWG Tea drew down \$6m on the UOB Facility in July 2013 and repaid part of the amount outstanding on the OSIM Loan on 29 July 2013. In August 2013, TWG Tea repaid OSIM another \$500,000. By November 2013, about \$5.5m remained outstanding on the OSIM Loan, excluding interest.

143 Manoj asserted on the stand that under clause 4.4 of the SPA, there was no obligation to repay the loan unless an initial public offering or acquisition of TWG Tea happens. [\[note: cxxiii\]](#) Upon further questioning, Manoj changed his evidence and asserted that the OSIM Loan was repayable within three years. [\[note: cxxiv\]](#) Clearly both assertions were unsustainable. Clause 4.4 is clear – the OSIM Loan fell due after two years, after which the higher default interest rates applied. Indeed, Manoj's assertions were contrary to what was pleaded in the statement of claim. [\[note: cxxv\]](#) In the end, Manoj conceded that the OSIM Loan was repayable by 23 March 2013, *ie* two years after the closing of the SPA. [\[note: cxxvi\]](#)

144 However, TWG pointed out that in Ron Sim's AEIC, he had stated that in July 2012 he told Manoj that he was "prepared to agree" to extend the OSIM Loan to 31 December 2013 "before the higher interest rate kicked in". [\[note: cxxvii\]](#) A subsequent email from Taha dated 13 July 2012 referred to an extension of the loan to 31 January 2014. [\[note: cxxviii\]](#) TWG argued that consequently, the OSIM Loan should not have been charged interest at 10% until after 31 December 2013/31 January 2014, and there was no reason to draw on the UOB Facility to repay OSIM.

145 Of course, OSIM could agree to extend the repayment date for the OSIM Loan at the original interest rate. Equally, OSIM could agree to extend the repayment date but at a higher interest rate. There is evidence which suggests that at least in July 2012, Ron Sim was prepared to extend the OSIM Loan at the original interest rate. Other evidence suggests that the OSIM Loan was subsequently extended but at an increased interest rate of 6-10% per annum. In my view, it is not necessary to decide whether the agreement to extend the OSIM Loan was at the original interest rate or at an increased interest rate. The fact remains that even on TWG's case, the OSIM Loan had to be repaid by 31 December 2013/31 January 2014; otherwise interest would increase to 10% per annum.

146 In my view, the real issue is whether repayment of the OSIM Loan was a *bona fide* reason for the Rights Issue and I find that it was.

147 TWG also submitted that in November 2013, TWG Tea's money market line under the UOB

Facility was increased to \$11m (from \$6m) and the requirement for subordination of the OSIM Loan was removed. [\[note: cxxix\]](#) TWG argued that based on the revised facilities, the repayment of \$5.6m to OSIM could have been made by drawing on the facilities instead of raising funds through a Rights Issue. In my view, it was for the TWG Tea Board to decide whether it was better to pay the OSIM Loan by drawing down on the UOB Facility or by raising capital through the Rights Issue. The fact that there were other sources of funds to pay the OSIM Loan may be one relevant factor in considering whether there were commercial reasons for the Rights Issue. However, on the facts of this case, I do not think much can be said about the possibility of drawing on the UOB Facility to repay the OSIM Loan. \$6m had already been drawn on the UOB Facility pay part of the OSIM Loan. What was available on the UOB Facility was no longer \$11m. Also, as will be seen later, the \$6m drawn on the UOB Facility was repayable on 24 January 2014. In addition, the Rights Issue was to raise capital for a number of things and repayment of the OSIM Loan was just one of them.

Repayment of \$6m to UOB

148 As mentioned at [142], \$6m was drawn on the UOB Facility to repay part of the OSIM Loan. TWG submitted that since the repayment date of the OSIM Loan had been extended to 31 December 2013/31 January 2014, TWG Tea did not have to draw on the UOB Facility to pay OSIM in July 2013. In my view, the issue here is not whether the TWG Tea Board was right or wrong in drawing on the UOB Facility to repay OSIM. As the defendants have pointed out, the fact remained that at the time of the Rights Issue proposal, the UOB Facility had been drawn upon and TWG Tea owed UOB \$6m. This amount of \$6m was also reflected in TWG Tea's Audited Financial Statements for April-December 2013 as a short-term bank loan that was repayable on 24 January 2014. [\[note: cxxx\]](#)

149 At the time of the Rights Issue proposal, the TWG Tea Board was faced with having to repay UOB \$6m by 24 January 2014. There can be no question that the repayment to UOB was a *bona fide* reason for the Rights Issue.

Payment of legal fees and other expenses (\$3m)

150 Peter Lee explained in his Supplemental AEIC that around November 2013, TWG Tea budgeted:

- (a) \$0.1m as expected expenses arising from proceedings in Paris for copyright infringement, trademark infringement and unfair and parasitic competition;
- (b) \$1.9m as legal expenses for litigation and an appeal in Hong Kong relating to trademark infringement and passing off; and
- (c) \$1m as related expenses to change the fitting of the retail stores in Hong Kong as well as putting up new branding trademarks because TGW Tea was restrained from the use of certain trademarks in Hong Kong.

151 In his Supplemental AEIC, Peter Lee explained in some detail how these funds were spent. As things turned out, between 27 January 2014 and 28 July 2015, TWG Tea paid \$5,886,331.29 for legal fees and other expenses associated with copyright and trademark cases. Peter Lee's testimony in this regard was unshaken and I accept the explanations given by him. I therefore find that the amounts budgeted were reasonable.

152 In its closing submissions, TWG also submitted that TWG Tea could have used its cash and bank balances (about \$6.6m as of December 2013 [\[note: cxxxi\]](#)) to settle the outstanding legal fees

instead of raising funds through the Rights Issue. [\[note: cxxxii\]](#) TWG did not put this case to the defendants' witnesses and its failure to do so means that I do not have the benefit of the defendants' explanations as to whether the cash could have been used to pay the outstanding legal fees. It is not open to TWG to now make this argument.

Funding of expansion plans (\$10.4m)

153 The plaintiffs sought to challenge Peter Lee's computation of the amount needed for TWG Tea's expansion plans. First, the plaintiffs relied on the fact that Taha had testified that one of the items in Peter Lee's computation was incorrect. I do not think this affects the *bona fides* of the need to raise funds for expansion. Overall, Taha agreed that funds needed to be raised for the expansion plans.

154 The plaintiffs next submitted that as of 26 December 2014, TWG Tea still had a sum of \$3.69m unspent and that this showed that no proper study was done by the directors of TWG Tea of the funds needed. I do not think such a conclusion is warranted. Just because the expansion did not go according to plan does not mean that no proper study was done in the first place. I find that the expansion plans were a *bona fide* purpose for the Rights Issue.

155 In conclusion, I find that there were commercial reasons for the Rights Issue.

Whether purpose of Rights Issue was to dilute TWG's shareholding, acquire majority shareholding and take control of TWG Tea

156 In their closing submissions, the plaintiffs have dealt with the issue of dilution together with the pricing of the Rights Issue. The dilution issue will be dealt with below. However, the allegation that the purpose of the Rights Issue was to acquire majority shareholding and take control of TWG Tea is clearly a non-starter. By the time of the Rights Issue, OSIM had acquired Paris and already had majority shareholding and control of TWG Tea.

Whether the Rights Issue was priced at an undervalue with the purpose of diluting TWG

157 TWG submitted that the Rights Issue price of \$325 per share was at a substantial undervalue for no objective reason. TWG invited me to draw the inference that since there was no objective reason for the undervalued Rights Issue price, the intention behind the Rights Issue price was to unfairly dilute TWG's shareholding if it failed to subscribe to the Rights Issue.

158 Two questions arise: first, whether the Rights Issue price was at an undervalue, and second, whether there were legitimate reasons for the Rights Issue price.

159 Peter Lee proposed the Rights Issue price of \$325 per share and the TWG Tea Board accepted the proposed price after taking into consideration a report by KPMG Corporate Finance Pte Ltd ("KPMG"). Peter Lee's computations were based on the OSIM Transaction (in March 2011) as adjusted by the Profit Swing Clause Transaction (in mid-2013). Peter Lee explained that the structure of the Profit Swing Clause Transaction meant that OSIM in fact acquired 45% of TWG Tea's shares for the original price of \$31.36m paid under the OSIM Transaction. Based on this, Peter valued TWG Tea at \$69.7m (pre-Rights Issue). This translated to a Theoretical Ex-Rights Issue Price ("TERP") of \$431 per share. [\[note: cxxxiii\]](#) The TERP is the post-Rights Issue price, after adjusting for the increase in the number of shares (from 142,933 to 219,933 shares) and the funds raised by the Rights Issue (\$25m). The price of \$325 per share in the Rights Issue was a discount of 24.5% to the TERP as computed by Peter Lee. Peter Lee explained that he did not consider the price used in the Paris Transaction to be a reasonable comparator because that included a control premium. It will be recalled that the purchase

of Paris gave OSIM a controlling stake in TWG Tea.

160 The defendants' expert, Mr Andrew Caldwell ("Caldwell"), a Managing Director of Berkeley Research Group (UK) Limited, was asked about the computation by Peter Lee. Caldwell explained that if TWG Tea's FY2013 PBT fell below \$17m, the Profit Swing Clause operated as a "reverse earn-out". This meant that OSIM was effectively saying that it had overpaid for the 35% shareholding and that the share price should therefore be reduced (by way of additional shares being transferred to OSIM at the nominal consideration of \$1). Caldwell explained that such adjustments are quite common where parties are uncertain about the price that should be paid because the price is based on a forecast. [\[note: cxxxiv\]](#)

161 The defendants' advisor, Mr Vishal Sharma ("Sharma"), Executive Director of KPMG, said that KPMG's brief was to review and assess the Rights Issue structure, including the Issue Price, specifically with reference to three precedent transactions - the OSIM Transaction, the OSIM Transaction as adjusted by the Profit Swing Clause Transaction, and the Paris Transaction. Sharma used the average valuations based on these three transactions to arrive at a TERP of \$510 per share. [\[note: cxxxv\]](#) The Rights Issue price of \$325 per share represented a discount of 36.3% to the TERP as computed by Sharma. [\[note: cxxxvii\]](#) KPMG also found that the discount of 36.3% was within the range of first and third quartile discounts of precedent rights issues announced by companies listed on the Singapore Stock Exchange and Catalist from 1 January 2011 to 6 December 2013. Sharma's evidence was that this comparison was appropriate as it was not possible to compare with a rights issue conducted by another private company in the same circumstances as TWG Tea, and KPMG was merely conducting a cross-check.

162 KPMG's report concluded that "the pricing and the features of the [Rights Issue] are made on a reasonable basis." However, in view of the instruction to KPMG to use the three precedent transactions instead of carrying out a valuation of TWG Tea, KPMG's conclusion that the pricing of \$325 per share was made on a reasonable basis was valid only when measured against the three precedent transactions.

