IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA(I) 2

Civil Appeal No 100 of 2020

Between

(1) Beyonics Asia Pacific Ltd
(2) Beyonics International Ltd
(3) Beyonics Technology (Senai) Sdn Bhd
(4) Beyonics Technology Electronic (Changshu) Co Ltd
(5) Beyonics Precision (Malaysia) Sdn Bhd

… *Appellants*

And

(1) Goh Chan Peng
(2) Pacific Globe Enterprises Ltd (formerly known as Wyser International Ltd)

… *Respondents*

Civil Appeal No 185 of 2020

Between

(1) Beyonics Asia Pacific Ltd
(2) Beyonics International Ltd
(3) Beyonics Technology (Senai) Sdn Bhd
(4) Beyonics Technology Electronic (Changshu) Co Ltd
(5) Beyonics Precision (Malaysia) Sdn Bhd

… *Appellants*

And

(1) Goh Chan Peng & anor
(2) Pacific Globe Enterprises Ltd (formerly known as Wyser International Ltd)

… *Respondents*

In the matter of SIC/Suit No 10 of 2018

Between

(1) Beyonics Asia Pacific Ltd
(2) Beyonics International Ltd
(3) Beyonics Technology (Senai) Sdn Bhd
(4) Beyonics Technology Electronic (Changshu) Co Ltd
(5) Beyonics Precision (Malaysia) Sdn Bhd

… *Plaintiffs*

And

(1) Goh Chan Peng & another
(2) Pacific Globe Enterprises Ltd (formerly known as Wyser International Ltd)

… *Defendants*

JUDGMENT

[Abuse of Process] — [*Henderson v Henderson* doctrine]

[Companies] — [Directors] — [Duties]

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v
Goh Chan Peng and another and another appeal

[2021] SGCA(I) 2

Court of Appeal — Civil Appeal Nos 100 and 185 of 2020
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Beverley Marian McLachlin IJ
2 February 2021

2 June 2021 Judgment reserved.

Judith Prakash JCA (delivering the judgment of the court):

Introduction

1 These are two related appeals filed by the same appellants against the same respondents. CA/CA 100/2020 ("CA 100") is an appeal against the decision of the International Judge ("the Judge") in *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another* [2020] 4 SLR 215 ("the Judgment"), in which the Judge struck out the appellants' claims in SIC/S 10/2018 ("S 10") for being in abuse of process. The Judge also held that most of the claims would have failed on the merits in any event. CA/CA 185/2020 ("CA 185") is an appeal against the Judge's decision on costs.

2 These appeals arise out of extended and rather unusual proceedings involving two actions in the High Court ("HC") and the Singapore International Commercial Court ("SICC"). The background to the appeals and the conduct of

the parties in the prior proceedings are crucial to the determination of whether S 10 had been brought in abuse of process. For the reasons set out below, we hold that there was no abuse of process pursuant to the extended doctrine of *res judicata* laid down by the English decision in *Henderson v Henderson* (1843) 3 Hare 100 ("the *Henderson* doctrine"). Following from our decision that the claims should not have been struck out, we consider the Judge's decision on the merits of S 10.

Facts

3 We first set out the brief factual background that is necessary to the determination of whether S 10 had been brought in abuse of process. We will detail the factual disputes further when considering the substantive merits of the appellants' claims.

The parties

4 At the material time, Beyonics Technology Ltd ("BTL") was the parent company of the Beyonics Group ("Beyonics"). The appellants were wholly owned subsidiaries of BTL and are:

(a) Beyonics Asia Pacific Limited ("BAP");

(b) Beyonics International Limited ("BIL");

(c) Beyonics Technology (Senai) Sdn. Bhd. ("BTS");

(d) Beyonics Technology Electronic (Changshu) Co., Ltd ("BTEC"); and

(e) Beyonics Precision (Malaysia) Sdn. Bhd. ("BPM").

5 Beyonics is engaged in, *inter alia*, manufacturing baseplates and other precision machining parts for the hard disk drive ("HDD"), electronics and automotive industries. The Precision Engineering Services Division ("PES Division") of Beyonics manufactured and supplied baseplates for HDDs manufactured by Seagate Technology International ("Seagate HDDs"), including under what was known as the Brinks 2H programme. BAP, BTEC and BPM, as well as another subsidiary, Beyonics Technology (Thailand) Co Ltd ("BTT"), were part of the PES Division. Mr Lee Leong Hua ("Mr LH Lee") was the Senior General Manager of BTEC's baseplate manufacturing facility.

6 The first respondent, Mr Goh Chan Peng ("Mr Goh"), is the beneficial owner of the second respondent, Pacific Globe Enterprises Limited (formerly known as Wyser International Limited) ("Wyser"). At the time when the transactions referred to in this appeal took place, Mr Goh was the Chief Executive Officer ("CEO") and sole executive director of BTL as well as a director of companies in Beyonics. He had been the CEO since the year 2000 and was used to operating very independently in his running of Beyonics.

7 On or about 2 February 2012, Channelview Investments Ltd ("Channelview") acquired the entire issued share capital of BTL including Mr Goh's small shareholding. In exchange, Mr Goh received shares in Channelview (4.89% of its issued capital) and retained his management positions in BTL and its subsidiaries. Mr Kyle Arnold Shaw Junior ("Mr Shaw") became the chairman of Channelview as well as non-executive chairman of BTL.

Background to the dispute

8 Nedec Co Ltd ("NEDEC") and Kodec Co Ltd ("KODEC") are affiliated companies incorporated in Korea. NEDEC, KODEC and other affiliated companies are collectively referred to as "NEDEC/KODEC". A Chinese company, Langfang Nedec Machinery & Electronics Co Ltd ("LND") is part of the NEDEC/KODEC group. LND has a baseplate manufacturing facility located in China. At the material time, Mr Stephen Hwang ("Mr Hwang") was the CEO of NEDEC/KODEC and Mr Tae Sung Lee ("Mr Tony Lee") was their Chief Financial Officer.

9 The process of manufacturing of baseplates can be divided into two main stages. "First Stage Work" involves processes such as die-casting and ends with e-coating. "Second Stage Work" involves precision machining and other work to produce a finished baseplate. At the second stage, Special Purpose Machines and/or Computer Numerical Control Machines ("CNC Machines") are used to drill holes and cut the baseplates.

10 Completed baseplates are sent to a company which assembles the other components of the HDD in a process called the motor baseplate assembly. Nidec Corporation ("Nidec") is one such company doing assembly work. Nidec also had a baseplate manufacturing factory, Nidec Brilliant.

11 In order to become manufacturers of Seagate HDDs, the manufacturing plants have to undergo a qualification process. BTEC, BPM and BTT were qualified as plants to manufacture baseplates for Seagate HDDS. Prior to the floods (see [13] below), the manufacture of baseplates within Beyonics was divided amongst BTEC, BPM and BTT. In 2011, NEDEC/KODEC was not yet qualified as a supplier to Seagate.

12 Within Beyonics, when baseplates were shipped from the relevant qualified plant to the assembly company, BTEC, BPM or BTT would issue an invoice to BAP for the number of baseplates shipped. BAP would then invoice Seagate for these baseplates.

13 As a result of severe floods in Thailand in October 2011, Seagate suffered a loss of supply of some 24.1 million baseplates. BTT's baseplate manufacturing facility was also damaged beyond repair. Seagate therefore embarked upon a recovery plan to replace the supply of baseplates with a view to recovering Seagate's HDD market. The disputes in this appeal and the proceedings below pertain to what transpired between Mr Goh and NEDEC/KODEC following the floods and the impact of these interactions on the appellants.

14 Following the floods, BAP and NEDEC/KODEC entered into a collaboration known as the BN Alliance (the "BN Alliance") in late 2011 in relation to the manufacturing of Seagate baseplates for the Brinks 2H programme. Under the BN Alliance, BTEC completed the First Stage Work and shipped the e-coated baseplates to LND. LND then performed the Second Stage Work before selling the baseplates to Seagate. Whether entering into the BN Alliance was in the interests of the appellants was a key issue in dispute. Beyonics eventually lost Seagate as a customer, and the last shipment of baseplates from Beyonics to Seagate took place in August 2013.

15 On 9 January 2013, Mr Goh resigned from his directorships in various companies in Beyonics. In this regard he signed resignation agreements with some of these companies, including BAP, BIL and BTS.

The Wyser Agreements

16 Three Wyser Agreements were entered into between Mr Goh on behalf of Wyser and Mr Tony Lee on behalf of NEDEC/KODEC (collectively, the "Wyser Agreements"). The First Wyser Agreement was between Wyser and KODEC. It provided that Wyser would assist KODEC in "securing quarterly 6 million baseplates capacity business starting from April 2012 for the Seagate Brink 2H program for an approximately US$45.6 million sales per year supplying at least 1 million pieces of e-coated baseplates to Kodec" and in "securing US$2.5 million as the co-sharing grant of fixture and tooling cost funded by Seagate". It was further agreed that KODEC would pay Wyser a monthly sales and management support fee of US$0.02 for every Brinks 2H baseplate that was shipped to KODEC from February 2012 to March 2013.

17 The Second Wyser Agreement was between Wyser and NEDEC. It contained the same terms as the First Wyser Agreement and provided in addition that NEDEC would pay US$500,000 to Mr Goh (by transfer to Wyser) upon its receipt of the US$2.5 million grant from Seagate.

18 The Third Wyser Agreement was between Wyser and KODEC. It provided that KODEC would carry out the Second Wyser Agreement and that Wyser would agree to transfer US$300,000 to Mr Stephen Hwang upon Wyser's receipt of the US$500,000.

19 Mr Goh did not deny entering into the Wyser Agreements. The Wyser Agreements were characterised by the appellants as bribes and by the respondents as legitimate consultancy agreements.

Procedural history

S 672/2013

Claims in S 672/2013

20 The first action to be taken as a result of the events above was S 672/2013 ("S 672") filed in the HC, with BTL and Beyonics International Pte Ltd ("BIPL") as the plaintiffs (the "672 Plaintiffs"); and Mr Goh, his wife, Ms Lee Bee Lan, Wyser and Wyser Capital Limited as the defendants (the "672 Defendants"). The substantive case was brought against Mr Goh and Wyser.

21 Firstly, BTL claimed that Mr Goh had breached his duty to exercise due care and skill, his duty of loyalty and fidelity, and/or his fiduciary obligations to the plaintiffs by (i) effecting a diversion of business in relation to Second Stage Work away from Beyonics to NEDEC/KODEC; (ii) procuring a US$2.5 million grant from Seagate for NEDEC/KODEC; (iii) facilitating NEDEC/KODEC in securing business from Seagate in competition with Beyonics with a view to NEDEC/KODEC supplanting Beyonics as a manufacturer of Seagate HDDs; and (iv) receiving payments under the Wyser Agreements.

22 Secondly, BTL claimed that Mr Goh and Wyser had engaged in an unlawful means conspiracy with NEDEC/KODEC and its representatives to injure BTL. Thirdly, BTL claimed that Wyser had dishonestly assisted Mr Goh's breaches of fiduciary duties and/or had knowingly received payments under the Wyser Agreements.

23 Fourthly, BIPL claimed that Mr Goh, in breach of his duties, had caused or instructed staff members of BIPL to make various unjustified expense claims

against its account, and procured an agreement for the payment of his monthly salary for the period from 10 January 2013 to 30 April 2013 by failing to disclose his prior breaches of duty.

24 BTL therefore claimed against Mr Goh and Wyser for (i) loss of profit as a result of the diversion of Second Stage Work to NEDEC/KODEC from January 2012 to January 2013 ("Diversion Loss"); (ii) loss of profit as a result of the loss of future baseplate business from Seagate ("Total Loss"): and (iii) for, among other things, an account of the amounts received under the Wyser Agreements and regurgitation of such amounts.

25 BIPL claimed against Mr Goh for payment of the amounts in relation to the unjustified expense claims and to recover the unjustified salary payments.

Decision in S 672/2013

26 The HC Judge in S 672 (the "672 Judge") held, in her decision in *Beyonics Technology Ltd and another v Goh Chan Peng and others* [2016] SGHC 120 (the "672 Judgment"), that Mr Goh had breached his fiduciary duties to BTL and BIPL. In summary, Mr Goh had failed to act honestly and in good faith in the best interests of BTL. After the floods, he had under-represented the manufacturing capacity of Beyonics to Seagate and endorsed the BN Alliance even though Beyonics had sufficient production capacity to carry out Second Stage Work. Mr Goh was also instrumental in enabling NEDEC/KODEC to obtain a grant of US$2.5 million from Seagate. He further facilitated the development of business between NEDEC/KODEC and Seagate, assisting the former with its qualification and performance of Second Stage Work and developing its capacity for First Stage Work. All of Mr Goh's actions were

tainted by his receipt of bribes through the Wyser Agreements (at [124]–[128] of the 672 Judgment).

