

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC 36

Originating Claim No 591 of 2025 (Registrar's Appeal No 230 of 2025)

Between

Tahnoon Pasha

... Claimant

And

(1) Hill, Avere Mark

(2) Chionh Chye Kit

... Defendants

Counterclaim of 1st and 2nd Defendants

Between

(1) Hill, Avere Mark

(2) Chionh Chye Kit

... Claimants in Counterclaim

And

Tahnoon Pasha

... Defendant in Counterclaim

GROUNDS OF DECISION

[Civil Procedure — Striking out — Factual unsustainability]

[Civil Procedure — Striking out — No reasonable cause of action —
Respondent relying on purported novel issues of law]

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Tahnoon Pasha
v
Hill, Avere Mark and another

[2026] SGHC 36

General Division of the High Court — Originating Claim No 591 of 2025
(Registrar's Appeal No 230 of 2025)
Low Siew Ling JC
30 December 2025

13 February 2026

Low Siew Ling JC:

Introduction

1 Registrar's Appeal No 230 of 2025 was the defendants' appeal against the learned Assistant Registrar's decision ordering: (a) the defendants' counterclaim in HC/OC 591/2025 ("OC 591") dated 19 August 2025 to be struck out; and (b) final judgment to be entered against the defendants in respect of the claimant's claim in OC 591.

2 Having considered the parties' arguments and the evidence, I dismissed the appeal. I agreed with the AR below that the defendants' counterclaim was legally and factually unsustainable and ought to be struck out under O 9 r 16(1)(a) and (c) of the Rules of Court 2021 ("ROC 2021"). As the defendants' case on appeal rested solely on the viability of its counterclaim, I accordingly affirmed the AR's decision to enter summary judgment in favour

of the claimant, fixing costs at \$18,000 (all-in). The defendants have appealed against my decision.

Facts

Background to the dispute

3 Prior to 3 February 2021, the claimant, Mr Tahnoon Pasha (“Mr Pasha”), the 1st defendant, Mr Avere Mark Hill (“Mr Hill”) and the 2nd defendant, Mr Chionh Chye Kit (“Mr Chionh”) (collectively “the Defendants”) were shareholders of Cynopsis Solution Pte Ltd (the “Company”).¹ The Defendants, Mr Hill and Mr Chionh, were also directors of the Company.

4 On or around 12 June 2015, the parties entered into a Shareholders’ Agreement with the Company (“SHA”) which contained provisions relating to governance, share transfers, confidentiality and non-competition.²

5 On 3 February 2021, Mr Pasha, the Defendants and one Mr Poh Ching Hong (“Mr Poh”) entered into an agreement in accordance with the terms of the SHA for the Defendants and Mr Poh (collectively, the “Buyers”) to purchase Mr Pasha’s 170,266 shares in the Company, for the total price of \$6,750,000 (the “Share Purchase Agreement” or “SPA”).³

6 Pursuant to Clause 2 of the SPA, the Buyers agreed to pay Mr Pasha for the shares in the following manner:

¹ Although Mr Pasha sold all his shares in the Company on 3 February 2021, he became a shareholder of the Company again on 3 October 2024 (Tahnoon Pasha’s 2nd affidavit dated 2 October 2025 (“TP2”) at paragraph 8).

² Chionh Chye Kit’s first affidavit dated 5 November 2025 (“CCK1”) at Tab 1, pages 33–52.

³ CCK1 at Tab 2, pages 54–55.

- (a) \$2,500,000 by 26 June 2021 (“Tranche 1”);
- (b) \$1,500,000 (“Tranche 2 Principal”) and interest on the remaining unpaid amount at the rate of 4.25% per annum (“Tranche 2 Interest”) by 26 June 2022;
- (c) \$1,500,000 and interest on the remaining unpaid amount at the rate of 4.25% per annum (“Tranche 3”) by 26 June 2023; and
- (d) \$1,250,000 and interest on the remaining unpaid amount at the rate of 4.25% per annum (“Tranche 4”) by 26 June 2024.

7 On 24 February 2021, Mr Pasha transferred his 170,266 shares in the Company to the Buyers in accordance with Clause 3 of the SPA.⁴ Payment of Tranche 1 was duly made to Mr Pasha on 25 June 2021.⁵

8 The next payment under the SPA was due on 26 June 2022. On 12 May 2022, Mr Pasha reminded the Defendants of the upcoming payment to give them time to liquidate their assets and raise the necessary funds.⁶ On 24 June 2022, Mr Chionh requested for payment of the Tranche 2 Interest to be moved to a later tranche. Mr Pasha agreed and indicated that the Tranche 2 Interest could be added to the balance for future interest calculations.⁷ On 27 June 2022, payment of the Tranche 2 Principal was made to Mr Pasha.⁸

⁴ TP2 at Tab 3, pages 38–40.

⁵ TP2 at paragraph 16.

⁶ As Mr Pasha pursued Mr Poh’s outstanding debt under the SPA separately, this judgment only deals with his claim against the Defendants.

⁷ Tahnoon Pasha’s 3rd affidavit dated 31 October 2025 (“TP3”) at Tab 3, page 95.

⁸ TP2 at paragraph 19.