163 Caldwell relied on the Paris Transaction as the best indicator of TWG Tea's value as at 25 November 2013 (the date of the notice of EGM to approve the Rights Issue). He computed the value of TWG Tea to be \$110.1m after adjusting for risk profile improvement (the Rights Issue will provide funds for TWG Tea) and control (control will be less than 100%). [\[note: cxxxviii\]](#) This implied a TERP of \$614. [\[note: cxxxviii\]](#) The Rights Issue price of \$325 per share represented a discount of 47.1% to the TERP as computed by Caldwell. [\[note: cxxxix\]](#)

164 In contrast, the plaintiffs' expert, Mr James Searby ("Searby"), valued TWG Tea using a discounted cash flow ("DCF") model of TWG Tea's expected performance. He valued TWG Tea at \$215m as at 25 November 2013. This implied a TERP of \$1,091 per share. [\[note: cxli\]](#) The Rights Issue price of \$325 per share represented a discount of 70.2% to the TERP as computed by Searby. [\[note: cxlii\]](#)

165 I find Caldwell's expert report to be more comprehensive and persuasively reasoned. I accept Caldwell's comments about Searby's report. Searby relied on the DCF analysis as a standalone valuation technique whereas Caldwell cross-checked his conclusions based on the prior transactions against those of alternative valuation methods. As Caldwell explained, each valuation method has its own strengths and weaknesses, and a valuation is more accurate if it is supported by a number of different methods. Further, the DCF approach depends on estimates of future cash flows. A young

growing company like TWG Tea has no consistency in its historical financial performance and so inferences about its future performance based on its past are not as reliable. The majority of Searby's assumptions were also not based on management forecasts which are generally preferable to those constructed by analysts.

166 The Paris Transaction was an arms-length transaction that took place in October 2013. This was just before the TWG Tea Board meeting on 25 November 2013 when the Board decided to hold an EGM to approve the Rights Issue. The notice of EGM was issued on the same date. I accept Caldwell's conclusion that the Paris Transaction was the best indicator of TWG Tea's value as at 25 November 2013. I also accept that Caldwell's adjustments for risk profile improvement and control (as set out at [163]) were appropriate.

167 On the evidence before me, I am of the view that (a) the approach adopted by Peter Lee was a reasonable and legitimate approach; (b) the reasonable range of TERP values would be from Peter Lee's \$431 per share to Caldwell's \$614 per share; and (c) based on KPMG's report, the discount of 24.5% that was applied to the TERP as computed by Peter Lee was reasonable. I therefore conclude that the Rights Issue price was within a reasonable range albeit at the low end of the range.

168 The question that arises then is whether the decision to price the Rights Issue at the low end of the range was motivated by the intent to dilute TWG's shareholding as alleged by TWG.

169 The defendants denied that the Rights Issue was priced to dilute TWG's shareholding. Peter Lee explained that the decision to price the Rights Issue at \$325 per share did take into consideration the dilutive effect but only as a factor to encourage TWG to subscribe to the Rights Issue. [\[note: cxliii\]](#) Peter Lee testified that the defendants expected TWG to subscribe to the Rights Issue. This was supported by the fact that in January 2014, Ron Sim, through EQ Capital, asked TWG's directors to subscribe to the Rights Issue. I accept the defendants' evidence that OSIM wanted TWG to subscribe to the Rights Issue and thereby contribute to the financing of TWG Tea. It is understandable that OSIM would have wanted TWG to contribute to the financing required by TWG Tea. After all, \$25m was not a small sum and OSIM would have had to contribute \$13.4m based on its and Paris' shareholding in TWG Tea. As TWG Tea needed \$25m, OSIM was looking at forking out an additional \$11.5m if TWG failed to subscribe (which was what eventually happened). I also accept the defendants' evidence that the Issue Price was priced at the low end in order to encourage TWG to subscribe to the Rights Issue. In other words, the dilutive effect was used to incentivize TWG to subscribe to the Rights Issue.

170 I do not think that it is realistic to expect the defendants not to have had any thoughts of diluting TWG's shareholding in mind at all. After all, the dilutive effect was inextricably linked to the pricing of the Rights Issue. However, I find on the evidence that any such intent to dilute was not a dominant purpose of the decision to price the Rights Issue at \$325 per share. I elaborate on the significance of this finding below (at [188] – [200]).

171 TWG further argued that Ron Sim, Taha, Peng Soon and Peter Lee knew TWG had no intention of participating in the Rights Issue. TWG invited me to infer from such knowledge that the defendants therefore intended to dilute TWG. I have already found that Ron Sim, Taha, Peng Soon and Peter Lee did not have any such knowledge (see [137] – [139]). In any event, in my view, any such knowledge may be a relevant factor in deciding whether to draw the inference but is not conclusive in and of itself.

Whether the Rights Issue was in breach of understandings that OSIM would not take a majority stake in TWG Tea and would provide sufficient funds by way of a shareholder's loan.

172 These issues have been dealt with at [71] – [77]. The shareholder’s loan refers to the OSIM Loan which was provided. There were no representations and/or understandings that OSIM would not take a majority stake in TWG Tea or that the expansion of TWG Tea would be financed only by debt. In any event, even if there were such understandings, TWG is not entitled to rely on them. The Rights Issue therefore did not breach any understandings.

Whether Ron Sim attempted to further dilute TWG’s shareholding in TWG Tea

173 As mentioned earlier, EQ Capital is a shareholder of TWG and Ron Sim is the principal of EQ Capital. On 14 February 2014, EQ Capital’s solicitors wrote to Manoj demanding that the shares in TWG Tea held by TWG and beneficially belonging to EQ Capital be transferred to EQ Capital. [\[note: cxliii\]](#)

174 I reject TWG’s claim that this was an attempt by OSIM and Ron Sim to further dilute TWG’s shareholding in TWG Tea, and thereby take control over TWG Tea.

175 Gaining direct ownership of the shares in TWG Tea held through TWG was not necessary for OSIM to take control over TWG Tea. By 14 February 2014, OSIM was already in control of TWG Tea. Together with Paris, OSIM controlled 69.9% of the shares in TWG Tea. On the evidence, gaining direct ownership of the shares in TWG Tea would not have increased OSIM’s control to the next significant level of 75% either. In any event, it was not TWG’s case that the “attempt” by OSIM was aimed at achieving control over 75% or higher.

176 Ron Sim explained that he wanted the shares in TWG Tea that were held through TWG, to be transferred to EQ Capital because (i) he had serious doubts by then whether EQ Capital’s interests would be served if it continued as a shareholder in TWG, and (ii) the original intention was for EQ Capital to invest in TWG Tea. I accept his explanation.

177 I find that Ron Sim’s demand that EQ Capital’s proportionate share of the shares in TWG Tea held by TWG be transferred to EQ Capital was not for purposes of further diluting TWG’s shareholding in TWG Tea or achieving control of TWG Tea. In any event, Ron Sim’s “demand” was nothing more than a request which TWG did not have to accede to. In my view, this “demand” could not constitute unfair conduct.

Summary of findings of facts in S187/2014

178 TWG has failed to prove all of its allegations. I have however made the following findings which I now need to deal with:

(a) The appointment of Peng Soon and Peter Lee as directors of TWG Tea was in breach of the implied term of the SHA as set out in [121(c)]; and

(b) The Rights Issue was priced within a reasonable range albeit at the low end of the range. The defendants wanted TWG to subscribe to the Rights Issue and the intention in pricing it at the low end of the range was to incentivize TWG to do so. Any intent to dilute TWG’s shareholding in the event that TWG did not subscribe to the Rights Issue was not a dominant purpose of the decision to price the Rights Issue at the low end of the range.

Conclusions – TWG’s claims in S187/2014

The s 216 Claim

179 Section 216(1) of the Companies Act provides as follows:

216.- (1) Any member or holder of a debenture of a company, or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground –

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

180 Although s 216(1) provides four alternative limbs (*ie*, oppression, disregard of a member's interests, unfair discrimination, or otherwise prejudicial conduct) under which relief may be granted, these four limbs are not to be read disjunctively. The common element is that of unfairness: *Over & Over Ltd v Bonvests Holdings Ltd* [2010] 2 SLR 776 ("*Over & Over*") at [70]. The common test is that of "a visible departure from the standards of fair dealing and a violation of the conditions of fair play which a shareholder is entitled to expect": *Over & Over* at [77], citing *Re Kong Thai Sawmill (Miri) Sdn Bhd* [1978] 2 MLJ 227 and *Low Peng Boon v Low Janie* [1999] 1 SLR(R) 337. Ultimately, whether the test is satisfied depends on the facts of each case.

181 It is well-established that the standards of fair dealing or fair play that a shareholder is entitled to expect are not confined to observance of legal rights as enshrined in a company's constitution or in shareholder's agreements. Informal understandings and assumptions between shareholders may also be taken into account in determining whether the minority has been unfairly treated; such understandings may arise regardless of whether there is a quasi-partnership: *Over & Over* at [84]; *Lian Hwee Choo Phebe v Maxz Universal Development Group Pte Ltd* [2010] SGHC 268 ("*Maxz Universal*") at [61]. Conversely, a breach of legal rights does not necessarily constitute unfair conduct within the meaning of s 216 although it may give rise to other remedies at law. The question then is whether the findings set out at [178] constitute unfair conduct on the part of the defendants within the meaning of s 216.

182 I first deal with the appointments of Peng Soon and Peter Lee as directors of TWG Tea. I have found these appointments to be in breach of an implied term of the SHA. However, in my view, this breach does not constitute conduct that is unfair to TWG within the meaning of s 216. Not only did TWG choose not to appoint anyone to the TWG Tea Board after Manoj's resignation, it is clear that OSIM already controlled the Board even without Peng Soon and Peter Lee. There could not have been any prejudice to the plaintiffs.

183 I turn next to the Rights Issue. In my judgment, a rights issue would be unfair within the meaning of s 216 if (a) there is no commercial reason to raise capital through a rights issue, or (b) the dominant purpose of the rights issue is to dilute non-subscribing shareholders. Support for this proposition may be found in *Over & Over* where the Court of Appeal held at [122] that "the issue of shares for any reason other than to raise capital – for instance, to dilute the voting power of others – amounts to a breach of fiduciary duties by the directors of the company and may be set aside by the court. Further, if directors representing majority shareholders abuse voting powers by voting in bad

faith or for a collateral purpose, oppression can be said to have been established.”

184 However, I should add that these two grounds are not meant to be exhaustive, although they are probably the most common.

Commercial reasons to raise capital through a rights issue

185 In principle, where there is no commercial reason to raise capital through a rights issue, the rights issue would, in my view, be unfair to shareholders even if the pricing of the rights issue is fair and reasonable. This is because a rights issue requires shareholders to either invest more money in the company by subscribing to the rights issue, or let their shareholdings be diluted in value and voting power. Shareholders are entitled to expect that they will not be subject to this dilemma unless the company has a commercial reason to have a rights issue. In practice, where there is no commercial reason for a rights issue, it has invariably been found that the purpose of the rights issue has been to dilute non-subscribing shareholders: see, for example, *Over & Over* at [127]; *Maxz Universal* at [108]; *Sharikat Logistics Pte Ltd v Ong Boon Chuan* [2014] SGHC 224 at [188].