27 The 672 Judge found that BTL's claims against Mr Goh for breaches of fiduciary duties, against Mr Goh and Wyser for unlawful means conspiracy in relation to the Diversion Loss and against Wyser for dishonest assistance in relation to payments under the Wyser Agreements, had been made out. The 672 Judge therefore granted (i) judgment to BTL against Mr Goh and Wyser jointly and severally for the amounts paid under the First and Second Wyser Agreements, as well as damages for the Diversion Loss; and (ii) judgment to BTL against Mr Goh for the Total Loss. In addition, the 672 Judge found that BIPL's claims against Mr Goh for unjustified expenses and salary had been made out, and granted judgment to BIPL for these sums (at [225]–[226]).

28 It is relevant to the abuse of process issue that the 672 Judge had considered the argument that BAP, rather than BTL, should have been the proper party to claim for any damages and/or loss of profit arising from the alleged breaches by Mr Goh as a preliminary issue, but rejected this argument both on the merits and on the basis that it had not been pleaded. It bears emphasis that, on the contrary, the 672 Judge held that there was a legal basis for BTL to claim the Diversion Loss and the Total Loss.

CA 94/2016

29 The appeal against the 672 Judgment in CA/CA 94/2016 was partially allowed. The judgment is reported at *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 591 (the "672 Appeal Judgment"). In the 672 Appeal Judgment, the Court of Appeal found that Mr Goh had acted in breach of his duties to BTL. However, there was no

legal basis to support the claims for the Diversion Loss and the Total Loss put forward by BTL, as these losses were in fact suffered by BAP.

30 This court upheld the 672 Judge's findings that the payments under the Wyser Agreements should be characterised as bribes or secret commissions, and the orders made for Mr Goh and Wyser to be jointly and severally liable to pay BTL the sums received under the Wyser Agreements (at [57]). This court also upheld the Judge's orders in respect of most of the items in relation to the unjustified expenses claim as well as her order in respect of the unjustified salaries claim.

The appellants take action

31 Thereafter, BAP and the four appellants commenced S 10. It was started in the HC but was subsequently transferred to the SICC. In S 10, the primary claim was brought by BAP against Mr Goh. BAP claimed that Mr Goh had breached his duty of loyalty and fidelity and/or fiduciary duties toward BAP, basing this claim on the same allegations that were made in S 672. BAP also claimed against Wyser for dishonest assistance, as well as against Mr Goh and Wyser for unlawful means conspiracy, also on the same basis as the claims brought in S 672. BAP therefore claimed for the Diversion Loss and the Total Loss. These same claims were brought in the alternative by BAP, BTEC and BPM.

32 In addition, BAP claimed against Mr Goh for reimbursement of an unjustified bonus that was paid to Mr Goh (the "Unjustified Bonus Claim"). BAP claimed that this bonus would not have been given had Mr Goh disclosed his breaches. BAP, BIL and BTS additionally claimed against Mr Goh for salaries paid for the period from 10 January 2013 to 31 March 2013 under

resignation agreements entered into between these parties and Mr Goh (the "Unjustified Salaries Claim").

Decision below

33 The Judge held that S 10 had been brought by the appellants in abuse of process. He further held that, even if the appellants' claims had not been struck out, they would have failed on the merits in respect of the Diversion Loss and Total Loss claims. However, they would have succeeded on the Unjustified Bonus and Unjustified Salaries claims.

34 The Judge held that Mr Goh did not breach his duties to the appellants in relation to his initial contact with NEDEC/KODEC, his decision to enter into the BN Alliance and the subsequent negotiations, his facilitation of NEDEC/KODEC's growth or in the sale of BTEC. Mr Goh did, however, breach his duties in respect of the Wyser Agreements as any payment for consultancy services should have been made to BTEC and not Mr Goh, and Mr Goh had entered into the Wyser Agreements without disclosing them to the board. However, this breach did not cause the Diversion and Total Losses, and the appellants were therefore not entitled to claim for the losses. It would however be inconceivable that a responsible board would have paid Mr Goh any bonus if they had known of the Wyser Agreements, and the board would also have been entitled to refuse to pay Mr Goh under the resignation agreements. As such, Mr Goh would have been liable to repay those sums had S 10 not been struck out.

Issues to be determined

35 The issues to be determined on appeal are as follows:

(a) whether the claims brought by the appellants in S 10 amount to an abuse of process;

(b) in respect of the substantive merits of S 10:

(i) whether Mr Goh breached his fiduciary or other duties owed to BAP, BTEC or BPM;

(ii) if so, whether BAP, BTEC or BPM were entitled to claim the Diversion Loss and the Total Loss;

(iii) whether the Judge had erred in finding that Mr Goh was liable to return the bonus and salaries he received;

(iv) whether the claims brought by BTEC were time-barred under PRC Law; and

(c) whether the costs order below should be varied or set aside.

Abuse of process

The Judge's decision

36 The Judge held that the claims in S 10 were brought in abuse of process as he reasoned that these claims could and should have been brought in S 672. In respect of the claims for Diversion Loss and Total Loss, Mr Shaw had been informed before S 672 was started that the losses claimed by BTL were in fact losses directly suffered by BAP. In respect of the Unjustified Bonus and Salaries claims, the directors of BTL were aware of these claims when S 672 was commenced (Judgment at [71]–[76]). In respect of the Diversion Loss and Total Loss claims, all the 672 Plaintiffs would have had to do to bring in the proper claimants was to amend the pleadings to add BAP, BTEC and BPM as plaintiffs. Any additional work required would not have been significant and the

defendants in S 672 could have been adequately compensated for the amendments by costs (Judgment at [79], [83]–[84]). The claims made in the Unjustified Salaries Claim mirrored those made by BIPL, and the Unjustified Bonus Claim arose out of the same matrix of facts underlying the Diversion Loss and Total Loss claims.

37 The Judge further took into account the fact that the 672 Plaintiffs had sought Mareva injunctions against Mr Goh and his wife, which were varied to the imposition of caveats on their properties in 2014. He observed that once the Mareva injunctions were in place, the 672 Plaintiffs had an added burden to ensure that all the claims which the Beyonics Group wished to make arising out of the same matrix of facts should be made such that the dispute would end at the earliest possible time. Further, the 672 Plaintiffs had refused to withdraw the caveats after the 672 Judgment was given even though the caveats had lapsed (Judgment at [109]–[110]).

38 The Judge considered the conduct of the 672 Plaintiffs subsequent to the 672 Appeal Judgment in delaying the release of excess damages that had been paid by the 672 Defendants to be unacceptable. The 672 Plaintiffs had refused to return the excess moneys for some time on the basis that the respondents were liable to pay the sums to BAP. The Judge was of the view that the 672 Plaintiffs had retained the sums in an attempt to compel the respondents to agree to pay the moneys to the appellants without a court order to do so (Judgment at [112]–[114]).

39 Finally, the trial in S 672 was burdensome and allowing the trial in S 10 to proceed would be exposing an individual defendant to another trial of a similar magnitude (Judgment at [116]). It would be manifestly unfair to the respondents, particularly to Mr Goh, to have to defend a second trial on the same

matrix of facts. This unfairness outweighed the right of the appellants to have what was "plainly a genuine cause of action" to be tried (Judgment at [116]–[118], [123]).

Parties' cases

Appellants' case

40 The appellants submitted that S 10 was not a collateral attack on the previous judgments. The claims for Unjustified Bonus by BAP and Unjustified Salaries by BAP, BIL and BTS were not in issue in S 672. As for the claims for Diversion Loss and Total Loss, the claims were now brought from the perspective of BAP, BTEC and/or BPM, instead of from that of the parent company. The fact that BAP brought the claim in S 10 as the primary claimant is in line with and/or consequential upon the finding made by this Court in the 672 Appeal Judgment that BAP should have been the proper plaintiff.

41 The appellants further submitted that there were reasonable grounds for BTL to have considered itself as the proper party originally. The 672 Plaintiffs' first expert who prepared the FTI report ("FTI Report") for the purposes of the application for an *ex parte* Mareva injunction had computed losses at the level of the parent company, *ie*, at BTL's level. At the trial for S 672, the 672 Plaintiffs relied on another expert, Mr Ramasamy Subramaniam Iyer ("Mr Iyer"), who had similarly computed the parent company's losses, taking into account the position of the subsidiaries. Further, the legal position in relation to the reflective loss principle was not settled.

42 During S 672, the 672 Defendants (who included the respondents) did not deny that BTL was the proper party and did not plead a positive case that BAP was the proper plaintiff. They only suggested that BAP was the proper

plaintiff on two isolated and belated occasions. On the first day of the trial of S 672, the 672 Defendants had suggested that BAP, BTEC or BPM should have been the proper plaintiff during the cross-examination of Mr Shaw. The 672 Plaintiffs objected to this on the basis that it had not been pleaded. The 672 Judge upheld the objection. This issue was then resurrected after trial in the respondents' closing submissions but only with regard to BAP. The appellants argued that the 672 Defendants did not admit that BAP was part of the PES Division and that revenue was booked in BAP, and therefore, it would be inconsistent for them to claim that BAP should have been the proper plaintiff. Since the 672 Defendants chose not to plead an affirmative case on the proper party, and chose to take their chances on the narrow basis that the parent company may be unable to prove that it had suffered loss by reason of Mr Goh's actions, they would also have to accept the risk that an alternative claimant may later start a fresh suit.

43 The appellants also argued that stopping the trial in S 672 to introduce alternative plaintiffs would have been a "massive exercise", unlike what the Judge assumed. The trial would have had to be vacated for a lengthy period for parties to prepare for a new trial of much wider scope.

44 Finally, the Judge had taken into account irrelevant factors, namely, Mr Shaw's alleged abusive comments contained in an e-mail dated 17 April 2013 sent to Mr Goh prior to S 672; the failure of the 672 Plaintiffs to remove the caveats on Mr Goh's properties after the 672 Judgment; and an alleged refusal to refund the 672 Defendants after the 672 Appeal Judgment. In respect of the alleged refusal to refund the moneys, it was sensible for the subsidiaries to propose that the moneys go towards discharging the liability to them in the light of the 672 Appeal Judgment. Refund was nevertheless made within a

month, and this relatively short delay was attributed to the 672 Defendants' request for a full account.

Respondents' case

45 The respondents submitted that the appellants could have brought their claims in S 672 and should have done so. The claims brought in S 10 were clearly part of the same subject matter, based on essentially the same complaints and sought similar reliefs. The 672 Plaintiffs as well as BAP, BTEC and BPM knew that BAP, BTEC and BPM should have been the proper plaintiffs in S 672. The respondents pointed to the FTI Report which stated that FTI Consulting was "instructed that the revenue and profits were recognised in the accounts of BAP" for the purpose of calculating the alleged Diversion Loss.

46 The respondents argued that in their Defence for S 672, they had pleaded that BTL was not the proper party to claim the Diversion Loss and Total Loss. In their closing submissions, the 672 Defendants had argued that on the 672 Plaintiffs' pleaded case, BAP would have been the proper party to claim for damages. Despite being put on notice that the 672 Defendants did not accept that BTL was the proper plaintiff, and despite the evidence of Mr Shaw and Mr Iyer that BAP, BTEC and BPM suffered the losses, the 672 Plaintiffs, BAP and BTEC had chosen not to apply for leave to join BAP and BTEC to the proceedings.

47 Further, there was no *bona fide* reason why the 672 Plaintiffs did not join the appellants in the earlier suit. The appellants' argument that they were justified in not doing so because the respondents did not plead that BTL was not the proper plaintiff turns the law on its head. The burden was on the 672 Plaintiffs to prove that they had a cause of action. In relation to the appellants'

submission on the reflective loss principle, the respondents submitted that the 672 Plaintiffs' position had always been that BTL was claiming for its own losses and not reflective loss.

48 The respondents further submitted that the claims made by the appellants are a collateral attack on the 672 Judgment. First, the appellants claimed that Mr Goh had conceived the BN Alliance, which was a collateral attack on the 672 Judge's finding that Seagate had initiated the collaboration. Second, the appellants' claims included damages representing the Total Loss arising from the conspiracy claim and equitable compensation in relation to the dishonest assistance claim against Wyser for Diversion Loss and Total Loss, which the 672 Judge had rejected. Third, the appellants claimed in S 10 that the appropriate period for the calculation of Total Loss was five years, a length of time rejected by the 672 Judge.