9 Pursuant to the SPA (as varied by the parties on 24 June 2022),⁹ the Defendants were obliged to make payment of a total sum of \$1,711,025.78 to Mr Pasha by 26 June 2023.¹⁰ This sum comprised their share of Tranche 3 and half of the Tranche 2 Interest that the Defendants had requested Mr Pasha to roll over (“Restructured Tranche 3”). Mr Pasha again reminded the Defendants of the upcoming payment due date about a month and a half in advance, on 15 May 2023, to give them time to prepare the funds.¹¹

10 On 31 May 2023, Mr Hill asked Mr Pasha for a call to discuss “some accommodation on the repayment date”. Mr Hill explained that the Defendants had been hopeful that an upcoming “M&A transaction” for the Company would close in time for them to raise the necessary funds for payment, but this did not appear likely.¹² Mr Pasha ultimately agreed to accommodate the Defendants’ request to defer the next tranche of payment until 2 October 2023.¹³

11 On 22 September 2023, Mr Pasha reminded the Defendants of the upcoming payment deadline. Mr Chionh asked for another call, and it became clear that the Defendants would not be able to make payment on 2 October 2023. On 29 September 2023, Mr Hill conceded that the last call was “somewhat unsatisfactory” but sought another discussion with Mr Pasha, stating that the

⁹ TP3 at Tab 3, page 95.

¹⁰ TP2 at paragraph 20. I noted that Mr Pasha’s message on 15 May 2023 (produced in TP3 at Tab 3, page 98) claimed for a total of \$1,714,864.06. This difference could be attributed to whether interest of 4.25% p.a. on the other half of the Tranche 2 Interest was also payable on 26 June 2023. The contemporaneous correspondence between the parties did not make this clear. I referred to the figure presented in Mr Pasha’s affidavit, but this difference was not material as it was in any event not paid.

¹¹ TP3 at Tab 3, page 98.

¹² TP3 at Tab 3, page 99.

¹³ TP3 at Tab 3, pages 99–100.

Company had “a number of important calls” coming up that would “hopefully resolve the situation”.¹⁴

12 Mr Pasha agreed to another call, but emphasised that he had “no flex on the 1.7 [million]”. While he was still prepared to “try and defer by a week at a push” to accommodate the Defendants, Mr Pasha made it clear that he had “run out of room to manoeuvre” at his end.¹⁵

13 On 2 October 2023, Mr Pasha presented the Defendants with two options for repayment of the next tranche:

(a) Option 1 was for the Defendants to make payment of the Restructured Tranche 3 by 6 October 2023 and Tranche 4 by 26 June 2024. Legal proceedings would be taken for any default.

(b) Option 2 was for the SGD equivalent of GBP 150,000 to be paid by 6 October 2023; for the Defendants to issue a new promissory note for \$1,686,066.97 payable by 26 June 2024; and for \$1,500,000 to be converted into shares equivalent to 7.15% of the issued share capital in the Company, with the Defendants issuing a put option at \$1,575,000 if there was no sale of the whole or part of the Company’s shares to a third party investor by 26 June 2025. Mr Pasha stated that he would “obviously help with the share sale” in terms of, among others, advising on the pitch deck and investor narrative.

¹⁴ TP3 at Tab 3 at page 99–100.

¹⁵ TP3 at paragraph 27 and Tab 3 at page 100–101.

Mr Pasha clarified that his preference was for Option 1, but he was prepared to do what he could to help the Defendants, so long as he was not out of pocket.¹⁶

14 The Defendants made it clear that they were unable to pay (*ie*, Option 1 was not feasible) and that Option 2 was not acceptable to them. Mr Pasha indicated that if payment of the overdue sum was not received, he would be forced to commence legal proceedings. The Defendants counter-proposed that Mr Pasha grant them a further extension of time for repayment of the Restructured Tranche 3 until they were able to secure a sale of the Company. In his email of 5 October 2023, Mr Hill emphasised that the quickest and easiest way to resolve the situation was for Mr Pasha to wait for the sale of Company to be completed so that the Defendants would have the necessary funds for repayment. Mr Hill also stressed that the repayment dispute was a “private matter” between the parties that should not have anything to do with the Company, and that the Company would “take all steps necessary” if any action on Mr Pasha’s part jeopardised any ongoing transaction.¹⁷

15 Mr Pasha rejected the Defendants’ proposal on the same day in the following terms:¹⁸

No. You are asking me to take massive additional equity risk in a business I have sold out of for no recompense to benefit individuals who have already shown a willingness to default [...] To be blunt your word is not worth very much at the moment...

16 While Mr Pasha indicated that he was still prepared to discuss the matter, he made it clear that he would proceed with legal action if the Defendants were unable to offer him a more concrete proposal.

¹⁶ TP3 at paragraph 29 and Tab 4 at pages 150–155.

¹⁷ TP3 at Tab 4, page 152.

¹⁸ TP3 at Tab 4, page 151.

17 Parties continued their discussions and eventually reached an agreement in principle on 10 October 2023, whereby: (a) interest would accrue on the outstanding amount due under the Restructured Tranche 3 at a higher rate of 8.5% per annum; and (b) Mr Pasha would serve as an advisor to help the Defendants secure a share sale or other investment for the Company in return for a fixed fee and a performance-based payment.¹⁹

18 The formal contracts were prepared by Mr Pasha’s solicitors. On 7 November 2023, parties executed two separate agreements:

(a) Side Letter: Mr Pasha entered into an agreement with the Defendants to address their outstanding payments under the SPA (the “Side Letter”).²⁰ In addition to recording the higher interest rate parties had agreed on, the Side Letter contemplated immediate payment of the Restructured Tranche 3 (including accrued interest) in the event of a sale of any or all of the shares in the Company to a third-party investor (a “Relevant Transaction”). If no Relevant Transaction was completed by 24 June 2025, the Defendants were to make payment of the Restructured Tranche 3 (including accrued interest) by the same date.

(b) Advisory Contract: Mr Pasha entered into an advisory contract with the Defendants and the Company, under which he was appointed as an “Adviser” to provide advice to the Defendants and the Company with a view to facilitating a Relevant Transaction (“Advisory Contract”).²¹ If a Relevant Transaction was successfully completed, Mr Pasha would receive a fixed advisory fee of \$250,000 and a

¹⁹ TP3 at paragraphs 33–36 and Tab 5 at pages 157–158.

