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

[2021] SGHC 197

Suit No 626 of 2019

Between

Elias Xanthopoulos

… *Plaintiff*

And

(1) Rotating Offshore Solutions Pte Ltd
(2) ROS Engineering Pte Ltd
(3) Lim Boon Chye Victor

… *Defendants*

JUDGMENT

[Contract] — [Contractual terms] — [Admissibility of evidence]
[Contract] — [Contractual terms] — [Express terms]
[Contract] — [Contractual terms] — [Parol evidence rule]
[Contract] — [Contractual terms] — [Rules of construction]
[Contract] — [Formation]
[Contract] — [Mistake] — [Mistake of fact]
[Equity] — [Remedies] — [Rectification]
[Restitution] — [Unjust enrichment]
[Companies] — [Oppression] — [Minority shareholders]

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v
Rotating Offshore Solutions Pte Ltd and others

[2021] SGHC 197

General Division of the High Court — Suit No 626 of 2019
Valerie Thean J
23–26, 29–31 March, 1, 5 April, 28 June 2021

31 August 2021 Judgment reserved.

Valerie Thean J:

Introduction

1 The plaintiff, Mr Elias Xanthopoulos ("Mr Xanthopoulos"), was the managing director and a minority shareholder of the second defendant, ROS Engineering Pte Ltd ("ROSE").[1] The first defendant, Rotating Offshore Solutions Pte Ltd ("RO Solutions"), owns the remainder 70% of ROSE.[2] The third defendant, Mr Lim Boon Chye Victor ("Mr Lim"), is the managing director of RO Solutions and a director of ROSE.[3] Mr Xanthopoulos resigned

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1 Statement of Claim ("SOC") at para 1; Defence of the 1st and 2nd Defendants (Amendment No 1) ("RO Defence") at para 4.

2 SOC at para 5; RO Defence at para 13.

3 SOC at para 6; Defence of the 3rd Defendant (Amendment No 1) ("VL Defence") at paras 5(a) and 5(d).

from his positions as engineering director at RO Solutions and managing director of ROSE on 1 July 2018.[4]

2 By this suit, Mr Xanthopoulos claims unpaid fees for his referral and project management services. He also seeks relief as a minority shareholder of ROSE, arising from conduct which he characterises as oppressive on the part of RO Solutions and Mr Lim.

Background

Parties

3 RO Solutions was incorporated in January 2010.[5] At the material time, it had three directors:

(a) Mr Chia Kuan Wee ("Mr Chia"), who was managing director of RO Solutions from 3 March 2015 to 13 September 2019, after which he left RO Solutions.[6] While he was a shareholder, he held his shares in RO Solutions through 3N Investments Group Limited, a company registered in the British Virgin Islands ("BVI").[7]

(b) Mr Lim, who was managing director of RO Solutions from 31 October 2018 onwards.[8] He holds his shares in RO Solutions through Kasana Holdings Limited, a company registered in the BVI.[9]

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4 Core Bundle of Documents, Vol 3 ("3 CB") 822–823.

5 3 CB 1016.

6 3 CB 1017; Affidavit of Evidence-in-Chief of Victor Lim Boon Chye ("Mr Lim's AEIC") at para 30.

7 SOC at para 8; RO Defence at para 17.

8 3 CB 1017.

9 SOC at para 6; RO Defence at para 15; VL Defence at para 5.

(c) Mr Murugesan Srinivasan ("Mr Srinivasan"), who holds his shares in RO Solutions through Vagan Holdings Limited, also a company registered in the BVI.[10]

4 Mr Lim, Mr Chia and Mr Srinivasan initially owned Goldpower Diesel Supply Pte Ltd with other shareholders. This entity was subsequently renamed in June 2006 as East Asia Energy Pte Ltd ("East Asia Energy").[11] The other shareholders gave up their shares sometime in 2008 or 2009, leaving Mr Lim, Mr Chia and Mr Srinivasan as the only remaining shareholders. They renamed the entity Rotating Offshore Systems Pte Ltd ("RO Systems") in September 2010[12] and thereafter incorporated RO Solutions in January 2010[13] to hold RO Systems as a wholly owned subsidiary.[14] As at November 2020, Mr Lim and Mr Srinivasan remain directors of the renamed entity, DFT Coating Systems Pte Ltd.[15] In this judgment, I refer to RO Solutions, RO Systems and ROSE collectively as the "ROS Group".

5 Mr Xanthopoulos, an engineer with some 25 years of engineering project management experience in the marine and offshore oil and gas industries, in particular in floating production storage and offloading ("FPSO") projects,[16] was first introduced to Mr Lim, Mr Srinivasan and Mr Chia in

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10 SOC at para 7; RO Defence at para 16.

11 3 CB 1021.

12 3 CB 1021.

13 Affidavit of Evidence-in-Chief of Murugesan Srinivasan ("Mr Srinivasan's AEIC") at paras 23–26.

14 SOC at para 4; RO Defence at para 11.

15 Mr Lim's AEIC at paras 13–14 and Tab 3 at p 101.

16 SOC at para 1; Affidavit of Evidence-in-Chief of Elias Xanthopoulos ("Mr Xanthopoulos's AEIC") at p 95.

November 2011.[17] On 29 November 2011, he sent an e-mail to Mr Chia expressing his interest in working with "ROS" and taking the company to the "next level", setting out his expected remuneration terms, including a finder's fee for any projects he might bring in, and his scope of work.[18] On 8 December 2011, Mr Chia followed up with a proposed agreement to be signed by RO Systems and Mr Xanthopoulos.[19] After further negotiation and revisions to the draft, Mr Xanthopoulos and RO Systems entered into an agreement dated 12 December 2011 (the "RO Systems Agreement") in which Mr Xanthopoulos was appointed as the "Engineering Director" of RO Systems.[20] Under the RO Systems Agreement, he was to receive a basic monthly salary of S$10,000 as engineering director and would be entitled to commissions if he initiated any projects that were eventually secured by RO Systems. He was, on the other hand, free to work with other firms, and any project-specific work was to be separately negotiated and remunerated.[21]

The formation of ROSE

6 On the heels of the RO Systems Agreement, Mr Xanthopoulos initiated discussions with Mr Lim, Mr Chia and Mr Srinivasan (the "four men") regarding the incorporation of an engineering company as a joint venture effort with RO Solutions. This was to be a new company under the ROS Group, which would later become ROSE. In the same period of time, Mr Xanthopoulos was engaged by DRL Engineering LLC ("DRL") to provide project management

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17 RO Defence at para 21(b); Reply to Defence of the 1st and 2nd Defendants (Amendment No 3) ("Reply to RO Defence") at para 7.

18 Core Bundle of Documents, Vol 1 ("1 CB") 40.

19 1 CB 41–50.

20 SOC at para 13; RO Defence at para 35; 1 CB 106 and 108.

21 SOC at para 11; RO Defence at para 29.

services. Under the terms of the RO Systems Agreement, he was able to retain his fees from DRL. This framed the context for the parties' negotiations. Mr Xanthopoulos explained that he initiated these discussions because he wished to take on more equity within the ROS Group before he brought on more new projects and clients, with the goal of benefiting financially from a future initial public offering of the ROS Group that the four men envisaged.[22]

7 Negotiations took place between 29 January and 14 February 2012 through a series of e-mails. On 14 February 2012, following upon their agreement over e-mail, Mr Chia asked Mr Xanthopoulos to rework the RO Systems Agreement, replacing RO Systems with ROSE as contracting party, and inserting the new terms as agreed.[23] On 7 March 2012, ROSE was registered with ACRA,[24] with RO Solutions holding 70% of share ownership and Mr Xanthopoulos holding the remaining 30%.[25] Subsequently, Mr Xanthopoulos's revised draft was sent to Mr Chia on 4 April 2012.[26] No further revisions were made by Mr Chia. On 1 May 2012, Mr Xanthopoulos and Mr Srinivasan, acting on behalf of ROSE as its chief executive officer and director at the material time, executed this agreement (the "ROSE Agreement").[27]

8 Mr Srinivasan was appointed as a director of ROSE but he resigned from this role in or around 11 July 2012. Mr Lim and Mr Xanthopoulos were then

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22 SOC at paras 18–19; RO Defence at paras 46–47; Mr Xanthopoulos's AEIC at para 39.

23 1 CB 154.

24 1 CB 169.

25 SOC at para 5; RO Defence at para 13.

26 1 CB 172–181.

27 SOC at para 24; RO Defence at para 62; 1 CB 191–199.

appointed as directors of ROSE on this date.[28] Mr Chia was appointed as the company secretary of ROSE on 25 January 2018 until 15 January 2019.[29]

After the signing of the ROSE Agreement

9 As provided by cl 2 read with cl 5.1 of the ROSE Agreement, Mr Xanthopoulos continued to receive his monthly retainer of S$10,000 after the signing of the ROSE Agreement as the managing director of ROSE.[30]

The DRL project – early 2012 to July 2013

10 In early 2012, DRL became a client of ROSE.[31] As permitted by cl 5.3 of the ROSE Agreement, Mr Xanthopoulos was paid the amount he billed DRL for his project consultancy services.[32] DRL requested time sheets, and he was paid each month with reference to the time sheets. This project ended sometime around July 2013.[33]

Monthly payments of S$15,000 – July 2013 onwards

11 From around July 2013, RO Solutions paid Mr Xanthopoulos an additional sum of S$15,000 *per* month. The reasons for these payments and the scope of work entailed are disputed. Mr Xanthopoulos's case was that this was paid because of his appointment as its engineering director.[34] The defendants

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28 SOC at para 21; RO Defence at para 48; VL Defence at para 16; 3 CB 1020.

29 SOC at para 112; RO Defence at para 178; 3 CB 1020.

30 1 CB 193–194.

31 SOC at para 40; RO Defence at para 80(a).

32 Mr Xanthopoulos's AEIC at para 48.

33 Mr Lim's AEIC at para 91.

34 SOC at para 43; RO Defence at para 86; VL Defence at para 31; Agreed Bundle of Documents, Vol 5 ("5 AB") 4661.

contend that this was reasonable compensation for work done for RO Solutions as provided under the ROSE Agreement.

The MOPU BOSS1 project – November 2013 to March 2014

12 A mobile offshore production unit ("MOPU") is a fixed platform used by the offshore oil and gas industry for the production and offloading of oil and gas.[35] From November 2013 to March 2014, ROSE rendered services to RO Solutions in respect of the MOPU BOSS1 Project.[36] For these services, ROSE was paid S$40,000 *per* month.[37]

The MODEC project – November 2014 to June 2015

13 On or around November 2014, RO Solutions undertook construction work on several FPSO topside modules for MODEC & TOYO Offshore Production Systems Pte Ltd ("MODEC"), associated with building a new hull to an FPSO for a client in Brazil Petrobras (the "MODEC Project"). Mr Xanthopoulos was appointed as the project manager.[38] There was no evidence of any discussion on his remuneration for this work, which forms part of the subject matter of his claim in this suit.

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35 Mr Xanthopoulos's AEIC at p 186.

36 SOC at para 95; RO Defence at para 158.

37 Agreed Bundle of Documents, Vol 6 ("6 AB") 5145; Transcript, 23 March 2021 at p 75 lines 13–21 (Mr Chia); Transcript, 1 April 2021 at p 100 lines 18–25 (Mr Srinivasan).

38 SOC at para 50; RO Defence at para 100.

The MOPU D18 project – June 2015 to March 2016

14 The MODEC Project commenced on 8 January 2015 and the certificate of completion for this project was issued on 29 March 2016.[39] However, Mr Xanthopoulos's involvement with the MODEC Project ended around June 2015 as he was asked to work on another project known as the "MOPU D18 Project".[40] The MOPU D18 Project related to a water injection facility to be developed in collaboration with a company from Kuala Lumpur.[41] Mr Chia's evidence was that he persuaded Mr Xanthopoulos to do this work for the MOPU D18 Project at no additional fee.[42]

RO Solutions' work with MINOX and Caevest

15 In addition to his remuneration for the MODEC Project, Mr Xanthopoulos claims finder's fees for two projects completed by RO Solutions.

(1) The MINOX project – January 2015 to February 2017

16 In the second half of 2014, RO Solutions entered into a contract with a Norwegian company, MINOX Technology AS ("MINOX"), for a project (the "MINOX Project"). The total value of this contract was approximately US$3,141,502.16 after excluding a liquidated damages claim and an agreed

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39 5 AB 4662; Transcript, 25 March 2021 at p 18 lines 17–32 and p 19 line 1 (Mr Chia).

40 Mr Xanthopoulos's AEIC at para 61; Transcript, 1 April 2021 at p 74 lines 9–18 (Mr Srinivasan).

41 Mr Xanthopoulos's AEIC at para 91; Transcript, 25 March 2021 at p 117 lines 28–31 and p 118 at lines 1–4 (Mr Knut Hvidsand).