49 The respondents also aligned themselves with the Judge's view that it would be manifestly unfair to allow the appellants to proceed with their claims in S 10. The respondents argued that the 672 Plaintiffs and the appellants had acted in a manner that was oppressive and abusive against Mr Goh before, during and after S 672.

Analysis

50 There is no dispute here on the law. The legal principles to be applied have been established by a series of cases in England and Singapore. The Judge gave a comprehensive account of the relevant authorities between [38] and [57] of the Judgment. It is sufficient therefore for us to give a brief summary of the applicable principles. We would emphasise here that abuse of process is "a concept which informs the exercise of the court's procedural powers"

(*per* Lord Sumption in *Takhar v Gracefield Developments and others* [2019] 2 WLR 984). The court controls its processes to ensure that litigants are not vexed by oppressive litigation, but at the same time guards against unjustly depriving a party of the ability to mount a genuine claim.

51 Whether abuse of process is found is dependent on the specific facts and circumstances of each case (*Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760 ("*Andy Lim*") at [42]). Even though an issue could have been raised earlier, that factor alone would not lead to the conclusion that there is an abuse of process when it is raised in subsequent litigation, and the court must ask whether in all the circumstances a party is misusing or abusing the process of the court by seeking to raise the issue (*Tannu v Moosajee and another* [2013] EWCA Civ 815 at [34]). In the foundational case of *Johnson v Gore Wood and Co (a Firm)* [2002] 2 AC 1 ("*Johnson v Gore Wood*") at 31, Lord Bingham emphasised that:

> *It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.* That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on *the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.* [emphasis added]

52 As stated in *Andy Lim*, the legal test for whether there is abuse of process is fact-specific, and depends on the following considerations (at [38]):

(a) whether the later proceedings are nothing more than a collateral attack upon the previous decision;

(b) whether there is fresh evidence that warrants re-litigation;

(c) whether there are *bona fide* reasons why an issue which ought to have been raised in the earlier action was not; and

(d) whether there are other special circumstances that justify allowing the case to proceed.

In the present case, it is mainly considerations (c) and (d) that are in play.

53 This court further noted in *Ong Han Nam v Borneo Ventures Pte Ltd* [2021] SGCA 21 at [71] that "[r]epeated claims by the same plaintiffs or repeated claims against the same defendant are not necessarily the critical factor"; rather, "[f]airness or oppressiveness, as demonstrated by the facts of the case, is the decisive factor".

54 It cannot be seriously disputed that the claims brought in S 10 could have been brought in S 672 either from the start or by amending the writ to add the appellants to the suit. This, however, is not the end of the enquiry since as Lord Bingham expressed it, "could have" does not necessarily equate to "should have". In our view, the claims in S 10 were not brought in abuse of process, for the reasons that follow.

55 The respondents' conduct of the trial proceedings in S 672 was such that they are not able to show that it would be oppressive for them to be subject to S 10. The burden to show that S 10 was brought in abuse of process rests on the respondents (*Johnson v Gore Wood* at 59–60), and as noted by the court in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] 1 SLR 1158 at [99], the "threshold for abusive conduct is very high".

56 The issue of whether BTL was the proper plaintiff was not a major issue in the trial of S 672, a key contributing factor to this being how the respondents

had chosen to run their case. We first consider the pleadings in S 672. In the Defence and Counterclaim (Amendment No 1) ("Defence"), the respondents did not plead that the claims in respect of the Diversion Loss and the Total Loss made in paras 33 and 34 of the Statement of Claim (Amendment No 1) ("Statement of Claim") should have been brought by BAP or by any other party. Instead, they had merely put in a general and bare denial of all matters pleaded in the aforesaid paras (para 24 of the Defence). The generality of this denial meant that it was capable of several interpretations: it could be a denial that BTL had suffered any such loss, or a denial that BTL was the correct party to make a claim against the respondents for the loss. The pleadings in the Defence could hardly be said to have clearly represented the position that BTL was not the proper plaintiff to claim the loss and that there was someone else who could and should have sued.

57 When considering the conduct of the parties during the S 672 trial proceedings, it would be apparent that the respondents had focussed on the defence that BTL had not suffered such losses as a result of Mr Goh's alleged breaches of duty and the alleged conspiracy. From the point of view of BTL, this would have been an understandable and possibly viable defence as it would have appreciated that the burden is always on a plaintiff to show that the loss it claims has been caused by the defendant's conduct that it complains about. It is notable that from the very outset, BTL sought expert advice as to the loss that it had suffered. At the beginning of the action, in support of its application for a Mareva injunction, BTL produced an expert report from an accountant showing how the accountant had calculated the Diversion Loss and the Total Loss as being losses of BTL. Subsequently, that particular accountant could no longer advise, and BTL engaged another expert, Mr Iyer, who produced another report to the same effect and appeared at the trial of S 672 to give evidence on BTL's

behalf. Thus, right up to the start of the trial and during the trial proceedings, the 672 Plaintiffs were focussed on establishing that the losses claimed had been suffered by BTL. Although they were of course aware that the income stream from Seagate went directly to BAP, considering the expert advice they had, they obviously did not sufficiently appreciate the legal effect of that flow.

58 Although the issue of whether BTL was the proper plaintiff was brought up at trial, the respondents did not pursue the point and could even be said to have accepted that the defence was not pleaded. As such, whether BTL was the proper plaintiff was not a major contention during S 672. The respondents, through their then-counsel Mr Ng Lip Chih, had first attempted to advance this point during the cross-examination of Mr Shaw. The appellant's counsel, Ms Marina Chin, objected to this line of cross-examination:

> Mr Ng: I will say this to you, the defendants' position that, even if you are correct that there was a diversion and a loss of revenue, essentially the proper claimants to claim for these losses would be either BAP, BTEC or BPM. You can agree or disagree.
>
> Mr Shaw: I don't know. I think this is a matter of law and I will leave it [to] the lawyers and judge to decide.
>
> Ms Chin: If I may, your Honour, two points. First, I think we are getting into territory which is for the experts and not for this factual witness. *And second, and perhaps more importantly, this is not an issue that has actually been pleaded.*
>
> Mr Ng: Your Honour, I don't think it is an issue for the expert, but I have already put forth my position to Mr Shaw.
>
> *Court:* *If it has not been pleaded, I think that is a point you may wish to consider.*
>
> *Mr Ng:* *Yes, Your Honour.*
>
> [emphasis added]

59 Two things in the above extract are of note. First, the respondents did not take the position that the issue had already been sufficiently pleaded, but instead moved on from that line of questioning in cross-examination. Second, the 672 Judge accepted that the point had not been pleaded. The respondents next picked up on this point briefly during trial proceedings in the cross-examination of Mr Iyer, who testified that he had looked at the profits and losses set out in BTL's consolidated accounts. Finally, the respondents argued in their closing submissions for S 672 that the 672 Plaintiffs had acknowledged at para 4 of the Statement of Claim that the revenue with contracts from Seagate was recognised in the accounts of BAP and, therefore, BAP would have been the correct plaintiff to claim for any damages and/or losses arising from Mr Goh's alleged breaches of fiduciary duties.

60 The 672 Judge considered this as a preliminary issue in the 672 Judgment. She did not think it served as a defence for the 672 Defendants. First, they had not pleaded the defence that BAP should have been the proper plaintiff, notwithstanding that such a defence should have been specifically pleaded. In addition, this position had not been taken in any of the affidavits of evidence-in-chief filed by the defendants' witnesses. She considered that the point had been abandoned. The 672 Judge further stated (672 Judgment at [37]):

> In any event, I agree with Ms Marina Chin that the defence is substantively flawed. The First Plaintiff's claims have always been for its own losses as the holding company of all the subsidiaries in the PE Division. It did not seek to equate the losses of BAP with its own losses, as the Defendants claim.

61 In the 672 Appeal Judgment, this court took a different view, and found that this point had not been dropped by Mr Ng but, instead, had also been raised during the cross-examination of Mr Iyer as well as in closing submissions (at [69]). This court also held that the 672 Defendants did not need to

specifically plead that BAP was the proper plaintiff, a holding which we address below. Nevertheless, we observe that while the point had not been abandoned by the respondents, it had only been brought up briefly on two isolated occasions during the trial itself and had not been advanced with much vigour. It is clear from the 672 Judgment that the Judge did not consider the proper plaintiff defence to be a key issue canvassed during trial proceedings. It was only on appeal, after the 672 Judge had made her findings against the respondents, that this defence came into primary focus.

62 The respondents sought to rely on [68] of the 672 Appeal Judgment to argue that, when the Defence in S 672 was filed, the issue of whether BAP was the proper plaintiff had been placed before the court. BTL could have joined the appellants at that point, but had chosen not to. However, this court's holding in the 672 Appeal Judgment that there was no need for the respondents to specifically plead that BAP was the proper plaintiff for the court to find that BAP (instead of BTL) suffered the relevant losses did not mean that the respondents had discharged their burden of showing that the appellants had brought S 10 in abuse of process.

63 It is undoubtedly correct that this court was entitled to decide on the issue of whether BTL was the proper plaintiff in CA 94/2016. As explained at [68] of the 672 Appeal Judgment, the question of *whether Mr Goh's breaches had caused BTL itself to suffer any loss* had been placed squarely before the court by reason of the 672 Defendants' pleadings. The general denials in the Defence that BTL had a reasonable cause of action or had suffered any loss were sufficient to put BTL on notice to prove its cause of action and losses. The pleadings were therefore also sufficient for this court to intervene to find that BTL was not the party which had suffered the relevant losses, and that it was therefore not the proper plaintiff in respect of those losses. There was no need

for the 672 Defendants to specifically plead who the proper plaintiff was or should have been.

64 Given that it was the 672 Plaintiffs' case that BTL suffered the losses caused by Mr Goh's alleged breaches of duties, it could not be said that they were taken by surprise in having to prove their very case. Whether an issue has been pleaded is not intended to be an "arid and technical" question. Rather, the "entire spirit underlying the regime of pleadings is that each party is aware of the respective arguments against it and that neither is therefore taken by surprise" (see *Liberty Sky Investments Ltd v Aesthetic Medical Partners Pte Ltd and other appeals and another matter* [2020] 1 SLR 606 at [16]). To insist that the 672 Defendants plead that another entity should have been the proper plaintiff would not be in accordance with the spirit of pleadings. In fact, the court's specific finding in the 672 Appeal Judgment that BAP was the proper plaintiff was tangential to the outcome of that judgment; that outcome arose from the primary conclusion which the court reached: that BTL, although the plaintiff in S 672, had not suffered the losses which it had made a claim for. For that reason, it would also not have been necessary for the 672 Defendants to plead in their Defence in S 672 as to which entity was in fact entitled to recover those losses.

65 However, as stated at [62], this did not mean that the respondents had shown that S 10 had been brought in abuse of process. The approach taken by the respondents at trial was substantively directed toward the defence that BTL did not suffer such losses, rather than that BTL was not the proper plaintiff to make the claims. The respondents could be said to have admitted that this position had not been pleaded, and the 672 Judge had also given an indication that she had accepted Ms Chin's objection that the 672 Defendants did not plead this point. As stated in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R)

453 ("*Goh Nellie*") at [53], "the inquiry [of whether an action has been brought in abuse of process] is directed not at the theoretical possibility that the issue raised in the later proceedings could conceivably have been taken in the earlier but rather at whether, having regard to the substance and reality of the earlier action, it reasonably ought to have been".

66 Before us, the appellants argued that if one placed himself in the position of the 672 Plaintiffs during the trial of S 672, one would appreciate that it was reasonable for them to decide that there was no need to join the subsidiaries at the outset, since the 672 Judge had agreed with their position that the proper plaintiff defence had not been pleaded. The respondents did not amend their Defence to specifically plead that the subsidiaries of BTL should have been the proper plaintiffs despite the Judge's indication that they might wish to consider doing so (see [58] above). Instead, the respondents had decided to pursue a narrow defence, *ie*, that BTL could not prove that it suffered the losses. In making such a decision, the respondents had also accepted the risk that another party could later bring claims against them.