²⁰ CCK1 at Tab 10, pages 149–153.

²¹ CCK1 at Tab 11, pages 155–167.

performance-based payment of 3.5% of any consideration if the valuation of the Company exceeded a US\$18 million floor valuation. In the course of preparing the Advisory Contract, Mr Pasha inserted Clauses 5.4 and 5.5 to make the agreement “more balanced”.²² The relevant clauses, which imposed duties on him as advisor to act with independence and in good faith to promote a Relevant Transaction and to act for the benefit of the Company as a whole, are reproduced below:²³

5. Duties of the Adviser

[...]

5.4 The Adviser has a duty of care to act with independence and in good faith to promote a Relevant Transaction.

5.5 The Adviser will act for the benefit of the Company as a whole.

[emphasis in original]

19 Following the execution of the Advisory Contract, Mr Pasha advised the Defendants on their negotiations with a potential third party investor, Wilmington PLC. Ultimately, no sale of the Company was secured.²⁴

20 In the meantime, pursuant to the SPA (as varied by parties on 24 June 2022), the Defendants were each obliged to pay Mr Pasha a total sum of \$924,184.79 by 26 June 2024. This sum comprised their share of Tranche 4 and the remaining part of the Tranche 2 Interest (the “Restructured Tranche 4”). On 1 June 2024, Mr Pasha messaged the Defendants to suggest that parties come

²² TP3 at Tab 7, page 179.

²³ CCK1 at Tab 11, page 159.

²⁴ CCK1 at paragraphs 44 and 54 and TP3 at paragraphs 51–52.

to a repayment agreement unless the Defendants were ready to pay on schedule. It is undisputed that the Defendants failed to make any part of this payment.²⁵

21 On 9 November 2024, following further negotiations between the parties, Mr Pasha and the Defendants entered into another agreement which, amongst others, increased the interest on the outstanding Restructured Tranche 4 to 9% per annum and extended the deadline for payment to 26 June 2025 (the “Addendum”).²⁶ The total outstanding sum payable by the Defendants as of 26 June 2025 was \$967,257.56 including accrued interest. It is important to note that leading up to the Addendum, Mr Pasha explained to the Defendants that he “won’t be able to provide any grace at all at that point so there isn’t any possibility of extending further”.²⁷

22 On 29 January 2025, Mr Pasha reminded the Defendants of the upcoming payments due under the SPA, Side Letter and Addendum.²⁸

Hi both, I hope the year has started well for you. As we approach the end of January, a reminder that the due date for all outstanding cash payments is the 24th of June. [29] That is S\$2,359,805 per my calculations. I know these things have a way of coming up quite quickly so I wanted to flag it well in advance so you can secure your funding as needed.

²⁵ TP2 at paragraphs 24–25.

²⁶ CCK1 at Tab 14, pages 175–176.

²⁷ TP3 at paragraph 50(a) and Tab 4 at pages 141–142.

²⁸ TP3 at paragraph 50(b) and Tab 4 at page 147.

²⁹ This appears to be an error, as the payment for the Restructured Tranche 4 under the Addendum was only due on 26 June 2025.

23 In a separate message, Mr Pasha also reminded the Defendants of the additional \$250,000 advisory fee that was due to him on the same day under the Advisory Contract. Mr Hill replied: “Thanks for the reminder we are aware”.³⁰

24 As of 24 June 2025, no Relevant Transaction had taken place. Therefore, pursuant to the SPA and Side Letter, the Defendants were each obliged to pay Mr Pasha \$671,420.77 by 24 June 2025.³¹ No payment was made.³² The Restructured Tranche 4 sum of \$483,628.78 due from each of the Defendants under the Addendum was also not paid by 26 June 2025.³³

25 On 10 July 2025, Mr Pasha’s solicitors wrote to each of the Defendants to demand payment of the total outstanding sum of \$1,155,049.56³⁴ by 24 July 2025.³⁵ As no payment was received, Mr Pasha commenced OC 591 against the Defendants on 28 July 2025 to claim the outstanding amounts due under the SPA, the Side Letter and the Addendum, with interest.³⁶

Procedural history

26 In their Defence and Counterclaim, the Defendants raised various defences, including that Mr Pasha had effectively waived his right to payment

³⁰ TP3 at paragraph 50(b) and Tab 4 at page 147.

³¹ This sum comprised their respective shares of the Restructured Tranche 3 Payment and interest accrued thereon at the rate of 8.5% per annum pursuant to Clause 3 of the Side Letter read with the SPA.

³² TP2 at paragraphs 28–30.

³³ TP2 at paragraphs 32–34.

³⁴ This appears to be a minor typographical error in the letter of demand dated 10 July 2025 and replicated in TP2 at paragraph 35, as the total sum based on the figures quoted in the letter and affidavit should be \$1,155,049.55.

³⁵ TP2 at paragraph 35 and Tab 7 at pages 53–56.

