

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 42

Court of Appeal / Civil Appeal No 196 of 2019

Between

- (1) How Weng Fan
- (2) How Weng Fan (Personal representative of the estate of Danny Loh Chong Meng, deceased, in his personal capacity and trading as FM Solutions & Integrated Services)
- (3) FM Solutions & Services Pte Ltd

... Appellants

And

Sengkang Town Council

... Respondent

Court of Appeal / Civil Appeal No 197 of 2019

Between

- (1) How Weng Fan
- (2) How Weng Fan (Personal representative of the estate of Danny Loh Chong Meng, deceased, in his personal capacity and trading as FM Solutions & Integrated Services)
- (3) FM Solutions & Services Pte Ltd

... Appellants

And

Aljunied-Hougang Town Council

Court of Appeal / Civil Appeal No 198 of 2019

... Respondent

Between

- (1) Sylvia Lim Swee Lian
- (2) Low Thia Khiang
- (3) Pritam Singh
- (4) Chua Zhi Hon
- (5) Kenneth Foo Seck Guan

... Appellants

And

Sengkang Town Council

Court of Appeal / Civil Appeal No 199 of 2019

... Respondent

Between

- (1) Sylvia Lim Swee Lian
- (2) Low Thia Khiang
- (3) Pritam Singh
- (4) Chua Zhi Hon
- (5) Kenneth Foo Seck Guan

... Appellants

And

Aljunied-Hougang Town Council

Court of Appeal / Civil Appeal No 200 of 2019

... Respondent

Between

Sengkang Town Council

And

- (1) Sylvia Lim Swee Lian

... Appellant

- (2) Low Thia Khiang
- (3) How Weng Fan
- (4) How Weng Fan (Personal representative of the estate of Danny Loh Chong Meng, deceased, in his personal capacity and trading as FM Solutions & Integrated Services

... Respondents

In the matter of Suit Nos 668 and 716 of 2017

Between

- (1) Aljunied-Hougang Town Council
... Plaintiff in S 668/2017
- (2) Pasir Ris-Punggol Town Council
... Plaintiff in S 716/2017

And

- (1) Sylvia Lim Swee Lian
- (2) Low Thia Khiang
- (3) Pritam Singh
- (4) Chua Zhi Hon
- (5) Kenneth Foo Seck Guan
- (6) How Weng Fan
- (7) How Weng Fan
(personal representative of the estate of Danny Loh Chong Meng, deceased, in his personal capacity and trading as FM Solutions & Integrated Services)
- (8) FM Solutions & Services Pte Ltd

... Defendants

JUDGMENT

[Civil Procedure — Costs — Principles]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

How Weng Fan and others
v
Sengkang Town Council and other appeals

[2023] SGCA 42

Court of Appeal — Civil Appeals Nos 196, 197, 198, 199 and 200 of 2019
Sundaresh Menon CJ, Judith Prakash JCA, Tay Yong Kwang JCA, Woo Bih Li JAD and Andrew Phang Boon Leong SJ
28 July 2023

29 November 2023

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 We previously dealt with the substantive merits of the present appeals (the “Appeals”) in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 1 SLR 707 (the “Judgment”), which concerned the liability of members and senior employees of Aljunied-Hougang Town Council (“AHTC”) to AHTC and to Sengkang Town Council (“STC”) (collectively, the “Town Councils”). The members comprise Ms Sylvia Lim Swee Lian (“Ms Lim”), Mr Low Thia Khiang (“Mr Low”), Mr Pritam Singh (“Mr Singh”), Mr Chua Zhi Hon (“Mr Chua”) and Mr Kenneth Foo Seck Guan (“Mr Foo”) (collectively, the “Town Councillors”). The senior employees are Ms How Weng Fan (“Ms How”) and Mr Danny Loh Chong Meng (“Mr Loh”) (collectively, the “Employees”), with Ms How acting as the personal

representative of Mr Loh’s estate. There is also FM Solutions & Services Pte Ltd (“FMSS”), which too is a party to the Appeals, and of which, at the material time, Ms How and Mr Loh were directors and shareholders (see the Judgment at [14(g)]).

2 Subsequent to the Judgment, we clarified the orders to be made in respect of the Appeals in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 (the “Supplementary Judgment”) in light of what appeared to be inadequacies in AHTC’s pleadings on a number of issues.

3 We thereafter directed the parties to tender written submissions on the issue of costs for the Appeals. The parties have since done so. We now provide our decision on the costs of the Appeals. For ease of reference, we adopt all terms of reference and abbreviations employed in the Judgment and the Supplementary Judgment for this judgment as well.

This court’s decision in the Appeals

4 The Town Councillors, the Employees and FMSS were co-defendants in the Suits below. The Town Councillors were represented by Tan Rajah & Cheah in the Appeals, while the Employees and FMSS were represented by Netto & Magin LLC. AHTC and STC were represented by Shook Lin & Bok LLP and Tan Kok Quan Partnership in the Appeals, respectively.

5 The Appeals consist of the following five appeals arising out of the Suits below: (a) CA/CA 196/2019 (“CA 196”); (b) CA/CA 197/2019 (“CA 197”); (c) CA/CA 198/2019 (“CA 198”); (d) CA/CA 199/2019 (“CA 199”); and (e) CA/CA 200/2019 (“CA 200”). The nature of the Appeals are as follows (see also the Judgment at [17] and the accompanying Annex in the Judgment):

- (a) CA 196 is the appeal brought by the Employees and FMSS against STC in respect of the Judge’s findings on their respective liabilities.
- (b) CA 197 is the appeal brought by the Employees and FMSS against AHTC in respect of the Judge’s findings on their respective liabilities.
- (c) CA 198 is the appeal brought by Town Councillors against STC in respect of the Judge’s findings on their respective liabilities.
- (d) CA 199 is the appeal brought by the Town Councillors against AHTC in respect of the Judge’s findings on their respective liabilities.
- (e) CA 200 is the appeal brought by STC against Ms Lim, Mr Low and the Employees, in respect of the Judge’s findings that limited the remedies available to it, specifically, that (i) STC was not entitled to equitable compensation in the form of substitutive compensation; and (ii) that STC bore the burden to demonstrate causation in the ‘but for’ sense to ascertain the loss recoverable in the form of equitable compensation arising from the Town Councillors’ and Employees’ breaches of fiduciary duties (see the Judgment at [109]). Just prior to the hearing of the Appeals, STC withdrew CA 200 in part and the parties to CA 200 agreed that the “hybrid approach” as set out in *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199, under which the Town Councillors and the Employees bore the legal burden of showing that the loss would have been sustained by the Town Councils even if the Town Councillors and the Employees had not breached their duties, would apply. Ms Lim, Mr Low and the

Employees reserved their rights to seek costs from STC in respect of CA 200 (see the Judgment at [115]).