67 In our view, it was up to the 672 Plaintiffs to show in those proceedings that BTL had suffered those losses that it claimed. However, the decision made by the respondents not to amend their pleadings is relevant to the question of whether the 672 Plaintiffs should have been expected to join the appellants early in the S 672 proceedings. We do not think that they needed to do so after the close of pleadings in S 672. When it came to the trial and the position taken by the respondents on the proper plaintiff became clearer, an application could have been made to add BAP and the other appellants. However, by then proceedings were far advanced, the trial would have had to be adjourned and new pleadings and further discovery (a rather arduous process as events in this action indicate) would have had to be undertaken. On the basis of the position

taken by the 672 Judge and the expert witness in that trial, it is difficult to conclude that Beyonics should have then undertaken such an expensive process which would also lead to considerable delay in the adjudication process.

68 Further, it may be noted that the 672 Plaintiffs had, before the 672 Judge, justified BTL's claim for the Diversion and Total losses, on the basis of their expert's view that these losses could be remitted "upwards" by BAP to BTL. From that perspective they became losses in the consolidated accounts of the Beyonics Group which conducted its business with Seagate on a collective basis through several subsidiaries. The 672 Judge accepted the argument that because BTL was the holding company in a position to direct the activities of its subsidiaries and the application of cash and profit, it could claim for loss suffered by a subsidiary. That contention was, on appeal, rejected by this court which held that the 672 Plaintiffs had thereby wrongly invoked the "single economic entity" concept which Singapore law does not accept ([70]–[73] of the 672 Appeal Judgment). Notwithstanding the ultimate failure of the argument, it is evident that at the time the issue of the proper plaintiff was raised at the 672 trial, the 672 Plaintiffs genuinely believed they had a cause of action and that there was no good reason to incur the expense and delay of adding BAP and the other subsidiaries as plaintiffs. And as it turned out, the 672 Judge ultimately agreed with them, so it would have appeared right up to the appeal against that judgment that they had pursued the correct course.

69 The threshold to find an abuse of process is high, and the court will be cautious so as not to shut out a genuine cause of action unless the later proceeding involves "what the court regards as unjust harassment of a party" (*Johnson v Gore Wood* at 31). Here, the Judge recognised that the appellants had genuine claims and, indeed, in his subsequent discussion on the merits, found for them on portions of those claims. As stated in *Andy Lim* at [44]:

> It seems to us that the common thread linking the decisions relating to the doctrine of abuse of process is the courts' concern with managing and preventing multiplicity of litigation so as to ensure that justice is achieved for all … the court will exercise its discretion in such a way as to strike a balance between allowing a litigant with a genuine claim to have his day in court on the one hand and ensuring that the litigation process would not be unduly oppressive to the defendant on the other. The court will also be mindful of the considerations which led a claimant to act as he did.

70 In our view, the respondents could not argue at this point that it would be unjust or oppressive for them to have to defend S 10. They had acknowledged early on in the trial that the point was not pleaded. They had only canvassed it fully on appeal when they engaged new counsel. Even in the pleadings for this action, the respondents remained cagey, never stating explicitly whether they accepted BAP as the proper plaintiff. They also refused to identify any other company as such. Considering the respondents' conduct and the appellants' interest in bringing a genuine claim before the court, we are of the view that the claims in S 10 should not have been struck out.

71 For completeness, we address a few other points. First, in finding an abuse of process, the Judge had, in our view, incorrectly considered the conduct of the 672 Plaintiffs in matters that were separate from the merits of the litigation. The Judge first considered that Mr Shaw had made abusive comments to Mr Goh before S 672, but also noted that, taken on their own, abusive comments prior to litigation would carry little weight in determining whether there would be manifest unfairness (Judgment at [101]). The Judge next considered that while the 672 Plaintiffs did nothing wrong in applying for the Mareva injunctions, once such exceptional remedies were granted, it was incumbent on them to prosecute their claims "in accordance with the rules and with respect for the defendants' position". The Judge held that the 672 Plaintiffs had failed to do this by expressly electing to reserve certain claims instead of

bringing all their claims in one suit. The Mareva injunctions placed on them an added burden to ensure that the dispute would end at the earliest possible time. The 672 Plaintiffs had also refused to withdraw the caveats after the 672 Judgment (Judgment at [108]–[111]). Finally, the Judge considered the 672 Plaintiffs' conduct after the 672 Appeal Judgment in refusing to refund the excess moneys.

72 However, all these matters considered by the Judge were irrelevant to the question of whether S 10 had been brought in abuse of process. Before us, the appellants submitted that none of these considerations related to the commencement of the second action. The conduct of the 672 Plaintiffs in relation to the Mareva injunctions bore no relevance to the merits of the decision in S 672 and would be even further removed from S 10. Whether the Mareva injunctions had been properly obtained or should have been continued is a separate analysis from whether a subsequent suit had been brought in abuse of process. We agree with the appellants' submissions in this regard. The question of whether there would be abuse of process in the context of the *Henderson* doctrine was whether it would be unjust for the respondents to be subject to a subsequent suit. Even if the S 672 Plaintiffs had wrongfully exerted pressure on the 672 Defendants in the ways examined by the Judge, their conduct has no bearing on this question.

73 Second, the appellants' case, viewed in context, was not a collateral attack on the earlier decisions in S 672 and the appeal. The Judge was similarly of the view that the appellants were *not* seeking to revisit the findings of the Court of Appeal in S 672 which would have been impermissible (Judgment at [115]).

74 It is undeniable that this court is being asked to reconsider issues that it had already considered in the 672 Appeal Judgment. However, this "re-litigation" was not an attempt to challenge that court's findings of fact, which were substantially in the appellants' favour. We agree with the appellants that the issues which the respondents claimed the appellants were re-litigating were not the key findings of fact in S 672 or were merely alternative claims in S 10. The 672 Judge had found Mr Goh to be liable for both the Diversion Loss and the Total Loss, which were the primary claims in S 672 and S 10. The appellants' claims in S 10 could not be said to be a collateral *attack* against the 672 Judgment.

75 Third, there is no indication that the appellants had intended to capitalise on the court's decision in S 672 to bring subsequent claims against the respondents. In fact, it would not have been feasible in any event for the appellants to commence a subsequent claim without there being double recovery, had the judgment in S 672 been upheld on appeal, given that the losses suffered by the subsidiaries were factored into the quantification of losses suffered by the parent company. The Judge had similarly taken the view that Mr Shaw had not reserved the right to bring further proceedings so as to put pressure on Mr Goh, but rather had identified possible claims with his lawyers and elected which to put forward in S 672 (Judgment at [88]). A genuine mistake alone would not necessarily be enough for a court to find that there was no abuse of process. In *Seele Austria GmbH Co v Tokio Marine Europe Insurance Ltd* [2009] EWHC 255 (TCC), the English High Court considered at [107] that while genuine mistakes could occur such that it would be "unfair and unreasonable to prevent one party from raising an issue on the merits which, for whatever reason, [had] not been the subject of a clear determination", the court should be "astute to prevent a claiming party from putting its case one

way, thereby causing the other side to incur considerable expense, only for the claiming party to lose and then come up with a different way of putting the same case, so as to begin the process all over again". On the facts of this case, for the reasons we have given earlier, the balance fell in favour of allowing the appellants to bring their claim.

76 The Judge noted that it should rarely be the case that an allegation that a subsequent action should be struck out on the basis of abuse of process should not be heard as a preliminary issue (Judgment at [41]). We agree with the Judge's observation. Trying abuse of process allegations early could help avoid unnecessary expense of time and costs on unmeritorious claims that should have been struck out.

Substantive merits of S 10

Preliminary observations

77 We turn next to determine the appellants' appeal in respect of the substantive merits of S 10.

78 We are cognisant, as the Judge was, of the fact that the substantive merits of the case were also discussed by this court in the 672 Appeal Judgment. As recognised by the Judge, the findings of fact made in the 672 Appeal Judgment could not be used to prove primary facts in S 10, but evidence given at the previous trial could be used to challenge or discredit the evidence given by a witness in S 10. The Judge therefore considered the issues *de novo* and reached an outcome that was substantively different from that of the 672 Judge. The evidence was presented before the Judge in a different manner and framed through a different lens. Several new documents were adduced as evidence and additional witnesses, including Professor Chua Tat-Seng ("Prof Chua"), were

called. It would therefore be of minimal assistance to compare the findings of fact made by the two judges, who each reached their independent conclusions in separate trial proceedings.

79 For the reasons that follow, we disagree with the Judge's analysis in respect of the Wyser Agreements. We find that Mr Goh had breached his fiduciary duties by negotiating and entering into the Wyser Agreements, from which he clearly stood to profit; and not merely because of how the payments were structured or because of his non-disclosure. However, even though he had breached his duties in entering into these Wyser Agreements, we are of the view that these breaches did not cause the Diversion Loss or the Total Loss. We uphold the Judge's findings of fact that the diversion of the Second Stage Works to NEDEC/KODEC and the supplanting of Beyonics by NEDEC/KODEC would have occurred regardless of Mr Goh's act of entering into the Wyser Agreements.

The Judge's decision

80 As stated at [34], the Judge found that Mr Goh did not breach his fiduciary duties toward the appellants except in structuring the payments under the Wyser Agreements such that the moneys were paid to Wyser rather than to BTEC, and in failing to seek the board's consent to enter into those agreements. As he found that the diversion of works and supplanting of Beyonics would have occurred in any event, he held that Mr Goh would not be liable for the Diversion Loss and the Total Loss. However, had the claims not been struck out, Mr Goh would have been liable for the Unjustified Bonus and Salaries claims. The Judge made the following findings of fact in relation to key events.

Events prior to the floods

81 In relation to events prior to the floods, the Judge found that the board of Beyonics had decided in 2010 that it should seek to divest the PES Division if an appropriate opportunity arose (at [225]). A policy of limited investment in the PES Division was implemented and continued into 2011, which was consistent with a decision to potentially divest the PES Division (at [226]–[233]). Following a visit to the Beyonics' plants in Malaysia and Thailand by Mr Stephen Hwang and Mr Tony Lee, Mr Goh was told that NEDEC/KODEC would only be interested in purchasing BTEC and not the entire PES Division (at [250]–[251]). The meetings between Mr Goh and NEDEC/KODEC prior to the floods were in relation to the potential sale of BTEC and there were no discussions at that point in time pertaining to the possibility of a collaboration as later envisioned under the BN Alliance (at [257]). There was nothing wrongful in Mr Goh's initial contact with NEDEC/KODEC (at [497]).

The BN Alliance

82 After the floods, Mr LH Lee of BTEC was asked by Nidec whether he could increase baseplate production of Hitachi models for Jupiter 1D baseplates. This was recorded in an e-mail dated 14 October 2011 from Mr LH Lee to Mr Goh (at [263]). Nidec later further requested that BTEC focus on supporting baseplate production for Hitachi (at [265]). Nidec had indicated that BTEC should be allocated Hitachi work and that Seagate work at BTEC was to be reduced and placed with other manufacturers. Further, Seagate had not reached out to Beyonics with any specific requests. Therefore, it was not reasonable to expect Mr Goh to reach beyond Nidec to contact Seagate when Nidec's proposal had provided orders from Hitachi which were more lucrative and would occupy BTEC's capacity (at [284]).

83 The proposal for NEDEC/KODEC to carry out Second Stage Work on e-coated baseplates (First Stage Work) produced by Beyonics or MMI (another baseplate manufacturer) had come from Mr Billy Chua of Seagate during a telephone call between Mr Chua and Mr Tony Lee on 24 October 2011, and this was the first time such a collaboration had been suggested to NEDEC/KODEC (at [277]). A meeting was later held between Mr Billy Chua and Mr Tony Lee on 27 October 2011 regarding the BN Alliance. Mr Lee indicated that NEDEC/KODEC's preference was to work with Beyonics (at [285]).

84 The Judge found that Mr Goh was not aware of the proposed BN Alliance until Mr Tony Lee e-mailed him on 26 October 2011 alluding to a "joint operation", followed by his telephone call with Mr Billy Chua on 27 October and his meeting with Mr Tony Lee on 28 October (at [278] and [301]).

85 Mr Goh was acting in what he considered to be in the best interests of Beyonics in forming the belief that Beyonics would be able to accommodate Seagate's request to form the BN Alliance, and that the alliance would allow it to utilise its spare capacity for First Stage Work to produce e-coated baseplates for profit. The possibility of NEDEC/KODEC purchasing BTEC had already surfaced and it would be logical for the former to prefer working with Beyonics over MMI. It would also be beneficial for Beyonics to work with NEDEC/KODEC to further the possibility of their purchase of BTEC (at [292] and [304]).