³⁶ TP2 at paragraph 41.

as parties had a common understanding that any payment would be contingent on a Relevant Transaction taking place.³⁷ The Defendants claimed that the Side Letter and the Advisory Contract were “inextricably linked” as they were entered into on the basis that the Defendants needed to carry out a Relevant Transaction in order to fulfil their obligations under the Side Letter.³⁸

27 The Defendants also counterclaimed against Mr Pasha for breaches of: (a) his confidentiality obligations under Clause 4.1.5 of the SHA and Clause 6.1 of the Advisory Contract, alleging that he had made use of sensitive information about the potential sale of the Company to deliberately time these proceedings to exert pressure on them; and (b) his duties to act in good faith to promote a Relevant Transaction and to act for the benefit of the Company under Clauses 5.4 and 5.5 of the Advisory Contract, as his very act of commencing OC 591 amounted to a breach of these duties.³⁹ The Defendants claimed that as a direct result of the initiation of these proceedings, several interested investors withdrew from negotiations, leaving only one investor who was prepared to proceed on a substantially reduced valuation.⁴⁰

28 Mr Pasha denied any waiver or common understanding that payment would be contingent on a Relevant Transaction, and reiterated that the Advisory Contract and Side Letter were not linked.⁴¹ Mr Pasha also denied that he was obliged to prefer the interests of the Defendants over his own interests as

³⁷ Defence and Counterclaim dated 19 August 2025 (“D&CC”) at paragraph 32.

³⁸ D&CC at paragraph 18.

³⁹ D&CC at paragraphs 39–48.

⁴⁰ D&CC at paragraph 40(c).

⁴¹ Defence to Counterclaim dated 2 September 2025 (“DCC”) at pages 27 and 30.

creditor, or that he was privy to any confidential information about potential investments in the Company at the time he commenced this action.⁴²

29 On 30 September 2025, Mr Pasha took out applications for summary judgment (Summons 2820 of 2025) and to strike out the Defendants’ counterclaim (Summons 2819 of 2025). Both applications were granted by the AR on 12 November 2025.

AR’s decision below

30 The AR rejected the defences to Mr Pasha’s claim as they were insufficiently pleaded, not borne out, or contradicted by the documents.⁴³

31 As for the Defendants’ counterclaims, the AR found that the pleadings failed to disclose essential requirements of a breach of Clause 4.1.5 of the SHA, *ie*, that Mr Pasha had used information he had obtained in connection with his shareholding in the Company, or that such information was used in a manner that caused loss to the Company.⁴⁴

32 On the alleged breaches of Clauses 5.4, 5.5 and 6.1 of the Advisory Contract, the AR held that the pleadings lacked material particulars, and further, that the counterclaims were not legally or factually sustainable. On Clauses 5.4 and 5.5, the Defendants did not advance any legal basis to show how Mr Pasha’s mere act of commencing proceedings to claim for the existing sums owed could amount to breaches of the Advisory Contract, which was made for a completely different purpose and which did not contain any provisions that limited

⁴² DCC at pages 31–32 and 40.

⁴³ [13]–[21] of the Annex: Brief Reasons to the Minute Sheet for 12 November 2025 before the learned AR (“AR’s Decision”).

⁴⁴ [2]–[6] of the AR’s Decision.

Mr Pasha's ability to sue the Defendants for the outstanding sums. As for Clause 6.1 of the Advisory Contract, the Defendants had failed to adduce any evidence pertaining to the nature of the information Mr Pasha had allegedly obtained, nor how Mr Pasha had used or disclosed such information in bringing the proceedings.⁴⁵

33 Consequently, the learned AR struck out the Defendants' counterclaims and granted summary judgment in favour of Mr Pasha.

Issues to be determined

34 On appeal, the Defendants did not pursue their defences below and accepted that Mr Pasha was *prima facie* entitled to summary judgment.⁴⁶ Their arguments on appeal focused solely on their counterclaim that Mr Pasha's act of initiating the present proceedings to recover the sums due under the SPA (as varied by the Side Letter and the Addendum) constituted a breach of his obligations under Clauses 5.4 and 5.5 of the Advisory Contract, to: (a) act with independence and in good faith to promote a Relevant Transaction; and/or (b) act for the benefit of the Company as a whole.

35 The Defendants' case was that this counterclaim was intrinsically connected to Mr Pasha's claim, such that unconditional leave to defend should be granted or, minimally, execution of summary judgment should be stayed pending resolution of the counterclaim.

36 Thus, the following issues arose for determination in this appeal:

⁴⁵ [7]–[11] of the AR's Decision.

⁴⁶ Defendants' Written Submissions dated 22 December 2025 at [19].

(a) Whether the Defendant’s counterclaim against Mr Pasha for breaches of Clauses 5.4 and 5.5 of the Advisory Contract should be struck out under O 9 r 16 of ROC 2021; and

(b) If the answer to (b) is no, whether unconditional leave to defend should be granted or execution of summary judgment should be stayed.

Striking out: test under O 9 r 16 of the ROC 2021

37 Under O 9 r 16(1) of the ROC 2021, a pleading may be struck out where: (a) it discloses no reasonable cause of action or defence; (b) it is an abuse of process of the court; or (c) it is in the interests of justice to do so. Mr Pasha relied on all three limbs for his application to strike out the Defendants’ counterclaim.

38 For striking out to be ordered under limb (a), the court must consider “whether the action has some chance of success when only the allegations in the pleadings are concerned”: *Iskandar bin Rahmat v Attorney-General* [2022] 2 SLR 1018 (“*Iskandar bin Rahmat*”) at [17]; *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 at [21]. In undertaking such an assessment, the court does not consider the evidence and will assume the truth of the claimant’s pleaded facts: *Envy Asset Management Pte Ltd v Lau Lee Sheng* [2024] 4 SLR 1210 (“*Envy Asset Management*”) at [18]. This ground is essentially directed at claims that are legally unsustainable, *ie*, where it is “clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks”: *The “Bunga Melati 5”* [2012] 4 SLR 546 (“*The “Bunga Melati 5”*”) at [39(a)].