186 In my view, there can be no commercial reason for a rights issue unless (a) the company is in need of funds, and (b) raising such funds via a rights issue, rather than other means of financing such as bank loans, is a reasonable option. Whether a company is in need of funds, and whether raising funds via a rights issue is a reasonable option, are findings of fact in every case. In general, such matters are for the company’s management and a court would be slow to question a *bona fide* management decision honestly arrived at: *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] 1 AC 821 at 832, cited in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [30].

187 In the present case, I have found that there were commercial reasons to raise capital through a rights issue (at [140] to [155] above).

Dominant purpose of the Rights Issue

188 Even if there are good commercial reasons for a rights issue, it is a fact that every rights issue will dilute the shareholder who chooses not to subscribe to it. A non-subscribing shareholder cannot complain about the mere fact of dilution because there can be no general expectation that the shareholding of a company will remain constant. Neither can a shareholder complain about the mere fact that the price is too low since the price applies to all shareholders equally. However, a shareholder is entitled not to be unfairly treated. A rights issue would be unfair if its dominant purpose is to dilute the non-subscribing shareholder. Such a purpose would be an improper purpose which the court will not permit.

189 I pause to note that a rights issue involves decisions by the board of directors as well as the shareholders in a general meeting. With regard to the exercise of directors’ powers, the dominant purpose requirement is well-established in law. Hence, an allotment of shares will be invalidated only if the impermissible purpose (such as dilution) is dominant: *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285 at 294. As for shareholders, I agree with the view expressed in Margaret Chew, *Minority Shareholders’ Rights and Remedies* (LexisNexis, 2nd Ed, 2007), at p 198, that s 216 is “wide enough to cover voting behaviour, previously unimpeachable under the common law” and that it is “capable of addressing situations where shareholders have used their majority weight to advance purposes that the courts consider to be improper, for instance, to vote in favour of an issue of shares for the main purpose of diluting a minority’s shareholding and not for the acceptable purpose of raising new capital”. In my view, shareholders who vote in favour of a rights issue with the dominant purpose to dilute the shareholding of the minority will be acting unfairly within the meaning of s 216.

190 The intention to dilute non-subscribing shareholders often has to be inferred. As mentioned earlier, the absence of commercial reasons for the rights issue is one obvious indicator of such an intention. Another strong indicator is a low issue price where there is no good commercial reason for the low price. This is because the issue price is correlated to the number of shares to be issued and consequently the dilutive effect of the rights issue. The lower the issue price, the higher the number of shares to be issued, and the greater the dilutive effect on the non-subscribing shareholder. Absent some good reason, a low price would suggest an intention to dilute non-subscribing shareholders. The majority's knowledge that a minority shareholder cannot or may not take up the issue does not necessarily mean that the rights issue is unfair, but it would be a factor to be considered: *Over & Over* at [76].

191 TWG's complaint was that the Rights Issue price was substantially undervalued for no objective reason, and that therefore it should be inferred that the defendants were using the Rights Issue to unfairly dilute TWG. I have found that the Rights Issue was priced at the low end of a reasonable range of prices, and that the purpose in adopting the lower price was not to dilute TWG but to incentivize TWG to subscribe to the Rights Issue. In other words, the defendants priced the Rights Issue at \$325 per share in the hope that the dilutive effect would motivate TWG to subscribe to the Rights Issue.

192 The question then is whether the decision to price the Rights Issue at \$325 per share for such a purpose constitutes unfair conduct within the meaning of s 216.

193 Using the dilutive effect for the purpose of encouraging shareholders to subscribe to a rights issue is conceptually different from using the dilutive effect for the purpose of diluting non-subscribing shareholders. It may be difficult in some cases to differentiate between the two on the evidence. However, this difficulty should not stop the court from recognizing and giving effect to the distinction.

194 The distinction may be better explained by considering two different factual scenarios. In the *first scenario*, the majority shareholder wants to increase his shareholding and either knows or hopes that the minority will not take up the rights shares. He then prices the rights issue at the low end of a reasonable range in order to increase the dilutive effect on the non-subscribing shareholder. In the *second scenario*, the majority shareholder is not looking to increase his shareholding and would like all shareholders to contribute proportionately to the financing of the company by subscribing to the rights issue. The rights issue is again priced at the low end of a reasonable range but this time the intention is to incentivize the shareholders to subscribe to the rights issue. In my view, the two scenarios deserve very different treatments even though the dilutive effect in both cases may be similarly disadvantageous to the non-subscribing shareholder. The decision for the low issue price in the first scenario would be unfairly prejudicial to the non-subscribing shareholder. However, I see no reason why the decision in the second scenario should constitute unfairly prejudicial conduct. Since there is a commercial reason for the rights issue, it would not be wrong for a majority shareholder to expect all shareholders to subscribe to the rights issue, or to price the rights issue low so that shareholders will be incentivized to subscribe in order to avoid the dilutive effect of not subscribing. It would also not be wrong, in the second scenario, if one of the reasons for the low issue price is to make it more attractive for the majority shareholder to take up the shares not taken up by the non-subscribing shareholder, so that the company is able to raise the full amount of financing needed.

195 In my opinion, the defendants' conduct cannot be said to be unfair to TWG. The TWG Tea Board had a responsibility to price the Rights Issue at a price that would incentivize all shareholders to subscribe to it. It is a fact that shareholders will consider, among other things, the dilutive effect when deciding whether to subscribe to a rights issue. In my view, it was therefore not unfair for the defendants to consider the dilutive effect with the objective of encouraging all the shareholders to

subscribe to the Rights Issue.

196 TWG sought to rely on *Over & Over* to support its assertion that the purpose of the Rights Issue was to dilute TWG's interest in TWG Tea. However, it is clear that the facts in *Over & Over* were different. The Court of Appeal found (at [114]) that the deliberate low pricing in that case was an attempt to strengthen the majority's hand in the company in the event that the minority failed to partake in the rights issue. There was evidence in the form of a memorandum that referred to the issue price as the price that would "result in the maximum dilution" of the minority shareholder's share if it did not take up the rights. The Court of Appeal found this memorandum to be a clear manifestation of the majority shareholder's bad faith (at [114]). The Court of Appeal also found that there was no valid commercial justification for the rights issue (at [124]).

197 TWG also referred me to *Re Sunrise Radio Ltd; Kohli v Lit and others* [2010] 1 BCLC 367 ("*Sunrise Radio*") and submitted that it is incumbent upon the directors of a company to consult the shareholders on the terms of a rights issue; and if it becomes apparent that a shareholder is not going to participate, or has remained silent, it is still the duty of the directors to give proper consideration to the question of the offer price.

198 That the directors have to give proper consideration to the offer price is uncontroversial. This duty exists whether or not it is apparent that a shareholder is not going to participate in the rights issue. What is important is that the directors should not price the rights issue with the dominant purpose of diluting the non-subscribing shareholders.

199 However, I disagree with TWG's submission that it is incumbent upon the directors to consult shareholders on the terms of a rights issue. It may be useful to do so in certain circumstances but this should be left to the directors to decide in each case. Even the decision in *Sunrise Radio* accepts that it would be wrong to be prescriptive on this point and merely states that where there are a limited number of shareholders it will often be prudent to do so (at [96]). Even so, I would not go so far as to suggest that inquiring in advance of any share offer as to the likely take-up rate of the different shareholders would often be a prudent thing to do. Directors may well end up with more complaints if they then have to disagree with any of the views given by any minority shareholder. Judge Purle QC in *Sunrise Radio* also said in that case that a failure to make such inquiries as are reasonable in the circumstances may incline the court towards holding that there has been a failure to take all relevant matters into account (at [96]). Given the views that I have expressed, I would respectfully disagree with this observation.

200 In conclusion, I find that there was no commercial unfairness in respect of the Rights Issue. There was a valid commercial reason for the Rights Issue and the dilution of TWG's shareholding, though contemplated by the defendants, was not their dominant purpose.

The Conspiracy Claim

201 In view of the findings that I have made on the plaintiffs' allegations, the conspiracy claim must fail.

The Contract Claim

202 TWG's pleaded case is that it was an implied term of the SPA that the parties would cooperate and act in good faith towards maximizing TWG Tea's PBT for FY2013. [\[note: cxliv\]](#) The pleaded implied term relates to the Profit Swing Clause under which either TWG/Paris' shareholding in TWG Tea or OSIM's shareholding in TWG Tea will be diluted depending on TWG Tea's performance in FY2013.

203 I agree with the defendants that the pleaded implied term is too vague and unclear and therefore should not be implied into the SPA. In any event, TWG's alleged breaches of this alleged implied term rely on the same allegations made in the s 216 Claim about OSIM, Ron Sim, Peng Soon and Peter Lee damaging the profitability of TWG Tea. As I have found that TWG has failed to prove these allegations, it follows that TWG has failed to prove that the alleged implied term has been breached.

Manoj's claim in S187/2014

204 Manoj's claim is founded on the following allegations:

- (a) That Ron Sim and Taha acted to remove Manoj as CEO of TWG Tea; and
- (b) That it was an implied term of the SHA that Manoj would continue his service contract with TWG Tea for five years from 24 March 2011.

205 Based on these allegations, Manoj claimed that OSIM, Ron Sim and Taha conspired to injure him:

- (a) by unlawful means (*viz*, removing him as CEO of TWG Tea in breach of the implied term of the SHA) with intent to injure him; and/or
- (b) with the predominant intention of injuring him.

Manoj's pleaded loss was his loss of salary as CEO of TWG Tea subsequent to his resignation. [\[note: cxlv\]](#)

206 The defendants submitted that Manoj's conspiracy claims fail because:

- (a) the statement of claim does not plead any agreement among the alleged conspirators;
- (b) Manoj resigned and was not removed; and
- (c) there is no basis to imply the term in the SHA as alleged by Manoj.

Whether Manoj's pleaded claim is defective

207 I disagree with the defendants' submission that Manoj's claim fails because he has not pleaded any agreement among the alleged conspirators to injure him, when any such agreement was reached and/or under what circumstances.

208 In the statement of claim, Manoj has pleaded the following: [\[note: cxlvi\]](#)

- (a) OSIM, Ron Sim and/or Taha and/or any combination of them wrongfully and with intent to injure Manoj and/or to cause loss to Manoj by unlawful means, conspired and combined together to remove Manoj as CEO of TWG Tea; and
- (b) Ron Sim and Taha conspired and combined together with the predominant intention of injuring Manoj and/or of causing loss to Manoj;
- (c) Ron Sim embarked on a course of conduct which made it impracticable for Manoj to

continue to discharge his duties as CEO of TWG Tea, and/or compelled Manoj to resign as CEO; and

(d) Taha participated and/or aided Ron Sim with the intention of removing Manoj as CEO of TWG Tea.

209 In my view, Manoj has sufficiently pleaded the agreement or combination among OSIM, Ron Sim and Taha for the unlawful means conspiracy claim, and between Ron Sim and Taha for the lawful means conspiracy claim. A company may conspire with its director even if the director in question is the alter ego of the company and the agreement or combination between the company and the director is established by attributing the director's mental state to the company: Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("Chan, *Law of Torts*") at para 15.056. Ron Sim is the alter ego of OSIM and his knowledge and intention would be attributed to OSIM. As for Taha, the agreement or combination is sufficiently pleaded since it is pleaded that Taha participated and/or aided Ron Sim with the intention of removing Manoj as CEO.