86 By 10 November 2011, Mr Goh had formed the view that BTEC should take part in the proposed BN Alliance if suitable terms could be agreed upon (at [319]). Mr Goh was "pulling the strings" behind the negotiations between NEDEC/KODEC and Seagate in relation to the BN Alliance (at [324]). While

it was clear that Mr Goh and Mr Tony Lee worked closely together, it was in the interests of both Beyonics and NEDEC/KODEC to get the best deal from Seagate (at [326]).

87 On 10 November 2011, Mr Goh visited NEDEC/KODEC's factory. The Judge found that, in relation to furtherance of the BN Alliance, the meeting was nothing more than "an appreciation by both parties (*ie*, BTEC and NEDEC/KODEC) that they should work together for their common good" (at [320]). He further found that, at this meeting, it was agreed that Mr Goh would take the lead on the questions of pricing and investment contribution from Seagate in relation to the proposed BN Alliance (at [326]).

88 Sometime before 10 November 2011, Beyonics was invited by Seagate to attend an Executive Business Review ("EBR Meeting") to discuss Beyonics' strategy in relation to production of baseplates after the floods (at [321]). Mr Goh was to give a presentation at the meeting and had been instructed by Seagate to give an indication of the financial assistance required by Beyonics and NEDEC/KODEC for the BN Alliance to work (at [322]).

89 On 11 November 2011, Mr Goh sent an e-mail to Mr LH Lee seeking his comments on a proposed plan which included one million pieces of First Stage production for NEDEC/KODEC. He asked for calculations to be done in preparation for the EBR Meeting. Subsequent e-mails were exchanged with different proposals being suggested (the "What-if" e-mails") (at [329]–[332]).

90 The "What-if" e-mails did not show that there was any scope for increasing capacity in BTEC for Second Stage Work without a sizeable capital investment (at [333]). BTEC's maximum machining capacity was 2.9 to

3 million per month. Investment would be needed to increase the capacity any further (at [474]). Mr Lee and Mr Goh had perceived the maximum capacity to be as such and it was in fact the case that BTEC did not have the capacity to produce one million Brinks 2H products at the Second Stage, but had the capacity to produce First Stage products in those quantities (at [476], [478]). There was nothing wrongful in Mr Goh's entertaining the proposal of a joint venture with NEDEC/KODEC (at [504]). There was also nothing wrongful about Mr Goh's actions leading up to the formation of the BN Alliance (at [515]).

91 The EBR Meeting was duly held on 18 November 2011 and Mr Goh had prepared slides for it promoting the BN Alliance and indicating that BPM would need an investment sum of US$5.8 million, BTEC would need a sum of US$3.3 million and KODEC/NEDEC would need a sum of US$2.5 million (at [336]–[341]).

92 On 24 November 2011, a Tripartite Meeting took place involving Seagate, Beyonics and NEDEC/KODEC. At this meeting the BN Alliance was officially agreed upon (at [345]–[348]).

93 The BN Alliance was only disclosed to the board of Beyonics on 13 December 2011 (at [352]–[353]). The BN Alliance was finally reduced to writing by an agreement dated 10 January 2012 which recorded that Beyonics and Seagate had agreed on 18 November 2011 to form a strategic partnership with NEDEC/KODEC (at [359]).

94 Mr Goh and BTEC personnel had given substantial assistance to NEDEC/KODEC for them to be able to qualify for Second Stage Work (at [433]). Generally, Mr Goh did not aid NEDEC/KODEC in relation to

First Stage Work, apart from becoming involved in NEDEC/KODEC's plans to build an e-coating line (at [441], [442], [449]). Regarding the assistance given by Mr Goh to NEDEC/KODEC, the Judge held that he was taking active steps to facilitate the success of the BN Alliance for the benefit of both NEDEC/KODEC and BTEC, and also for himself under the Wyser Agreements. He was also facilitating the purchase of BTEC. He might have given more assistance than was strictly necessary but there was nothing sinister about it (at [454]). His conduct did not enter the realm of *male fide* behaviour (at [531]).

Impact of the Wyser Agreements

95 In relation to the Wyser Agreements, the Judge held that Mr Goh *did* breach his fiduciary duties. The breach did not lie in seeking payment from NEDEC/KODEC for the consultancy work in assisting NEDEC/KODEC in advancing the BN Alliance, but in the structuring of the payments to Wyser rather than to BTEC and in failing to inform the Beyonics Board of the agreements or seeking its consent to enter into them (at [518], [522]).

96 It would have been wholly apparent to Mr Goh, Mr Tony Lee and Mr Hwang that any payment for consultancy services should be to BTEC and not to Mr Goh. Mr Goh did not inform the Beyonics board about the Wyser Agreements. There was also no legitimate reason for structuring the payment of US$300,000 from NEDEC/KODEC to Mr Hwang through a third party, *ie*, Mr Goh. Mr Goh's involvement in the agreements was reprehensible (at [378]–[381]).

97 However, the fact that Mr Goh did not act in good faith vis-a-vis Beyonics in relation to the Wyser Agreements did not mean he did not act in Beyonics' interests in relation to the BN Alliance and other issues (at [382]).

Intended sale of BTEC

98 In relation to the potential sale of BTEC, Mr Tony Lee had disclosed information confidential to NEDEC/KODEC to Mr Goh and also sought advice regarding the financing of the acquisition (at [392]). On 28 February 2012, Mr Tony Lee e-mailed Mr Goh informing him of a potential investor funding 60% of the purchase price of BTEC, working on a sale price of US$40 million (at [399]). Eventually, on 23 April 2012, Mr Tony Lee sent a letter of intent to purchase BTEC at a price of between US$28 million and US$31 million in cash (at [402]).

99 While the discussions in relation to the sale of BTEC showed that Mr Goh and Mr Tony Lee worked closely, it was mainly Mr Lee who was imparting confidential information and Mr Goh had not acted improperly. While Mr Goh did advise Mr Tony Lee as to possible ways forward, this was not against Beyonics' best interests if it enabled BTEC to be successfully sold (at [393], [396], [400]). As a result of this close cooperation, NEDEC/KODEC had informed Mr Goh of its willingness to pay between US$28 million and US$31 million for BTEC (at [402]). While Mr Goh did not keep the board informed of the progress of negotiations, this was how he had been allowed to function over the years (at [424]).

100 On 31 January 2012, Mr Goh e-mailed Mr Shaw a copy of an Information Memorandum prepared to solicit offers for parts of the PES Division in November 2011 (the "PE Memorandum"). But Mr Goh did not inform Mr Shaw or Channelview's Board about the steps he was taking to sell BTEC to NEDEC/KODEC (at [404]–[405]).

101 Mr Shaw had intended to appoint an external adviser, Business Development Asia LLC ("BDA") to oversee the divestment of the PES Division. Mr Goh objected to this. BDA was eventually appointed. On 22 May 2012, BDA representatives met with NEDEC/KODEC, who told BDA that they had expected to be the only ones discussing a deal for BTEC (at [406]–[414]). BDA was unable to induce NEDEC/KODEC to increase its offer (at [416]). According to Mr Goh, the best offer BDA was able to obtain was between US$25 and 28 million from MMI. BDA reverted to NEDEC/KODEC in September 2012; however, the HDD market had collapsed by then and NEDEC/KODEC reduced their offer to between US$13 and 15 million (at [417]). As matters developed, Channelview eventually no longer needed to divest the PES Division and attempts to divest BTEC therefore ceased (at [418]).

Parties' cases

Appellants' case

102 The appellants' primary contention was that the Judge had erred in focusing on Mr Goh's subjective view that he did not breach his fiduciary duties to the appellants, when he should have applied a more objective test. Mr Goh's acts were also considered in isolation without sufficient regard to the documents, the wider context and the collective impact of his breaches. The appellants' case, in summary, was that the Wyser Agreements were bribes that had tainted Mr Goh's actions in promoting the BN Alliance. Entering into the BN Alliance was not in the interests of Beyonics, and neither was Mr Goh's facilitation of the growth of NEDEC/KODEC, nor Mr Goh's actions in pushing for the sale of BTEC to NEDEC/KODEC. The Wyser Agreements tainted all of Mr Goh's dealings with NEDEC/KODEC, and Mr Goh would not be able to

rebut the presumption that his breaches had caused the Diversion Loss and the Total Loss. Mr Goh was also liable for the claims in respect of the Unjustified Bonus and Salaries.

Respondents' case

103 In contrast, the respondents submitted that the Judge did not err in finding that the appellants' claims for the Diversion Loss and the Total Loss would have failed even if they had not been struck out. There was nothing wrongful about Mr Goh's initial negotiations with NEDEC/KODEC, or with his negotiations with NEDEC/KODEC in relation to the BN Alliance. It was in Beyonics' interests to enter into the BN Alliance, and for Mr Goh to continue with negotiations in relation to the sale of BTEC. The payments under the Wyser Agreements were not bribes, but legitimate payments for consultancy services. The respondents disagreed with the Judge that Mr Goh would have been liable for the Unjustified Bonus and Salaries claims.

Analysis

Whether Mr Goh had breached his fiduciary duties toward the appellants

104 We begin with the Wyser Agreements. As stated earlier, the Judge found that Mr Goh's breaches in relation to the Wyser Agreements lay only in the structuring of the payments to Wyser and in his lack of disclosure to the board. The Judge found that had the sums paid by NEDEC/KODEC in the Wyser Agreements been paid to Beyonics, they would have been proportional to the assistance provided by Beyonics personnel in relation to qualification for the production of Second Stage works and in ironing out production difficulties. With respect, we are unable to agree with the Judge. The Wyser Agreements should be appropriately characterised as bribes or secret payments made to

Mr Goh, from which he had personally benefited. Mr Goh's involvement in the Wyser Agreements was undoubtedly a breach of his fiduciary duties to the appellants, in particular of the no-profit and no-conflict rules.

105 The appellants submitted that on 10 November 2011, Mr Stephen Hwang and Mr Tony Lee had requested that Mr Goh help NEDEC/KEDEC obtain a US$2.5 million grant from Seagate in exchange for compensation. The Judge had erred in taking a benign view of this meeting. Mr Tony Lee had testified that he had proposed paying Mr Goh for "overall consultancy", which included getting financial assistance from Seagate. Thereafter, the slides used during the EBR Meeting on 18 November prepared by Mr Goh then set out an "Investment Proposal" for Seagate to give NEDEC/KODEC a US$2.5 million grant.

106 The Wyser Agreements provided that the agreements were made on 24 November 2011 between both parties (being Wyser and KODEC or NEDEC as the case may be) even though the drafts of the agreements were only e-mailed from Mr Tony Lee to Mr Goh on 6 March 2012. The appellants pointed out that 24 November 2011 was the same day as the Tripartite Meeting during which the BN Alliance was confirmed.

107 The appellants submitted that the Wyser Agreements tainted Mr Goh's actions in promoting the BN Alliance, as they incentivised Mr Goh to disregard the interests of Beyonics, cause the diversion of the Second Stage Works to LND, facilitate the entering into of the BN Alliance, and assist NEDEC/KODEC in obtaining the US$2.5 million grant from Seagate. The Wyser Agreements were "premised on the BN Alliance" and had no purpose outside of it. Once a bribe or secret payment is made to an agent, it would taint future dealings in which the agent acts for the principal. At the minimum,

Mr Goh had placed himself in a position of conflict of interest by taking the bribes. Mr Goh had only informed the board about the BN Alliance on 13 December after he had already committed Beyonics to it. This prolonged non-disclosure pointed to a lack of *bona fides*.

108 In response, the respondents submitted that payments made under the Wyser Agreements were not bribes but were negotiated fees in exchange for consultancy services. The respondents agreed with the Judge's findings that even though Mr Goh had breached his duties in receiving the payments and failing to disclose them, it did not mean that he had acted in bad faith towards Beyonics. As Mr Goh had only entered into the Wyser Agreements on 6 March 2012, he could not have been induced by the payments to enter into the BN Alliance or obtain the US$2.5 million grant, both of which had been completed/approved by then.

109 The respondents further submitted, in relation to the procurement of a grant of US$2.5 million for NEDEC/KODEC, that Mr Goh's proposal at the EBR Meeting in relation to investments for both Beyonics and NEDEC/KODEC was consistent with Seagate's requirements. At the Tripartite Meeting, Mr Tony Lee had asked Seagate for a US$2.5 million grant for NEDEC/KODEC. Seagate then independently considered this before approving the grant.

110 In our view, the Wyser Agreements could not merely have been consultancy agreements. The Wyser Agreements only contained a few terms each and were not well-drafted. Nevertheless, it was clear that under the First Wyser Agreement, Wyser was to assist in securing Second Stage Work and a US$2.5 million grant for KODEC, and that it would be paid a "monthly

sales and management support service fee" for each baseplate KODEC received.