6 In the Judgment and Supplementary Judgment, we reversed many of the Judge’s factual findings and legal conclusions (see the Judgment at [498] and [499] and the Supplementary Judgment at [66(a)]–[66(c)]). We held, in relation to AHTC, that Mr Low, Ms Lim and the Employees were negligent in permitting the control failures in the System to exist. In respect of STC, we held that the Town Councillors and the Employees were negligent in permitting the control failures in the System to exist, and in addition, Ms Lim was negligent in causing AHTC to award a fresh contract to Red-Power instead of renewing contracts with Digo and Terminal 9 at significantly cheaper rates. We further held that the degree of negligence involved in this context amounted to gross negligence so that the relevant parties could not rely on s 52 of the TCA to avoid personal liability (see the Judgment at [451]–[454]).

7 Accordingly, we made the following orders (see the Supplementary Judgment at [66(c)]):

(a) CA 196 was allowed in part in that the Employees succeeded in reversing some of the heads on which they had been found liable by the Judge but were held liable to STC in negligence for permitting the control failures in the System to exist.

(b) CA 197 was allowed in part in that the Employees succeeded in reversing some of the heads on which they had been found liable by the Judge but were held liable to AHTC in negligence for permitting the control failures in the System to exist.

(c) CA 198 was allowed in part in that the Town Councillors succeeded in reversing some of the heads on which they had been found liable by the Judge but were held liable to STC in negligence for permitting the control failures in the System to exist and Ms Lim was held liable to STC for causing AHTC to award a contract to Red-Power.

(d) CA 199 was allowed in part in that the Town Councillors succeeded in reversing some of the heads on which they had been found liable by the Judge but Mr Low and Ms Lim were held liable to AHTC in negligence for permitting the control failures in the System to exist.

(e) CA 200 was dismissed, because neither the Town Councillors nor the Employees owed any fiduciary duties to AHTC, and the issue of reparative compensation therefore fell away.

8 We pause here to note that since the time the parties filed their respective costs schedules prior to the hearing of the Appeals, they have filed four further sets of written submissions, as directed by this court. These are: (a) first, in February 2021, in response to this court’s list of questions preceding the hearing of the Appeals; (b) second, on 30 November 2022, to address the appropriate orders that ought to be made following the release of the Judgment; (c) third, on 3 July 2023, in response to our request for parties to indicate their positions on costs ahead of the release of the Supplementary Judgment; and (d) fourth, on 28 July 2023, in response to this court’s direction at [68] of the Supplementary Judgment for parties to file their submissions on costs of the Appeals. The parties have therefore revised their costs indications to take into account the additional work done, which we address below.

The parties' submissions

9 We begin by summarising the parties' respective submissions on the costs that should be awarded in respect of the Appeals.

The Town Councillors

10 The Town Councillors are the appellants in CA 198 and CA 199, and Ms Lim and Mr Low are also two of four of the respondents in CA 200.

11 The Town Councillors submit that they should be awarded costs for CA 198, CA 199 and CA 200 because, in substance, they should be seen as having succeeded in these Appeals. Having regard to the outcome of the Appeals, they contend that the majority of the claims pursued by AHTC and STC against them in the Suits below were ultimately dismissed as a result of the Appeals. These are, specifically, the claims for breach of fiduciary duties in respect of the waiver of tender of the Contracts, breach of duties in respect of the award of contracts to third-party contractors, as well as on the correct interpretation of s 52 of the TCA. The only claims on which the Town Councils prevailed were: (a) for CA 199, in the case of AHTC, in respect of the control failures in relation to Ms Lim and Mr Low as well as certain miscellaneous payments (see the Judgment at [464]–[465]); and (b) for CA 198, in the case of STC, the Town Councillors were found to be negligent in respect of the control failures in the System and Ms Lim for the award of a fresh contract to Red-Power.

12 The Town Councillors further submit that the exceptional nature and complexity of the Appeals warrant the award of a certificate pursuant to O 59 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "Rules") allowing for the recovery of costs for getting up the case by and for attendance in court of more than two solicitors ("Certificate of Three Counsel") for each of these

three Appeals in CA 198, CA 199 and CA 200. This is said to be justified by reason of, among other things, the complexity and difficulty of the legal questions involved, the number of documents that were in the record, the urgency and importance of the cause or matter to the client and the amount claimed against them.

13 In terms of quantum, having regard to the limited issues on which AHTC and STC succeeded, the Town Councillors submit that a discount of 15% should be applied to the costs to which the Town Councillors ought to be entitled. The costs schedules were prepared on the basis of two solicitors, and on the basis of a Certificate of Three Counsel being awarded, they seek an uplift of 50% on the costs provided in their costs schedules. Further, they submit that the costs and disbursements in CA 198 and CA 199 are to be apportioned between STC and AHTC in the ratio of 60:40 as STC's claims against the Town Councillors were broader than AHTC's. As such, the Town Councillors seek the following costs:

- (a) for CA 198, STC to pay costs of \$139,612.50 and disbursements of \$20,043.87;
- (b) for CA 199, AHTC to pay costs of \$93,075 and disbursements of \$13,362.58; and
- (c) for CA 200, STC to pay costs of \$52,500 and disbursements of \$3,725.30.

The Employees and FMSS

14 The Employees and FMSS are the appellants in CA 196 and CA 197 and also the two other respondents in CA 200.

15 Similar to the Town Councillors, the Employees submit that they have substantially succeeded in CA 196 and CA 197, while FMSS submits that it has wholly succeeded in CA 196 and CA 197. The Employees also submit that they have succeeded completely in resisting CA 200 and are therefore entitled to costs. The Employees submit that the documents for the Appeals were voluminous and raised complex issues of law, traversing a range of areas including negligence, breach of statutory duty and the intersection between public law and private law fiduciary duties. Extensive research had to be undertaken and the complexity of the case, they say, is also evident in the time taken to dispose of the Appeals.