42 Transcript, 23 March 2021 at p 115 line 21 to p 116 line 5.

over run cost.[43] The MINOX Project commenced on 29 January 2015 and was completed on 6 February 2017.[44]

(2) The Caevest project – September 2016 to March 2018

17 In 2016, RO Solutions entered into a contract with Caevest Private Limited ("Caevest") for a project (the "Caevest Project"). The total contract value of the Caevest Project was S$12,944,955.[45] The Caevest Project commenced on 19 September 2016 and the certificate of completion for the Caevest Project was signed on 26 and 29 March 2018.[46]

Mr Xanthopoulos resigns

18 On 1 July 2018, Mr Xanthopoulos tendered letters of resignation to RO Solutions and ROSE.[47] RO Solutions accepted his resignation in a letter dated 30 July 2018.[48] Mr Chia made arrangements to strike ROSE off the register and for dividends to be distributed. Part of the dividends included receivables owing from RO Solutions. A dividend voucher in the sum of S$81,970.83 was prepared for Mr Xanthopoulos's 30% share and signed by him,[49] but the dividend was not paid out as Mr Lim and Mr Srinivasan were not

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43 Mr Xanthopoulos's AEIC at para 97(b); 1 CB 24.

44 Transcript, 25 March 2021 at p 17 lines 26–31 and p 18 lines 1–14 (Mr Chia).

45 SOC at para 69; RO Defence at para 130; Plaintiff's Closing Submissions ("PWS") at para 177.

46 5 AB 4663; Transcript, 25 March 2021 at p 16 lines 26–29 and p 17 at lines 7–25 (Mr Chia).

47 3 CB 822–823.

48 3 CB 844.

49 3 CB 925.

in agreement.[50] On 31 October 2018, Mr Srinivasan and Mr Lim made an offer by telephone to buy out Mr Xanthopoulos's 30% shareholding in ROSE for about S$20,000, which was said to represent about 30% of the cash held by ROSE.[51] Mr Xanthopoulos rejected this.

19 The writ of summons for this suit was filed on 27 June 2019.

Parties' cases

20 Mr Xanthopoulos's claims are in two broad categories. The first is against RO Solutions for fees for his services in respect of the MODEC Project, the MINOX Project and the Caevest Project (collectively, the "Projects"). The second is a minority oppression claim against RO Solutions and Mr Lim.

Mr Xanthopoulos's claims for unpaid fees

The contract claims

21 Mr Xanthopoulos's contract claims rest primarily on two bases: first, a contention that there existed a free-standing and legally binding overarching agreement between himself and RO Solutions (the "Overarching Agreement");[52] and second, his interpretation of the ROSE Agreement.

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50 Transcript, 5 April 2021 at p 35 lines 19–24 (Mr Srinivasan) and p 106 lines 13–31 (Mr Lim).

51 SOC at paras 104–106; RO Defence at para 170; VL Defence at para 53; Mr Srinivasan's AEIC at paras 206–209; Mr Lim's AEIC at paras 206–209; Mr Xanthopoulos's AEIC at paras 120–122.

52 SOC at paras 22–23.

(1) The Overarching Agreement

22 The Overarching Agreement, on Mr Xanthopoulos's case, was formed in February 2012, following verbal and e-mail discussions between Mr Xanthopoulos, Mr Lim, Mr Chia and Mr Srinivasan (who were acting for and on behalf of RO Solutions) from November 2011 to February 2012.[53] Pursuant to this Overarching Agreement, Mr Xanthopoulos would be directly paid fees for the services he provided personally to any company in the ROS Group by RO Solutions or by the relevant company in the ROS Group.[54] In addition, Mr Xanthopoulos would be directly paid a finder's fee or commission by RO Solutions for referring new clients or orders, calculated with reference to the value of the contract secured by the relevant company in the ROS Group.[55]

23 On the other hand, the defendants categorically deny the existence of the Overarching Agreement and aver that Mr Xanthopoulos's relationship with them is governed only by the RO Systems Agreement, and thereafter the ROSE Agreement, which distil and record all terms agreed in their discussions from November 2011 to February 2012.[56]

(2) Interpretation of the ROSE Agreement

24 In the alternative, Mr Xanthopoulos argues that the terms of the Overarching Agreement were reflected in the ROSE Agreement,[57] and cll 5.4

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53 SOC at paras 18 and 23.

54 SOC at para 22(f).

55 SOC at para 22(h).

56 RO Defence at para 36 (RO Systems) and paras 50, 55–56 and 60 (ROSE); VL Defence at paras 17 and 21; 1st and 2nd Defendants' Closing Submissions ("RO DWS") at para 57.

57 SOC at para 24.

and 5.5 of the ROSE Agreement should be interpreted to mean that any company in the ROS Group that he provided project consultancy or referral services to would be obliged to pay him.[58] Accordingly, Mr Xanthopoulos seeks a declaration that the ROSE Agreement, properly construed, does not preclude him from claiming against RO Solutions for fees for his services rendered in respect of the Projects.[59]

25 As against this, the defendants contend that the proper interpretation of the ROSE Agreement is that Mr Xanthopoulos would only be paid fees by ROSE.[60] Further, the defendants rely on the *contra proferentem* rule to argue that, because the ROSE Agreement (in particular, cl 5.5 thereof) was drafted by and originated from Mr Xanthopoulos, any ambiguity in the ROSE Agreement should be construed against him.[61] The defendants also aver that any request for Mr Xanthopoulos to perform work for RO Solutions fell within the ambit of cl 5.5 of the ROSE Agreement as "in-house work" for which the amount of "reasonable compensation", as orally agreed between Mr Xanthopoulos, Mr Lim, Mr Chia and Mr Srinivasan, was S$15,000 *per* month.[62] In response to this, Mr Xanthopoulos contends that the monthly payments of S$15,000 were instead paid to him for taking on the role of RO Solutions' engineering director, pursuant to a verbal agreement he had made with Mr Chia (acting for and on behalf of RO Solutions) in June or July 2013 (the "Verbal Agreement").[63]

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58 SOC at paras 30–31.

59 SOC at para 85; PWS at para 52(a).

60 RO Defence at para 69.

61 RO Defence at para 86F; RO DWS at paras 103–105.

62 RO Defence at para 86; VL Defence at para 31.

63 SOC at para 43; PWS at para 138.

(3) Rectification of the ROSE Agreement

26 In the further alternative, if his interpretation of the ROSE Agreement is not accepted, Mr Xanthopoulos claims that cl 4.5, cll 5.3–5.6 and Sch 1 para 1 of the ROSE Agreement should be rectified on the basis of common or unilateral mistake.[64]

(a) With regard to common mistake, Mr Xanthopoulos argues that the intention and common accord between him, RO Solutions (as represented by Mr Lim, Mr Chia and Mr Srinivasan) and ROSE (as represented by Mr Srinivasan) was that he would be paid by any company in the ROS Group, and not only by ROSE. The parties mistakenly believed that the terms of the ROSE Agreement reflected this intention and common accord.[65]

(b) With regard to unilateral mistake, Mr Xanthopoulos contends that Mr Srinivasan (acting for and on behalf of ROSE) knew that the terms of the ROSE Agreement did not reflect his intentions, yet failed to draw his attention to this mistake.[66]

27 The defendants deny that there was any mistake as to the terms of the ROSE Agreement.[67] They argue that there was no common intention or accord for Mr Xanthopoulos to be remunerated by RO Solutions, or any company in the ROS Group (apart from ROSE), for services rendered to that company.[68]

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64 SOC at paras 86 and 91; PWS at para 52(b).

65 SOC at paras 87–89; PWS at paras 125–126.

66 SOC at para 90; PWS at para 130.

67 RO Defence at para 154B; RO DWS at para 110.

68 RO DWS at para 126–128.

Further, they aver that they had no actual or constructive knowledge of the alleged mistake made by Mr Xanthopoulos in the ROSE Agreement, and that they did not take unconscionable advantage of this alleged mistake.[69]

(4) Mr Xanthopoulos's entitlement to fees for the Projects

28 With regard to the Projects, Mr Xanthopoulos asserts that he rendered project management services for the MODEC Project from November 2014 to June 2015,[70] as well as referral services for the Caevest Project (by introducing Caevest to Mr Srinivasan)[71] and the MINOX Project (by referring this project to RO Solutions and assisting in the formal presentations of RO Solutions' capabilities to MINOX).[72] He claims fees for these services from the defendants under the Overarching Agreement, the terms of which he avers were also incorporated into the Verbal Agreement.[73]

29 On the other hand, the defendants contend that Mr Xanthopoulos is not entitled to the fees he has claimed for the Projects. They argue that the MINOX Project and the Caevest Project were not referred to RO Solutions by Mr Xanthopoulos.[74] Further, the defendants argue that Mr Xanthopoulos was seconded from ROSE to RO Solutions to perform "in-house work" for "reasonable compensation" under cl 5.5 of the ROSE Agreement, and that Mr Xanthopoulos's services in respect of the MODEC Project fell within the

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69 RO Defence at para 154A; RO DWS at paras 116–122.

70 SOC at paras 50–52; PWS at para 132.

71 SOC at paras 63–64; PWS at para 149.

72 SOC at para 76; PWS at para 158.

73 SOC at paras 43, 55, 67 and 79.

74 RO Defence at paras 140 (the MINOX Project) and 122–123 (the Caevest Project); RO DWS at paras 187 (the MINOX Project) and 198 (the Caevest Project).

scope of such "in-house" works, for which he was paid fees of S$15,000 *per* month.[75]

The unjust enrichment claims

30 In the event that his primary case based on the Overarching Agreement does not succeed, Mr Xanthopoulos contends that RO Solutions has been unjustly enriched by his services in respect of the Projects, for which he received no payment. He relies on two alternative unjust factors: failure of basis and free acceptance.[76]

31 The defendants deny any unjust enrichment on their part.[77] They argue that there is no factual basis for Mr Xanthopoulos's claim that he provided referral services in respect of MINOX Project[78] and the Caevest Project[79] to RO Solutions, and that the ROSE Agreement regulated Mr Xanthopoulos's work on the MODEC Project.[80]

Mr Xanthopoulos's minority oppression claim

32 Mr Xanthopoulos's second broad claim is that he has been oppressed as a 30% minority shareholder of ROSE, within the meaning of s 216 of the Companies Act (Cap 50, 2006 Rev Ed) (the "CA"). He contends that he had a legitimate expectation that ROSE's profits would be shared between himself

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75 RO Defence at para 110; RO DWS at paras 101–102 and 141(b).

76 SOC at paras 56 (the MODEC Project), 68 (the Caevest Project) and 80 (the MINOX Project); PWS at paras 100 and 102–106.

77 RO Defence at paras 112 (the MODEC Project), 128 (the Caevest Project) and 144 (the MINOX Project).

78 RO DWS at paras 187 and 195.

79 RO DWS at paras 198 and 206.

80 RO DWS at para 176.

and RO Solutions in accordance with their respective shareholding,[81] and that RO Solutions (as the 70% majority shareholder of ROSE) and Mr Lim (as its nominee director in ROSE) have conducted ROSE's affairs in a manner that is oppressive and commercially unfair to him.[82] Mr Xanthopoulos relies on the following acts by RO Solutions and/or Mr Lim to support this allegation:

(a) First, RO Solutions' refusal to pay ROSE substantial outstanding receivables, amounting to S$256,871.71, for the services rendered by ROSE in respect of the MOPU BOSS1 Project from November 2013 to March 2014.[83]

(b) Second, Mr Lim's refusal, as a director of ROSE and acting in his capacity as RO Solutions' nominee director, to take action against RO Solutions to claim these outstanding receivables.[84]

(c) Third, RO Solutions' and Mr Lim's refusal to have ROSE's assets realised and distributed to Mr Xanthopoulos as dividends. Mr Xanthopoulos argues that RO Solutions has, without any reasonable explanation, blocked or objected to his repeated requests for the realisation and distribution of ROSE's assets (of which he would be entitled to S$96,671.73 as a 30% shareholder[85]) and the issuance of dividends.[86]

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81 SOC at para 92.

82 SOC at para 115.

83 SOC at paras 95, 108 and 115(a).

84 SOC at paras 108, 113 and 115(b).

85 SOC at para 106.

86 SOC at paras 108, 114 and 115(c).

(d) Fourth, Mr Lim's refusal to comply with ROSE's articles of association to call for a meeting of ROSE's directors to consider the realisation of its assets, the distribution of its profits and its striking off. Mr Xanthopoulos had requested Mr Lim to do so but Mr Lim did not respond.[87]

(e) Fifth, RO Solutions' refusal, without any explanation, to accede to a written resolution authorising ROSE's directors to declare dividends to ROSE's shareholders.[88]

33 In connection with his minority oppression claim, Mr Xanthopoulos seeks the following relief:

(a) a declaration that RO Solutions and Mr Lim have caused ROSE's affairs to be conducted in a manner that is prejudicial to Mr Xanthopoulos and constitutes oppression, or is in disregard of or prejudicial to his interests as a shareholder of ROSE;[89] and

(b) an order that RO Solutions buy out Mr Xanthopoulos's shares in ROSE,[90] with the share value calculated based on the net asset value of ROSE;[91] in the alternative, an order that ROSE be compulsorily wound up and its assets realised and distributed in accordance with RO Solutions' and Mr Xanthopoulos's respective shareholding in ROSE.[92]

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87 SOC at paras 109 and 115(d).