111 There would have been no reason for the Wyser Agreements to be tied to the US$2.5 million grant or the number of baseplates shipped to LND if they were legitimate consultancy agreements. The agreements did not set out what consultancy services had been envisioned for a net payment of US$200,000. There were also no details as to what would constitute services for payment of the "monthly sales and management support service fee". There is merit in the appellants' submissions that the non-disclosure to the board indicated that the Wyser Agreements were not merely consultancy agreements: the secret payments were made to Wyser for Mr Goh's benefit, and the terms of the Wyser Agreements required Mr Goh to advance positions that could be in direct conflict or direct competition with the interests of the appellants.

112 It is apparent on the face of the Wyser Agreements that they were undoubtedly linked to the BN Alliance, and specifically to the procurement of the US$2.5 million grant and the diversion of Second Stage Works to LND. Mr Tony Lee had acknowledged that he had come up with a proposal while they were in a car ride on 10 November 2011 to compensate Mr Goh for his help, including getting the US$2.5 million grant from Seagate. In the slides prepared by Mr Goh for the EBR Meeting on 18 November, it is clear that Mr Goh had promoted the BN Alliance, including the advantages of working with NEDEC/KODEC, to Seagate. His slides reflected that KODEC had "2 million machining capacity", that KODEC "[had] experience in HDD Base supply to Samsung for more than 10 years" and that working with KODEC was a "Golden Opportunity". In the slides, he had also set out an "Investment Proposal", including an investment of US$2.5 million to NEDEC/KODEC. The circumstances showed that Mr Goh was at least aware of the terms of the Wyser

Agreements in November 2011, even if the agreements had not been formally entered into.

113 Mr Tony Lee further testified that while he did not discuss how payments were to be effected with Mr Goh, to his mind, he would leave that to Mr Goh as long as Mr Goh assisted NEDEC/KODEC in "[receiving] the money from Seagate". He testified that he would compensate Mr Goh as long as NEDEC/KODEC received assistance "to be successful", whether the money was going to Mr Goh or to his personal account or by any other means of transfer. These arrangements were not structured as payments for consultancy services, but rather as private commissions paid to Mr Goh personally for his assistance to NEDEC/KODEC. We therefore find that the Wyser Agreements were secret commissions and that Mr Goh had breached his duties to the appellants with regard to these agreements.

Whether the breach of duties caused the Diversion Loss and the Total Loss

114 It is undisputed that the law as set out in *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Winsta*") applies with regard to establishing whether losses were caused by the fiduciary's non-custodial breach of "no-conflict" and "no profit" duties . As stated at [254] of *Winsta:*

> (a) In a claim for a ***non****-custodial* breach of the duty of *no-conflict* or *no-profit* or the duty to act in *good faith*, the plaintiff-principal must establish that the fiduciary breached the duty and establish the loss sustained.
>
> (b) If the plaintiff-principal is able to meet the requirements of (a), a *rebuttable* ***presumption*** that the fiduciary's breach caused the loss arises. The ***legal burden*** is on the wrongdoing ***fiduciary*** to rebut the presumption, to prove that the principal would have suffered the loss in spite of the breach.

> (c) Where the fiduciary is *able* to show that the loss would be sustained in spite of the breach, no equitable compensation can be claimed in respect of that loss.
>
> (d) Where the fiduciary is *unable* to show that the loss would be sustained in spite of the breach, the upper limit of equitable compensation is to be assessed by reference to the position the principal would have been in had there been no breach.
>
> [emphasis in original]

115 In this case, Mr Goh's acts of negotiating and entering into the BN Alliance and facilitating NEDEC/KODEC's growth in Second Stage Works, including securing the US$2.5 million grant on behalf of NEDEC/KODEC, were tainted by the Wyser Agreements. On the appellants' case, these acts, amongst others, had cumulatively caused the Diversion Loss and the Total Loss. These acts were therefore said to be sufficient to link his breaches to both the Diversion Loss and the Total Loss. The question then is whether Mr Goh was able to show that the Diversion Loss and the Total Loss would have occurred in any event regardless of his breaches. In this respect, the Judge's findings of fact that Mr Goh had acted objectively in the interests of Beyonics amply support our conclusion that Mr Goh's breaches did not cause the relevant losses.

(1) Events prior to the floods

116 We begin by considering the events prior to the floods. The Judge had found that the board had implemented a policy to limit investment and to divest the PES Division before the floods. It was argued by the appellants that Mr Goh had changed his evidence multiple times as to when the decision to divest had been reached by the board. Events such as Beyonics' acquisition of Wealth Preview (an e-coating business) in 2011, as well as the fact that such a decision had not been minuted, showed that it was not possible that a definitive decision had been made on divestment or limited investment in 2010. Further, by

October 2011, the acquisition of BTL by Channelview would have been well underway on the terms which required its relationship with Seagate to be preserved. Even if the board had made such a decision, the floods had presented an opportunity to enhance profit levels and the relationship of Beyonics with Seagate.

117 However, the acquisition of Wealth Preview, as well as the lack of minuted evidence, had been specifically considered by the Judge. In relation to the lack of Board minutes, the Judge accepted Prof Chua's explanation that as it was a sensitive matter, it would not be explicitly minuted unless there was a specific offer on the table (Judgment at [224]). The Judge was also persuaded by two examples showing that investment was still allowed but was controlled. Firstly, the board's decision to purchase the 20% outstanding share in Wealth Preview in October 2011 would not require a large sum of money, given that Beyonics had already acquired 80% of the business in 2008. Secondly, capital expenditure in FY 2010 and 2011 was significantly lower than that incurred in FY 2008 and 2009 (Judgment at [232]). The Judge further relied on the evidence of Prof Chua, who testified to the board's decision to divest the PES Division and to limit further capital investment into the PES Division (Judgment at [222]–[227]). Further, divestment of the PES Division continued after the acquisition of BTL by Channelview, with Mr Shaw deciding to appoint BDA to oversee the divestment. There was nothing suspect or incredible about Beyonics' policy to divest the PES Division or limit investments into it.

118 This finding on the board's early decision sometime in 2010 on divestment and limiting investments supported the conclusion that the BN Alliance would have been entered into regardless of whether Mr Goh had entered into the Wyser Agreements.

(2) Formation of the BN Alliance

119 In respect of the formation of the BN Alliance, the Judge had concluded that the idea of a collaboration between NEDEC/KODEC and Beyonics or MMI came from Mr Chua during the phone call with Mr Tony Lee on 24 October (Judgment at [277]); and that Mr Goh only became aware of the possibility of Beyonics joining the BN Alliance when Mr Lee alluded to it in his e-mail of 26 October (Judgment at [301]).

120 The appellants took an entirely different view of the events that had transpired following the floods. They contended that following the floods, Seagate was desperate and preferred increased production from existing suppliers. However, Mr Goh was unenthusiastic in his responses, setting the stage for the introduction of NEDEC/KODEC into the baseplate manufacturing process. Seagate then reached out to NEDEC/KODEC on 24 October 2011 to propose a partnership proposal, for Beyonics or MMI to do the First Stage Work and NEDEC/KODEC to do the Second Stage Work. On 26 October 2011, Mr Tony Lee asked to meet Mr Goh regarding the BN Alliance without having had discussions with MMI, suggesting that there must have been prior discussions between Mr Goh and NEDEC/KODEC. Ten minutes before Seagate's first meeting with NEDEC/KODEC on 27 October 2011, Mr Goh sent an e-mail to Mr Billy Chua stating that Beyonics would only support Seagate selectively due to major losses in the PES Division. The appellants argued that the evidence showed that Mr Goh had been pushing for the BN Alliance against the interests of Beyonics.

121 In our view, in finding that there was nothing insidious in how the BN Alliance was conceptualised, the Judge had come to the correct conclusion on the evidence before him. The Judge had referred to an internal brainstorming

meeting held at Seagate where the idea of a collaboration between suppliers was raised (Judgment at [271]–[272]), as well as to an e-mail sent from Mr Billy Chua to Mr Tony Lee on 24 October 2011, introducing himself and setting up a conference call. The Judge also considered the testimony of Mr Chua and Mr Lee in relation to the call as well as their subsequent e-mail correspondence. Based on the evidence, the Judge had concluded that this proposal had originated during Mr Chua's phone call and had therefore come from Seagate (Judgment at [274]–[277]).

122 In relation to when Mr Goh found out about the possibility of the BN Alliance, the Judge considered the e-mail sent from Mr Goh to Mr Chua on 27 October 2011 which the appellants had sought to rely on. The Judge noted that in this e-mail, there was no reference to any collaboration between entities for First and Second Stage works. If the proposal had already been surfaced to Mr Goh, it would be expected that he might have brought it up. The Judge acknowledged that it was difficult to determine whether Mr Billy Chua had told Mr Goh about the proposal on 25 October 2011 as the contemporaneous documents were sparse. Mr Goh had testified that Mr Chua had informed him about the proposal on 27 October 2011, and an e-mail was sent from Mr Goh to Mr LH Lee the next morning on 28 October 2011, requesting him to advise as to his capacity for one million First Stage baseplates. The Judge considered that Mr Goh might have made this request earlier if he had been informed of the proposal at an earlier time. As such, the Judge was not persuaded that Mr Goh was aware of the possibility of the BN Alliance until the "seeds of the idea were sown" by Mr Tony Lee's reference to a "joint operation" in his 26 October e-mail, followed by the clarification of that idea by way of telephone call with Mr Chua on 27 October and the meeting with Mr Lee on 28 October (Judgment at [300]–[301]).

123 There was nothing objectionable about the Judge's reasoning and analysis of the evidence, and the Judge was entitled to draw the inferences that he did. In relation to the appellants' submission about NEDEC/KODEC's preference of MMI over Beyonics, the Judge had concluded that it was logical for NEDEC/KODEC to choose to work with Beyonics over MMI since the possibility of NEDEC/KODEC purchasing BTEC had already been canvassed (Judgment at [304(a)]). The inferences that the appellants wanted the court to make were speculative and insufficient to displace the Judge's considered conclusion based on the available evidence.

(3) Whether the BN Alliance had been reasonably entered into

124 The Judge was of the view that the figures provided in Mr LH Lee's e-mails were the reliable records of BTEC's capacity for Second Stage Works. In this regard, the Judge found that:

> (a) After the floods, Mr LH Lee sent an e-mail to Mr Goh on 14 October 2011, informing him that Nidec's machining plant had lost 1000 CNC units and that the motor baseplate assembly plant had lost 20 million monthly capacity, and that both these plants had been mainly supplying products to Hitachi. Nidec therefore requested that BTEC consider manufacturing more baseplates to support Hitachi. Mr Lee further stated that he had received a quotation for Jupiter 1D baseplates and that he might discuss this further with Nidec (Judgment at [263]).
>
> (b) On 18 October 2011, Mr LH Lee informed Mr Goh that he had a discussion with Hitachi, which requested that BTEC manufacture baseplates for its Jupiter 1D programme. In Mr LH Lee's e-mails dated 18 October and 22 October 2011, he indicated that committing to the Jupiter programme would require a reduction of Brinks 2H production.

In the 22 October e-mail, he also indicated that the maximum Second Stage capacity at BTEC was 2.4 million pieces per month (Judgment at [265]–[267])

(c) On 28 October 2011, Mr LH Lee replied to Mr Goh's e-mail requesting that he advise as to BTEC's capacity to produce 1 million First Stage baseplates for NEDEC/KODEC (see [122] above). Mr Lee indicated that BTEC's capacity for First Stage work was 4 million baseplates per month and that it could accommodate 1 million First Stage orders from NEDEC/KODEC. However, BTEC's capacity for Second Stage machining was 2.4 million baseplates, and that this capacity would be fully utilised by March 2012, taking into account the Jupiter 1D order and other projected Second Stage orders (Judgment at [290]–[291]).

(d) By 9 November 2011, Mr LH Lee appeared to have managed to find a way to increase production by March 2012 to 2.7 million pieces per month. This figure increased further to 2.9 million pieces two days later. Mr Lee further indicated that to increase monthly capacity for 390,000, an investment cost of US4.18 million would be necessary (Judgment at [469]). In the "What-if" e-mail chain, Mr LH Lee came up with different proposals to increase capacity, but none of the documents suggested that there was any scope for increased capacity without a sizeable investment (Judgment at [329]–[333]).