16 The Employees and FMSS filed a costs schedule for CA 196 and CA 197 seeking costs of \$111,000 and disbursements of \$13,974. However, they have revised these calculations in light of the additional submissions that have been tendered to this court (see [8] above).

17 In light of the nature of the work carried out for CA 196 and CA 197, the Employees and FMSS submit that they should be paid costs of \$180,000 and disbursements of \$15,492, with the total amount to be apportioned equally between AHTC and STC. In the alternative, they submit that AHTC and STC pay FMSS costs in the sum of \$60,000 for CA 196 and CA 197 (representing a third of the full costs of \$180,000 claimed) and the Employees the sum of \$108,000 (being \$54,000 each for Ms How and Mr Loh, representing a third of 90% of the full costs of \$180,000 claimed), although they did not provide further elaboration for the basis of this computation. As for CA 200, the Employees submit that they are entitled to costs of \$31,000 and disbursements of \$2,216. The Employees contend that the documents for CA 200 were voluminous and that the partial withdrawal of CA 200 by STC (see [5(e)] above) ultimately came late in the day.

AHTC

18 AHTC is the respondent in CA 197 and CA 199.

19 AHTC contends that neither the Employees in CA 197 nor the Town Councillors in CA 199 succeeded substantially in their respective appeals. This is because while the Town Councillors and the Employees succeeded on the issue of whether they owed fiduciary duties to AHTC and on the propriety of the award of the Contracts, Ms Lim, Mr Low and the Employees were ultimately found to be grossly negligent in respect of the control failures (see [7(b)] and [7(d)] above), which formed a significant plank of its pleaded claims. Accordingly, AHTC contends that AHTC is the party that should be entitled to costs of CA 197 and CA 199.

20 AHTC submits that the Employees should pay costs in the aggregate sum of \$30,000 to AHTC for CA 197, and that Ms Lim and Mr Low should pay costs in the aggregate sum of \$40,000 for CA 199. In the alternative, no order as to costs should be made in respect of the Employees and Ms Lim and Mr Low. As for costs to FMSS, costs follow the event, and AHTC argues that it should be ordered to pay to FMSS costs fixed in the aggregate sum of \$5,000 because the arguments in CA 197 almost wholly centred on the Employees and FMSS's liability was only contingent on the Employees' liability.

21 For CA 199, and in respect of the remaining Town Councillors (namely, Mr Singh, Mr Chua and Mr Foo), AHTC contends that no order as to costs should be made because this court had found misconduct on their part in the form of gross negligence, and it would be inimical to the use or safeguarding of public funds to award costs to them. In the alternative, if Mr Singh, Mr Chua and Mr Foo are to be awarded costs, only a minimal sum of \$5,000 in the aggregate should be awarded.

STC

22 STC is the respondent in CA 196 and CA 198 and the appellant in CA 200.

23 Distinct from AHTC's position, STC accepts that the Town Councillors, the Employees and FMSS succeeded on more key issues, and so, for CA 196, CA 198 and CA 200, STC accepts that a costs order should be made against it, but it submits that the costs ordered should be subject to discounts, where appropriate.

24 As its primary submission, STC argues that it should be subject to a *single* costs order for CA 196 (the Employees' and FMSS's appeal) and CA 198 (the Town Councillors' appeal) even though the parties were represented by different law firms (see [4] above). Further, such a single costs order should be apportioned in the ratio of 55:45 as between the Employees and FMSS on the one hand and the Town Councillors on the other, respectively. In addition, STC contends that the single costs order against STC should be for a lesser quantum than that ordered against AHTC as STC had succeeded on more issues and STC's case, unlike AHTC's, did not involve the issue of whether an unpleaded claim should be allowed (see the Judgment at [455] and [485]). As to quantum, STC contends that the single set of costs payable to the appellants in CA 196 and CA 198 should total \$63,125, exclusive of disbursements. Disbursements should likewise be discounted and apportioned in the ratio of 55:45 as between the Employees and FMSS on the one hand and the Town Councillors on the other, such that the Employees and FMSS should be entitled to 55% of half of their disbursements, and the Town Councillors should be entitled to 45% of half of their disbursements.

25 In the alternative, if this court should decide that there be *separate* costs orders against STC in favour of the Town Councillors in CA 198 and the Employees and FMSS in CA 196, STC submits that three layers of discounts should be applied, on account of the following: (a) STC succeeded on some claims (namely, on the control failures and on the award of the contract to Red-Power); (b) there was an overlap between work done for the Employees and FMSS in CA 196 and the Town Councillors in CA 198; and (c) there was an overlap between work done for the Employees and FMSS in CA 196 and CA 197 and for the Town Councillors in CA 198 and CA 199. On this basis, for CA 196, STC should pay to the Employees and FMSS costs of \$35,964, exclusive of disbursements, and for CA 198, STC should pay the Town Councillors costs of \$43,299, exclusive of disbursements.

26 As the appellant in CA 200, STC submits that a single costs order should likewise be made. If separate costs orders are made, the costs should be discounted due to the overlap in the thrust of the cases presented, as well as the fact that STC confirmed its withdrawal of part of CA 200 prior to the hearing of the Appeals (see [5(e)] above). In terms of quantum, STC submits that a single costs order of \$20,000 is appropriate and that these costs are to be apportioned equally between the Town Councillors and the Employees. Alternatively, if separate costs orders are made, it should be a sum of \$11,000 each with the disbursements subject to a 20% discount for the overlap in work.

Issues to be determined

27 We will deal with the following issues:

- (a) First, should a Certificate of Three Counsel be awarded to the Town Councillors for the purposes of CA 198, CA 199 and CA 200?

(b) Second, whether a single or separate costs order ought to be made against STC in CA 196, CA 198 and CA 200?

(c) Third, and contingent on our decision on the issues listed above in (a) and (b), what is the appropriate quantum of costs to be awarded in respect of the Appeals?

28 We shall deal with each in turn.

Our decision

A preliminary point on the entitlement to costs

29 We address a preliminary point as to whether the Town Councillors, Employees and FMSS may be considered the successful parties in the Appeals, so as to warrant an entitlement as to costs, in light of AHTC’s submission that *it* should be the party awarded costs (see [19] above).