88 SOC at paras 110–111 and 115(e).

89 SOC at p 41 para (6); PWS at para 52(f).

90 SOC at p 41 para (7).

91 PWS at paras 52(g) and 186.

92 SOC at p 41 para (8); PWS at para 52(h).

34 The defendants deny that Mr Xanthopoulos was treated in a commercially unfair manner.[93] They do not deny that RO Solutions owes ROSE receivables amounting to S$256,871.71. However, in their defence, the defendants assert that there was a mutual agreement and understanding between all parties involved not to pursue the outstanding receivables owed to ROSE, and that Mr Xanthopoulos was at all times aware of this understanding.[94] The defendants further contend that there were legitimate commercial reasons for not acceding to Mr Xanthopoulos's requests, and that this was not an unfair course of action to take.[95] In particular, they argue that ROSE was a loss-making entity since the 2014/2015 financial year and that there were plans at the material time for ROSE to be repurposed, such that it was not prudent for dividends to be issued and for ROSE to be struck off.[96] In any event, they assert that the appropriate value for the share buyout should be assessed based on ROSE's most recent audited financial statements,[97] or alternatively, based on an independent valuation and set-off against operational costs provided by RO Solutions to ROSE from July 2013 to December 2018 totalling S$512,000.[98]

Issues

35 Mr Xanthopoulos has made multiple and alternate claims. I approach the various issues in the following way:

(a) First, what was the intention of the four men in creating ROSE?

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93 RO DWS at para 13; 3rd Defendant's Closing Submissions ("VL DWS") at para 43.

94 RO Defence at para 175; VL Defence at para 50; RO DWS at paras 13(a) and 218; VL DWS at para 64.

95 RO DWS at para 225; VL DWS at para 73.

96 RO DWS at para 13(b).

97 RO DWS at para 236.

98 RO DWS at para 236; VL DWS at para 81.

(i) What were the terms agreed by the four men?

(ii) Were these terms intended to be distilled and recorded in the written ROSE Agreement, or were they instead intended to form a free-standing Overarching Agreement?

(b) Second, does the ROSE Agreement, properly interpreted, reflect the terms agreed upon by the four men?

(c) Third, and because I answer the second question in the negative:

(i) May extrinsic evidence be used to prove that there was a mistake?

(ii) Was the mistake common or unilateral?

(iii) If there was a mistake such that the ROSE Agreement is to be rectified, how should the ROSE Agreement be rectified?

(d) Fourth, as I hold that the ROSE Agreement should be rectified, may Mr Xanthopoulos still claim restitution on the basis of unjust enrichment from the defendants for his services in respect of the Projects?

(e) Fifth, on the basis of the permissible claims and a proper interpretation of the rectified ROSE Agreement:

(i) Did Mr Xanthopoulos "initiate" the MINOX Project and the Caevest Project within the meaning of cl 5.4 of the ROSE Agreement?

(ii) Is Mr Xanthopoulos able to claim additional compensation for his work on the MODEC Project?

(f) Sixth, with regard to the minority oppression claim against RO Solutions and Mr Lim:

(i) Was Mr Xanthopoulos oppressed as a minority shareholder of ROSE; and

(ii) If so, what is the appropriate remedy?

36 I organise my judgment in three broad sections below. First, I analyse the contractual and restitutionary framework between the parties. The three specific claims hinge on the legal obligations existing between the parties and I deal with these claims in that context. The minority oppression claim is considered subsequently as my findings on the first two issues are relevant to the third.

Analysis on the contractual and restitutionary context

What was agreed by the four men in their negotiations?

37 Mr Xanthopoulos's case rests on an e-mail exchange between Mr Chia, Mr Lim and him from 29 January to 14 February 2012.

38 The object of ROSE was to grow the business of RO Solutions. On 29 January 2012, Mr Chia sent an e-mail to Mr Xanthopoulos with the subject heading "Re: Discussion". He stated in the e-mail that "[t]he key is ROS cannot lose money".[99] In the same e-mail chain, in an e-mail dated 1 February 2012, Mr Xanthopoulos sent an e-mail to the other three men, stating that he was sure

[99] 1 CB 115.

they could "grow the ROS business significantly" and that he was "in general agreement with [their] discussion".[100]

39 As to the terms, on 8 February 2012, Mr Xanthopoulos sent an e-mail addressed to the other three men with the subject heading "NEW ROS Engineering Company Formation" (the "8 February 2012 e-mail"). On the subject of "starting a new ROS conceptual engineering company", he set out terms and conditions such as his receiving 30% equity in the new company, as well as defining the term "finder's fee". He also asked to maintain the existing terms of his contract with "ROS", referring to the RO Systems Agreement.[101] In the same e-mail, Mr Xanthopoulos informed the three men that he had received a signed contract from DRL, and that it was signed with a fictitious company called ABC Company Pte Ltd which would be changed once the new company was formed.[102] There is a "Consulting Agreement" between DRL and ROSE dated May 2012 for ROSE to provide project management and engineering services to DRL from 15 August to 31 December 2012.[103] Mr Chia replied later the same day, agreeing to Mr Xanthopoulos's request for 30% equity in the new company. However, he stated that it was "not fair or acceptable" for the terms of the RO Systems Agreement to be maintained because Mr Xanthopoulos was "already paid as a full time staff" and had been given 30%. He also stated that "BW Offshore" should be excluded from finder's fees as "ROS" already had a strong relationship with them.[104] The next day, on 9 February 2012, Mr Xanthopoulos responded, stating that maintaining the terms of the

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100 1 CB 114–115.

101 1 CB 114.

102 1 CB 114 and 117.

103 1 CB 200.

104 1 CB 126.

RO Systems Agreement was a "requirement of [his]", and that "BW Offshore" had to be included in the finder's fees.[105]

40 The contents of the 8 February 2012 e-mail, with Mr Chia's replies added in *italics and underline* and Mr Xanthopoulos's responses on 9 February 2012 in **bold**, are set out in full below:[106]

> Gents,
>
> Further on subject of starting a new ROS conceptual engineering company, I am outlining some terms that we need to both agree upon. Once agreed, we can proceed to register the company, etc.
>
> Specific Terms & Conditions:
>
> 1. Eli to receive 30% equity in the new company. *Ok* **I am negotiable on this but also plan on using my portion of the equity to give to key engineer(s) to reduce their salary and improve profit margins.**
>
> 2. Maintain existing terms of Eli's Contract with ROS. *This is not fair or acceptable. You are already paid as a full time staff and have been given 30%.* **This is a requirement of mine.**
>
> 3. Suggest we clearly define "Finder's Fee" portion in our existing contract (and for the new company) as follows:
>
> a. For any orders from "NEW" Clients or BW Offshore initiated by ELI and/or his team, ELI to receive 100% of Contract terms. *Ok but BWO excluded as ROS relationship with BWO is already strong.* **This is a requirement of mine – refer to my point above.**
>
> b. For all other orders for modules/packages that ROS do not currently offer to "NEW" or existing Clients, requiring assistance from ELI and/or his team, ELI & ROS to split 50/50 the Contract "Finder's Fee" Terms. *Ok*
>
> 4. Need to address repeat orders from "NEW" Clients and BWO brought in by ELI. *As long as the client is*

105 1 CB 129–130.

106 1 CB 129–130.

> *brought to the table by you and you ensure that contracts are secured, it will be recurring.* **BWO must be included.**
>
> After further consideration, I am suggesting we use the following name for the new company: ROS Process Pte Ltd. *We support your call.* **Again this is only a suggestion based on my experience.**
>
> Regarding Noble Energy Projects, I have received the Signed Contract from DRL Engineering in Houston, who have the contracts for several Noble Energy Gas Projects in the Eastern Mediterranean. Please find it attached. The contract was tentatively signed for a fictitious Company called ABC Company pte Ltd. We can change as soon as we come to agreement on company formation. I will be starting work this week on the NOBLE ENERGY Leviathan FPSO and FLNG projects and will probably have to travel to London next week for kick-off meeting. *We will review contract and provide feedback only after setup of Company has been agreed.* **OK**
>
> Please review and lets [*sic*] try and finalize ASAP.
>
> *We are running a business. Let's ensure that the newco CANNOT INCUR LOSSES. If we are not confident that it can make profits, better drop Noble and look for other opportunities.* **Understood. My plan is to use a portion of my 30% equity and the Finder Fee's [*sic*] to reduce the salary exposure of the Lead Engineers. Thus improving profit margins.**
>
> Best Regards,
>
> Eli Xanthopoulos
>
> Director - Engineering

41 On 11 February 2012, Mr Lim e-mailed Mr Xanthopoulos, copying Mr Chia and Mr Srinivasan. The e-mail, which was addressed to Mr Xanthopoulos and Mr Chia, was intended to cut through the impasse between the two men, and stated that they were "happy for [Mr Xanthopoulos] to keep the previous ROS terms 10K plus commission also ontop [*sic*] of the new Noble salaries", but that "minimum end of the day will need to break even". At the end of the e-mail, he asked, "[d]o we agree on this?"[107]

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107 1 CB 133.

42 On the same day, Mr Xanthopoulos replied "[o]f course I agree", before going on to ask about registering the new company and getting an office space, reiterating the premise of the new company:[108]

> I very firmly believe that with a strong Engineering Company behind ROS with FPSO knowledge and capability, we can overcome the lack of FPSO Module experience we want to pursue. And I am sure we can convince our FPSO clients. I know it will come at a cost but please trust me in that I will do whatever it takes to manage.

43 Mr Lim then replied later the same day, thanking Mr Xanthopoulos for his agreement. By the same e-mail, he asked Mr Chia to "set up the company, inject 50 or 100 K first for running capital". He proposed three names, including "ROS Engineering", and encouraged the fast build-up of the new engineering company:[109]

> Will need you [*ie*, Mr Xanthopoulos] to push getting more engineers on board, as this will support the biz and start the ball rolling, all the best my friend! and for any biz the first year is most crucial, got to get the sales in fast to cover the cost and convince clients without track record and competitors will be out to kill etc.....but youre [*sic*] almost there!

44 On 14 February 2012, Mr Xanthopoulos replied, agreeing to the name "ROS Engineering" for the new company.[110] He later sent another e-mail addressed to Mr Chia, asking for the terms to be "in writing" so that they were "all on the same page".[111] Mr Chia then e-mailed Mr Xanthopoulos stating that he would have a 30% share in the new company, that the RO Systems Agreement would be terminated as it would be replaced by an agreement with

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108 1 CB 137.

109 1 CB 142.

110 1 CB 148.

111 1 CB 154.

ROSE, and that Mr Xanthopoulos would have to "revise the agreement to reflect what had been agreed".[112]

45 The key terms agreed on by the four men on e-mail as at 14 February 2012 were therefore as follows:

(a) The terms of the RO Systems Agreement would be maintained. Accordingly, Mr Xanthopoulos would earn a monthly salary of S$10,000 (*per* cl 5.1 of the RO Systems Agreement) albeit as the managing director of ROSE. Mr Xanthopoulos was entitled to keep the new salaries he received from independent sources such as DRL.

(b) Mr Xanthopoulos would receive a 30% share of the equity in ROSE, which was intended to be an engineering company leveraging on his FPSO network, expertise and experience.

(c) For projects initiated by him involving new clients, Mr Xanthopoulos would earn commissions at the rates set out in the RO Systems Agreement. For other projects involving modules or packages which RO Solutions did not at that time offer, which required his or ROSE's assistance, Mr Xanthopoulos would earn 50% of the commission.

What legal effect did the parties' agreement have?

46 A critical question is whether the parties intended their agreement to be distilled into a written agreement, or whether they intended their e-mails to have independent legal effect. Mr Xanthopoulos contends that the discussions

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112 1 CB 154.

between the four men from November 2011 to February 2012 gave rise to a free-standing Overarching Agreement.

47 The facts do not, however, support Mr Xanthopoulos's case, for the following reasons. In order for a binding agreement to be formed, there must be a single point in time when the necessary consensus *ad idem* is reached: see *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 ("*Day Ashley Francis*") at [46]. There must be a "deeper appreciation of the context of the agreement" by examining "the whole course of negotiations", and a contract is formed at the point of "unqualified acceptance" (*Day Ashley Francis* at [47]). Identifying such a precise point of formation is important not only because it affects matters such as the applicable limitation period for contractual actions, but also because it is "necessary in order to give commercial certainty to the parties that their continuing negotiations would not be taken to be a binding contract unless there was a clear acceptance at some point in time" (*Day Ashley Francis* at [48]–[49]). It is important to ensure that a party "who subjectively views that he is merely engaging in negotiations is not unfairly bound by a contract he did not subjectively intend to enter" (*Day Ashley Francis* at [49]). Thus, Mr Xanthopoulos must be able to pinpoint a precise point in time that a free-standing agreement materialised from these negotiations.