(e) Mr Goh was entitled to rely on the figures provided to him by Mr LH Lee. Thus, Mr Goh would have perceived the maximum Second Stage capacity of BTEC to be at 2.9 to 3 million pieces without further investment being made (Judgment at [475]–[476]).

125 The appellants submitted that entering into the BN Alliance was not in the interests of Beyonics as it was more profitable to do both First Stage Work and Second Stage Work. This was because the direct margin on Second Stage Work was higher, and cost adders were only paid by Seagate on finished baseplates (*ie*, after the Second Stage). The appellants also submitted that BTEC had enough production capacity and did not need to divert Second Stage Work to NEDEC/KODEC. The appellants submitted that the Judge had erred in finding that Mr Goh did not act unreasonably in considering whether to enter negotiations for the BN Alliance as he had based his conclusion on erroneous findings, including that Beyonics did not have sufficient capacity for Second Stage Work but had excess capacity for First Stage Work.

126 In terms of production capacity, the appellants submitted that contemporaneous documents showed that BTEC had the capacity to perform Second Stage Work, relying on the PE Memorandum, as well as contemporaneous production reports. The appellants also submitted that the Judge had erred in placing weight on the "What-if" e-mails, which should not have been given credence over the PE Memorandum and reports. The appellants also contended that the Judge had erred in considering that BTEC's capacity had been taken up by increased work for Hitachi. Apart from the fact that BTEC did have enough capacity, Seagate as the largest and most important customer of the PES Division and Beyonics should have been prioritised over Nidec and other baseplate customers. Finally, Mr Goh being a shareholder should have had no impact on the Judge's analysis; in any event he was only a minority shareholder.

127 We agree with the Judge that the contemporaneous e-mail correspondence showed that Mr LH Lee did not consider that Beyonics had any spare capacity at the material time. Crucially, the appellants did not dispute the

Judge's interpretation of the e-mail correspondence between Mr Lee and Mr Goh. Mr LH Lee had attempted to explore various permutations with the goal of increasing capacity but could only find ways to increase the capacity up to 2.9 to 3 million pieces per month without investment to accommodate the increased orders from Hitachi. There is no suggestion that Mr LH Lee had any reason to lie or that he had deliberately made misrepresentations as to BTEC's capacity. We also agree with the Judge that Mr Goh was entitled to rely on the information supplied to him by Mr Lee, whose job was to manage the plant at Changshu.

128 We turn to the documents which the appellants claim should have been given greater weight. In terms of the reports which the appellants sought to rely on, the Judge had considered that attempts were made at trial to reconstruct the maximum capacity that was in fact available, but that this was only relevant if Mr Goh or Mr LH Lee had considered at the material time that they had understated the actual maximum capacity. We agree with the Judge that it would be of limited use to consider these reports now if there was no evidence that Mr Goh or Mr Lee had used these figures at the material time.

129 Nevertheless, briefly considering the analysis tables produced by the appellants, if the BTEC Weekly Output Reports prepared by the appellants were accurate, it would seem that there was spare capacity for Second Stage Work. However, as submitted by the respondents, it was difficult to see how the figures in the tables were derived from the annexed reports. The respondents further pointed out that Mr LH Lee had testified that it was difficult to determine the spare capacity based on such work reports. He testified as follows:

> Q Mr Lee, can I ask you to go back to bundle volume 18 at page 11627. Mr Lee, what I would like you to do is to look at page 11627 until page 11644. These pages, I am told, make up the BTEC 2012 weekly output report for

> week 22. Mr Lee, looking at these pages, could you help us by telling us where we should look at, or what we should look to in these pages, to work out the number of CNC machines that were being used and the number that were spare for that week.
>
> A Very difficult to – to look at this report to reference back to week 22, the spare machines. Very difficult. As I told you, this is just a – a daily production record – report, okay. It is difficult to reference back the week 22 machine utilisation report. Very difficult.
>
> Q Why is it very difficult?
>
> A Because I – as I told you, there are more detailed report that – to justify those not – machines not been utilisation, okay. I cannot remember now where the report, okay.
>
> Q Tell me if I'm wrong. Looking at page 11627 until page 11644, one cannot tell how many CNC machines were being used and how many were spare for week 22 of 2012, would that be correct?
>
> A Yeah. This few page of report just to tell you what are the product running and how many machines loading for these few products because this is talking about – reference back to 200-over machines, okay. It is difficult by these few pages to refer back to the 269 machines utilisation.

130 The respondents also submitted that there are large unexplained fluctuations across months in the space capacity as calculated by the appellants. Based on the evidence available, we agree with the respondents that there are some difficulties with relying on the analysis in the tables adduced by the appellants which purport to show that BTEC had spare capacity to fulfil Second Stage Works for Seagate.

131 As for the PE Memorandum, the Judge was of the view that he could not place material reliance on them without evidence as to how the numbers therein were reached, in the face of other documents containing detailed figures which were inconsistent to the numbers in the memorandum. We are of the view that

the Judge had accorded appropriate weight to the PE Memorandum. The PE Memorandum is dated 23 November 2011 and merely contains an assertion that BTEC had 259 CNC machines with a capacity for Second Stage Works of 3.5 million pieces per month, with no supporting calculations. It is noted that the memorandum was later updated in March 2012 where the figure was increased to 3.63 million. As stated in the PE Memorandum, it was "delivered for information purposes only to a limited number of interested parties for their sole use and for the sole purpose of assisting them to decide whether they are interested in making an offer to acquire the [PES] Division". It was further stated that "[w]hile the information contained in [the PE Memorandum] is believed to be accurate…in all material respects, it does not purport to be complete and all interested parties should conduct their own investigation into the [PES] Division". The memorandum was clearly meant to be a brief write-up of the PES Division to promote it for acquisition, and was not meant to be relied upon internally for business planning.

132 This is in stark contrast to the e-mail correspondence between Mr Goh and Mr LH Lee, including the "What-if" e-mails. Mr Lee's initial response that BTEC's capacity for Second Stage machining was 2.4 million pieces was made in response to Mr Goh's request for BTEC's capacity after he had been informed of the BN Alliance. Subsequently, the "What-if" e-mail chain started with an e-mail sent from Mr Goh to Mr LH Lee (amongst other recipients) on 11 November, in which Mr Goh had sought Mr Lee's help to do the capacity calculations, on the basis that 1 million pieces of First Stage production would be supplied to NEDEC/KODEC. These calculations were needed for the upcoming EBR, during which Mr Goh needed to give Seagate a proposal in order to ask for an increase in price and for investment. The appellants argued that the "What-if" e-mails sent from 11 to 16 November 2011 were

correspondence targeted at obtaining investment from Seagate and could not be relied upon. However, rather than diminishing the accuracy of the e-mails, this in fact showed that Mr LH Lee would have been specifically focussed on the question of capacity at that time. It would also be logical to infer that he would have carefully considered the available capacity figures that he provided to Mr Goh, since it must have been apparent to him that Mr Goh was relying on these calculations for his proposal to and negotiations with Seagate.

133 In terms of whether Mr Goh should have rejected the requests from Nidec and Hitachi to support the Jupiter 1D baseplates, there is no evidence that supporting Seagate would have clearly been the more profitable or desirable option. In any event, the evidence showed that Mr Goh had considered the proposal from Nidec and did not merely accept it at face value. Mr Goh was cognisant of the need to increase prices and to benefit from supporting Hitachi. On 18 October 2011, Mr LH Lee sent an e-mail to Beyonics representatives including Mr Goh, informing the latter of Nidec's request for BTEC to support Hitachi, and that he had not made any commitment to Nidec. To this e-mail, Mr Goh responded: "[a]ll prices need to re quote, if any come with low price, we are not interested!". Subsequently, in an e-mail dated 11 November 2011, Mr LH Lee informed Nidec that BTEC was requesting a 30% increase in the selling price of all Hitachi baseplates. If a purchase order was not issued to reserve production capacity for million 1 Jupiter baseplates and 100,000 Jaguar baseplates per month by 5.00pm, BTEC would reassign the production capacity to another customer. Nidec had replied with the requested purchase orders by the time limit. On the available evidence, there was no reason why BTEC should have rejected the proposal presented to it by Nidec and Hitachi. For the above reasons, we see no reason to disturb the Judge's findings.

134 Finally, the Judge had made a related finding of fact that Seagate was conducting similar discussions with other baseplate manufacturers at the material time. Seagate had conducted discussions with other baseplate manufacturers, resulting in similar joint ventures being created. This was not challenged by the appellants, and the finding supported the conclusion that entering into the BN Alliance was not an unreasonable decision made by Mr Goh. Thus, to the extent to which the BN Alliance may have contributed to the Diversion Loss and the Total Loss, Mr Goh was able to discharge his onus of showing that the same were not due to his decisions which were taken in the interests of Beyonics.

(4) Facilitation of the growth of NEDEC/KODEC

(A) DEVELOPMENT OF CAPABILITIES AND SEAGATE GRANT

135 The appellants submitted that Mr Goh had assisted NEDEC/KODEC in developing capability for Second Stage Work and even for First Stage Work even though it was irrelevant to the BN Alliance. With these capabilities, NEDEC/KODEC became independent of Beyonics and was in a position to supplant the latter. The following assistance had been provided by Mr Goh:

(a) Mr Goh arranged visits to BTEC by LND personnel and *vice versa* in order for BTEC's personnel to guide NEDEC/KODEC regarding the manufacturing of Seagate baseplates.

(b) Mr Goh also offered services to NEDEC/KODEC, such as pre-testing the production line at LND before the actual testing conducted by Seagate.

(c) Mr Goh also acted as the intermediary to help NEDEC/KODEC develop an "ED Coating Line", even though it was unrelated to the BN Alliance.

(d) Mr Goh enabled NEDEC/KODEC to obtain a US$2.5 million grant from Seagate.

136 In relation to Second Stage Work, the Judge held that he was "wholly satisfied that Mr Goh and other personnel at BTEC did give a considerable amount of advice and assistance to [NEDEC/KODEC] to assist them both in qualifying to produce the Second Stage baseplates and in ironing out production difficulties" (Judgment at [433]). However, it was not against the interests of Beyonics to promote the success of the BN Alliance.

137 The Judge was also not satisfied that the assistance provided by Mr Goh to NEDEC/KODEC in relation to First Stage Work amounted to a breach of his duties to Beyonics. The Judge accepted that Mr Goh did assist with the development of the ED Coating Line and found that Mr Goh "must have appreciated that the purpose (of NEDEC/KODEC's request of a visit to BPM's facility in Malaysia to have a tour of the e-coating line) was to assist [NEDEC/KODEC's] plans to build a 1st Stage line at KPI". However, the Judge found that Mr Goh "must have appreciated that to refuse would cause offence to Mr Lee and Mr Hwang" (Judgment at [442]).

138 The Judge also accepted that Mr Goh had sought to bring together NEDEC/KODEC and Ovindo, so that KPI (NEDEC/KODEC's facility in the Philippines) could purchase an e-coating line from Ovindo for the Seagate M8 programme, though this eventually fell through (Judgment at [529]–[530]). The Judge held at [530]:

> Taking such an active part to assist a competitor is not a normal part of the role of a CEO and, *prima facie*, would give rise to a justifiable assertion that it was not in the best interests of the company. *However, in the circumstances of this case, the assistance has to be viewed in the context of the relationship which had developed between BTEC and Nedec/Kodec both as a result of the BN Alliance and the proposed takeover.* Mr Goh had to take into account the potential for souring relations between the parties if he had refused to allow Mr Tony Lee and Mr Hwang access to BPM's factory against the potential assistance he was giving to a competitor by doing what he did. This is a matter of judgment. *Other CEOs might have acted differently but that does not mean that what Mr Goh did in the circumstances was a breach of his duties.* [emphasis added]

139 In this regard, the appellants submitted that the Judge had erred by overlooking the power dynamics in the relationship. Mr Goh had worked with Seagate for years and it was Mr Tony Lee who stood to benefit from this relationship.

140 In relation to the assistance rendered by Mr Goh to NEDEC/KODEC in respect of Second Stage Work, we agree with the Judge that this assistance was in line with promoting the success of the BN Alliance, a partnership which, as the Judge found, and we agree, was reasonable of Mr Goh to have made for BTEC. The same analysis applies to Mr Goh's assistance in enabling NEDEC/KODEC to obtain the US$2.5 million grant from Seagate. Mr Goh had requested that Seagate provide NEDEC/KODEC with a US$2.5 million grant as stated on the slide titled "Investment Proposal" prepared for the EBR Meeting. However, it should be noted that Mr Goh had also requested that investments totalling US$8.8 million be made in BPM and BTEC. Given that Mr Goh had already committed to the BN Alliance at that time, and that he was leading negotiations with Seagate, as the Judge inferred, it was reasonable for him to consider that the interests of Beyonics and NEDEC/KODEC would be aligned and that he should request Seagate to provide grants to NEDEC/KODEC as well.