39 Under limb (b), the court’s broader concern is to “prevent improper use of its machinery and the judicial process from being used as a means of vexation and oppression in the process of litigation”: *Iskandar bin Rahmat* at [18]. This would include cases where a claimant knowingly pursues a claim that is doomed to fail, thereby wasting the court’s time and resources: *The “Bunga Melati 5”* at [37] and *Envy Asset Management* at [24].

40 Limb (c) is a broad ground that preserves the inherent jurisdiction of the court to prevent injustice. This would include cases where a claim is plainly or obviously unsustainable on the facts: *Iskandar bin Rahmat* at [19]. While a court hearing a striking out application should not choose between conflicting accounts of crucial facts, a claim may still be struck out for being factually unsustainable if it is “possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance”, eg, where it is “clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based.”: *The “Bunga Melati 5”* at [39(b)].

41 Before moving to the facts of the present case, I bore in mind the observation by the High Court in *Leong Quee Ching Karen v Lim Soon Huat* [2023] 4 SLR 1133 at [25] that the bar for striking out is high, and the power to strike out is sparingly exercised. Nevertheless, while a detailed examination of the facts for the purposes of fact-finding “strictly belongs to a trial judge who will have the benefit of all the fact-finding processes in a full trial”, this did not mean that the court was precluded from having any regard to the evidence in finding that a parties’ pleaded case had been rendered factually impossible or untenable: *Peloso, Matthew v Vikash Kumar* [2024] 4 SLR 289 (“*Peloso*”) at [31]–[33].

42 Finally, in a striking out application, a claimant is bound by its pleadings and cannot be allowed to shift the metaphorical goal posts (*Peloso* at [29]). Therefore, a claimant must plead all material facts that constituted a complete cause of action and furnish sufficient particulars for the defendant to have reasonable notice of the case it had to meet: *Chandra Winata Lie v Citibank NA* [2015] 1 SLR 875 at [34]–[35].

The Defendants’ counterclaim did not disclose a reasonable cause of action

43 On appeal, the Defendants did not pursue their counterclaim in respect of Mr Pasha’s alleged breaches of his confidentiality obligations under the SHA and the Advisory Contract. In my assessment, this was the appropriate course to take. As the AR noted below, there was nothing in the pleadings to substantiate any purported use of confidential information by Mr Pasha in bringing these proceedings. It thus remained for me to consider the counterclaim based on Mr Pasha’s alleged breach of Clauses 5.4 and 5.5 of the Advisory Contract.

44 There was no dispute as to the material fact that allegedly gave rise to the breach, which was Mr Pasha’s commencement of this action to recover the sums owed to him under the SPA (as varied by the Side Letter and Addendum). The crux of the Defendants’ case was that by this very act, Mr Pasha had breached his obligations under the Advisory Contract to act independently and in good faith to promote a Relevant Transaction, and for the benefit of the Company as a whole. Put another way, the Defendants’ counterclaim hinged on a court finding that by signing the Advisory Contract, the parties had mutually agreed that Mr Pasha would subordinate his rights as a creditor to recover the outstanding sums until a sale of the Company was completed.

45 In my view, this counterclaim was legally unsustainable.

46 I agreed with the AR below that the Defendants had not advanced any legal basis to show that Mr Pasha’s mere act of commencing proceedings to claim for an outstanding debt owed by the Defendants personally – which arose and which was demanded even before the Advisory Contract was formed – could amount to a breach of his duties to act independently and in good faith to promote a Relevant Transaction (Clause 5.4) and for the benefit of the Company as a whole (Clause 5.5).⁴⁷

Duty to act independently

47 On the content of the duty to act independently under Clause 5.4, I should first note that this was not part of the Defendants’ pleaded case, which relied solely on the duty of good faith to promote a Relevant Transaction in respect of Clause 5.4.⁴⁸ I will nevertheless address this briefly, as it formed part of the Defendants’ main arguments on appeal.

48 The Defendants relied on two authorities where the court discussed what constituted independent legal advice when considering the validity of certain gifts.

49 *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 (“*Wan Hui Hong James*”) involved an advocate and solicitor accepting a significant gift from a client without advising the client to seek independent

⁴⁷ [10(a)] of the AR’s Decision.

⁴⁸ The Defence & Counterclaim relied solely on “a duty of care to act in good faith to promote a Relevant Transaction ... and to act for the benefit of the Company as a whole” (D&CC at paragraph 43). Mr Chionh’s affidavit opposing the applications also relied solely on the duty of good faith to promote a Relevant Transaction and made no reference to the duty to act independently (CCK1 at paragraphs 78–81).

legal advice in respect of the gift. In the context of discussing what the advocate and solicitor should have done, the Court of Three Judges at [13] quoted the following observations in *In re Coomber; Coomber v Coomber* [1911] 1 Ch 723 at 729–730, where Mouton LJ noted that independent advice meant advice from “some independent person, free from any taint of the relationship, or of the consideration of interest which would affect the act”.

50 In *Hooi Cheng Kwong Michael v Hooi Cheng Cheong Paul* [1979–1980] SLR(R) 775 (“*Hooi Cheng Kwong Michael*”), the plaintiff was seeking to void a gift of shares made to her son, and one of her arguments was that she had not received independent legal advice. In the course of finding that independent legal advice was not essential to rebut the presumption of undue influence, Choor Singh J summarised a previous decision by Lord Hailsham LC in *Inche Noriah v Shaik Allie bin Omar* [1929] AC 127 as holding that independent legal advice must be such as a competent and honest advisor would give if acting solely in the interest of the donor.

51 Relying on the above extracts from *Wan Hui Hong James* and *Hooi Cheng Kwong Michael*, the Defendants argued that Clause 5.4 bound Mr Pasha to disregard his conflicting interests *qua* creditor as he had to act *solely* in the interests of the recipients of his advice (*ie*, the Defendants and the Company).