48 In my view, Mr Xanthopoulos has not succeeded in establishing this. The e-mails show that the four men intended to distil the agreed terms into writing. On 14 February 2012, Mr Xanthopoulos wrote that he "would like to get in writing the terms we agreed to so we are all on the same page" and asked how they should go about doing this.[113] In Mr Chia's reply, he informed Mr Xanthopoulos that the RO Systems Agreement was to be terminated and

[113] 1 CB 154.

replaced by "an agreement with [ROSE]". Mr Chia also instructed Mr Xanthopoulos to "revise the agreement to reflect what had been agreed".[114] Clause 12 of the ROSE Agreement, which states that the agreement superceded previous agreements and constituted the entire agreement between parties, should be read in this light. On 4 April 2012, Mr Xanthopoulos sent the revised draft of the ROSE Agreement to Mr Chia, Mr Lim and Mr Srinivasan, stating in his covering e-mail that he had "revised [his] existing agreement with ROS to reflect [his] new employment agreement with [ROSE]".[115] This draft became the ROSE Agreement. The necessary consensus *ad idem* envisaged by *Day Ashley Francis* at [46] was found in their agreement with the written draft ROSE Agreement after 4 April 2012.

49 In this context, I deal with Mr Xanthopoulos's pleading that the Overarching Agreement was formed as a legally binding agreement when his offer of terms was accepted by Mr Lim and/or Mr Chia by e-mail on 11 February 2012 and 14 February 2012.[116] He also goes on to plead that "[t]he terms of the above agreement [*ie*, the Overarching Agreement] and common understanding were reflected in a ROSE Service Agreement dated 1 May 2012".[117] This refers to the ROSE Agreement. Mr Xanthopoulos thus appears to plead that both the Overarching Agreement and the ROSE Agreement were valid agreements. In his closing submissions, counsel for Mr Xanthopoulos argued that because the Overarching Agreement concluded *via* the e-mail negotiations was not expressly stated to be "subject to contract", a valid contract was formed between the four men in February 2012, and the subsequent written

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114 1 CB 154.

115 1 CB 172.

116 SOC at para 23.

117 SOC at para 24.

ROSE Agreement was "an entirely different agreement".[118] This ties in with Mr Xanthopoulos's secondary argument that the written ROSE Agreement, being ineffective in recording the earlier Overarching Agreement concluded over e-mail, could not supersede the Overarching Agreement.[119]

50 My reasons at [48] above explain that this position is not borne out by the evidence. The four men intended for their final agreement to be in written form and the ROSE Agreement was that written form.

51 Accordingly, I hold that the Overarching Agreement did not have any independent legal effect. The question that follows, therefore, is whether the ROSE Agreement reflected the parties' understanding of what they agreed on e-mail.

Did the ROSE Agreement reflect the parties' intention?

52 Mr Xanthopoulos's case is that the ROSE Agreement reflected either a common mistake on the part of the relevant parties or a unilateral mistake on his part. I deal preliminarily with the role of extrinsic evidence in this context.

Role of extrinsic evidence

53 The defendants' contention is that parol evidence should be excluded. Extrinsic evidence may be considered in determining whether a mistake has been made in the contract that requires rectification: see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [56] (citing Lord Hoffmann's

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118 PWS at para 92; Transcript, 28 June 2021 at p 6 lines 20–30 and p 14 lines 1–11.

119 Transcript, 28 June 2021 at p 14 lines 12–16.

restatement of the applicable principles in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 ("*ICS*") at 912–913) and [132(f)]. As Lord Hoffmann observed in *ICS* at 913, the relevant background "may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax". Where extrinsic evidence leads the court to conclude that parties have used the wrong words, rectification may be an appropriate remedy (*Zurich Insurance* at [123] and [132(f)]).

54 Mr Xanthopoulos bears the burden of showing "convincing proof" that the ROSE Agreement did not accord with the parties' continuing common intention at the time of its execution and that his proposed changes will accord with that intention. In producing "convincing proof", all relevant evidence is admissible, including declarations of subjective intent: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 ("*Yap Son On*") at [64]–[65]. As such, the e-mail negotiations are relevant and admissible evidence for the purposes of Mr Xanthopoulos's alternative argument for rectification of the ROSE Agreement because of either common or unilateral mistake.

Whether the facts show any mistake

55 Mr Xanthopoulos's contention is that the ROSE Agreement did not reflect that it was intended to regulate the dealings and payments between Mr Xanthopoulos and RO Solutions.[120] To analyse whether this was so, we return to what parties agreed, summarised at [45].

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120 PWS at para 126.

56 In the RO Systems Agreement, RO Systems was the contracting party. No clear distinction was made between RO Solutions and RO Systems in the RO Systems Agreement. Nothing turned on the distinction because RO Systems was wholly owned by RO Solutions. All three directors of RO Solutions admitted that "ROS" was used to refer to both RO Solutions and RO Systems interchangeably. Mr Chia stated that RO Systems and RO Solutions were "the same ROS".[121] Similarly, Mr Srinivasan said that when he used the name "ROS", "in [the] back of [his] mind, [he did not] think about whether [he was] referring [to RO] Systems or [RO] Solutions".[122] Mr Lim said that when he used "ROS", he could be referring to both RO Systems and RO Solutions.[123] Mr Chia explained at trial that RO Solutions was formed so that he, Mr Lim and Mr Srinivasan could migrate their business over from RO Systems. The business in RO Systems could slowly be wound down, whilst they took on new business in RO Solutions.[124] In the interim period when RO Solutions had not yet been placed on their customers' approved vendor lists, they would bid for new contracts under RO Systems, which was on those lists.[125] Mr Srinivasan's and Mr Lim's evidence was that RO Systems was a "legacy company" that was "tasked with performing ongoing contracts".[126] The same logo was used by both RO Systems and RO Solutions.[127]

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121 Transcript, 23 March 2021 at p 59 lines 29–32.

122 Transcript, 31 March 2021 at p 69 lines 11–14.

123 Transcript, 5 April 2021 at p 62 lines 3–14.

124 Transcript, 23 March 2021 at p 56 line 21 to p 57 line 5.

125 Transcript, 23 March 2021 at p 93 line 28 to p 94 line 9.

126 Mr Srinivasan's AEIC at para 32; Mr Lim's AEIC at para 32.

127 Transcript, 23 March 2021 at p 58 lines 4–7, read with 1 CB 17.

57 It is in this context that Mr Lim's instruction to "keep the previous ROS terms" in his e-mail dated 11 February 2012 should be considered. The lack of distinction between different corporate vehicles appears to have carried over to the discussions leading up to the ROSE Agreement and to ROSE after its formation in March 2012. RO Solutions, RO Systems and ROSE operated as a group and not independently. At trial, Mr Chia testified that the three companies were operated by "the same team of people" and corporate functions such as finance and human resources were "shared across the entire group".[128] When Mr Chia and Mr Xanthopoulos met with potential clients, they marketed the three companies together as a group because they were not sure, at the time of marketing, which company would be the best entity to bid for each job.[129] Mr Chia explained that RO Solutions was the "strongest entity" in the ROS Group to secure big new projects because it had the "most net tangible assets" and could "pass the financial test of [their] customers".[130] Mr Chia's understanding was that Mr Xanthopoulos was to be paid a commission by whichever company in the ROS Group he secured a project for, because "the key [was] to use the best company, the most suitable company, to bid for the project and win the project".[131]

58 Mr Xanthopoulos's understanding that he would be paid commissions by whichever company in the ROS Group he secured projects for is borne out by his responses to Mr Chia on 9 February 2012, as set out in bold at [40] above. In that e-mail, Mr Xanthopoulos stated that his "plan [was] to use a portion of [his] 30% equity and the Finder Fee's [*sic*] to reduce the salary exposure of the

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128 Transcript, 23 March 2021 at p 119 lines 2 and 16–22.

129 Transcript, 23 March 2021 at p 120 lines 13–17.

130 Transcript, 23 March 2021 at p 92 lines 20–32.

131 Transcript, 23 March 2021 at p 116 line 31 to p 117 line 11.

Lead Engineers", thereby "improving profit margins". This was in response to Mr Chia's concern that ROSE should not incur losses.[132] When this response is read in context, it indicates that Mr Xanthopoulos must have envisioned, at the time of the ROSE Agreement, that his commission could be paid by a company in the ROS Group other than ROSE. If his commission had to be paid by ROSE, then (as Mr Lim acknowledged[133]) this amount would appear as a liability on ROSE's books. It is unclear how that could have assisted in improving ROSE's profit margins or preventing ROSE from incurring losses.

59 The various contradictions in the defendants' case bring out this point clearly. The defendants' case is that the relationship between Mr Xanthopoulos, RO Solutions and ROSE was governed *entirely* by the ROSE Agreement at all material times[134] and that the ROSE Agreement was the only valid agreement between them.[135] This literal interpretation has three defects.

60 First, RO Solutions would have no commercial relationship with Mr Xanthopoulos. This contradicts the intention of the parties to replace the RO Systems Agreement with another agreement encompassing a new joint venture.

61 Second, cl 5.4 of the ROSE Agreement would not make commercial sense. With ROSE defined as the "Company" within cl 5.4, Mr Xanthopoulos would only be paid commissions (by ROSE) for projects initiated by him and secured by *ROSE*, excluding projects secured by RO Systems or RO Solutions.

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132 1 CB 130.

133 Transcript, 5 April 2021 at p 77 lines 14–30.

134 RO DWS at para 12(a).

135 Transcript, 28 June 2021 at p 39 lines 10–11.

Indeed the defendants raised at trial the argument that ROSE could be the company to secure the project and thereafter subcontract the project on a back-to-back basis to RO Solutions, or could make a joint bid with RO Solutions.[136] This argument was not pleaded or mentioned in the defendants' affidavits of evidence-in-chief and was raised for the first time at trial, during the cross-examination of Mr Xanthopoulos.[137] It was in any event untenable. ROSE was a new company with no track record, whereas RO Systems, and increasingly RO Solutions, had an established client base and were on customers' approved vendor lists.[138] Mr Srinivasan agreed that ROSE could not have secured contracts for large-scale FPSO projects unless it was supported by RO Solutions.[139] Existing clients of RO Solutions, such as BW Offshore, would want to award a main contract to RO Solutions (with which it had an established relationship) and not to ROSE.[140] Further, as Mr Chia explained, being on customers' approved vendor lists was "extremely important" in bidding for jobs in this business and only RO Systems and RO Solutions were on these approved vendor lists. Nor would it, according to Mr Chia, "make sense for [them] in ROS to allow [ROSE] to jump onto the approved vendor list and to compete with RO Solutions directly".[141] RO Solutions was thus far better placed to secure these projects. Moreover, ROSE was positioned as a conceptual engineering or engineering consultancy company and was not meant to carry

136 Transcript, 30 March 2021 at p 88 lines 16–28 and p 90 lines 5–8.

137 PWS at para 75; Transcript, 28 June 2021 at p 35 lines 27–32.

138 Transcript, 31 March 2021 at p 126 lines 10–19 (Mr Srinivasan).

139 Transcript, 31 March 2021 at p 126 lines 26–30 and p 127 at lines 1–12.

140 Transcript, 1 April 2021 at p 30 lines 17–32.

141 Transcript, 24 March 2021 at p 121 lines 13–22.

out fabrication work itself.[142] As repeatedly expressed by Mr Chia, the parties' ultimate aim was to grow the business of the ROS Group as a whole so that they would benefit as shareholders.[143] The reason for paying Mr Xanthopoulos commissions for referrals, Mr Chia explained, was to encourage him "not just to grow ROSE using whatever means he can in ROSE, but also [to] help us in [RO] Systems and [RO] Solutions to grow [their] business as much as [they could]".[144]

62 Third, the defendants' case assumes that Mr Xanthopoulos's engineering work for RO Solutions is "in-house work" within the meaning of cl 5.5 of the ROSE Agreement. That it was RO Solutions which paid the additional S$15,000 a month was not disputed. If the liability was that of ROSE and not RO Solutions, it would indicate that RO Solutions paid Mr Xanthopoulos without any proper legal basis. Rather, what is plain is that work for RO Solutions was interpreted by all concerned to be "in-house".[145]

The specific mistake

63 All these reasons point to RO Solutions, and not ROSE, being the correct contracting party to the ROSE Agreement. Confusion between entities is seen throughout the ROSE Agreement. Even though ROSE is defined as the "Company" in the preamble to the ROSE Agreement, the clauses that remained unamended from the old RO Systems Agreement used the word in the context

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142 Mr Xanthopoulos's AEIC at para 38; Transcript, 5 April 2021 at p 80 lines 5–16 (Mr Lim).

143 Transcript, 23 March 2021 at p 72 lines 24–27 and p 73 lines 2–4; Transcript, 24 March 2021 at p 94 lines 1–2 and 19–20 and p 101 at lines 20–24; Transcript, 25 March 2021 at p 78 lines 24–26 and p 79 lines 22–24.