30 That costs are discretionary is an uncontroversial proposition of law (see O 59 r 2(2) of the Rules; see also *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2023] SGCA(I) 8 at [25]). But this discretion is necessarily to be exercised in accordance with established principles. The incidence of costs in civil litigation is governed by what is referred to as the “indemnity principle” (*Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96 (“*Kiri*”) at [43]). This principle “dictates that a successful party ought to recover an indemnity – no less, but also no more – for the costs which it has had to incur as between solicitor and client in order to vindicate its legal rights in the litigation” (*Lim Siew Soo v Sembawang Engineers and Constructors Pte Ltd (in compulsory liquidation) (Metax Eco Solutions Pte Ltd, intervener)* [2021] 4 SLR 556 at [22], citing *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1

SLR 245 at [153]–[160] (“*Then Khek Koon*”) and *Harold v Smith* (1860) 5 H & N 381 at 385). It is for this reason that the discretion to award costs is exercised in favour of a successful party. Ordinarily, therefore, costs follow the event (see O 59 r 3(2) of the Rules) and the successful party to the litigation is entitled to recover its costs of the litigation from the unsuccessful party (*Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 (“*Comfort Management*”) at [26]). Further, the indemnity principle is not punitive in nature, but compensatory. Its ultimate policy is rooted in enhancing access to justice and entails striking a balance between the interests of the litigants (*Then Khek Koon* at [156] and [158]). The indemnity principle therefore extends only to costs reasonably incurred (*Kiri* at [47]) by the successful party in its endeavour to secure its desired outcome.

31 It will often not be controversial who the successful party is in a given litigation. But the position becomes less clear where neither party can be said to have achieved a complete victory. In such circumstances, how should a court go about determining the successful party to the litigation? This will usually turn on the outcome of the litigation as a whole and how the outcome reflects the respective and relative success of each party in the context of the dispute as a whole. This will necessarily be a fact-sensitive exercise, and “[a]scertaining in whose favour the event went in litigation therefore requires asking which party in substance and reality won the litigation, looking at its outcome in a realistic and commercially sensible way” (*Comfort Management* at [28]). In *Roache v News Group Newspapers Limited and others* [1998] EMLR 161, Sir Thomas Bingham MR described the exercise that the court ought to undertake in these terms (at 168–169):

The judge must look closely at the facts of the particular case before him and ask: who, as a matter of substance and reality, has won? Has the plaintiff won anything of value which he could not have won without fighting the action through to a

finish? Has the defendant substantially denied the plaintiff the prize which the plaintiff fought the action to win?

32 Bearing this in mind, we reject AHTC’s argument that it should be seen as the successful party *in these Appeals* and ought therefore to be entitled to costs. The submission that AHTC was the successful party in CA 197 and CA 199 cannot be sustained on the facts because most of the issues *in the Appeals* (in this context, CA 197 and CA 199) were *not* found in AHTC’s favour. The issues in the Appeals were summarised at [122]–[124] of the Judgment as follows:

- (a) Do the Town Councillors and the Employees owe fiduciary duties, equitable duties of skill and care, and/or a tortious duty of care at common law to AHTC?
- (b) What is the proper interpretation and scope of s 52 of the TCA?
- (c) Did the Town Councillors and Employees act in good faith in respect of the waiver of tender for the First MA Contract and First EMSU Contract and the subsequent award of those contracts to FMSS?
- (d) Were the award of contracts by AHTC to LST Architects, Red-Power, Titan and J Keart done in good faith?
- (e) Were the control measures associated with the “control failures” instituted by the Town Councillors and the Employees effected in good faith, even if such measures were ultimately found to be inadequate, and if so, whether this constituted a breach of duties owed to AHTC?

33 The issues listed at (a), (b) and (c) above formed the bulk of the analysis in the Judgment (see the Judgment at [125]–[413]) and indeed, this also occupied much of the parties’ Cases in the Appeals as well as their written

submissions (including the parties' response to the court's list of questions, see [8] above). At the hearing of the Appeals, substantial time was also spent on the issue of the propriety of the award of the Contracts. Having regard to the substance of the matter, we are satisfied that the Town Councillors and the Employees (along with FMSS) did succeed substantially in the Appeals given that the result of the Appeals is that it is primarily the claims relating to (e) above and a small part of (d) that were ultimately allowed to proceed to assessment. We found that the Town Councillors and the Employees did not owe fiduciary duties to AHTC, and that they had acted in good faith in the award of the Contracts, thereby entitling them to personal immunity under s 52 of the TCA (see the Judgment at [212] and [498]). Further, in so far as the award of the contract to Red-Power is concerned, this was a claim that was only pleaded by STC (see the Supplementary Judgment at [9]). While it is of course true, as AHTC submits, that we did conclude that liability had been established in relation to AHTC for the control failures, we first note that this conclusion was limited to Ms Lim and Mr Low, because we also found that AHTC had failed to adequately plead and run a case against Mr Singh, Mr Chua and Mr Foo in respect of the control failures (see [7] above and the Supplementary Judgment at [54]). More importantly, however, the question is not whether AHTC did enjoy some success against the Town Councillors and the Employees. They did, because even after the Appeals, liability for some serious breaches was found to have been established. But the real question is in relation to the outcome of the Appeals. On this, it is clear that the Town Councillors, the Employees and FMSS were successful in overturning the outcome reached in the court below on the majority of the issues.

34 Overall, the position of the Town Councillors, the Employees and FMSS seems to us to be akin to that of the defendants in *Afro-Asia Shipping Co (Pte) Ltd v Da Zhong Investment Pte Ltd and others* [2004] 3 SLR(R) 274 (at [20]–

[24]), who succeeded in defending against most of the plaintiff’s claims and were awarded most of the costs they had incurred in defending those claims. We are therefore satisfied that AHTC’s submission that it should be seen as the successful party in CA 197 and CA 199 is wrong.

35 Our further analysis proceeds on the basis that the Town Councillors, the Employees and FMSS have succeeded substantially in the Appeals, and so they should, as a matter of course, be entitled to costs.

Should a Certificate of Three Counsel be awarded to the Town Councillors?