Whether Manoj resigned or was removed as CEO of TWG Tea

210 I have found that Manoj resigned on his own accord and was not removed: see [109] – [113].

Whether it was an implied term of the SHA that Manoj may not be removed as CEO of TWG Tea before 24 March 2016

211 The statement of claim pleaded that it was an implied term of the SHA that Manoj would continue his service contract with TWG Tea for five years from 24 March 2011. [\[note: cxlviii\]](#) However, no particulars were pleaded to show why it is necessary to imply this term. In fact, Manoj's AEIC also did not shed any light on the basis for the alleged implied term. It was only during his cross-examination that Manoj explained that the implied terms arises from clause 8 of the SHA.

212 Given that the facts relied upon to support the alleged implied term have not been pleaded, Manoj's claim based on this implied term must fail.

213 In any event, in my judgment, there is no basis for the implied term pleaded in the statement of claim. The law on the implication of terms has been set out earlier at [120].

214 Clause 8 of the SHA provides that so long as OSIM holds not less than 25% of TWG Tea's shares, TWG Tea "shall ensure that [Manoj] and [Taha] shall continue their service contracts with [TWG Tea] for the next five years from [24 March 2011] on such terms which are acceptable and agreed" by the parties to the SHA (*ie*, Paris, TWG and OSIM). Manoj accepted that clause 8 was for the benefit of OSIM.

215 However, Manoj submitted in his closing submissions that as the majority shareholder of TWG Tea at the time the SHA was signed, it was important to TWG for Manoj to remain as CEO to protect TWG's interest. Therefore, so the argument went, a gap existed in the SHA in that parties failed to provide for the situation where the minority shareholders (*ie*, OSIM) sought to remove Manoj as CEO of TWG Tea. Consequently, it was necessary to imply a term that Manoj continues as CEO for at least five years; otherwise, the minority shareholders could use their power at the board level to remove Manoj and leave TWG without control of the management. [\[note: cxlviii\]](#)

216 I disagree with Manoj's submissions. Clause 8 of the SHA imposed an obligation on *TWG Tea* to ensure that Manoj and Taha *did not leave* TWG Tea for at least five years. The clause was meant to

protect OSIM (as a new investor) against key members of management leaving the company soon after its investment. Clause 8 has nothing to do with shareholders of TWG Tea “using their powers at the board level” to remove Manoj or Taha. Manoj himself conceded in cross-examination that if he chose to resign as CEO of TWG Tea, OSIM would not have breached of clause 8 of the SHA. [\[note: cxlix\]](#) His construction of clause 8, creative though it may be, cannot be sustained and accordingly I reject his submissions.

Conclusion on Manoj’s claim of conspiracy to injure

217 For the reasons stated above, Manoj’s claim that OSIM, Ron Sim and Taha conspired to injure him fails.

218 However, I should deal with another submission made by the defendants. It was submitted that since Manoj’s unlawful means conspiracy claim relied on the breach of the implied term in the SHA, that claim cannot succeed because Manoj is not a party to the SHA and therefore has no standing to claim damages for breach of the implied term. Manoj submitted that all that is needed is that the defendants intended to harm him through unlawful means; it is irrelevant whether he can sue on the unlawful means used. I agree with Manoj’s submission. First, for purposes of unlawful means conspiracy, the unlawful means need not be independently actionable by the plaintiff: *Beckett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452 at [120], citing *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174. This view also found favour with the Court of Appeal in *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 (“*EFT Holdings*”) at [91]. If the unlawful means need not be actionable by the plaintiff, it is irrelevant that Manoj could not have sued for breach of the implied term.

219 Second, the focus in conspiracy torts (whether the means used are lawful or unlawful) is on the intention to cause harm to the plaintiff. As the Court of Appeal said in *EFT Holdings*, “the real wrong [in conspiracy torts] rests in the notion that something is done *in order to harm another person*” (at [95]) [emphasis in original]. The difference between lawful means conspiracy and unlawful means conspiracy is that the former requires a predominant purpose to cause injury to the plaintiff. This means that where the predominant purpose is self-interest, a lawful means conspiracy claim will fail. In the case of unlawful means conspiracy, there is no scope for such justification as a means of avoiding liability: *EFT Holdings* at [96]. It seems to me that the reason for the distinction is that the law frowns on *any* use of unlawful means. It should therefore not matter whether the unlawful means is actionable by the plaintiff.

S187/2014 - Counterclaim for Defamation

220 I turn now to the counterclaim for defamation in S187/2014. This was founded on the ST Article which is at Annex C.

221 The 1st to 6th defendants are the plaintiffs in the counterclaim and will be referred to as “the Plaintiffs” in this part of the judgment dealing with the counterclaim. Their complaint is about the following words in the ST Article (“the ST Offending Words”): [\[note: cl\]](#)

[TWG] said in a separate statement on Monday that “the other shareholders and directors of TWG Tea have conspired to injure the interests of [TWG] by diluting its shareholdings in TWG Tea and enabling OSIM to take control over TWG Tea”.

...

[Manoj] also alleges that OSIM, [Ron Sim] and [Taha] conspired to remove him as TWG Tea chief executive, even as a shareholders' agreement implied that he would stay in the position for five years from March 24, 2011.

The two paragraphs above will be referred to as "Paragraph A" and "Paragraph B" respectively.

222 The issues in the counterclaim are:

- (a) Whether TWG and Manoj are responsible for the republication by the Straits Times;
- (b) Whether the ST Offending Words refer to the Plaintiffs;
- (c) Whether the ST Offending Words are defamatory; and
- (d) Whether any defences are available to TWG and Manoj.

Whether TWG and Manoj are responsible for the republication by the Straits Times

223 The Plaintiffs submitted that the ST Offending Words were a republication of relevant parts of the TWG Press Statement and the writ of summons and statement of claim in S187/2014 ("the Original Publication").

224 The original publisher of a libel is also liable for its republication "where that republication [is] more likely than not the consequence of the original publication": *Goh Chok Tong v Jeyaretnam Joshua Benjamin* [1997] 3 SLR(R) 46 at [129]. In such cases, the original publisher is said to have intended or authorised the republication. It will very readily be held that the defendant is responsible for the consequences of further publications if, for example, he submits material to a newspaper, tells a reporter a story defamatory of the plaintiff without restriction on its publication, makes statements at a press conference, or issues a press release: *Gatley on Libel and Slander* (Alastair Mullis and Richard Parkes QC eds) (Sweet & Maxwell, 12th Ed, 2013) ("*Gatley*") at para 6.53.

225 TWG and Manoj did not deny that they issued the TWG Press Statement (a) fully expecting that the media would then ask for the statement of claim and (b) intending the Straits Times to publish an article based on the Original Publication. Manoj admitted during cross-examination that he intended for the media to make enquiries and get information and documents about the case, and write a story about the TWG Press Statement and the case. [\[note: cli\]](#) However, TWG and Manoj submitted that in the ST Offending Words the Straits Times had altered the words used in the Original Publication and therefore the republication of the ST Offending Words was not reasonably foreseeable.

226 TWG and Manoj first submitted that crucial words had been omitted in Paragraph A [\[note: clii\]](#). The relevant paragraph in the TWG Press Statement stated as follows:

In the Suit, [TWG] has alleged, amongst other things, that the other shareholders and directors of TWG Tea have conspired to injure the interests of [TWG] by diluting its shareholdings in TWG Tea and enabling OSIM to take control over TWG Tea.

[emphasis added]

227 Paragraph A replaced the italicized words with "It said in a separate statement on Monday". TWG and Manoj submitted that the omission of the words "In the Suit, [TWG] has alleged" meant that

the allegations of conspiracy were made independently of, instead of in the context of, S187/2014. I disagree. I do not think the omission of the italicized words is material in this case. As will be seen later, it is my view that read in the context of the whole article, the ST Offending Words are about the allegations in S187/2014.

228 TWG and Manoj next submitted that Paragraph B was not a repetition of the relevant part of the Original Publication but were the Straits Times' own words. The submission seemed to suggest that the republication was not a repetition unless it repeated the relevant part of the Original Publication word-for-word. I reject this submission. Where the republisher uses language that is his own, the defendant who can be said to have authorised the republication would remain liable so long as the republication adheres to the sense and substance of the statement given by the defendant. The question is whether the defendant authorised the substance and the sting: *Gatley*, at para 6.54. In my view, Paragraph B clearly adheres to the "sense and substance" of the Original Publication in that it is a concise and accurate summary of Manoj's claim in the statement of claim in S187/2014.

229 TWG and Manoj are therefore responsible for the republication by the Straits Times.

Whether the ST Offending Words refer to the Plaintiffs

230 It is clear that Paragraph B referred to OSIM, Ron Sim and Taha. However, TWG and Manoj argued that a reasonable reader would not have understood Paragraph A to refer to the Plaintiffs. Paragraph A referred to "the other directors and shareholders of TWG Tea".

231 The test is whether the ordinary reasonable person who, at the material time, was aware of the relevant circumstances or special facts (if any) would reasonably understand the offending words to refer to the plaintiff: *Review Publishing* at [49].

232 A plaintiff need not be referred to by name: *Gatley* at para 7.2. If the words refer to a class of persons, the question is whether a reasonable reader could conclude that each of the plaintiffs as an individual was referred to. It is sufficient that people "acquainted with" or who "know" the plaintiffs believe that the class of persons refers to them: *DHKW Marketing v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 at [22]; *Golden Season Pte Ltd v Kairos Singapore Holdings Pte Ltd* [2015] 2 SLR 751 at [46].

233 It is clear from the ST Article itself that OSIM was a shareholder of TWG Tea. The ST Article also referred to OSIM, Paris, Ron Sim and Taha as parties involved in the suit. In addition, information as to the identities of the shareholders and directors of TWG Tea was publicly available. A reader of the ST Offending Words could therefore conclude that the reference to "shareholders and directors" included the Plaintiffs. In addition, persons acquainted with Ron Sim, Taha, Peng Soon and Peter Lee would have understood Paragraph A to refer to them. In the circumstances, I find that the ST Offending Words did refer to the Plaintiffs.

Whether the ST Offending Words are defamatory

234 The first step is to determine the natural and ordinary meaning of the words complained of. It is well-settled that the natural and ordinary meaning of words in a defamation action is determined by deciding what meaning the allegedly offending words would convey to an ordinary reasonable person, not unduly suspicious or avid for scandal, using his general knowledge and common sense, and that the meaning actually understood by the plaintiff is irrelevant: *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 ("*Review Publishing*") at [27].

235 The Plaintiffs submitted that the ST Offending Words in their natural and ordinary meaning meant and were understood to mean that:

(a) The Plaintiffs conspired to injure the interests of TWG by diluting its shareholdings in TWG Tea and enabling OSIM to take control over TWG Tea; and

(b) The Plaintiffs conspired to remove Manoj as CEO of TWG Tea even though it was implied under a shareholders' agreement that Manoj would remain as CEO of TWG Tea for five years from 24 March 2011.