144 Transcript, 24 March 2021 at p 136 lines 10–16.

145 Transcript, 1 April 2021 at p 59 lines 16–18 and p 61 lines 1–8.

of RO Solutions. Clause 5.1 is the same in both contracts. It states, specifically, that Mr Xanthopoulos's salary would be reviewed "with reference to the progress of the business of the Company and the Group Companies".[146]

64 At the same time, the fresh clauses are not consistent, and reflect the drafting of the legally untrained. Clause 5.2 deals with Mr Xanthopoulos's equity in "ROS Engineering Pte. Ltd.", ignoring any use of the definition of the "Company" in the preamble.

65 Clause 5.4 is an amalgam of cl 5.2 of the original RO Systems Agreement and an additional half. The first half, taken from the RO Systems Agreement, envisaged RO Solutions as the "Company":[147]

> 5.4 A Commission in addition to the salary as provided in Clause 5.1 shall be as follows for any projects initiated by Appointee and secured by Company:
>
> 5% of the value of the contract up to S$5M (million).
>
> 3% of the value of the contract up to S$5M~50M
>
> 2% of the value of the contract up to S$50~100M
>
> 1% of the value of the contract up to S$100M
>
> The amount shall be computed as follows: As an example, a purchase order in the amount of 8 million dollars would generate a Commission of 5 million x 5% = S$250,000, plus 3 million at 3% = S$90,000 for a total of S$340,000.

Mr Xanthopoulos's freshly drafted second half deals specifically with RO Solutions and RO Systems by name and attempts a definition of the "ROS Group" which ought to have first been introduced together with the other terms

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146 1 CB 194.

147 1 CB 194.

defined in cl 1 and propagated at appropriate points throughout the ROSE Agreement.

66 Clauses 5.3 and 5.5 reflect Mr Xanthopoulos's attempt to redraft cll 4.1 and 4.2 of the RO Systems Agreement. Clause 4.1 provides that Mr Xanthopoulos's "[s]ervices provided to help execute any projects are excluded in this agreement but can be negotiated in writing along with remuneration for [the] same on a case by case basis".[148] Clause 4.2 states that Mr Xanthopoulos "shall during his employment under this Agreement perform the duties and exercise the powers which the Directors or the Board may from time to time properly assign to him or in connection with the business of the Company and its Group Companies, and without prejudice to the generality of the foregoing".[149] At cl 5.5, Mr Xanthopoulos introduces the word "in-house" without referring to whether this means RO Solutions, RO Systems or ROSE.

Was the mistake common or unilateral?

67 Mr Xanthopoulos seeks equitable and not common law rectification. To prove common mistake, he must show that the parties were in complete agreement on the relevant term, but by an error had recorded that term incorrectly. This is to be ascertained objectively, by looking at the parties' outward acts and then comparing them with the document which they have signed: *OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another v Crest Capital Asia Pte Ltd and others* [2020] SGHC 142 at [328]. The elements of rectification based on common mistake are (*Yap Son On* at [67]):

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148 SOC at para 16; RO Defence at para 43; 1 CB 109.

149 SOC at para 14; RO Defence at para 41; 1 CB 109.

(a) the parties had a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified;

(b) there was an outward expression of accord;

(c) the intention continued at the time of the execution of the instrument sought to be rectified; and

(d) by mistake, the instrument did not reflect that common intention.

68 In my judgment, the mistake was common, not unilateral. The e-mails from 29 January to 14 February 2012 show that all four men intended to appoint Mr Xanthopoulos as the managing director of ROSE, but ROSE was a conceptual engineering company designed to benefit RO Solutions, either directly, or through RO Systems. Mr Xanthopoulos's referral services and "in-house work", in the same vein, were intended to grow the business of RO Solutions, either directly, or through RO Systems. What the four men envisaged was an agreement between, on the one hand, RO Solutions as the majority shareholder of ROSE (acting through Mr Chia, Mr Srinivasan and Mr Lim as its controlling minds), and on the other, Mr Xanthopoulos as the minority shareholder of ROSE. In respect of the ROSE Agreement, Mr Chia first made the mistake by asking Mr Xanthopoulos to amend the RO Systems Agreement to change the contracting party to ROSE, and Mr Xanthopoulos then made the same mistake by doing so. This fundamental mistake permeated the ROSE Agreement. The subsequent conduct of the four men also reflects that they were operating under this mistake at the time that the ROSE Agreement was signed and in the years that followed after.

The appropriate rectifications

69 The mistake regarding the proper contracting party permeated the ROSE Agreement, was common on the part of all four men, and grounds Mr Xanthopoulos's claim for equitable rectification. The rectifications that are appropriate therefore would delineate the entities properly in the clauses in dispute. For the purposes of the suit, the necessary rectifications would be the following: RO Solutions, rather than ROSE, would be party to the ROSE Agreement. RO Solutions should be referred to as the "Company" in the preamble. Thus "Company" in the first half of cl 5.4 would refer to RO Solutions, and RO Systems should be included because these were the two companies on various vendor lists. The term "in-house work" within cl 5.5 would refer to work done within the entire ROS Group, which Mr Xanthopoulos had defined in cl 5.4(b). The specific changes to cll 5.4 and 5.5 (the clauses relevant to the three specific claims) should be as follows, with two amendments in bold italics (cl 5.3 is set out here only for the purposes of reference in relation to cl 5.5):

> 5.3 Appointee to receive 100% of any consulting work fee's [*sic*] billed and performed directly by himself.
>
> 5.4 A Commission in addition to the salary as provided in Clause 5.1 shall be as follows for any projects initiated by Appointee and secured by Company ***or RO Systems***:
>
> 5% of the value of the contract up to S$5M (million).
>
> 3% of the value of the contract up to S$5M~50M
>
> 2% of the value of the contract up to S$50~100M
>
> 1% of the value of the contract up to S$100M
>
> The amount shall be computed as follows: As an example, a purchase order in the amount of 8 million dollars would generate a Commission of 5 million x 5% = S$250,000, plus 3 million at 3% = S$90,000 for a total of S$340,000.

> To further clarify the commission described above and to preclude any future misunderstanding:
>
> a. For any orders from "NEW" Clients initiated by Appointee and/or his team, Appointee to receive 100% of Commission described above.
>
> b. For all other orders for modules/packages that Rotating Offshore Solutions Pte. Ltd., Rotating Offshore Systems Pte. Ltd. or other affiliated group businesses (refer to all aforementioned as "ROS Group") do not currently offer to "NEW" or existing Clients, requiring assistance from Appointee and/or his team, Appointee shall receive 50% of Commission described above.
>
> 5.5 Regarding compensation for managing & executing of [*sic*] any in-house work ***for the ROS Group***. Appointee agrees not to charge any additional fee assuming he is billing for consulting work being performed directly by himself as per 5.3 above. In the event that Appointee is not billing or performing consulting work as in 5.3 above, then reasonable compensation agreed by both parties shall be paid to Appointee to manage and execute this work. If there is no in house work to manage/execute, then only the terms of 5.1 and 5.4 shall apply.

70 In making these rectifications, I do not include any of the further and more wide-ranging amendments requested by Mr Xanthopoulos in Annex A of his Statement of Claim. Counsel for Mr Xanthopoulos confirmed in his oral closing submissions that he was seeking, amongst his alternative claims, a rectification of the contracting party to the ROSE Agreement,[150] and counsel for the defendants agreed that paragraphs 87 and 89 and prayer (2) of the Statement of Claim are broad enough to envisage the amendment of the contracting party.[151] The rectifications made above at [69] are sufficient to fulfil the intention of the four men as summarised at [45]. I have also held, at [48], that the four men intended for this rectified ROSE Agreement to govern their

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150 Transcript, 28 June 2021 at p 68 lines 3-17.

151 Transcript, 28 June 2021 at p 70 lines 22-29.

relationship. The question that follows, then, is whether this rectified ROSE Agreement is exhaustive in setting out their obligations to each other, or whether, as Mr Xanthopoulos contends, restitutionary obligations also apply.

Claims in unjust enrichment

71 Mr Xanthopoulos's claim in unjust enrichment asserts that the ROSE Agreement should be "construed such that it *does not preclude* RO Solutions from paying such fees [*ie*, fees for the Projects] under the Overarching Agreement *or* in unjust enrichment" [emphasis in original].[152] This is because the ROSE Agreement, on the defendants' construction (and in its unrectified form), "posits arrangements between [Mr Xanthopoulos] and ROSE only", and "leaves a lacuna as to any legal relationship between [Mr Xanthopoulos] and RO Solutions" [emphasis in original omitted].[153]

72 As I have found that the ROSE Agreement should be rectified such that Mr Xanthopoulos would be paid by any company in the ROS Group for the services he rendered to that company, the basis of his unjust enrichment claim falls away. The ROSE Agreement, as rectified, does not leave any lacuna as to the legal relationship between Mr Xanthopoulos and RO Solutions. On the contrary, the ROSE Agreement was a valid contractual arrangement which governed the relationship between him and RO Solutions and provided for the payment of his fees at the material time.

73 It follows from this that the law of restitution for unjust enrichment has no part to play in this matter. In *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*"), the Court

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152 PWS at para 117.

153 PWS at para 120.

of Appeal rejected the unjust enrichment claim on the ground that the plaintiffs had contracted for a particular payment to be made by one of the defendants ("Antig") to a third party ("OAFL"). Under the contract between the plaintiffs and Antig, as interpreted by the Court of Appeal, Antig was contractually obliged to make the payment to OAFL and it did so. To allow the plaintiffs to recover that payment from OAFL *via* unjust enrichment "would be to undermine the contractual bargain under the [contract] which the [p]laintiffs and Antig agreed on" (*Alwie Handoyo* at [103]–[104]).

74 The Court of Appeal cited the House of Lords decision of *Pan Ocean Shipping Co Ltd v Creditcorp Ltd* [1994] 1 WLR 161 ("*Pan Ocean*"), which involved a valid and subsisting contract between the plaintiff (the charterer) and another company (the shipowner), under which that company had assigned its right to the benefit of payment to the defendant (the shipowner's assignee). The Court of Appeal at [105]–[106] of *Alwie Handoyo* agreed with the following remarks made by Lord Goff of Chieveley in *Pan Ocean* at 164 and 166:

> [A]s between shipowner and charterer, there is a contractual regime which legislates for the recovery of overpaid hire. *It follows that, as a general rule, the law of restitution has no part to play in the matter; the existence of the agreed regime renders the imposition by the law of a remedy in restitution both unnecessary and inappropriate.* Of course, if the contract is proved never to have been binding, or if the contract ceases to bind, different considerations may arise, as in the case of frustration …. With such cases as these, we are not here concerned.
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> …
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> I am of course well aware that writers on the law of restitution have been exploring the possibility that, in exceptional circumstances, a plaintiff may have a claim in restitution when he has conferred a benefit on the defendant in the course of performing an obligation to a third party (see, e.g., Goff and Jones on the Law of Restitution, 4th ed. (1993), pp. 55 et seq., and (for a particular example) Burrows on the Law of Restitution, (1993) pp. 271-272). But, quite apart from the fact that the existence of a remedy in restitution in such

> circumstances must still be regarded as a matter of debate, *it is always recognised that serious difficulties arise if the law seeks to expand the law of restitution to redistribute risks for which provision has been made under an applicable contract.*
>
> [emphasis added]

75 The contracts in *Alwie Handoyo* and *Pan Ocean* were concluded between the plaintiffs and a third party. These principles would apply with even greater force where the plaintiff and the defendant have a contract. Party autonomy would be imperative. For example, the English Court of Appeal in *MacDonald Dickens & Macklin (a firm) v Costello and others* [2012] QB 244 at [23], in a passage cited in *Alwie Handoyo* at [108], stated that the general rule of upholding parties' contractual arrangements "reflects a sound legal policy which acknowledges the parties' autonomy to configure the legal relations between them and provides certainty". In a similar vein, Prof Tang Hang Wu in his chapter in *Research Handbook on Unjust Enrichment and Restitution* (Elise Bant, Kit Barker and Simone Degeling eds) (Edward Elgar Publishing, 2020) at pp 103–104 states that unjust enrichment "may usually only operate if there is no valid contract between the claimant and the defendant", and that it is "only in exceptional cases that an unjust enrichment claim may operate where there is a subsisting contract", as it is "not for the courts to re-write the contract between the parties" and "upset the agreed distribution of risks". Prof Tang goes on to observe (at pp 105–106 and 107) that for unjust enrichment to apply where there is a contract between the parties, a claimant must first be able to establish that the contract is void or rescinded due to a vitiating factor or discharged due to breach, or that there is a gap in the contract. If not, "then contractual principles should govern and the unjust enrichment argument would be a non-starter" (at pp 107–108).

76 Therefore, I find that the rectified ROSE Agreement precludes Mr Xanthopoulos's claim for fees for the Projects based on unjust enrichment. Clauses 5.4 and 5.5 of the ROSE Agreement, as rectified, provide for Mr Xanthopoulos's remuneration for referrals and in-house work done for any company in the ROS Group. Such remuneration is governed by the four corners of the rectified ROSE Agreement. In these circumstances, the contractually agreed conditions for Mr Xanthopoulos's remuneration should be upheld, and he cannot instead opt to claim these fees from RO Solutions on a restitutionary basis.