52 Even if I were minded to allow the Defendants to rely on this aspect of Clause 5.4 (which was not pleaded), it was apparent that the authorities cited were entirely distinguishable as they were decided in contexts that were very far removed from the present case. First, Mr Pasha did not hold himself out as an independent advisor without any conflicting interests. It was precisely in the context of his seeking repayment for the overdue sums the Defendants owed to him that he agreed to advise them on a potential sale of the Company, as he was

an experienced investor and they had informed him repeatedly that this was the only way they would be able to pay him back. Second, and more importantly, any duty which Mr Pasha owed to act independently must be linked to the provision of his services under the Advisory Contract. Yet the Defendants did not allege that the advice that Mr Pasha provided was in any way tainted by his own interests, which were in any case aligned with theirs at that point in time.

53 The Defendants were not able to point to a single authority which stood for the proposition they were advancing in substance: that a creditor who agrees to independently advise a company or its shareholders on a potential share sale must necessarily subordinate his pre-existing interests as a creditor and refrain from taking legal action to enforce the debt to ensure the success of the share sale transaction.

Duty to act in good faith

54 Clause 5.4 also required Mr Pasha to act in good faith to promote a Relevant Transaction. It is well-established that a duty to act in good faith incorporates both a subjective element of acting honestly and an objective requirement of observing accepted commercial standards of fair dealing in the performance of the identified obligations: *HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] 4 SLR 738 (“*Toshin*”) at [45]. In addition to this, the Defendants relied on *Re Compound Photonics Group Ltd* [2022] EWCA Civ 1371 (“*Re Compound Photonics*”) to argue that the duty to act in good faith also encompassed a broader duty of “fidelity to the bargain” or “adherence to the spirit of the agreement” which prohibited any conduct that “undermines the bargain entered or the substance of the contractual benefit bargained for”: *Re Compound Photonics* at [212].

55 The thrust of the Defendants’ case was that the entire purpose of the Advisory Contract (and the extension of payment deadlines through the Side Letter) was to facilitate a Relevant Transaction. Accordingly, Clause 5.4 prohibited Mr Pasha from engaging in any conduct that could undermine the promotion of a Relevant Transaction, such as by commencing legal proceedings to enforce the outstanding debt.

56 I did not think that *Re Compound Photonics* advanced the Defendants’ case to any significant degree. While the Defendants quoted from certain parts of the judgment in *Re Compound Photonics* to suggest support for a broad interpretation of a good faith clause that incorporated some degree of fidelity to the bargain, it is clear when the judgment is read as a whole that the court was in fact cautioning against such wholesale expansion of the duty of good faith.

57 In *Re Compound Photonics*, the minority shareholders of a company sought relief for unfair prejudice after the appellant majority investors removed two of the minority shareholders as directors. Although there was no express term in the shareholders’ agreement entrenching the two minority shareholders as directors, there was a clause under which the shareholders undertook to each other and to the company that they would “at all times act in good faith in all dealings with” each other in relation to matters contained in the shareholders’ agreement. The Judge below found that unfair prejudice was established as the good faith clause imposed a restriction on the majority’s otherwise untrammelled rights to exercise their majority power as they saw fit. In his view, the clause required the majority investors to act “with fidelity to the bargain”, and that bargain was that, come what may, the management of the company was to be conducted by a board on which the two removed directors were entrenched and held the balance of power. The Judge also found that the clause obliged the

majority investors to take account of the interests of the minority as well as their own interests.

58 The UK Court of Appeal unanimously allowed the appeal and held that the Judge below had erred and reached an implausible conclusion. The good faith clause did not require the parties to adhere to the concept of a bargain whereby the two minority shareholders could never be removed as directors. The Court of Appeal also rejected any suggestion that the good faith clause required the majority investors to have regard to the interests of the minority shareholders in some undefined way, over and above the usual requirements that would apply to shareholders as a matter of general company law.

59 The following observations by Snowden LJ (delivering the judgment of the court) at [195]–[196], [202] and [205] bear reproduction at length as they sounded a clear note of caution against using a contractual duty of good faith to import wholly unexpressed obligations into the parties’ bargain:

... [T]he concepts of fidelity to the bargain and a requirement to have regard to the interests of the other contracting party. [...] originated in a commentary on US contract law and were then adopted and developed in New South Wales in the context of the imposition of terms requiring good faith in the performance of contracts as a matter of general law. They were not developed in the context of the interpretation of individually negotiated contracts. [...] I see no sound juridical basis for saying that all of the same concepts should automatically be regarded as incorporated in a formulaic way whenever any contract governed by English law contains an express term requiring the parties to act in good faith. ...

...

[T]he interpretation of a good faith clause as requiring fidelity to the bargain may reflect the fact that an ordinary contract cannot expressly provide for every event that may happen in the future, especially if the contract is a long-term contract. In such cases, the parties might more readily be taken to have intended a good faith clause to require adherence to their common aims

and purposes (as expressed or implied in the terms of their agreement) in unforeseen future situations...

...

[A]lthough judges have, on occasions, used the expression “the spirit of the contract” in the context of a good faith clause, I do not read that as an open invitation to the court to interpret a good faith clause as imposing additional substantive obligations (or restrictions on action) outside the other terms of the contract. That must especially be so where [...] the contract in question is professionally and comprehensively drafted, and contains an entire agreement clause.