236 The ST Offending Words, taken on their own, could convey the meanings pleaded. However, the words complained of are to be read in the context of the whole article and the reasonable reader is assumed to have read the whole article: *Gatley* at para 3.31; *Chan, Law of Torts* at para 12.051. In determining the meaning of the words alleged to be defamatory, a holistic approach has to be adopted as it is the broad impression conveyed that falls to be considered: *Jeyasegaram David v Ban Song Long David* [2005] 2 SLR(R) 712 ("*Jeyasegaram*") at [27].

237 I disagree with the Plaintiffs that in the context of the ST Article, the natural and ordinary meaning of the ST Offending Words was as pleaded by them. The Plaintiffs' pleaded meanings ignored the context of the ST Article. I also disagree with the Plaintiffs that it would have been clear to a reader that Paragraph A was from a "separate statement" by TWG and Manoj and not from the court papers. The Plaintiffs submitted that the ST Article moved from telling the reader what the court papers said about the dispute to what a separate statement said about the facts. In my view, an ordinary reasonable reader would not have made such a minute linguistic analysis of the ST Offending Words. Further, after referring to allegations in the "separate statement", the ST Article then referred to Manoj's claim "in the court papers" that he had suffered loss and damage. In my view, this would also have told a reader that the preceding paragraphs in the ST Article were related to the case before the court.

238 In my judgment, an ordinary reasonable reader of the ST Article, not unduly suspicious or avid for scandal, using his general knowledge and common sense, would understand the ST Offending Words to refer to a dispute before the court between TWG and Manoj on one hand and the Plaintiffs on the other.

239 The headline for the ST Article was "Details on TWG Tea co-founder v Osim". The ST Article itself started with a reference to a "bitter stand-off between key shareholders [which] has been detailed in legal papers", and described the dispute as one "set for a show-down in the High Court". The ST Article also referred to "[d]ocuments filed in the court". Finally, the ST Article ended with a reference to Manoj's "claims in the court papers", OSIM's statement that it was "seeking legal advice to refute the claims and to file a counter-claim against [TWG] and [Manoj]", and to the fact that a "pre-trial conference" had been scheduled. The defendants' argument that a reasonable reader would not have applied his mind to these statements in the ST Article when reading the ST Offending Words gives too little credit to the reader. [\[note: cliii\]](#) A reasonable reader would understand that the allegations in the dispute remain to be proved in court. The references to a "show-down in the High Court" and the scheduling of a pre-trial conference, would tell a reader that the matter would be tried in the High Court. There was no suggestion that any findings of liability had been made. It was also clear from the statement that OSIM was seeking legal advice to "refute the claims and to file a counter-claim" and that OSIM was denying and challenging the allegations by TWG and Manoj.

240 The next step is to determine whether the natural and ordinary meaning of the words complained of is defamatory. The general test is whether the words would tend to lower the plaintiff

in the estimation of right-thinking members of society generally, cause the plaintiff to be shunned or avoided, or expose the plaintiff to hatred, contempt or ridicule: Chan, *Law of Torts* at para 12.015. A publication understood to mean that a dispute is before the court and that the allegations in the dispute remain to be determined is not defamatory: *Ross McConnel Kitchen & Co Pty Ltd v John Fairfax & Sons Ltd* [1980] 2 NSWLR 845 at [25]; *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd* [2014] 2 SLR 1045 at [230]. I therefore find that the ST Offending Words, read in the context of the entire ST Article, are not defamatory.

241 My finding that the ST Offending Words are not defamatory disposes of the counterclaim. For completeness, I shall deal with whether TWG and Manoj can avail themselves of the defences of justification, qualified privilege and absolute privilege.

Justification

242 To succeed in their defence of justification, TWG and Manoj would need to prove the truth of the defamatory meaning pleaded (see [235] above). In view of my findings on TWG's and Manoj's allegations in their conspiracy claims, the defence of justification would have failed.

Qualified privilege

243 In my view, the defence of qualified privilege would have failed. The defamation claim is based on the republication by the Straits Times. The Plaintiffs submitted that the relevant question is whether the *republication* was made on an occasion of qualified privilege and that TWG and Manoj have not pleaded that the republication was made on an occasion of qualified privilege. [\[note: cliv\]](#)

244 TWG and Manoj pleaded in their statement of claim that the publication to the Straits Times (*ie* the Original Publication) was protected by qualified privilege. In their submissions, they relied on the following passage from *Gatley* at para 6.58:

If D, without malice, makes a statement to X on a privileged occasion and X repeats the statement to Y, again on a privileged occasion, D has a defence in respect of both the original publication and the republication. The same is true where X is actuated by malice and therefore loses the protection of privilege, for it is necessary to consider the state of mind of each defendant separately. *If X is unprotected because he repeats the statement on an occasion which is not privileged (e.g. because he republishes it more widely than is permissible) D should still be protected unless he requested the manner or scope of the publication by X.*

[emphasis added]

TWG and Manoj submitted that the highlighted sentence meant that as long as they did not request the manner or scope of the publication by the Straits Times, any qualified privilege they enjoyed in respect of the Original Publication extended to the republication.

245 I do not think that this extract from *Gatley* supports TWG's and Manoj's submission. The highlighted sentence means that D would not be protected by qualified privilege in respect of the publication by X if D is liable for the publication by X (*eg*, by requesting the manner or scope of the publication by X). Viewed this way, it is clear that the qualified privilege in respect of the original publication by D to X does not protect D in respect of the publication by X. In other words, whether the original publisher can rely on qualified privilege in respect of the republication depends on whether the republication was made on an occasion of qualified privilege. In any event, it is clear that TWG and Manoj did request the republication by the Straits Times. TWG and Manoj gave the Original

Publication to the Straits Times intending the Straits Times to publish an article based on it, and I have found that they are responsible for the republication by the Straits Times: see [223] – [229] above.

246 Even if TWG and Manoj were right that qualified privilege in respect of the original publication extends to the republication by the Straits Times, the defence would still have failed. TWG and Manoj claimed that the TWG Press Statement and the statement of claim was published to the Straits Times in anticipation of OSIM courting media attention. TWG and Manoj claimed that it was necessary to make known the facts relating to the proceedings and to ensure that any media queries were directed to the appropriate representatives.

247 TWG and Manoj submitted that a pre-emptive press release in response to an anticipated attack attracts qualified privilege: *Bhatt v Chelsea and Westminster NHS Trust*, Unreported, 16 October 1997 (“*Bhatt*”) at p 7. *Bhatt* was doubted in *Bento v The Chief Constable of Bedfordshire Police* [2012] EWHC 1525 (QB) at [103]. Nonetheless, Bean J held (at [104]) that if *Bhatt* was correct, the pre-emptive reply had to be (a) in reasonable anticipation of an imminent attack, and (b) limited to a proportionate rebuttal of the anticipated attack.

248 A person whose character or conduct has been attacked is entitled to answer such attack and any defamatory statements he may make about the person who attacked him will be privileged, provided they are published in good faith and are fairly relevant to the accusations made: *Gatley* at para 14.51. It seems to me that a pre-emptive reply ought to be protected by qualified privilege the same way that a response to an actual published attack would be, provided the pre-emptive reply is in reasonable anticipation of an imminent attack and is a proportionate rebuttal. If the purpose of the privilege is to protect a person’s legitimate interest in defending his reputation, it seems unrealistic to require that person to wait until his character is actually attacked before making the rebuttal.

249 In the present case, Manoj said, during cross-examination, that the TWG Press Statement was issued to state the facts and pre-empt OSIM as he thought OSIM would issue a disparaging and incorrect statement against TWG and himself. [\[note: clv\]](#) When asked what sort of disparaging statements he thought OSIM might make, Manoj said it would be something like the OSIM Announcement. In other words, the OSIM Announcement was the anticipated attack that the TWG Press Statement was issued to pre-empt. In my view, the OSIM Announcement was not even an attack on TWG or Manoj. In addition, the TWG Press Statement was not a pre-emptive reply to the OSIM Announcement. On the stand, Manoj could not even explain what it was in the OSIM Statement that the TWG Press Statement pre-empted. [\[note: clvi\]](#) Further, as a rebuttal to the OSIM Announcement, the TWG Press Statement would have exceeded all proportionality necessary for the defence of qualified privilege. In my view, the issuance of the TWG Press Statement was a carefully calculated move by TWG and Manoj to sensationalise the case through the press, and to use the publicity to embarrass and pressurise OSIM into settling the claim by TWG and Manoj in S187/2014. This court frowns on the antics employed by TWG and Manoj.

250 I do not need to determine if TWG was actuated by malice since I have found that the publication would not have been protected by qualified privilege.

Absolute privilege

251 TWG and Manoj pleaded that insofar as the ST Offending Words were a republication of relevant parts of the SOC, they were subject to absolute privilege. However, they make no reference to this defence in both their opening statement and closing submissions. I know of no principle of law or authority that supports this assertion and none has been cited to me. On the contrary, the

"general view has been that privilege will not attach to the publication in a newspaper of the contents of pleadings, affidavits, or other papers filed in civil proceedings and not brought up in open court": *Gatley*, at para 13.48. The defence of absolute privilege in this case clearly would have failed. It seems to me that TWG and Manoj were not serious about this defence and I would only add that they should therefore not have pleaded it in the first place.

Conclusion on the counterclaim in S187/2014

252 TWG and Manoj are responsible for the republication by the Straits Times. The ST Offending Words refer to the Plaintiffs but are not defamatory. Accordingly, the counterclaim in S187/2014 is dismissed.

S545/2014 - Claim for Defamation

253 Finally, I turn to address the claim in S545/2014. This is based on the OSIM Announcement which is at Annex B.

254 The complaint in this case is about the following words in the OSIM Announcement ("the OSIM Offending Words"):

The Board believes that the allegations [in S187/2014] are unmeritorious and groundless, and hence, [OSIM] intends to vigorously defend the Claim and is currently seeking legal advice to refute the Claim as well as to file Counterclaim against [TWG] and Manoj.

255 The plaintiffs (TWG and Manoj) claimed that the OSIM Offending Words were defamatory and that the natural and ordinary meaning of the OSIM Offending Words meant that in commencing S187/2014, the plaintiffs:

- (a) had acted dishonestly and/or lacked integrity; and/or
- (b) had acted in bad faith; and/or
- (c) had abused the court process and/or acted for an improper/ulterior purpose; and/or
- (d) had acted mischievously, frivolously and/or vexatiously; and/or
- (e) were reckless and/or grossly negligent; and/or
- (f) had committed and/or were suspected of committing an egregious civil wrong against OSIM and were potentially liable to OSIM; and/or
- (g) were miscreants and/or troublemakers, despite having committed an egregious civil wrong against OSIM.

256 The plaintiffs sought to support the meanings set out at [255] on the grounds that:

- (a) both words "unmeritorious" and "groundless" were used in the OSIM Offending Words when either word would have sufficed; and
- (b) the use of the word "refute" (in contrast to "defend") meant that the defendants were going on the attack to destroy or discredit the claim.