Analysis on the three specific claims

77 In the result, Mr Xanthopoulos is only able to claim against RO Solutions in respect of fees that are owing under the rectified ROSE Agreement. It is in this context that I deal with Mr Xanthopoulos's claims in respect of each of the Projects in turn.

Claims under cl 5.4 of the ROSE Agreement

78 Clause 5.4 of the ROSE Agreement, as rectified, entitles Mr Xanthopoulos to claim commissions for any projects "initiated" by him and "secured" by the relevant company in the ROS Group.

The MINOX Project

79 Mr Xanthopoulos claims a commission for referring the MINOX Project to RO Solutions. He asserts that in or around July 2014, he engaged Mr Knut Hvidsand ("Mr Hvidsand"), the vice president of MINOX. He then referred the MINOX Project to RO Solutions and assisted in the formal presentations of RO Solutions' capabilities to MINOX. Eventually, RO Solutions secured the

MINOX Project.[154] RO Solutions and ROSE contend that Mr Xanthopoulos did not refer the MINOX Project to RO Solutions. They argue that it was Mr Hvidsand who initiated contact with RO Solutions for the MINOX Project.[155]

(1) Mr Hvidsand's evidence

80 Mr Xanthopoulos contends that Mr Hvidsand had known him since 2007 or 2008 in a work capacity before he joined the ROS Group, when he was working at Prosafe Production Pte Ltd.[156] Mr Hvidsand did not dispute this under cross-examination,[157] but he qualified this by stating that his "main contact" had been a different person and that he had only met Mr Xanthopoulos in the corridors and did not remember having any meetings with him at this time.[158] Rather, Mr Hvidsand was of the view that he had met Mr Lim around 2007, and he approached RO Solutions because of Mr Lim.[159]

81 Mr Xanthopoulos argues that Mr Hvidsand's and the defendants' evidence on this issue is unreliable for several reasons.

(a) First, Mr Hvidsand states in his evidence that he had met Mr Lim around 2007.[160] He then states that he was introduced to RO Solutions through Mr Lim and that he was informed that RO Solutions "had deep

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154 PWS at paras 158–159.

155 RO DWS at paras 12(d) and 187.

156 PWS at para 162.

157 Transcript, 25 March 2021 at p 102 lines 1–17.

158 Transcript, 25 March 2021 at p 101 lines 11–20.

159 Affidavit of Evidence-in-Chief of Knut Hvidsand ("Mr Hvidsand's AEIC") at paras 13–14.

160 Mr Hvidsand's AEIC at para 13.

expertise and experience in, among other things, the construction and fabrication of large floating production process units as well as in handling large scale off-loading projects".[161] This was corroborated by Mr Lim's evidence.[162] Mr Xanthopoulos argues that this is unreliable as RO Solutions did not even exist in 2007; only its predecessor company (East Asia Energy) did,[163] a fact that was testified to by Mr Lim.[164] He further points to the fact that RO Solutions only took on its first MOPU project in 2014 and its first large module fabrication for an FPSO in 2015,[165] which Mr Lim confirmed.[166] Under cross-examination, Mr Lim accepted that this meant that his statement to Mr Knut that RO Solutions had deep expertise in the construction and fabrication of large FPSO storage and in handling large scale off-loading projects, in his affidavit of evidence-in-chief, was incorrect.[167]

(b) Second, Mr Xanthopoulos asserts that Mr Hvidsand's evidence on his contact with Mr Lim are bare assertions.[168] Mr Hvidsand asserts that he met with Mr Lim in early June 2014 and again in August 2014.[169] Mr Xanthopoulos argues that there are no notes or e-mails relating to any of these meetings, and that although Mr Hvidsand claims that he relied on his notes, none of these have been disclosed. As such, he

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161 Mr Hvidsand's AEIC at para 14.

162 Mr Lim's AEIC at para 158.

163 PWS at para 164(a).

164 Transcript, 5 April 2021 at p 93 lines 1–5.

165 PWS at para 164(b).

166 Transcript, 5 April 2021 at p 95 lines 7–13.

167 Transcript, 5 April 2021 at p 95 lines 18–24.

168 PWS at para 165.

169 Mr Hvidsand's AEIC at paras 21–22.

submits that an adverse inference should be drawn against Mr Hvidsand.[170]

(c) Third, Mr Xanthopoulos submits that Mr Hvidsand's evidence is contradicted by contemporaneous documents.[171] First, Mr Hvidsand claimed that he did not meet Mr Xanthopoulos in August 2014 in his affidavit of evidence-in-chief,[172] yet there is an e-mail dated 25 September 2014 (the "25 September 2014 e-mail") that shows otherwise as it refers to "[their] discussion in Singapore last month".[173] When shown this e-mail, Mr Hvidsand explained that he had lunch with Mr Xanthopoulos, Mr Lim and Mr Srinivasan, and that Mr Xanthopoulos had brought up the MOPU D18 Project.[174]

82 Mr Hvidsand and Mr Lim both had points of poor recall. However, Mr Xanthopoulos bears the burden of proving that he was the one who referred the MINOX Project to RO Solutions. He does not raise more than bare assertions. The relevant e-mail correspondence with MINOX does not support these assertions, but rather, those of the defendants.

(2) E-mail correspondence

83 Mr Xanthopoulos further relies on the 25 September 2014 e-mail from Mr Hvidsand which references the August 2014 discussion between himself and

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170 PWS at para 165.

171 PWS at para 167.

172 Mr Hvidsand's AEIC at paras 23(c) and 28.

173 Core Bundle of Documents, Vol 2 ("2 CB") 630.

174 Transcript, 25 March 2021 at p 115 line 19 to p 116 line 23.

Mr Hvidsand.[175] MINOX first evinced its intention to award the contract for the MINOX Project to RO Solutions in an e-mail dated 29 August 2014.[176] When these two e-mails are read together, Mr Xanthopoulos argues that this shows that it was he who had brought the MINOX Project to RO Solutions.[177] But this evidence is equivocal on whether Mr Xanthopoulos had referred the MINOX Project to RO Solutions. First, the 25 September 2014 e-mail referred to the *MOPU D18 Project*, not the MINOX Project. Further and more importantly, by this time, there were already discussions between MINOX and RO Solutions a month prior in July 2014.

84 These discussions between MINOX and RO Solutions are found in an e-mail chain from 8 to 28 July 2014. While Mr Xanthopoulos and Mr Lim were copied on this e-mail chain, they did not participate in the discussions – rather, it was Mr Srinivasan and two other RO Solutions employees communicating with MINOX.[178] The dates of these e-mails corroborate Mr Hvidsand's evidence that he had agreed with Mr Lim that RO Solutions would make its first bid for the MINOX Project on 4 July 2014.[179] Furthermore, Mr Xanthopoulos was not copied on any of these e-mails until Mr Srinivasan copied him on an e-mail dated 25 July 2014 which arranged the meeting in August 2014.[180] This further supports the position that the meeting in August 2014 was not with Mr Xanthopoulos alone, but rather, with the whole RO Solutions team.

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175 2 CB 630.

176 5 AB 4084.

177 PWS at paras 169 and 172.

178 2 CB 556–565.

179 Mr Hvidsand's AEIC at para 21.

180 2 CB 557.

Mr Xanthopoulos, at this point in time, was on his S$15,000 monthly fee arrangement with RO Solutions.

85 In totality, the e-mails do not support Mr Xanthopoulos's case. The only e-mail he can point to is the 25 September 2014 e-mail which makes a vague reference to a discussion in August 2014. Mr Srinivasan's e-mail on 25 July 2014 suggests that this discussion was not with Mr Xanthopoulos alone, which takes the weight out of any suggestion that it was he who led MINOX to evince its intention to award the contract to RO Solutions in the e-mail dated 29 August 2014. Importantly, the July 2014 e-mails run completely contrary to Mr Xanthopoulos's case that he had engaged Mr Hvidsand around that time. The e-mails show that there were ongoing discussions between other members of RO Solutions and MINOX, and Mr Xanthopoulos was not even copied on these e-mails until the end of July 2014.

The Caevest Project

86 Mr Xanthopoulos also claims a commission for referring the Caevest Project to RO Solutions. He contends that he did so through Mr Ernest Enver ("Mr Enver") of Caevest. On or around 30 April 2016, Mr Enver had contacted him regarding the Caevest Project and he had informed Mr Enver that RO Solutions was interested in participating in the project. Mr Enver then sent an e-mail to Mr Xanthopoulos alone with a request for information and a request for a quotation for the Caevest Project. Mr Xanthopoulos forwarded this e-mail to Mr Srinivasan and Mr Chia. After this, Mr Srinivasan followed up with an e-mail to Mr Enver expressing RO Solutions' interest in the Caevest Project and ultimately secured the Caevest Project on behalf of RO Solutions.[181]

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181 PWS at paras 149–150.

87 It is clear that Mr Enver had contacted Mr Xanthopoulos on 30 April 2016 through e-mail and that Mr Xanthopoulos had forwarded this e-mail to Mr Srinivasan on 1 May 2016.[182] However, RO Solutions and ROSE contend that Mr Enver did so not because of Mr Xanthopoulos, but rather, because the two companies had worked together on a prior project with a third party and Caevest was already aware of the competencies of RO Solutions. They allege that Mr Enver was directed to contact *any representative* of RO Solutions and thus it was not Mr Xanthopoulos who referred RO Solutions to Caevest.[183]

88 The key issue here is the interpretation of the phrase "initiated by Appointee and secured by the relevant company in the ROS Group" which appears in cl 5.4 of the ROSE Agreement (as rectified).[184] Mr Xanthopoulos has premised his argument on a literal reading of the word "initiate". He argues that "initiate" simply means "causing a process to begin" and that this is exactly what he had done regarding the Caevest Project.[185]

89 There are two difficulties with Mr Xanthopoulos's argument. First, it is not disputed that it was Mr Enver who telephoned Mr Xanthopoulos on 30 April 2016 (see [86] above). If a literal approach were taken, it would be Mr Enver of Caevest who "initiated" contact. Mr Xanthopoulos thereafter linked Mr Enver to Mr Srinivasan.

90 The second difficulty may be more fundamental. In interpreting the word "initiate", reference may be had to the negotiation context as admissible

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182 3 CB 746–748; Affidavit of Evidence-in-Chief of Enver Druce Ernest at para 18.

183 RO DWS at paras 198–206.

184 1 CB 194.

185 PWS at para 156.

extrinsic evidence. These e-mails would be admissible as they are relevant, reasonably available to all the contracting parties and relate to a clear or obvious context, and would not contradict or vary the written words of cl 5.4 of the ROSE Agreement: see *Zurich Insurance*, as summarised at [53] above.

91 In these e-mails from 8–9 February 2012 (as set out at [39]–[40] above), Mr Chia emphasised the need for the client to be new. Mr Xanthopoulos's response was to emphasise that he would bring new work to the table even for existing clients and he was to be recognised for his role. What emerges from these e-mails is that the parties envisioned that Mr Xanthopoulos would only be paid a commission for *extra work* that he brought to RO Solutions using his expertise and contacts and which RO Solutions would not otherwise get. In other words, Mr Xanthopoulos must have had some instrumentality in enabling RO Solutions to secure the project and cannot merely have been a conduit for interested customers. The ultimate aim, as Mr Chia said on the stand, was to "grow the group business" such that the shareholders would "gain the benefits".[186] Mr Chia explained that he did not think Mr Xanthopoulos should be entitled to commissions for securing new business from BW Offshore because RO Solutions "[did not] need his relationship with BWO for … ROS … to secure new jobs from BWO"[187] and that he "[did not] want a case where [they had] conflicts down the road … whereby [Mr Xanthopoulos] claim[ed] … that he introduced BWO to [them] as a customer when, in fact, [they] already kn[e]w BWO very well".[188]

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186 Transcript, 23 March 2021 at p 72 line 27 and p 73 lines 3–4.

187 Transcript, 23 March 2021 at p 97 lines 28–32.

188 Transcript, 23 March 2021 at p 98 lines 2–4.

92 In context, Mr Enver contacted Mr Xanthopoulos out of convenience: see [87] above. Caevest was aware of RO Solutions' prior work and approached RO Solutions because of its known competencies. The word "initiate" has to be interpreted by reference to commercial efficacy. In *Zurich Insurance* at [129], the Court of Appeal remarked that the benefits of adopting the contextual approach to contractual interpretation were "flexibility and accord with commercial common sense". At [131] of *Zurich Insurance*, the Court of Appeal endorsed the summary of principles set out in Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007) at paras 1.124–1.133, including that "due consideration is given to the *commercial purpose* of the transaction or provision" and that the courts "have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken" [emphasis in original]. In this case, Mr Xanthopoulos's literal reading of the word "initiate" does not accord with commercial common sense as it would mean that RO Solutions was obliged to pay him commissions even for projects where his help was not crucial to its securing the project. In contrast, Mr Chia stated in no uncertain terms, they were "here to do business" and "here to make money".[189]

93 Accordingly, I do not think the objective evidence demonstrates that the word "initiate" was meant to take on the literal meaning that Mr Xanthopoulos suggests. Applying an interpretation in line with the relevant commercial context, I hold that the MINOX Project was not initiated by Mr Xanthopoulos.