[emphasis added in bold]

60 In the present case, the Defendants were similarly inviting the court to traverse well beyond the terms of the Advisory Contract and rely on a generic duty of good faith to find that Mr Pasha had, by taking on this advisory role, agreed not to commence legal proceedings to recover the sums due to him under the SPA, simply because this could have a detrimental effect on any potential sale of the Company. This was, in the words of Snowden LJ, tantamount to imposing additional substantive obligations and restrictions on Mr Pasha well outside the terms of the parties’ contract. Quite apart from the fact that the Advisory Contract contained an entire agreement clause at Clause 9.2,⁴⁹ which strongly militated against any such finding, there was nothing in the authorities proffered to support such a wide and wholly unprecedented construction of a good faith clause.

61 In fact, the authorities discussed in *Re Compound Photonics* further undermined the Defendants’ case. In *Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* (2010) 383 ALR 577 (“*Macquarie*”), Allsop P (as he then was) explicitly noted that a good faith

⁴⁹ CCK1 at Tab 11, page 161.

obligation does not require the interests of a party to be subordinated to those of another (*Macquarie* at [13]). This point was repeated by Hodgson JA in his judgment given in the same case, where he noted that a contractual obligation of good faith does not require a party to act in the interests of the other party or to subordinate its own legitimate interest to the interests of the other party (*Macquarie* at [147]). This struck at the heart of the Defendants' case, which rested on the fundamental premise that the contractual duty of good faith did not just require Mr Pasha to consider the Defendants' interests but to *subjugate* his interests as creditor to their interests and the interests of the Company to secure a share sale.

62 Even if I accepted the Defendants' contention that the duty of good faith to promote a Relevant Transaction could encompass a broader principle that would prohibit conduct which may undermine the scope of the parties' bargain, any such prohibition must logically be limited to and connected with the conduct of Mr Pasha's services under the Advisory Contract. Any express contractual duty of good faith must be understood in light of "the commercial nature and purpose of the contract in question": *Toshin* at [49]. In *Toshin*, for example, the Court of Appeal found that in the context of a clause to "in good faith endeavour to agree on the prevailing market rental" of the property, faithfulness to the common purpose incorporated an obligation not to unfairly profit from the known ignorance of the other *during rent review negotiations*: *Toshin* at [50].

63 There was simply no authority to support the Defendants' contention that a contractual duty of good faith in one contract could go so far as to prohibit conduct that fell entirely outside the scope of parties' obligations under that contract. In the present case, there was nothing in the Advisory Contract that suggested that parties intended its terms to have the broader effect of requiring

Mr Pasha to suspend his existing legal right to enforce an outstanding debt under a separate pre-existing contract.

Duty to act for the benefit of the Company

64 The Defendants' arguments on Clause 5.5 were without merit for similar reasons. Put simply, I failed to see how an agreement by Mr Pasha to act for the benefit of the Company as a whole *in the context of providing his services under the Advisory Contract* necessarily meant that he must have agreed to forgo his right to enforce the debts owed to him by the Defendants under the SPA, Side Letter and Addendum.

Purported novel issue of law

65 The Defendants also contended that their counterclaim entailed the consideration of a novel issue of law, as the legal principles on whether a duty to act in good faith would encompass a broader duty of fidelity to the bargain were still in a state of development. The Defendants argued, on this basis, that their counterclaim ought not to be struck out.

66 I accepted that if an action contains a novel issue of law or a point which requires serious argument, striking out would generally be inappropriate: *CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd* [2020] 5 SLR 665 at [129]. However, while the threshold for striking out is high, this did not mean that the Defendants could simply point to how similarly-worded contractual provisions may have been construed in other contexts to argue that a novel point of law or triable issue arose in the present case. Any dispute as to the meaning or scope of a contractual provision must still be grounded in a substratum of authority and fact in order to raise a triable issue. There was a distinction between a novel point of law which had some legal and factual basis and would therefore merit

the rigour of a full trial, and a point of law which found no support either in legal authority or the contractual language and context.

67 In my assessment, the Defendants’ counterclaim fell into the latter category. Quite apart from the fact that none of the authorities cited supported their contentions in substance, the Defendants’ counterclaim also lacked factual basis as it was contradicted by the contractual documents and surrounding context.

The Defendants’ counterclaim was factually unsustainable

68 It is important to bear in mind that the ultimate aim of the court in any case involving the construction of a contract is to give effect to the objectively ascertained expressed intentions of the contracting parties, as it emerged from the contextual meaning of the relevant contractual language: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30].

69 Even if I accepted that the legal propositions the Defendants relied on were arguable, the contractual documentation could not support the construction they advanced. Despite the Defendants’ contention that the Side Letter and Advisory Contract were “intended to operate as part of a single, integrated arrangement”,⁵⁰ neither the Advisory Contract nor the Side Letter made any reference to each other. Both agreements were concluded on the same day, yet they were drafted as separate contracts and the obligations in each contract stood independently of the other.⁵¹ The Advisory Contract also contained an explicit entire agreement clause at Clause 9.2.

⁵⁰ CCK1 at paragraph 33.

⁵¹ TP2 at paragraph 45; TP3 at paragraph 44.

70 As the AR rightly noted, the terms of the Advisory Contract, on their face, did not contain any provisions that constrained Mr Pasha’s right to sue the Defendants for the outstanding debt. Given that parties were, at the same time, discussing how the overdue payments under the SPA should be restructured and repaid, if the provisions of the Advisory Contract were intended to have the effect of somehow suspending Mr Pasha’s right to enforce the debts due under the SPA, then it is difficult to see why this was not stated clearly in either the Advisory Contract or the Side Letter, or both contracts. After all, the possibility of Mr Pasha commencing legal proceedings to claim the outstanding sum was not unforeseeable at the time when the Advisory Contract was being drafted. In fact, Mr Pasha had expressly and repeatedly presented this option, if the Defendants were unable to offer him a more concrete proposal beyond just asking him to wait until the Company was sold to get paid.⁵²

71 The Advisory Contract and the Side Letter were drafted as separate agreements, and the Defendants’ payment obligations under the latter were clearly stipulated and not made subject to any obligations under the former. In fact, the payment obligations in the Side Letter, specifically paragraph 3.4 of the Side Letter, explicitly contemplated that a Relevant Transaction may not take place.⁵³ This put paid to the Defendants’ suggestion that parties had agreed that a Relevant Transaction had to take place in order for the Defendants to fulfil their obligations under the Side Letter. While a Relevant Transaction would undoubtedly increase the likelihood of Mr Pasha receiving the overdue

⁵² TP3 at Tab 4, pages 150 and 153.