According to the plaintiffs, the above meant that the plaintiffs' case was so bad that the plaintiffs must have acted dishonestly and in bad faith, and/or for an improper/ulterior purpose in commencing S187/2014.

257 The plaintiffs also pointed out that the OSIM Offending Words said that OSIM was seeking legal advice to file a counterclaim against the plaintiffs, in contrast to saying that it was seeking legal advice as to whether it had a counterclaim or for the purposes of considering filing a counterclaim. According to the plaintiffs, this meant that (a) OSIM had a counterclaim, and (b) the liability of the plaintiffs must have been so egregious that it warranted OSIM mentioning it in the OSIM Announcement.

258 The test to apply in interpreting the words complained of in a defamation action has been set out at [234]. In my judgment, the plaintiffs' pleaded meanings of the OSIM Offending Words could not be any further from the natural and ordinary meaning of the words. No ordinary reasonable person, even reading between the lines, would interpret the OSIM Offending Words the way the plaintiffs have. In my view, the plaintiffs' pleaded meanings are so contrived they can only be described as "the product of some strained or forced or utterly unreasonable interpretation" which must be rejected (*Gordon Berkeley Jones v Clement John Skelton* [1963] 1 WLR 1362 at 1370).

259 In my view, an ordinary reasonable person would understand the OSIM Offending Words to mean nothing more than that the OSIM Board believed that the plaintiffs in S187/2014 did not have a good case or that the plaintiffs' case was unfounded, that OSIM therefore intended to defend the claim vigorously, that the OSIM Board believed OSIM may have a counterclaim against the plaintiffs, and that it was seeking legal advice on its defence and counterclaim.

260 I agree with the defendants' submission that the OSIM Board was simply expressing its view about the allegations made by the plaintiffs in S187/2014. As for the OSIM Board's belief that OSIM may have a counterclaim and was seeking legal advice on it, that was just a general statement without any specific allegations against either of the plaintiffs. Even if, as pleaded by the plaintiffs, the OSIM Board was saying it *had* a counterclaim, that would still be nothing more than a general statement without any specific allegations. In my judgment, there is simply nothing defamatory in the OSIM Offending Words.

261 The plaintiffs further submitted that what was being conveyed by the defendants through the OSIM Offending Words was that S187/2014 was a dishonest claim. The plaintiffs sought to rely on the fact that Ron Sim had said during cross-examination that his case was that the claim by the plaintiffs in S187/2014 was dishonest. [\[note: clviii\]](#) In my view, what Ron Sim thought about the claim by the plaintiffs is irrelevant to the interpretation of the OSIM Offending Words. The meaning intended by the maker of the defamatory statement is irrelevant: *Microsoft Corp v SM Summit Holdings* [1999] 3 SLR(R) 465 at [53]. The law is clear - the natural and ordinary meaning of the OSIM Offending Words depends on how an ordinary reasonable person would interpret the words.

262 I agree with the defendants that the OSIM Offending Words, on their natural and ordinary meaning, could not bear, could not be understood to bear, and were not capable of bearing the meanings alleged by the plaintiffs, or any defamatory meaning.

263 This is sufficient to dispose of the plaintiffs' claim in S545/2014. Again, for completeness I will also deal briefly with the other defences raised, *ie*, qualified privilege, fair comment and justification.

Qualified privilege

264 Qualified privilege can arise where a defendant makes a statement in pursuance of a legal, social or moral duty, or in the protection or furtherance of a legitimate interest, to a person with a corresponding duty or interest to receive it, thereby giving rise to a reciprocity of duty or interest: *Arul Chandran v Chew Chin Aik Victor JP* [2000] SGHC 111 at [242].

265 Rule 703(1)(b) of the SGX Mainboard Rules requires listed companies to disclose material that “would be likely to materially affect the price or value of its securities”.

266 I agree with the defendants’ submission that the publication of information by a company pursuant to its disclosure requirements under the listing rules is an occasion of qualified privilege: *Hady Hartanto v Yee Kit Hong* [2014] 2 SLR 1127 (“*Hady Hartanto*”). The plaintiffs did not challenge this proposition but submitted that qualified privilege does not apply because:

- (a) the OSIM Offending Words went beyond OSIM’s obligations under the SGX Mainboard Rules in that the words amounted to an “attack” on the plaintiffs; and
- (b) the OSIM Announcement was selective in its disclosure in that it did not give a full picture of the causes of action in S187/2014.

267 I disagree with the plaintiffs’ submissions. First, the ultimate question is whether the words were “fairly warranted by the occasion”: *Hady Hartanto* at [174]. In my view, the OSIM Offending Words fit this description; they were concise and did not exceed OSIM’s disclosure obligations under the SGX Mainboard Rules.

268 Second, I agree with the defendants’ submissions that the defence of qualified privilege is not defeated by the fact that the response does not set out all the attacks to which the response is being made. It is sufficient if the response is published *bona fide* and is “fairly relevant to the accusations made”: *Lee Kuan Yew v Jeyaretnam Joshua Benjamin* [1979-1980] SLR(R) 24 (“*LKY v JBJ*”) at [49]; *Gatley* at para 14.51.

269 The requirement that the response must be fairly relevant to the accusations made is meant to limit (for purposes of the qualified privilege defence) what may be said in response to an attack. A response would not be fairly relevant to the accusations made if it says *more* than is necessary to refute the accusations. As the court held in *LKY v JBJ* (at [51]), a “man may defend himself against an attack but he may not proceed to make a counter-charge which is not part of the refutation of the attack made on him”. However, in the present case, the plaintiffs’ complaint was that the OSIM Announcement was not fairly relevant because it did not refer to the conspiracy claim. In other words, the complaint was that OSIM’s responses in the OSIM Announcement were not fairly relevant because they did not say enough! In my view, the plaintiffs’ perverse submission is plainly unsustainable.

270 I should add that during cross-examination, Manoj at first made the startling assertion that OSIM could announce the fact that it had been sued but could not state its own views about the allegations made against it. Obviously, this was an untenable position to take. A bland statement by a listed company that it has been sued, without any comment as to how the company views the claim or what steps it is taking, would be irresponsible. Manoj subsequently conceded that as a listed company, OSIM had an obligation to respond and say something about the claim. Manoj also conceded that there was a legitimate interest on the part of the investing public to know OSIM’s position.

271 The plaintiffs next argued that the defence of qualified privilege is defeated by malice in this

case. The test for malice is not in dispute. The plaintiffs can prove malice if they can prove (a) the defendants' knowledge of the falsity, recklessness or lack of belief in the defamatory statement, or (b) that, although the defendants may have had a genuine or honest belief in the truth of the defamatory statements, their dominant intention was to injure the plaintiffs or some other improper motive: *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 at [90], citing *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 331.

272 Although the plaintiffs pleaded several particulars of the alleged malice, their closing submissions focused on two main arguments.

273 The plaintiffs first contended that the defendants could not have had an honest belief that the claims in S187/2014 were "unmeritorious and groundless" because:

(a) the defendants had not received any legal advice on the merits of the claim in S187/2014 when the OSIM Announcement was made; and

(b) of all the directors, only Peter Lee had seen the statement of claim in S187/2014; the other members of the OSIM Board had simply left everything to Peter Lee and Ron Sim.

274 I find no merit in the plaintiffs' submission that the defendants could not have formed an honest view on the factual allegations by the plaintiffs in S187/2014 without first receiving legal advice. In my view, there is no reason why legal advice should be a prerequisite.

275 As for the reliance on Peter Lee, I agree with the defendants that the other directors were entitled to rely on Peter Lee for information on the allegations in the statement of claim in S187/2014, and to rely on Peter Lee's and Ron Sim's views on those allegations. First, Ron Sim and Peter Lee were the executive directors who had been heavily involved in the matters complained of in S187/2014. The other directors are either executive directors who were not involved in TWG Tea, or non-executive directors.

276 Second, it is important to view the events in context. Manoj had carefully orchestrated the issuance and service of the writ and statement of claim in S187/2014, as well as the release of the TWG Press Statement, on the same day on 17 February 2014. Ron Sim was informed of the release of the TWG Press Statement by OSIM's public relations firm at 3.58 pm on that day. Since OSIM is a listed company, it is understandable that the OSIM Board was under pressure to issue the OSIM Announcement as soon as possible and before trading commenced the next morning. Under the SGX Mainboard Rules, OSIM was required to provide timely disclosure of material information, and any significant litigation was regarded as likely to require immediate disclosure. Finally, there is no evidence that there was any reason for the other directors to doubt what Peter Lee had told them about the allegations in statement of claim in S187/2014 or Peter Lee's and Ron Sim's views on those allegations.

277 The plaintiffs next contended that the defendants could not have honestly believed at the time of the OSIM Announcement that OSIM had a counterclaim or potential counterclaim based on an existing cause of action. In my view, this would be correct if the OSIM Offending Words bore the meaning alleged by the plaintiffs. However, as stated at [259], the OSIM Offending Words merely mean that the OSIM Board believed that OSIM may have a counterclaim against the plaintiffs. The plaintiffs have no shown any reason to challenge this belief.

278 In my view, the defence of qualified privilege would have succeeded.

Fair comment

279 To succeed in the defence of fair comment, the defendants must prove the following:

- (a) The words complained of are comments, though they may consist of or include inferences of facts;
- (b) The comment is on a matter of public interest;
- (c) The comment is based on facts; and
- (d) The comment is one which a fair-minded person can honestly make on the facts proved.

See *Review Publishing* at [139], citing *Chen Cheng v Central Christian Church* [1999] 3 SLR(R) 236 at [33].

Whether the words are comments

280 It is well-established that the test is whether an ordinary reasonable and fair-minded reader would recognize the statement as comment, having regard to the whole context of the publication: *Review Publishing* at [140]. Comment is generally equated with a statement of opinion: *Review Publishing* at [141]; Chan, *Law of Torts* at para 13.015.

281 Obviously, a statement of fact is not comment. A statement of fact is objectively verifiable whereas a comment is by its very nature not objectively verifiable. Hence, "one is not permitted to seek shelter behind a defence of fair comment when the defamatory sting is one of verifiable fact": *Hamilton v Clifford* [2004] EWHC 1542 (QB) ("*Hamilton*") at [60].

282 The plaintiffs relied on *Hamilton* and argued that the statement - that the plaintiffs' allegation in S187/2014 are "unmeritorious and groundless" - is objectively verifiable in that it can be objectively proven whether the allegations are unmeritorious and groundless. Therefore, they submitted, the statement is not a comment. I disagree with the plaintiffs' submission. Until the plaintiffs' allegations have been finally determined by a court, any view expressed on the merits of those allegations must necessarily be an expression of an opinion. In my view, at the time that the OSIM Announcement was made, it was not objectively verifiable whether the allegations were unmeritorious and groundless.

283 The facts in *Hamilton* were very different. In *Hamilton*, the defendant sought to argue that the following statement was a comment:

...the police investigation and subsequent arrest of the Claimants gave rise to grounds to suspect the Claimants and each of them of guilt of those criminal offences.

The English High Court held that the statement that there were "grounds to suspect" was one of fact rather than comment (at [62]). That is clearly correct. Whether one has grounds for one's suspicions is a question of fact which can be objectively verified. However, in the present case, the OSIM Board's view on the merits of the allegations in S187/2014 was an opinion. An opinion is a value judgment which by definition is not objectively verifiable.