36 The Town Councillors seek an award of a Certificate of Three Counsel pursuant to O 59 r 19 of the Rules.

37 Order 59 r 19 of the Rules provides as follows:

Costs for more than 2 solicitors (O. 59, r. 19)

19.—(1) Subject to paragraph (3), costs for getting up the case by and for attendance in Court of more than 2 solicitors for a party shall not be allowed unless the Court so certifies at the hearing or upon an application made by that party within one month from the date of the judgment or order.

(2) Such costs may be allowed notwithstanding that the solicitors are members of the same firm of solicitors.

(3) Notwithstanding paragraph (1), the Court must be satisfied at the taxation of costs that the use of 2 solicitors is reasonable, having regard to paragraph 1 of Appendix 1 to this Order.

Order 59 r 19(1) enshrines what is colloquially known as the “two counsel rule”, which provides that the costs of more than two solicitors shall not be allowed *unless* the court orders otherwise (see *Trans Eurokars Pte Ltd v Koh Wee Meng* [2015] SGHCR 6 at [22]). In this regard, it has been observed that a Certificate of Three Counsel should only be granted exceptionally in cases that involve “a high degree of complexity of facts [and/or] law or, where there are many issues

of both fact and law and, trial is lengthy” (*New Civilbuild Pte Ltd v Guobena Sendirian Berhad and Another* [2000] SGHC 47 at [6]; see also *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 59/19/2).

38 Paragraph 1(2) of Appendix 1 to O 59 of the Rules sets out the following factors that are to be considered by the court when determining whether the use of more than two solicitors is reasonable (see also *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 4 SLR(R) 155 (“*Ng Eng Ghee*”) at [36]):

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the urgency and importance of the cause or matter to the client; and
- (f) where money or property is involved, its amount or value.

39 As an illustration, in *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582, Chan Seng Onn J granted a Certificate of Three Counsel, considering that

the litigation resulted in what was, at the time, the longest civil trial in Singapore’s history, a wide range of issues had been raised at trial, numerous witnesses had been called, and the documents were voluminous. He concluded that the “use of more than two solicitors was reasonably necessary for the adequate preparation and presentation of the case” (at [41]). In contrast, in *Colliers International (Singapore) Pte Ltd v Senkee Logistics Pte Ltd* [2007] 2 SLR(R) 230, Lai Siu Chiu J rejected the defendant’s request to be awarded a Certificate of Three Counsel in unequivocal terms, observing that one counsel would have been more than sufficient for the defendant’s case, given that there was only one issue in dispute, namely, whether the plaintiff was the effective cause of the sale of the defendant’s property (at [126]).

40 Save for CA 200, in our judgment, this is an exceptional case that warrants the award of a Certificate of Three Counsel to the Town Councillors in CA 198 and CA 199, for three reasons.

41 First, they involved complex issues of both law *and* fact:

(a) As we observed in the Judgment, the Appeals “raise the important question of whether a public servant exercising statutory duties under public law is also subject to duties under private law (specifically, fiduciary and equitable duties)” (see the Judgment at [1]). This required a consideration of the distinction between public law duties and private law duties, which had only been touched upon briefly in our earlier decision in *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915. This was a sufficiently important issue that we directed the parties on 14 September 2020, prior to the hearing of the appeals (see [8] above), to provide further submissions on whether public law statutory duties should be overlaid

with fiduciary duties. It may be noted also that a five-judge Bench was empanelled to hear the Appeals and this in turn reflected the need for the assistance of counsel with the requisite knowledge and experience. The Judgment that we issued did consider in detail the distinction between private law duties and public law duties, and drew on authorities from a number of different jurisdictions (see the Judgment at [137]–[212]).

(b) They were also factually complex. Numerous claims were made by the Town Councils against the Town Councillors, the Employees and FMSS, with much of the factual complexity arising in the context of the events leading up to the award of the Contracts which necessitated careful analysis of the oral and written evidence and to situate it all in its proper context in order to determine whether the Town Councillors and the Employees had acted in good faith. Unsurprisingly, a substantial part of the Judgment dealt with the issue of the propriety of the award of the Contracts (see the Judgment at [296]–[413]).

42 Second, the Appeals involved voluminous materials, which in part accounts for the increase that we allowed in page limits for the parties' respective Cases to 100 pages each. The Joint Record of Appeal comprised 206 bundles totalling 52,694 pages.

43 Third, the stakes in these Appeals were very high for all the parties. There was strong media interest and important questions of public interest were raised. More fundamentally, the claims raised against the Town Councillors and Employees were serious ones: allegations of breaches of fiduciary duties owing from the wrongful award of the Contracts, as well as the lack of oversight of public funds.

44 Viewed in its entirety, we agree with the Town Councillors' submission that the use of more than two counsel was reasonably necessary for the adequate presentation and preparation for the Appeals. Therefore, we grant a Certificate of Three Counsel for the Appeals with respect to the Town Councillors for CA 198 and CA 199, with the appropriate uplift in the quantum of costs which we will consider below.

45 However, we do not consider the grant of a Certificate of Three Counsel to the Town Councillors to be warranted for CA 200. CA 200 was a relatively confined appeal (see [5(e)] above) as it turned largely on a question of law, which was whether STC would have to prove but for causation before it would be entitled to obtain recovery in the form of reparative compensation. That question of law ultimately depended upon certain anterior questions being answered, which were whether the Town Councillors and Employees owed fiduciary duties to AHTC and STC, and whether they acted in breach of their fiduciary duties in respect of the award of the Contracts. These questions were the subject of CA 196, CA 197, CA 198 and CA 199. We answered these anterior questions in the negative, as a result of which CA 200 fell away (see the Judgment at [413]). The numerous documents underpinning the factual circumstances leading to the award of the Contracts were, in essence, the very evidence that had already been considered in CA 196, CA 197, CA 198 and CA 199. Furthermore, CA 200 was, in a large part, withdrawn before the Appeals were heard (see the Judgment at [115]). In the circumstances, we are of the view the CA 200 neither involved issues of such complexity nor did it require such specialised knowledge of the solicitors that would justify the grant of a Certificate of Three Counsel.

Should a single or separate costs order be made against STC in CA 196, CA 198 and CA 200?