⁵³ CCK1 at Tab 11, pages 149–150. Paragraph 3.4 of the Side Letter refers to the event that “no Sale is effected and completed by 24 June 2025”, and “Sale” is in turn defined at paragraph 3.3 of the Side Letter as “a sale of any or all of the shares in the capital of the Company held by either or both of the [Defendants] to a third party investor who does not hold shares in the Company at the time of the sale”. This was referred to at [18(a)] above as a possible Relevant Transaction.

payments from the Defendants, this was not the same as Mr Pasha agreeing to wait for a sale of the Company before getting paid what he was owed.

72 I should add that the two contracts were also consistently framed as separate contracts in the parties’ pre-contractual discussions. In the “TP Proposed Offer” which Mr Hill prepared and sent to record the parties’ in-principle agreement on 10 October 2023, the agreement to record how the Restructured Tranche 3 under the SPA would be further restructured was presented separately from the Advisory Contract terms, with no linkage between the two.⁵⁴ This reinforced the impression that the terms of the Advisory Contract were intended to cover matters that were separate and independent from the debts owed by the Defendants to Mr Pasha under the SPA which, as Mr Hill had himself noted, was a “private matter” between the parties that had nothing to do with the Company.⁵⁵

73 The contemporaneous records of the parties’ correspondence also contradicted the Defendants’ assertion that Mr Pasha had “elected to postpone and condition his right to payment”.⁵⁶ It was the failure of the Defendants’ to pay their dues under the SPA which necessitated the subsequent Side Letter and Addendum, through which Mr Pasha repeatedly granted the Defendants more time to pay. Even though Mr Pasha, through the Advisory Contract, agreed to assist the Defendants to secure a Relevant Transaction, there was never any indication in the parties’ contemporaneous discussions that Mr Pasha was prepared to give up his right to recover what was owed to him, or that this was what the Defendants understood him to have agreed to do when the Advisory

⁵⁴ CCK1 at Tab 6, pages 118–120.

⁵⁵ TP3 at Tab 4, page 152.

⁵⁶ CCK1 at paragraph 60.

Contract was signed. The ultimate goal, which Mr Pasha maintained throughout the negotiations, was to ensure that he was not “out of pocket”,⁵⁷ not that a Relevant Transaction must take place.

74 Finally, if the parties understood Clauses 5.4 and 5.5 to have the effect of subordinating or suspending Mr Pasha’s right to sue for the outstanding debt, then one would have expected the parties to discuss this very significant effect of the Advisory Contract on Mr Pasha’s ongoing demands for payment. Despite there being extended communications between the parties both before and after the conclusion of the Advisory Contract and Side Letter on 7 November 2023, no evidence of any contemporaneous discussions or correspondence was presented that could support the Defendants’ proffered construction of these clauses. On the contrary, the correspondence made it clear that Mr Pasha had consistently wished to be made whole as soon as possible.⁵⁸

75 Thus, neither the contractual language nor the surrounding context could sustain the Defendants’ construction of Clauses 5.4 and 5.5 of the Advisory Contract. I was accordingly of the view that the Defendants’ case was factually untenable as well, and thus liable to be struck out in the interests of justice under O 9 r 16(1)(c) of ROC 2021.

Conclusion

76 As such, I found that the Defendants’ counterclaim against Mr Pasha for a breach of Clauses 5.4 and 5.5 of the Advisory Contract was both factually and legally unsustainable, and ought to be struck out in the interests of justice and for failing to disclose a reasonable cause of action. For the avoidance of doubt,

⁵⁷ CCK1 at Tab 5, page 116.

⁵⁸ TP3 at paragraphs 23–44, and Tab 3.

I made no finding as to whether the Defendants' counterclaim was brought in an abuse of process.

77 As the Defendants' case on appeal rested solely on the viability of its counterclaim, this was sufficient to dispose of the appeal. It was therefore unnecessary for me to consider whether the counterclaim, if plausible, would have amounted to a defence of legal or equitable set-off, or whether it otherwise merited a stay of execution of summary judgment.

78 I therefore dismissed the Defendants' appeal and affirmed the AR's decision to strike out the Defendants' counterclaim and grant summary judgment in favour of Mr Pasha.

79 On costs, Mr Pasha's solicitors asked for costs to be fixed at \$25,000 all in, while the Defendants' solicitors left costs in the discretion of the court. In assessing the appropriate quantum of costs to be awarded, I took note of the fact that the issues raised on appeal were more targeted than those canvassed before the AR below, as the Defendants focused their arguments solely on Clauses 5.4 and 5.5 of the Advisory Contract. With this in mind, I fixed costs at \$18,000 all in to be paid by the Defendants to Mr Pasha.

Low Siew Ling
Judicial Commissioner

Ong Pei Ching, Phoon Wuei and Poh Yuxuan, Natalie (TSMP Law Corporation) for the claimant;
David Rajeev Menon and Timothy James Chong Wen An (Rajah & Tann Singapore LLP) for the first and second defendants.