284 It is clear to me that the statement in question qualifies as a comment. Any ordinary reasonable and fair-minded reader would see the statement as the OSIM Board's opinion of the merits of the claim in S187/2014.

Whether the comment is on a matter of public interest

whether the comment is on a matter of public interest

285 The plaintiffs do not dispute that the OSIM Offending Words are on a matter of public interest. This is not surprising as OSIM is a listed company and shareholders and the investing public would be legitimately interested in the claims against OSIM and what OSIM's position was.

Whether the comment was based on facts

286 It is unnecessary for all the facts which formed the basis of the comment to be referred to, so long as there is a sufficient substratum of facts referred to or implied from the defamatory words: *Jeyasegaram* at [52].

287 As pleaded, the defence of fair comment was based on the following facts:

- (a) The plaintiffs had served a writ on OSIM, Taha, Paris and TWG Tea;
- (b) The claim in the writ was in relation to the subscription by OSIM and Paris of the shares in TWG Tea and other disputes;
- (c) The plaintiffs claimed that the issuance of shares was an act of minority oppression and was in breach of the terms of a shareholders agreement entered into among OSIM, Paris, TWG and TWG Tea; and
- (d) The plaintiffs were asking for the issuance of shares to OSIM and Paris to be set aside, for TWG to regain its shareholding percentage in TWG Tea and for damages to be assessed.

I agree with the plaintiffs that the facts stated above do not support the comment that the allegations are unmeritorious and groundless.

Whether the comment was fair

288 The test is "whether an honest and fair-minded man on the basis of the facts which the [defendants] have proved can honestly hold and express such opinions... The essential thing is the honest opinion of a fair-minded person and in this connection every allowance or latitude must be given for any prejudice and exaggeration entertained by such a fair-minded person": *Aaron Anne Joseph v Cheong Yip Seng* [1996] 1 SLR(R) 258 at [77] - [78]. Or, to adopt the concise summary in *Chan, Law of Torts* at para 13.027, "a fair comment is an opinion that a fair-minded person could honestly hold, with some allowance given for prejudices and exaggeration."

289 The plaintiffs submitted that an honest fair-minded person could not honestly hold an opinion that the plaintiffs' allegations in S187/2014 were unmeritorious and groundless, based on the supporting facts pleaded by the defendants (see [287] above). I agree. The supporting facts say nothing about the merits of the plaintiff's allegations, nor the position taken by the defendants in the suit, and an honest fair-minded reader of the OSIM Announcement would not be able to form an opinion that the plaintiffs' allegations are unmeritorious.

Malice

290 The earlier discussions on malice in relation to qualified privilege equally apply here. I find that the plaintiffs would have failed to prove malice on the part of the defendants.

Conclusion on defence of fair comment

291 The OSIM Offending Words are comments touching on a matter of public interest. However, the defendants have failed to prove that the comments were based on facts and that the comments were fair. The defence of fair comment would have failed.

Justification

292 In view of my findings in respect of S187/2014, the defence of justification would have succeeded.

Conclusion in S545/2014

293 In my judgment, the OSIM Offending Words are clearly not defamatory. Even if they are, the defendants would have succeeded on their defences of qualified privilege and justification.

294 S545/2014 is dismissed. In my view, this claim is nothing more than a very big storm in a tiny tea cup and should never have been brought.

Costs

295 The plaintiffs in S187/2014 are to pay the costs of the 1st to 6th defendants, such costs to be agreed or taxed. The plaintiffs are to pay the costs of the 7th defendant fixed at \$48,000 plus reasonable disbursements.

296 The plaintiffs in the counterclaim in S187/2014 are to pay the costs of the defendants in the counterclaim, such costs to be agreed or taxed.

297 The plaintiffs in S545/2014 are to pay the costs of the defendants, such costs to be agreed or taxed.



For Immediate Release

Singapore, February 17th, 2014: The Wellness Group Pte Ltd and its Chairman, Manoj M Murjani have filed a Writ of Summons in the High Court of Singapore, being Suit No. 187 of 2014 ("the Suit"), against the other shareholders and directors of TWG Tea Company Pte Ltd ("TWG Tea") - OSIM International Ltd ("OSIM"), Ron Sim, Taha Bou Qdib, Peter Lee and Khor Peng Soon.

Ron Sim, Peter Lee and Khor Peng Soon are also directors of OSIM.

In the Suit, The Wellness Group has alleged, amongst other things, that the other shareholders and directors of TWG Tea have conspired to injure the interests of the Wellness Group by diluting its shareholdings in TWG Tea and enabling OSIM to take control over TWG Tea.

Further, The Wellness Group has alleged that the other shareholders and directors of TWG Tea have oppressed The Wellness Group's interests as a member of TWG Tea.

In addition, The Wellness Group's founder, Manoj M Murjani has also alleged that Ron Sim and Taha Bou Qdib had conspired to damage his interests.

The Wellness Group and Manoj M Murjani have claimed for a number of remedies, including reversal of the recent transfers in shareholding of TWG Tea and for damages to be assessed.

The Wellness Group and Manoj M Murjani are represented in the Suit by Prakash Pillai and Junxiang Koh of Clasis LLC.



About The Wellness Group Pte. Ltd.

The Wellness Group (TWG) was founded in Singapore in 2003 by Manoj M Murjani. Through Manoj's vision and leadership, TWG launched a subsidiary, TWG Tea Company in 2007.

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- End -

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Annex B



OSIM INTERNATIONAL LTD
(Company Registration No.: 198304191N)
(Incorporated in Singapore)

Response to Writ of Summons from The Wellness Group Pte. Ltd.

The Board of Directors (the "Board") of OSIM International Ltd (the "Company", together with its subsidiaries, the "Group") wishes to announce that the Company, Taha Bou Qdib, Paris Investment Pte Ltd ("Paris Investment"), and TWG Tea Company Pte Ltd ("TWG Tea") have on 17 February 2014 been served with a Writ of Summons issued by The Wellness Group Pte. Ltd. ("The Wellness Group") and Manoj Mohan Murjani ("Manoj").

The claim in the Writ of Summons (the "Claim") relates to the recent subscription by the Company and Paris Investment of the shares in TWG Tea and other disputes. The Wellness Group and Manoj claimed that the issuance of shares was an act of minority oppression and is in breach of the terms of the Shareholders Agreement dated 18 March 2011 entered into between the Company, Paris Investment, The Wellness Group, and TWG Tea. They have asked for the issuance of shares in TWG Tea to the Company and Paris Investment to be set aside, for The Wellness Group to regain its shareholding percentage in TWG Tea, and for damages to be assessed.

The Board believes that the allegations are unmeritorious and groundless, and hence, the Company intends to vigorously defend the Claim, and is currently seeking legal advice to refute the Claim as well as to file Counterclaim against The Wellness Group and Manoj.

The Company will keep the shareholders informed of the progress of the matter and will make further announcements, when appropriate.

By the order of the Board

Peter Lee Hwai Kiat
Company Secretary
17 February 2014

Annex C

By RACHAEL BOON

THE way the much-heralded link between TWG Tea Company and lifestyle giant Osim International descended into a bitter stand-off between key shareholders has been detailed in legal papers obtained by The Straits Times.

The dispute, set for a showdown in the High Court, seems to have been ignited by failed expectations among stakeholders.

Documents filed in the court also show that the "bad blood" between TWG Tea co-founder Manoj Mohan Murjani and other shareholders appeared to have been brewing for some time.

Mr Murjani now wants the court to reverse moves by Osim that have given it control of the firm. He and The Wellness Group filed a writ of summons in the High Court on Monday against the other shareholders and directors of TWG Tea.

Details on TWG Tea co-founder v Osim

They ask that the issuance of TWG shares to Osim and an Osim unit, Paris Investment, be set aside. They also want The Wellness Group to get back its shareholding percentage in TWG Tea.

Other parties involved in the suit include Osim chief executive Ron Sim and Mr Taha Bouqdid, also a co-founder of TWG Tea.

The firm was launched in Singapore in 2007 by Mr Murjani, Mr Bouqdid and his wife Maranda Barnes. Mr Murjani and The Wellness Group had ambitious plans for TWG Tea, including local and international expansion. They looked for investors and were approached by Osim, which proposed a joint venture, among other things, according to the court papers.

Osim bought an initial 35 per cent stake in the gourmet beverage company in April 2011. It lifted that to 45 per cent in July, then 53.7 per cent in October last year, and raised it again to 70 per cent last month.

The court papers detailed TWG Tea's expansion plans, which included how Osim's management team was to help the firm grow and how the firm would provide funding. A joint venture was set up for expansion into North Asia, for example, with Osim committing to TWG Tea that the move would add a significant portion to revenues by 2013.

However, The Wellness Group notes that projections of new outlets in various markets fell short of expectations.

It also claims in the court papers that Osim directors led TWG Tea to supply to the joint venture at below franchise price, lowering TWG Tea's profits.

The papers also contend that Osim directors prevented TWG Tea or the joint venture from expanding, and if not for their actions, TWG Tea's profitability for the 2013 financial year would have been much higher.

The Wellness Group is claiming that the reduced profit meant that Osim could exercise its rights to take an increased shareholding in TWG Tea, at the expense of The Wellness Group.

It said in a separate statement on Monday that "the other shareholders and directors of TWG Tea have conspired to injure the inter-

ests of The Wellness Group by diluting its shareholdings in TWG Tea and enabling Osim to take control over TWG Tea".

The Wellness Group claims Osim and its directors had assured it that Osim "had no interest in taking a majority stake in TWG Tea and the expansion of TWG Tea would be financed by debt".

Mr Murjani also alleges that Osim, Mr Sim and Mr Bouqdid conspired to remove him as TWG Tea chief executive, even as shareholders' agreement implied that he would stay in the position for five years from March 24, 2011.

He cites two e-mails from Mr Sim - one to call for a board meeting reviewing Mr Murjani's position, and another stating Mr

Sim's concerns about not knowing Mr Murjani's schedule and a lack of financial discipline.

Mr Murjani, who denies the allegations made in the e-mails, resigned in 2012 as TWG Tea director and its chief executive, a post that paid him \$45,000 a month.

Mr Murjani also notes the lack of support from Mr Bouqdid, who took over as TWG Tea chief executive on Sept 28, 2012. He adds that since his resignation, Mr Bouqdid has represented himself as the sole founder of TWG Tea.

He claims in the court papers that he has "suffered loss and damage", including losing his salary as TWG Tea chief executive.

Osim said on Monday that it is seeking legal advice to refute the claims and to file a counter-claim against The Wellness Group and Mr Murjani.