46 The next issue is whether, as STC submits, a single costs order should be made against it in CA 196, CA 198 and CA 200. STC argues that such a single costs order should be made, notwithstanding that the Town Councillors on the one hand and the Employees and FMSS on the other were represented by different sets of counsel. Implicit in this submission is the suggestion that separate representation was not justified in the circumstances.

47 The legal principles concerning when a single costs order or separate costs orders should be made when several parties are separately represented was considered in *Ng Eng Ghee*. There, this court observed that the “right to be represented by separate counsel does not invariably carry with it an entitlement to recover all the attendant legal costs incurred” and any such “right must be judiciously balanced against the desirability of not unduly penalising the losing party by visiting it with unreasonably incurred costs” (*Ng Eng Ghee* at [22]). This is consistent with the understanding that the indemnity principle is not a punitive one (see [30] above). The “general rule [is that] parties advancing or supporting the same cause should ordinarily not be entitled to receive separate sets of costs for repeating or reiterating points or matters” (*Ng Eng Ghee* at [25]; see also *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd and another and another appeal* [2009] 2 SLR(R) 814 at [201]–[202]). That being said, the court emphasised that “[e]ach determination of whether to award more than one set of costs will necessarily have to turn on the facts of the case” (*Ng Eng Ghee* at [24]). Some factors that may be taken into consideration by a court in turn include (*Ng Eng Ghee* at [24]):

- (a) the degree of the community of interests among the parties;

- (b) the size of the sum or the importance of the interest that is the subject matter of the dispute; and
- (c) the degree of overlap in the pre-hearing preparations and conduct of proceedings.

48 The facts of *Ng Eng Ghee* help to illustrate the operation of these principles. That case concerned two appeals. Both sets of appellants were subsidiary proprietors objecting to the collective sale of a condominium development and were represented by separate counsel in the appeals. The appeals having been allowed, the appellants in each of the appeals argued that they be awarded costs because they each had the right to appoint their own counsel, whether based on their view of the counsel’s ability or the level of trust they placed in their respective counsel. In response, the respondents and the interveners submitted that the court should award only one set of costs even where the parties were separately represented.

49 The court there held that it was “not unreasonable for the appellants to engage separate counsel, given the importance of the subject matter at stake, viz, their homes, and the involved nature of the dispute” (*Ng Eng Ghee* at [26]). This is because the appellants had “reasonably explained that they had indeed aligned themselves with other subsidiary proprietors they were familiar with and on that basis had attempted to engage common counsel where feasible” (*Ng Eng Ghee* at [26]). The key consideration in *Ng Eng Ghee* was whether there was unnecessary duplication of work and/or a wastage of time and resources as a result of the appellants’ separate representation. The court answered this in the negative, and held that although both sets of appellants raised the issue of good faith as part of the substantive issues in the case, they had from the outset differentiated their cross-examination of witnesses and the approaches they each

adopted in their submissions (*Ng Eng Ghee* at [27]). While there was some degree of duplication of legal resources, a review of the relevant records did not indicate that it was unreasonable, and the court therefore allowed the appellants separate sets of costs each (*Ng Eng Ghee* at [28]).

50 Having considered STC’s arguments, we disagree that a single costs order should be made against it in CA 196, CA 198 and CA 200. Instead, we are of the view that separate costs orders for each set of appellants in each of the aforementioned appeals are warranted in the present case.

51 While it is true that there is some degree of shared interests as between the Town Councillors and the Employees – a point which STC places considerable emphasis on in arguing that a single costs order be made – in our judgment, this cannot be taken too far. Their interests were aligned *in so far* as they relied on the same *broad* arguments, such as in the interpretation of s 52 of the TCA (where they maintained that it should be interpreted as being applicable even when a Town Council sued its own officers provided that they had acted in good faith), or in whether they owed fiduciary duties to AHTC, or in whether they acted in breach of their duties in the award of the Contracts and in the institution of the System that was plagued by the control failures. However, that in and of itself does not lead to the conclusion that the Town Councillors’ and Employees’ decision to engage separate counsel was an unreasonable one. In *Ng Eng Ghee*, it was similarly noted that “both sets of appellants raised the issue of good faith” but had “differentiated themselves in their cross-examination of witnesses and in the approaches adopted in their submissions” (*Ng Eng Ghee* at [27]). It is of course unsurprising that there was some degree of overlap, but a close analysis of the arguments that had been made by the Town Councillors and the Employees respectively in respect of the interpretation of s 52 of the TCA, whether they owed fiduciary duties, or whether they breached their duties

in respect of the award of the Contracts, reveals that these were not identical. Rather, there were some nuances and differences as between the parties' positions. We list just a few examples:

(a) In respect of the correct interpretation of s 52 of the TCA, the Town Councillors' arguments and the Employees' arguments differed, with the Town Councillors placing greater emphasis on the mischief behind s 52 of the TCA, while the Employees focused on the plain wording of the provision (see the Judgment at [251] and [252]). The Town Councillors' submission was also that good faith in s 52 of the TCA could encompass elements of reasonableness, whereas the Employees wholly rejected the notion that it could encompass concepts such as reasonable care.

(b) As to the point concerning whether they had breached their duties by awarding the Contracts, the Town Councillors' primary submission was that FMSS's involvement was a contingency plan in the event that CPG decided not to continue providing its services and it was not a pre-ordained conclusion. Given the urgency and importance of MA and EMSU services, the waiver of tender was therefore justified in the circumstances (see the Judgment at [117]). On the other hand, the Employees' submissions hinged mainly on the fact that they were not involved in the decisions to waive the calling of tenders for the First MA Contract and the First EMSU Contract (see the Judgment at [119]).¹ In fact, Ms How's position was that she was not even sure of the exact date

¹ Employees' Written Submissions dated 11 February 2021, paras 85 and 86.

on which the waiver of tender for the First MA Contract had taken place.²

(c) Even in the context of the control failures in the System, the Employees' arguments appeared to place greater weight on the Standing Instruction that had been instituted as being an adequate safeguard against the risks of overpayment (see the Judgment at [430] and [431]).