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189 Transcript, 24 March 2021 at p 15 lines 2–3.

Claim for fees for the MODEC Project

94 Clause 5.5 of the ROSE Agreement, as rectified, entitles Mr Xanthopoulos to "reasonable compensation agreed by both parties" for managing and executing work for RO Solutions. The defendants' case is that the S$15,000 fee that Mr Xanthopoulos received after June 2013 covered all his work for RO Solutions. Mr Xanthopoulos contends, on the basis of his Verbal Agreement with Mr Chia, that the fee was paid to him for taking on the role of engineering director at RO Solutions.

95 The history surrounding the projects completed after the start of the S$15,000 monthly fee arrangement is relevant. Mr Chia's evidence was that any payment would be "on a case-by-case basis … subject to agreement, subject to discussion".[190] For the MOPU BOSS1 Project, Mr Chia agreed with Mr Xanthopoulos that ROSE would be paid directly instead of Mr Xanthopoulos and Mr Xanthopoulos would then receive his 30% share of the sums paid to ROSE.[191] Mr Chia also sent Mr Xanthopoulos an e-mail on 26 October 2013 stating that ROSE should bill RO Solutions.[192] Therefore, during the period when the MOPU BOSS1 Project was ongoing, which was up to March 2014, both ROSE and Mr Xanthopoulos were remunerated by RO Solutions. Work on the MODEC Project subsequently started in November 2014.[193] The MOPU D18 Project then started after the MODEC Project, in or

190 Transcript, 23 March 2021 at p 114 lines 18–19.

191 Transcript, 23 March 2021 at p 114 lines 13–16; Transcript, 25 March 2021 at p 93 lines 7–8 and 14–17.

192 6 AB 5145.

193 Transcript, 23 March 2021 at p 127 line 22.

around June 2015.[194] In contrast to the MOPU BOSS1 Project, for the MOPU D18 Project which followed after the MODEC Project, Mr Chia explained that he convinced Mr Xanthopoulos not to charge, because RO Solutions was struggling financially at that point due to losses incurred from the MOPU BOSS1 Project.[195]

96 Mr Xanthopoulos argues that the payments made by RO Solutions for the MOPU BOSS1 Project support his claim for fees for the MODEC Project, on the footing that it was similar to the MODEC Project.[196] He relies on Mr Chia's testimony that there was a "common understanding" for both the MOPU BOSS1 Project and the MODEC Project that Mr Xanthopoulos needed to be compensated for his services.[197] I reject this argument for two reasons. First, the monthly S$40,000 payments were to ROSE, not to Mr Xanthopoulos. Therefore, the past payments do not assist Mr Xanthopoulos's case. Second, while there is no dispute that Mr Chia had promised the payment for the MOPU BOSS1 Project to ROSE, there is no evidence of any agreement for the MODEC Project. Specific remuneration agreements were made between Mr Chia and Mr Xanthopoulos in relation to both the MOPU BOSS1 Project (which preceded the MODEC Project) and the MOPU D18 Project (which followed the MODEC Project). In the absence of agreement, neither the contract nor Mr Chia's practice indicated that there was any obligation to pay. It was implicit in Mr Chia's evidence that there was no agreement made with Mr Xanthopoulos for payment. When Mr Chia was confronted with the fact that

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194 Mr Xanthopoulos's AEIC at para 61; Transcript, 1 April 2021 at p 74 lines 9–18 (Mr Srinivasan).

195 Transcript, 23 March 2021, p 115 line 21 to p 116 line 5.

196 PWS at para 141.

197 Transcript, 24 March 2021 at p 8 lines 25–28.

he had given inconsistent instructions to the defendants' solicitors that Mr Xanthopoulos was not entitled to fees for the MODEC Project, his only explanation was that his memory had been "triggered" after reading Mr Xanthopoulos's affidavit and that RO Solutions had been so busy with the MOPU BOSS1 Project and the MOPU D18 Project that they "forgot … about all these agreements and every month [they] just ma[d]e a monthly payment".[198] Mr Chia did not state that he had *agreed* on any compensation to be paid to Mr Xanthopoulos for the MODEC Project.

97 Therefore, Mr Xanthopoulos had no entitlement to additional remuneration for the MODEC Project under cl 5.5. What about his alternative claim in unjust enrichment? I have held at [76] that no claim in restitution may be made in the present case because the rectified ROSE Agreement defines the parties' relationship. Clause 5.5 requires prior agreement. As Mr Xanthopoulos is unable to claim these fees for the MODEC Project under cl 5.5 because the stipulated requirement of a prior agreement was not satisfied, he cannot now bring a claim for these fees in unjust enrichment.

Mr Xanthopoulos's failure to raise the three claims at an earlier stage

98 Of relevance is Mr Xanthopoulos's failure to ask for payment for any of the three Projects until his e-mail on the last day of his notice period, 31 July 2018, where he asked that "ROS *consider* dispersing" [emphasis added] any remaining funds in the liquidation of ROSE to him as he had "contributed over the years either directly or indirectly in securing jobs for ROS", listing the MODEC Project, the MINOX Project and the Caevest Project as examples.[199]

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198 Transcript, 24 March 2021 at p 139 lines 1–17.

199 9 AB 8227.

He made no attempt to claim his fees in stages while each of the Projects was ongoing, or even on the completion of the MODEC Project (on 29 March 2016), the MINOX Project (on 6 February 2017) and the Caevest Project (on 29 March 2018). Similarly, when he referenced the three claims again on 27 September 2018 in his e-mail enclosing the signed dividend voucher for his 30% share, he asked Mr Chia, Mr Lim and Mr Srinivasan to "*consider* paying [him] the entire dividend given the time and effort [he had] put in over the years" [emphasis added], and mentioned the three Projects.[200] His posture was not that of strict legal entitlement.

99 According to Mr Xanthopoulos, his understanding was that he was to be remunerated on a "pay on pay basis", which meant that he would only be paid after the customer had paid RO Solutions in full at the end of the project.[201]

100 In my view, this argument is not convincing. The concept of "pay on pay basis" had been explained to him by Mr Chia as early as 9 December 2011, in the course of their e-mail exchange leading up to the RO Systems Agreement. As Mr Chia explained, this meant that Mr Xanthopoulos could be paid whenever the customer paid the company in stages, and not that his commissions would be payable only after the customer had paid the company in full at the end of the project. In any event, RO Solutions was paid in full for the MODEC Project and the Caevest Project before Mr Xanthopoulos's departure. MODEC paid sometime after October 2017 (more than two years after Mr Xanthopoulos's involvement with the MODEC Project ended around

200 3 CB 917.

201 PWS at para 37.

June 2015)[202] and the Caevest Project ended in March 2018.[203] Only the payments for the MINOX Project ended after his departure in September 2019.[204] There is no evidence that Mr Xanthopoulos made queries as to when each of the Projects was to be fully paid for. Further, the particular "payable only after the Customer has paid the Company" line was dropped from cl 5.4 of the ROSE Agreement when Mr Xanthopoulos amended it in his version of 4 April 2012.[205]

101 Mr Xanthopoulos's belated claim for work done for the MODEC Project is even less convincing. This claim was not for a finder's fee, but for his work as a project manager. Any sums owing should have been paid on a monthly basis. For the DRL project, he had submitted monthly time sheets as requested by DRL. While this was explained as DRL's requirement, he would have been aware that such work would be accounted for each month. As a further example, for the MOPU BOSS1 Project, ROSE received S$40,000 each month as agreed with Mr Chia. That Mr Xanthopoulos did not seek payment while working on the project month after month reflects his understanding that it was not outside the scope of work for which he was already being remunerated.

102 Accordingly, Mr Xanthopoulos's explanation that he did not claim his fees at an earlier stage because he was focused on his other work does not pass muster.

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202 PWS at para 38; Transcript, 1 April 2021 at p 74 lines 2–5 (Mr Srinivasan).

203 PWS at para 39; 1 CB 28.

204 PWS at para 40; 1 CB 29.

205 1 CB 176–177.

Minority oppression

Was Mr Xanthopoulos oppressed as a minority shareholder of ROSE?

103 Mr Xanthopoulos's final claim is as a minority shareholder of ROSE. Section 216 of the CA allows a shareholder to bring an action for relief where: (a) the company's affairs or the directors' powers are being exercised in a manner oppressive to one or more shareholders, or in disregard of one or more shareholders' interests; or (b) some act of the company has been done or threatened or a members' resolution is passed or proposed which unfairly discriminates against or is otherwise prejudicial to one or more shareholders (*Ascend Field Pte Ltd and others v Tee Wee Sien and another appeal* [2020] 1 SLR 771 ("*Ascend Field*") at [27]). This encapsulates four limbs: oppression, disregard of a shareholder's interests, unfair discrimination and prejudice to the shareholder: *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Sakae Holdings*") at [81]. The "common thread underpinning the entire section is the element of unfairness", specifically, "[c]ommercial fairness", which is the "touchstone by which the court determines whether to grant relief under s 216": *Over & Over Ltd v Bonvests Holdings Ltd and another* [2010] 2 SLR 776 ("*Over & Over*") at [70] and [81]. The court will look into the legal rights and legitimate expectations of the company's members and whether they were considered by the majority: *Over & Over* at [78]. Thus, the inquiry before me is whether the affairs of ROSE were conducted in a manner that was commercially unfair.

104 The commercial unfairness alleged by Mr Xanthopoulos is RO Solutions' non-payment of outstanding receivables amounting to S$256,871.71 to ROSE, and its failure to distribute dividends amounting to S$96,671.73 to Mr Xanthopoulos.

Non-payment of receivables to ROSE

105 It is undisputed that RO Solutions owes ROSE receivables amounting to S$256,871.71. The defendants' defence is that there was a mutual agreement and understanding between RO Solutions and ROSE, which was arrived at before Mr Xanthopoulos's departure from the ROS Group, for these receivables to be written off. According to the defendants, this mutual understanding was arrived at in view of the expenses incurred by RO Solutions in subsidising the operations of and providing various facilities and resources to ROSE over the years.[206] The defendants rely on Mr Lim's and Mr Srinivasan's evidence that there was such an understanding and that it was communicated to Mr Xanthopoulos.[207] The defendants also argue that this mutual understanding is borne out by the fact that Mr Xanthopoulos did not take any steps to pursue these receivables while he was the managing director of ROSE, despite knowing that they were owed.[208] Mr Xanthopoulos denies the existence of this mutual understanding.[209] His explanation for his omission to pursue the receivables was that he "trusted [his] partners" and that they would pay him one day as long as these receivables were reflected on ROSE's accounts.[210]

106 The defendants have not provided any particulars of this alleged mutual understanding that ROSE would not pursue the receivables owed to it by RO Solutions, such as how or when this understanding was formed and its

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206 RO DWS at para 218; VL DWS at paras 37, 39 and 64.

207 RO DWS at paras 218–219; Transcript, 5 April 2021 at p 105 lines 22–26 (Mr Lim); Transcript, 5 April 2021 at p 12 lines 8–19 (Mr Srinivasan).

208 RO DWS at para 221; VL DWS at paras 64 and 67.

209 Mr Xanthopoulos's AEIC at para 124; PWS at para 45.

210 Transcript, 31 March 2021 at p 50 lines 18–32.

terms. There is no evidence to corroborate their bare assertions that this understanding existed.

107 Further, it seems unbelievable that if such a mutual understanding existed, it would not be recorded in any minute sheets, e-mails, or corporate resolutions. The sum of receivables owed is not insignificant and it would have made more sense that an understanding to write it off would be mentioned in a contemporaneous document. This makes it unlikely that the alleged mutual understanding existed.

108 Mr Lim and Mr Srinivasan stated in their affidavits of evidence-in-chief that they recalled that a credit note was meant to be issued by ROSE to RO Solutions to record that the alleged receivables had been written off, but this credit note was never issued due to an oversight by the accounting department.[211] However, this purported explanation holds no water. The defendants have not adduced any evidence of their intention to issue such a credit note and none was ever issued. Further, Mr Lim, as RO Solutions' nominee director in ROSE, signed off on ROSE's financial statements each year which listed the receivables as such, and never raised any concerns as to whether these receivables were indeed payable.[212] If the mutual understanding alleged by the defendants had existed, Mr Lim would have had many opportunities to put on record that these receivables had been written off pursuant to the parties' agreement or mutual understanding, yet he made no attempt to do so.

109 To the contrary, Mr Chia testified that he had asked Mr Xanthopoulos to hold off on claiming the fees owed for the MOPU BOSS1 Project because

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211 Mr Lim's AEIC at para 188; Mr Srinivasan's AEIC at para 188.