A pre-trial conference is scheduled on March 26.
✉ rachael@sph.com.sg

[\[note: i\]](#) Statement of claim ("SOC") at para 1.1.10

[\[note: ii\]](#) SOC at paras 1.1.4 - 1.1.5

[\[note: iii\]](#) 1,778,658 shares x US\$2.53 per share

[\[note: iiiii\]](#) SOC at paras 2.1.4 to 2.1.5; Defence at para 15

[\[note: iv\]](#) Manoj's AEIC at para 9

[\[note: v\]](#) SOC at para 2.2.3

[\[note: vi\]](#) 4AB 28

[\[note: viii\]](#) Clause 2.2 of SPA

[\[note: viiii\]](#) Clause 2.4 of SPA

[\[note: ix\]](#) 4AB 88

[\[note: x\]](#) 4AB 89

[\[note: xi\]](#) SOC at para 2.2.9

[\[note: xii\]](#) SOC at para 2.2.12

[\[note: xiii\]](#) SOC at para 2.2.13

[\[note: xiv\]](#) 4AB 47

[\[note: xv\]](#) 4AB 95

[\[note: xvii\]](#) 4AB 108

[\[note: xviii\]](#) 4AB 123, 126

[\[note: xviii\]](#) Ron Sim's AEIC at para 98

[\[note: xix\]](#) Defence at para 16(n)

[\[note: xx\]](#) Ron Sim's AEIC at paras 111-112

[\[note: xxi\]](#) 5AB 19

[\[note: xxii\]](#) Manoj's AEIC at paras 122-123

[\[note: xxiii\]](#) 5AB 91

[\[note: xxiv\]](#) 5AB 158

[\[note: xxv\]](#) 5AB 160

[\[note: xxvi\]](#) Ron Sim's AEIC at para 192

[\[note: xxvii\]](#) 5AB 94 - 96

[\[note: xxviii\]](#) 5AB 186

[\[note: xxix\]](#) 5AB 197

[\[note: xxx\]](#) 5AB 211

[\[note: xxxi\]](#) Ron Sim's AEIC at paras 195-196; Defence at para 96

[\[note: xxxii\]](#) 6AB 17

[\[note: xxxiii\]](#) 6AB 21

[\[note: xxxiv\]](#) 6AB 33

[\[note: xxxv\]](#) 6AB 39

[\[note: xxxvi\]](#) 6AB 64

[\[note: xxxvii\]](#) Ron Sim's AEIC at para 227

[\[note: xxxviii\]](#) Manoj's AEIC at para 230

[\[note: xxxix\]](#) Ron Sim's AEIC at paras 216-218

[\[note: xl\]](#) 7AB 424

[\[note: xli\]](#) Manoj's AEIC at para 253; 8AB 73

[\[note: xlii\]](#) 8AB 471 and 477

[\[note: xliii\]](#) 9AB 243

[\[note: xliv\]](#) SOC at para 4.1.7

[\[note: xlv\]](#) 10AB 115

[\[note: xlvi\]](#) 10AB 233

[\[note: xlvii\]](#) 10AB 226

[\[note: xlviii\]](#) 13AB 27

[\[note: xlix\]](#) 10AB 415

[\[note: l\]](#) 10AB 416

[\[note: li\]](#) 10AB 427

[\[note: lii\]](#) 11AB 245

[\[note: liii\]](#) 11AB 250

[\[note: liv\]](#) SOC at para 1.1.14

[\[note: lv\]](#) 11AB 302A

[\[note: lvi\]](#) 11AB 304

[\[note: lvii\]](#) 11AB 330

[\[note: lviii\]](#) SOC at paras 3.1.5 - 3.1.6

[\[note: lix\]](#) 6AB 132

[\[note: lx\]](#) Ron Sim's AEIC at para 180

[\[note: lxi\]](#) Plaintiffs' closing submissions at paras 7.3.1 - 7.3.2

[\[note: lxii\]](#) At para 195

[\[note: lxiii\]](#) Transcript, 13 August 2015 at p 41 line 11 – p 42 line 24

[\[note: lxiv\]](#) SOC at para 3.2.1

[\[note: lxv\]](#) Ron Sim's AEIC at paras 111 - 113

[\[note: lxvi\]](#) 5AB 19

[\[note: lxvii\]](#) 5AB 20

[\[note: lxviii\]](#) SOC at para 2.2.6

[\[note: lxix\]](#) Transcript, 6 August 2015 at p 114 line 17 – p 116 line 15

[\[note: lxx\]](#) SOC at para 2.2.6(g)

[\[note: lxxi\]](#) Transcript, 6 August 2015 at p 190 line 11 – p 192 line 4; Transcript, 11 August 2015 at p 27 lines 15-18

[\[note: lxxii\]](#) Transcript, 6 August 2015 at p 175 line 24 – p 185 line 24

[\[note: lxxiii\]](#) Transcript, 6 August 2015 at p 15 lines 13-20; Transcript, 11 August 2015 at p 11 lines 10-24

[\[note: lxxiv\]](#) Transcript, 11 August 2015 at p 131 line 15 – p 137 line 3

[\[note: lxxv\]](#) SOC at para 3.3.1

[\[note: lxxvi\]](#) Transcript, 14 August 2015 at pp 64-65 and p 66 lines 5-11

[\[note: lxxvii\]](#) Transcript, 14 August 2015 at p 66 lines 5-11

[\[note: lxxviii\]](#) Transcript, 14 August 2015 at p 68 line 12 – p 69 line 6

[\[note: lxxix\]](#) Transcript, 14 August 2015 at p 67 lines 12-14 and p 68 lines 4-11

[\[note: lxxx\]](#) 8AB 295, 8AB 219

[\[note: lxxxii\]](#) 4AB 45

[\[note: lxxxiii\]](#) 5AB 170

[\[note: lxxxiiii\]](#) Transcript, 19 August 2015 at p 134 line 13 to p 135 line 1

[\[note: lxxxv\]](#) Manoj's AEIC at para 147

[\[note: lxxxvi\]](#) DB145; Defendants' closing submissions at p 472

[\[note: lxxxvii\]](#) 3AB 53-54

[\[note: lxxxviii\]](#) 3AB 57

[\[note: lxxxviiii\]](#) 3AB 76-77

[\[note: lxxxix\]](#) 3AB 88

[\[note: xc\]](#) 3AB 324-325

[\[note: xci\]](#) Manoj's AEIC at para 79

[\[note: xcii\]](#) 5AB 78

[\[note: xciii\]](#) 5AB 126

[\[note: xciv\]](#) 5AB 130

[\[note: xcv\]](#) 5AB 183-184

[\[note: xcvi\]](#) 5AB 183

[\[note: xcvi\]](#) 5AB 185

[\[note: xcvi\]](#) 5AB 186, 5AB 190

[\[note: xcix\]](#) SOC at para 4

[\[note: c\]](#) SOC at para 4.1.3

[\[note: ci\]](#) Transcript, 6 August 2015 at p 16 lines 18-21

[\[note: cii\]](#) Defence at paras 106-107

[\[note: ciii\]](#) Transcript, 6 August 2015 at p 20 lines 11 – 19 and p 27 line 22 - p 59 line 23

[\[note: civ\]](#) Transcript, 6 August 2015 at p 65 lines 17-20

[\[note: cv\]](#) Plaintiffs' closing submissions at para 7.10.3

[\[note: cvi\]](#) Manoj's AEIC at para 175

[\[note: cvii\]](#) Defendants' closing submissions at para 692

[\[note: cviii\]](#) 8ABD 146-147

[\[note: cix\]](#) At para 235

[\[note: cx\]](#) Ron Sim's AEIC at para 269; 7AB 424

[\[note: cxii\]](#) SOC para 4.2.2b

[\[note: cxiii\]](#) 6AB 182-221

[\[note: cxiiii\]](#) 6AB 181; 6AB 202

[\[note: cxv\]](#) Transcript, 11 August 2015 at p 36 lines 7-17

[\[note: cxvi\]](#) Transcript, 11 August 2015 at p 40 lines 3-18

[\[note: cxvii\]](#) At para 280

[\[note: cxviii\]](#) Manoj's AEIC at para 241

[\[note: cxix\]](#) Transcript, 17 August 2015 at p 64 lines 5-18

[\[note: cxx\]](#) Transcript, 17 August 2015 at p 83 lines 1-3

[\[note: cxxi\]](#) 13AB 27

[\[note: cxxii\]](#) Transcript, 17 August 2015 at p 64 line 20 – p 65 line 21

[\[note: cxxiii\]](#) Ron Sim's AEIC at para 360

[\[note: cxxiv\]](#) Transcript, 6 August 2015 at p 118 lines 4-18; p 120 lines 12-23

[\[note: cxxv\]](#) Transcript, 6 August 2015 at p 167 line 24 – p 168 line 14

[\[note: cxxvi\]](#) SOC para 2.2.13A(a)

[\[note: cxxvii\]](#) Transcript, 6 August 2015 at p 173 lines 20-23

[\[note: cxxviii\]](#) Ron Sim's AEIC at para 267(c)

[\[note: cxxix\]](#) 7AB 424

[\[note: cxxx\]](#) DB 230-238

[\[note: cxxxi\]](#) 12AB 63 at note 15

[\[note: cxxxii\]](#) 12AB 59

[\[note: cxxxii\]](#) Plaintiff's closing submissions at para 6.4.35

[\[note: cxxxiii\]](#) \$(69.7m + \$25m)/219,933

[\[note: cxxxiv\]](#) Transcript, 1 September 2015 at p 8 line 21 to p 9 line 19

[\[note: cxxxv\]](#) 10AB 406

[\[note: cxxxvi\]](#) (510-325)/510

[\[note: cxxxviii\]](#) Caldwell's expert report at paras 1.3.2(IV) and 10.2-10.5

[\[note: cxxxviii\]](#) (\$110.1m + \$25m)/219,933

[\[note: cxxxix\]](#) (614-325)/614

[\[note: cxli\]](#) Searby's expert report at paras 4.6-4.7 and 5.37

[\[note: cxlii\]](#) (1091-325)/1091

[\[note: cxliii\]](#) Transcript, 26 August 2015 at p 63 line 13 – p 62 line 17

[\[note: cxliii\]](#) 11AB 298

[\[note: cxliv\]](#) SOC at para 5.3.1 read with para 2.2.14A

[\[note: cxlv\]](#) SOC at para 6.1.3

[\[note: cxlvi\]](#) SOC at paras 4.2.1 and 6.1.1 - 6.1.2

[\[note: cxlvii\]](#) SOC at para 6.1.1(b)

[\[note: cxlviii\]](#) Plaintiffs' closing submissions at paras 11.4.9 - 11.4.10

[\[note: cxlix\]](#) Transcript, 11 August 2015 at page 122 line 9 to page 123 line 9

[\[note: cl\]](#) Defendants' closing submissions at para 5

[\[note: cli\]](#) Transcript, 17 August 2015 at p 95 lines 7-17

[\[note: clii\]](#) Plaintiff's closing submissions (Defamation claims) at para 2.5

[\[note: cliii\]](#) Defendants' closing submissions at para 93

[\[note: cliv\]](#) Plaintiff's closing submissions (counterclaim) at para 14

[\[note: clv\]](#) Transcript, 18 August 2015 at p 91 lines 8-10

[\[note: clvi\]](#) Transcript, 18 August 2015 at p 151 line 21 – p 152 line 17

[\[note: clvii\]](#) Transcript, 21 August 2015 at p 149 lines 8-22

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