52 Moreover, and relatedly, the Town Councillors and Employees also stand in distinct positions (and therefore necessarily have quite distinct interests). In particular, Mr Low, Ms Lim and Mr Singh are elected MPs in addition to being key appointment holders in AHTC (see the Judgment at [9]), while the Employees, although likewise appointed to key positions in AHTC, are not public facing, in that they did not, on top of the legal consequences arising from the claims brought against them, also have to face potential political consequences arising from the breaches alleged. Further, the Town Councillors and Employees acted in rather distinct capacities in respect of AHTC's affairs. The Town Councillors appeared to largely be responsible for the management of AHTC while the Employees were largely responsible for the operations of AHTC, and in particular, pursuant to their obligations under the Contracts. The nature of the claims against the Town Councillors, the Employees and FMSS were also somewhat distinct. For example, the claims against FMSS were based only on secondary liability for dishonest assistance and knowing receipt. And the improper award of contracts to third-party contractors were claims limited only to the Town Councillors (see the Judgment at [99]). It therefore cannot be said that there is a complete overlap of interests

² Employees' Written Submissions dated 11 February 2021, para 59.

that would militate against the Town Councillors and the Employees engaging separate sets of counsel.

53 We also note that the subject matter of the Appeals involved a very substantial sum. While the ultimate amount of any liability has yet to be determined, the stakes were, as we have observed, very high. This goes to the importance of issues in the case to the parties and the different interests that they each had in the outcome of the case, which goes to the reasonableness of their desire to be separately represented.

54 Finally, as to the degree of overlap in the pre-hearing preparations and conduct of proceedings, there was some degree of overlap in so far as the parties had relied on the same *broad* arguments (see [51] above). However, in our view, this cannot be taken too far, in light of the differences in the nature of the claims brought against the Town Councillors and Employees (and FMSS), and in the nature of the defences they ran as we have outlined above. We note that the oral submissions made by counsel for the Town Councillors focused extensively on the parliamentary intention underpinning the TCA and why the imposition of a fiduciary duty over and above statutory duties would be inconsistent with such intention, particularly given the stringency of such a duty that mandates single-minded loyalty. Considerable emphasis was placed on the fact that Town Councils are inherently political in nature and that MPs are granted latitude to exercise autonomy on how best to achieve their agenda and to serve their residents' interests. Much time was also devoted to the argument that FMSS's appointment and the award of the Contracts was part of a contingency plan should CPG opt to no longer continue to provide MA and EMSU services. On the other hand, counsel for the Employees focused in his oral submissions on the issue of the control failures, and how there could not be any risk of unjustified payments.

55 In our judgment, it is therefore appropriate for separate costs orders to be made against STC in CA 196, CA 198 and CA 200. For the same reason, separate costs orders should likewise be made against AHTC in CA 197 and CA 199, even though this point was neither clearly canvassed by AHTC nor pursued vigorously in its written submissions (see [19]–[21] above). In essence, we consider it reasonable for the Town Councillors and Employees (and FMSS) to have engaged separate counsel for the purposes of the Appeals. Even in the context of separate costs orders, the court may apply a discount to reflect the extent of any overlap in the overall work done. This will, in our view, adequately assuage any concerns over unduly penalising STC and AHTC.

The quantum of costs that should be awarded for the Appeals

56 We turn then to the final issue which is the appropriate quantum to be awarded to the Town Councillors, Employees and FMSS for the respective Appeals.

57 In arriving at the quantum of costs payable, we bear in mind the following:

(a) First, there should be a degree of uplift in the costs payable to the Town Councillors for CA 198 and CA 199 on account of our grant of the Certificate of Three Counsel. We consider that it is appropriate for a 50% uplift to be awarded based on the Town Councillors' costs estimates as set out in their costs submissions in order to represent the work of one additional solicitor, as these estimates were prepared on the basis of two solicitors' work.

(b) Second, there should be some discount in the costs payable to the Employees and FMSS for CA 196 and CA 197, because there is a

degree of overlap in the work prepared by Netto & Magin LLC for both these appeals given the overlap in the claims made by AHTC and STC. The same should apply to the costs payable to the Town Councillors for CA 198 and CA 199 for the degree of overlap in the work prepared by Tan Rajah & Cheah for both these appeals as well. The overlap in the work prepared by the respective solicitors for the appeals involving STC's claims CA 196 and CA 198 (on the one hand) and the appeals involving AHTC's claims in CA 197 and CA 199 (on the other) would not have been insignificant since these two sets of appeals canvassed essentially the same issues, and while AHTC's pleadings were narrower than those of STC's in certain aspects (see the Judgment at [65]), that would not have detracted too much from the overall complexion of the appeals that we have described. We therefore consider that it is appropriate for this discount to be fixed at 25%.

(c) Third, there should be some discount in the costs payable by AHTC and STC as the Town Councillors and the Employees ultimately did not succeed on some issues in the Appeals (see [7] above). Although the Town Councillors and the Employees did substantially succeed in the Appeals (see [33] above), there were nonetheless some issues found in AHTC and STC's favour, as we found that the Town Councillors and Employees owed a common law duty of care and skill to the Town Councils and consequently found the Employees, the Town Councillors, as well as Mr Low and Ms Lim liable in respect of some of AHTC's and STC's claims. We therefore consider that it is appropriate for this discount to be fixed at 15%.

(d) Fourth, we consider that any costs and disbursements ordered against STC and AHTC should be apportioned 45:55 between them.

This is so for two reasons. While we agree with the Town Councillors that in respect of all of the Appeals except CA 200 STC's claims had been broader than those of AHTC's, AHTC's case ultimately raised the additional issue of whether an unpleaded claim should be allowed, which we addressed in detail in the Supplementary Judgment. Further, STC was more successful in the Appeals as compared to AHTC, as we elaborate at [58] below.

58 We consider that STC was more successful in the Appeals as compared to AHTC for two reasons. First, AHTC only succeeded in establishing negligence in respect of the control failures as against Ms Lim, Mr Low, Ms How and Mr Loh, whereas STC succeeded against *all* the Town Councillors and Employees (see the Supplementary Judgment at [66(a)] and [66(b)]). Second, STC succeeded in proving a claim in negligence against Ms Lim in respect of the Red-Power contract, while AHTC conceded that it did not plead such a claim and did not pray for an order in this regard (see the Supplementary Judgment at [14]).