212 Transcript, 5 April 2021 at p 109 lines 11–22 (Mr Lim).

RO Solutions was on the brink of bankruptcy at the time, *but that ROSE was to be paid later when RO Solutions had the financial means to pay*.[213] By the time of Mr Xanthopoulos's departure, it appeared that RO Solutions had sufficient funds. On 27 September 2018, Ms Loh Soo Kim, RO Solutions' accountant ("Ms Loh"),[214] sent an e-mail to Mr Xanthopoulos instructing him to check and sign on an attached dividend voucher.[215] The explanation for the non-payment of the receivables given by Mr Lim and Mr Srinivasan to Mr Xanthopoulos during their tele-conversation on 31 October 2018 was that RO Solutions had insufficient funds to pay ROSE the receivables.[216] This explanation was untrue. RO Solutions' financial statements dated 25 June 2019 show that in the financial year ended 31 March 2019, it had S$22.4m in total current assets (including S$10.8m in cash and bank balances) and its share capital and accumulated profits amounted to S$25,222,527.[217]

110 During the trial, Mr Lim also raised a belated claim that the receivables were to be set off against the services provided by RO Solutions to ROSE.[218] This claim is untenable as there is no evidence of any such agreement to set off the receivables against RO Solutions' services or of such set-off having been effected.

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213 Transcript, 24 March 2021 at p 17 line 26 to p 18 lines 8 and 15–16.

214 Mr Xanthopoulos's AEIC at para 48; Mr Lim's AEIC at para 192; Transcript, 24 March 2021 at p 17 lines 9–12 (Mr Chia).

215 3 CB 917 and 924–925.

216 3 CB 958; Transcript, 5 April 2021 at p 45 lines 3–17 (Mr Srinivasan) and p 115 line 29 to p 116 line 8 (Mr Lim).

217 3 CB 1063 and 1067; PWS at para 51.

218 Transcript, 5 April 2021 at p 12 lines 18–19.

Reflective loss

111 The defendants also submit that in any event, the "loss" to Mr Xanthopoulos from RO Solutions' non-payment of receivables to ROSE is not grounds for a minority oppression action under s 216 of the CA because it is merely a reflection of the loss to ROSE. They contend that Mr Xanthopoulos should instead have brought a derivative action under s 216A of the CA.[219]

112 It is well established that s 216 of the CA should not be used to vindicate wrongs which are in substance wrongs committed against a company and which are thus corporate rather than personal in nature. This prevents the improper circumvention of the proper plaintiff rule and the no reflective loss principle: *Suying Design Pte Ltd v Ng Kian Huan Edmund and other appeals* [2020] 2 SLR 221 at [30]. However, it is also clear that the same set of facts can give rise to both personal wrongs and corporate wrongs: *Teelek Realty Pte Ltd and others v Ng Tang Hock* [2021] SGCA 70 at [62]. As the Court of Appeal explained in *Sakae Holdings* at [116], the appropriate analytical framework to ascertain whether a claim is appropriately pursued under s 216 is to consider:

(a) Injury

(i) What is the real injury that the plaintiff seeks to vindicate?

(ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?

(b) Remedy

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219 VL DWS at para 68.

(i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?

(ii) Is it a remedy that can only be obtained under s 216?

113 In the present case, I find that the real injury which Mr Xanthopoulos seeks to vindicate is a personal wrong arising from the non-payment of the dividends to which he is entitled as a 30% shareholder of ROSE, which in turn arise from the non-payment of the receivables to ROSE as these form part of the dividends to be distributed. The commercial bargain struck between Mr Xanthopoulos and RO Solutions when ROSE was formed, as the minority and majority shareholders of ROSE respectively, was for him to be entitled to 30% of what ROSE received. This profit-sharing arrangement was the basis on which he sought to take on a share of the equity in ROSE. Indeed, this was also understood by Mr Lim and Mr Srinivasan, who stated that Mr Xanthopoulos's intention behind the formation of ROSE was to earn a share of its profits.[220] Further, the receivables owed are payments for services rendered by Mr Xanthopoulos, through ROSE, in respect of the MOPU BOSS1 Project. The non-payment of receivables to ROSE therefore gave rise to commercial unfairness against Mr Xanthopoulos as a member of ROSE, namely, the fact that he has not been paid the full value of his shares. This is distinct from any injury suffered by ROSE itself.

114 With this in mind, I turn to consider Mr Xanthopoulos's argument that the non-payment of dividends to him crossed the threshold of commercial unfairness.

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220 Mr Lim's AEIC at para 58; Mr Srinivasan's AEIC at para 58.

Non-payment of dividends to Mr Xanthopoulos

115 It is not disputed that no dividends were paid out while Mr Xanthopoulos was with ROSE. The defendants contend that there were legitimate commercial reasons for refusing to realise ROSE's assets and distribute dividends to Mr Xanthopoulos because ROSE had been a loss-making entity for several years and there were plans to repurpose ROSE and preserve it as a going concern.[221]

116 In appropriate circumstances, the non-payment of dividends can amount to "oppression" or "disregard" within the meaning of s 216(1)(*a*) of the CA: *Re Gee Hoe Chan Trading Co Pte Ltd* [1991] 2 SLR(R) 114 ("*Gee Hoe Chan Trading*") at [35]. The facts of *Gee Hoe Chan Trading* were rather more extreme, involving majority shareholders who had "lined their pockets with the profits of the company in the form of either salaries and bonuses … and/or directors' fees" while the minority shareholders were "getting nothing at all either in terms of directors' fees or dividends". This led Chao Hick Tin J (as he then was) to conclude that the majority shareholders had "acted in the affairs of the company in their own interest rather than in the interest of the members as a whole" (*Gee Hoe Chan Trading* at [38]).

117 The defendants argue that the facts of *Gee Hoe Chan Trading* are entirely distinct from those of the present case because Mr Xanthopoulos was given his 30% shareholding in ROSE for a nominal fee and was entitled to a generous remuneration package.[222] However, the relevant issue is that of "upholding the commercial agreement between the shareholders of the

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221 RO DWS at para 225; VL DWS at paras 18 and 73.

222 RO DWS at para 227–228.

company": *Ascend Field* at [29]. In this case, the commercial agreement between RO Solutions and Mr Xanthopoulos was essentially a profit-sharing arrangement under which he was entitled to 30% of what ROSE received. The fact that Mr Xanthopoulos received substantial remuneration over the years as well as 30% of ROSE's shares[223] does not detract from that commercial bargain.

118 The defendants also rely on *Cost Engineers (SEA) Pte Ltd and another v Chan Siew Lun* [2016] 1 SLR 137 at [20] for the proposition that a shareholder generally has no direct right to the profits of a company and a company generally has no obligation to declare dividends.[224] However, as I have found that the basis of the parties' commercial bargain in this case was for Mr Xanthopoulos to receive a 30% share of the profits received by ROSE, the basis of this arrangement no longer held after Mr Xanthopoulos had left ROSE and the ROS Group. In these circumstances, it was valid for him to ask for ROSE to be struck off and for dividends to be distributed. Even on the defendants' explanation that they want to preserve ROSE as a going concern, it would be commercially unfair for Mr Xanthopoulos not to be paid his due in the form of dividends, in accordance with this commercial bargain.

The appropriate remedy

119 Mr Xanthopoulos seeks a declaration that RO Solutions and Mr Lim have conducted ROSE's affairs in a manner that is oppressive to him and an order for RO Solutions to buy out his shares in ROSE. He proposes using the share value calculated on the net asset value of ROSE as ROSE is presently not actively conducting any business or generating any revenue.[225] Based on

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223 VL DWS at para 14.

224 VL DWS at paras 70 and 72; Transcript, 28 June 2021 at p 51 lines 1–17.

225 SOC at p 41 para (7); PWS at paras 52(g) and 186.

ROSE's audited financial statements dated 10 July 2018 and balance sheet dated 30 September 2018, the value of its total current assets (*ie*, the sum of its cash assets and receivables owing from RO Solutions) and its total capital (its accumulated profits and share capital less its current year earnings) was S$322,239.10.[226] Mr Xanthopoulos's 30% entitlement would be in the sum of S$96,671.73.[227]

120 The defendants propose that the purchase price for Mr Xanthopoulos's shareholding should be assessed by an independent valuer, valued at the date of the buyout order and set off against the operational costs borne by RO Solutions for ROSE from July 2013 to December 2018, amounting to S$512,000.[228] Alternatively, RO Solutions and ROSE agree that Mr Xanthopoulos's 30% shareholding in ROSE should be bought out at a fair market value, which should be assessed based on ROSE's most recent audited financial statements. However, they argue that a discount should be applied to reflect Mr Xanthopoulos's minority stake because Mr Xanthopoulos intended to give up his 30% shareholding from the moment he voluntarily left ROSE and RO Solutions and this was not caused by the conduct of RO Solutions.[229]

121 The discretion of the court to make an order under s 216 of the CA is very wide, with the caveat that it must be made "with a view to bringing an end or remedying the matters complained of": *Kumagai Gumi Co Ltd v Zenecon Pte Ltd and others and other appeals* [1995] 2 SLR(R) 304 at [71]. In my judgment, RO Solutions should buy out Mr Xanthopoulos's shareholding in ROSE for the

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226 3 CB 833 and 926.

227 PWS at para 186.

228 RO DWS at para 236; VL DWS at para 81.

229 RO DWS at paras 233–236.

sum of S$96,671.73, as claimed by Mr Xanthopoulos, without any discount on the basis of his minority stake. In so ordering, I return to the commercial agreement made between the four men in early 2012. ROSE was formed as an engineering company, to bring in new work to RO Solutions on the strength of Mr Xanthopoulos's reputation and to grow the business of the ROS Group. While ROSE has not been as successful as they hoped, the profits generated ought still to be divided in line with the commercial bargain that they made. Mr Lim and Mr Srinivasan are chagrined that a substantial component includes amounts payable by RO Solutions. These amounts were, however, agreed upon by RO Solutions' managing director. ROSE billed as agreed with no evidence of queries were posed by the other RO Solutions directors in the years following despite their visibility in the financial statements. With Mr Xanthopoulos's departure, the purpose for which ROSE was formed has come to an end. Mr Xanthopoulos and Mr Chia's agreement in September 2018 to wind up ROSE and distribute dividends[230] was a fair commercial resolution, and the refusal of the other RO Solutions directors to agree resulted in commercial unfairness. ROSE has not been utilised for any projects since that time.

122 In this specific context, the defendants' argument for a minority discount is not apt. While Mr Xanthopoulos's departure was voluntary and did not arise out of oppression by RO Solutions as the majority shareholder, the latter's refusal to pay Mr Xanthopoulos his share of their joint gains together is oppressive. If Mr Lim and Mr Srinivasan now wish to repurpose the company for other uses, they ought to do so on a clean slate.

123 As for the set-off now mooted by the defendants, any set-off ought to have been agreed and applied in the course of the parties' dealings, not at the

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[230] Mr Xanthopoulos's AEIC at para 114.

present point in time. That no set-off was discussed is not surprising. ROSE gave up its lease for its separate office in mid-2013, around the same time that RO Solutions started paying Mr Xanthopoulos S$15,000 a month for his services.[231] As a logical matter, the parties would have taken all relevant matters into account when negotiating Mr Xanthopoulos's S$15,000 monthly fee. To impose a set-off now would not be fair.

124 Coming to the sum for the buyout, it is not necessary for an independent valuer to be appointed because ready figures are available. A declaration is also not necessary in view of the quantifiable sum. Mr Xanthopoulos's 30% shareholding may be quantified with reference to ROSE's cash assets and receivables owing from RO Solutions, being S$322,239.10. In this context, I note that the dividend voucher sent by Ms Loh to Mr Xanthopoulos on 27 September 2018 stated that he would be entitled to S$81,970.83.[232] This was 30% of S$273,236.10, which in turn was the amount of remaining funds in the ROSE account or ROSE's accumulated profits less its current year earnings. I do not use this figure as it fails to take into account ROSE's share capital, which amounted to S$49,003. Mr Xanthopoulos's right to this amount is premised on cl 5.2 of the ROSE Agreement, which entitles him to "30% equity" in ROSE. His 30% shareholding in ROSE should therefore be valued at S$96,671.73 for the purposes of the share buyout by RO Solutions.

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231 Mr Srinivasan's AEIC at paras 93 and 96.

232 3 CB 917 and 924–925.

Conclusion

125 I therefore order RO Solutions to purchase Mr Xanthopoulos's 30% shareholding in ROSE for the sum of S$96,671.73. I shall hear counsel on costs.

Valerie Thean
Judge of the High Court

Ronald Wong Jian Jie and Lopez Stacey Millicent Xue Mei
(Covenant Chambers LLC) for the plaintiff;
Ramachandran Doraisamy Raghunath and Kyle Gabriel Peters
(PDLegal LLC) for the first and second defendants;
Aqbal Singh s/o Kuldip Singh, Wong Yiping and Cheng Cui Wen
(Pinnacle Law LLC) for the third defendant.