59 For completeness, STC also argues that if we are to make separate costs orders against it in respect of CA 196 and CA 198 in favour of, on the one hand, the Employees and FMSS and, on the other hand, the Town Councillors respectively, then there should be a discount applied to account for the overlap in work between CA 196 and CA 197 on the one hand and CA 198 and CA 199 on the other (see [25] above). The point made appears to be that, in so far as both CA 196 and CA 198 involved the same respondent, namely STC, the work done by *the Employees and FMSS* and *the Town Councillors* would have overlapped, and this justifies a discount to costs that might be separately awarded in their favour. We reject this argument. As we explained previously, the arguments ran by the Employees and the Town Councillors in the Appeals

differed in some respects (see [51] above) and for this and other reasons, it is not inappropriate for separate costs orders to be made. We have already held that a discount is appropriate where there is an overlap in the work done in respect of the Appeals where this arose from the broadly similar types of claims brought by the different plaintiffs (see [57(b)] above). We are not satisfied that there is any justification for a *further* discount in the costs to which they are separately entitled, over and above the discounts that we have highlighted at [57] above.

60 We now apply that methodology to the Appeals.

CA 196 and CA 197

61 For CA 196, we order STC to pay the Employees and FMSS costs of \$51,637.50 and disbursements of \$4,444.27. For CA 197, we order AHTC to pay the Employees and FMSS costs of \$63,112.50 and disbursements of \$5,431.88.

62 Our methodology in arriving at the quantum of costs payable for both appeals is as follows. For costs, we utilise as the starting point the sum of \$180,000, which is the costs estimate set out in the Employees' and FMSS' costs submissions. Next, we apply a 25% discount for overlap in work across CA 196 and CA 197 (see [57(b)] above) and a further 15% discount to account for the fact that the Employees and FMSS did *not* prevail on some issues in the Appeals (see [57(c)] above). With that, we arrive at a sum of \$114,750, which is to be apportioned 45:55 between STC and AHTC. For disbursements, we utilise as a starting point the sum of \$15,492 as set out in the Employees' and FMSS' costs submissions, and similarly subject it to the two layers of discounts that have been applied to costs. With that, we arrive at a sum of \$9,876.15, which too is to be apportioned 45:55 between STC and AHTC.

CA 198 and CA 199

63 For CA 198, we order STC to pay the Town Councillors costs of \$78,532.03 and disbursements of \$9,583.48. For CA 199, we order AHTC to pay the Town Councillors costs of \$95,983.59 and disbursements of \$11,713.14.

64 Our methodology in arriving at the quantum of costs payable for both Appeals in CA 198 and CA 199 is similar to that applied in CA 196 and CA 197 above. For costs, we utilise as a starting point the sum of \$182,500, which is the costs estimate set out in the Town Councillors' costs submissions. Next, we apply a 50% uplift on account of our award of the Certificate of Three Counsel (see [57(a)] above). We arrive at a sum of \$273,750. To this, we similarly apply the 25% discount for overlap in work across CA 198 and CA 199 and a further 15% discount to account for the fact that the Town Councillors did *not* prevail on some issues in the Appeals. With that, we arrive at a sum of \$174,515.63, which is to be apportioned 45:55 between STC and AHTC. For disbursements, we utilise as a starting point the sum of \$33,406.45 and similarly subject it to the two layers of discounts that have been applied to costs, and arrive at a sum of \$21,296.61, which too is to be apportioned 45:55 between STC and AHTC.

CA 200

65 For CA 200, in respect of Mr Low and Ms Lim, we order STC to pay costs of \$31,350 and disbursements of \$3,539.04 and in respect of the Employees, we order STC to pay costs of \$31,350 and disbursements of \$2,105.20.

66 Our methodology in arriving at the quantum of costs payable for CA 200 is as follows. For costs, we utilise as a starting point the sum of \$33,000, which

is the mean of the costs estimates for CA 200 respectively put forward by Ms Lim and Mr Low (\$35,000) and the Employees (\$31,000). We adopt this approach since the issues that the Town Councillors and the Employees had to contend with in STC's appeal in CA 200 were broadly similar. No further uplift is warranted given our decision that a Certificate of Three Counsel should not be granted for CA 200 (see [45] above). To this, we apply a 5% discount to account for the fact that a part of CA 200 had been withdrawn by STC prior to the hearing of the Appeals (see [5(e)] above). We consider that no further discount beyond this 5% discount is necessary because the partial withdrawal of CA 200 came late in the day. While this issue of substitutive compensation was not canvassed in depth at the hearing of the Appeals before us, it is clear that the majority of the work for CA 200 would have nevertheless been done prior to the hearing of the Appeals. Indeed, the parties' respective Cases and skeletal submissions had been filed and the accompanying bundle of authorities tendered ahead of the hearing. In respect of both Ms Lim and Mr Low as well as the Employees, following the 5% discount, the costs to which they are each entitled are \$31,350. For disbursements, we utilise the respective estimates provided by the Town Councillors and the Employees and similarly apply a 5% discount. With that, we arrive at a sum of \$3,539.04 for Mr Low and Ms Lim and \$2,105.20 for the Employees.

Conclusion

67 In summary, we make the following costs orders in respect of the Appeals:

- (a) For CA 196: STC is to pay to the Employees and FMSS costs of and incidental to the appeal fixed at \$51,637.50 and disbursements of \$4,444.27, with the usual consequential orders to apply.

- (b) For CA 197: AHTC is to pay to the Employees and FMSS costs of and incidental to the appeal fixed at \$63,112.50 and disbursements of \$5,431.88, with the usual consequential orders to apply.
- (c) For CA 198: STC is to pay to the Town Councillors costs of and incidental to the appeal fixed at \$78,532.03 and disbursements of \$9,583.48, with the usual consequential orders to apply.
- (d) For CA 199: AHTC is to pay to the Town Councillors costs of and incidental to the appeal fixed at \$95,983.59 and disbursements of \$11,713.14, with the usual consequential orders to apply.
- (e) For CA 200: STC is to pay to Ms Lim and Mr Low costs of and incidental to the appeal fixed at \$31,350 and disbursements of \$3,539.04, and STC is to pay to the Employees costs of and incidental to the appeal fixed at \$31,350 and disbursements of \$2,105.20. The security furnished by STC for CA 200 is to be equally divided amongst Ms Lim and Mr Low on the one hand and the Employees on the other hand.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Andrew Phang Boon Leong
Senior Judge

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