141 As for First Stage Work, the Judge had acknowledged that the assistance rendered by Mr Goh would have been viewed as unusual; but stated that in the circumstances of the case, he did not consider Mr Goh to have acted in breach of his duties. We note that the Wyser Agreements focussed on the Second Stage Work and did not extend to Mr Goh's assistance in respect of First Stage Work. The court will be "slow to interfere with commercial decisions of directors which have been made honestly even if they turn out, on hindsight, to be financially detrimental" (*Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [37]; see also *Intraco Ltd v Multi-pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 at [30]). The Judge was entitled to find that, given the collaboration between BTEC and NEDEC/KODEC as a result of the BN Alliance and the potential sale of BTEC, Mr Goh had to consider maintaining the relationship with NEDEC/KODEC even though it meant that he was assisting a competitor.

(B) POTENTIAL SALE OF BTEC

142 In relation to the sale of BTEC, the appellants relied on an e-mail in which Mr Goh stated that he had offered NEDEC/KODEC a "FRIEND PRICE". The Judge however rejected the contention that the appellants had offered NEDEC/KODEC a preferential price. He was, instead, of the view that Mr Goh was merely adopting marketing tactics in a bid to induce NEDEC/KODEC to offer a price in that region. The Judge considered that the "Friend Price" of US$40 million proposed by Mr Goh was on the higher end of the spectrum, comparing that figure with NEDEC/KODEC's eventual offer of around US$30 million as well as MMI's projected offer of US$25 to 28 million. While Mr Goh did not keep the board informed of his negotiations, he had been allowed to function very independently over the years.

143 The appellants submitted that the negotiations between Mr Goh and NEDEC/KODEC were not at arm's length, and that Mr Goh had clearly favoured NEDEC/KODEC, from whom he had accepted bribes. Mr Goh had offered NEDEC/KODEC a "Friend Price" and informed NEDEC/KODEC that it would enjoy exclusivity or have priority in the sale. Mr Goh had also given instructions to reject any bid by SEMCO, in accordance with a prior agreement reached between Mr Goh and Mr Tony Lee. The eventual bids received by Beyonics for BTEC were irrelevant as the bid outcomes could only have been known later. The Judge had also erred in comparing the offer made by NEDEC/KODEC of US$28 to 31 million on 23 April 2012 with MMI's offer of US$25 to 28 million in 23 October 2012. NEDEC/KODEC had an offer of exclusivity, and the offers were issued about six months apart.

144 The appellants further submitted that Mr Goh had also advised NEDEC/KODEC regarding financing to procure BTEC, and Mr Tony Lee had readily updated Mr Goh on NEDEC/KODEC's efforts to obtain financing despite such information being confidential. This was further evidence that negotiations were not at arm's length. Mr Goh also did not disclose the extent of his negotiations with NEDEC/KODEC to the board.

145 In our view, there is insufficient evidence for us to conclude that Mr Goh was not acting in the interests of Beyonics in his negotiations with NEDEC/KODEC for the sale of BTEC. For reference, the relevant e-mail in relation to the purported offer of a "friend price" sent from Mr Goh to Mr Tony Lee stated that:

> ok, you just think the cost of investment with 1 m per month; during my discussion with NMB, in order to produce 1 m base a month, you need a total investment of US$25-30 million investment; you know the number well, currently BTEC has the ability to produce 3m to 2.5 m a month … My target price is

> US$40m, this is FRIEND PRICE, IF SEMCO, WE ARE GOING TO ASK FOR 50m; you and me shall discuss … if you are interested … However, my investor might think MORE …

146 It can be seen from the e-mail that Mr Goh was attempting to encourage Mr Lee to acquire BTEC and to offer a price around his "target price". Mr Goh had also testified that he had chosen the phrase "friend price" in a bid to "make sure that Mr Tony Lee and Mr Stephen Hwang [would be] willing to pay 40 million for BTEC". This is supported by Mr Tony Lee's evidence. Mr Lee had testified that it was a "practical price" and was part of "negotiation". He further testified that he knew the price of BTEC as others would talk about it, and that he was not "so stupid". The evidence does show that Mr Goh did offer NEDEC/KODEC a right of exclusivity. However, there is no evidence that NEDEC/KODEC was readily open to the idea of acquisition or of offering a price in that range. As the Judge also found, when BDA took over the divestment efforts, its attempts to induce NEDEC/KODEC to increase its offer bore no fruit. There is no apparent error in the Judge's finding that Mr Goh was merely deploying tactics to try to obtain the best price for BTEC.

(5) Causation

147 As explained above, Mr Goh's breaches in entering into the Wyser Agreements were linked to both the Diversion Loss and the Total Loss. We agree with the Judge that regarding the second stage of the *Winsta* test, the evidence relied on by Mr Goh proved that his breaches in relation to the Wyser Agreements did not cause those losses.

148 The appellants submitted that the Wyser Agreements were bribes and should taint all of Mr Goh's dealings with NEDEC/KODEC. They further submitted that Mr Goh would not be able to rebut the presumption in *Winsta* by

showing that the appellants would have suffered loss in spite of the breaches in relation to the Wyser Agreements, for the following reasons:

(a) BTEC and/or BPM had sufficient capacity to carry out the Second Stage Work on the first stage baseplates but instead the work was diverted to LND. If Mr Goh had disclosed this, the BN Alliance would not have arisen.

(b) Mr Goh worked in collaboration with NEDEC/KODEC such that Seagate would approve the BN Alliance. He also secured the US$2.5 million grant from Seagate for NEDEC/KODEC.

(c) The Wyser Agreements were directly relevant to facilitating the BN Alliance.

(d) Mr Goh's acts eventually caused Seagate to replace Beyonics with NEDEC/KODEC as a supplier, when Beyonics could have entrenched its position after the floods.

149 The respondents submitted that Mr Goh did not cause the Diversion Loss because BTEC did not have sufficient production capacity to undertake Second Stage Work. Mr Goh also did not cause the Total Loss because his sole breach of duty (*ie*, receiving and failing to disclose the payments received under the Wyser Agreements) had nothing to do with NEDEC/KODEC's qualification as a supplier of Seagate baseplates. In any event, the qualification of NEDEC/KEDEC was only one of a number of reasons why Seagate had terminated Beyonics as a supplier.

150 The Judge found that the Wyser Agreements were "reactive to the negotiations and not proactive in causing the parties to enter the BN Alliance".

The parties had already agreed to enter the BN Alliance at the Tripartite meeting on 24 November 2011 before Mr Goh gave the first drafts of the Wyser agreements to Mr Tony Lee. The respondents were also unable to prove that BTEC had the capacity to do the Second Stage Work such that there would have been no diversionary loss, even if Mr Goh did not act in the best interests of Beyonics in entering the Wyser Agreements (Judgment at [539]–[540]). As for the Total Loss, NEDEC/KODEC's qualification to carry out Second Stage Work was a "necessary consequence" of the BN Alliance, and according to the appellants, that subsequently contributed to Beyonics being replaced as a supplier. However, the Judge found that Mr Goh did not breach his duties in concluding the BN Alliance and the Wyser Agreements did not cause the BN Alliance to be formed.

151 In terms of the Diversion Loss, the contention was that the appellants have not been able to displace the Judge's findings of fact that Mr Goh did not act unreasonably in entering into negotiations for the BN Alliance and eventually agreeing to the collaboration. We agree that the evidence showed that there was no spare capacity for Second Stage Work, and that the BN Alliance provided an opportunity for Beyonics to make profit from its excess capacity for First Stage Work. The evidence also showed that it was reasonable for Mr Goh to have collaborated with Nidec and Hitachi after the floods.

152 In terms of the Total Loss, we agree that the Wyser Agreements had not caused the BN Alliance to be formed. Although the fact that NEDEC/KODEC had become qualified for Second Stage Work and would soon be qualified for First Stage Work was one of the reasons for Seagate's decision to replace Beyonics with NEDEC/KODEC, the evidence we have referred to earlier showed that there was nothing unreasonable about entering into the

BN Alliance, or in Mr Goh's facilitation of NEDEC/KODEC's growth in respect of First and Second Stage works. Mr Goh was able to discharge the burden on him to establish that the losses were not due to his actions. Rather his actions and those of Seagate arose from the situation that Seagate was placed in after the floods. There was insufficient evidence that any of Mr Goh's acts were objectively against the interests of Beyonics and undertaken only in order to profit from the Wyser Agreements. It was more likely than not that Mr Goh had opportunistically entered into the Wyser Agreements for personal profit, whilst making decisions for Beyonics based on usual commercial considerations.

153 The findings of the Judge that entering into the BN Alliance and the facilitation of the growth of NEDEC/KODEC were objectively in the interests of Beyonics were more than sufficient to support his finding that the diversion of Second Stage Work to LND and the substitution of Beyonics with NEDEC/KODEC as a supplier would have occurred whether or not Mr Goh had entered into the Wyser Agreements. Accordingly, we agree with the Judge's conclusion that the Diversion Loss and the Total Loss were not caused by the Wyser Agreements and that Mr Goh had rebutted the presumption applied under the second stage of the *Winsta* principle.

Bonus and salaries

154 The Judge had found that, if the appellants' claim had not been struck out for abuse of process, Mr Goh would have been liable to reimburse the Unjustified Bonus and Salaries which he received.

155 The respondents submitted that the Judge had erred in finding Mr Goh liable for the salaries and bonus on the basis that the board would not have approved of these if they had known of the Wyser Agreements. In relation to

the bonus, the respondents argued that the Wyser Agreements were only entered into on 6 March 2012, three months after his bonus was approved on 4 January 2012. In relation to the salaries, the respondents argued that there was no evidence of the resignation agreements from which the payments arose.

156 There is no merit in the respondents' submissions. The Wyser Agreements had been discussed and agreed upon by November 2011, some time prior to the disbursement of the bonus. It was stated clearly in the agreements that they were reached on 24 November 2011 and discussed even prior to that date. As for the existence of the resignation agreements, the respondents submitted that Mr Shaw testified that he did not discuss the alleged agreements with Mr Goh. But Mr Shaw had in fact testified that he did not recall talking to Mr Goh after the latter left but that he "could be wrong" and that he "did discuss it with [his] lawyers". The respondents' assertions are patently insufficient as a basis for us to reverse the Judge's findings of fact.

157 It would follow from the discussion above that Mr Goh has to pay BAP the Unjustified Bonus and BAP, BIL and BTS the amounts each of them claimed in respect of Unjustified Salaries. There will be judgment against Mr Goh in favour of the appellants accordingly.

Other issues

158 In the circumstances, the claims in dishonest assistance and conspiracy do not arise. Nor does the issue of whether BTEC's claim is time-barred.

Conclusion on the substantive merits

159 In conclusion, whilst we are of the view that the payments under the Wyser Agreements should have been construed as being bribes and that in

accepting them Mr Goh had clearly breached the no-conflict and no-profit rules, he had rebutted the presumption that those breaches had caused the Diversion Loss and the Total Loss. He was, however, liable for the Unjustified Bonus and Salaries claims.

Costs

CA 185/2020

160 We next consider the appeal in CA 185/2020 against the Judge's decision on costs.

161 The Judge had ordered the S 10 Plaintiffs to pay the S 10 Defendants' costs in relation to the abuse of process issue; and two thirds of the S 10 Defendants' costs in relation to the substantive merits. Given that we have now reversed the findings in respect of the abuse of process issue, we also reverse the costs order for that issue and order that the respondents pay the appellants' costs for that issue. As for the substantive merits, as we have substantially upheld the Judge's findings, there is no reason to disturb his costs order. We note that parties have not been able to agree on the quantum of sums payable and a further hearing will be fixed before the Judge.

Costs of the present appeals

162 Turning to the costs of the present appeals, the appellants submitted that even if CA 100/2020 is dismissed, the costs of CA 185/2020 should nevertheless be paid by the respondents, as the respondents had refused to give consent to an extension of time for the filing of the notice of appeal in respect of the substantive judgment, such that both the appeals against the substantive judgment and costs judgment could be captured in a single notice of appeal.

Further, it was the respondents' conduct which had necessitated a contested application in SIC/SUM 56/2020, which was the appellants' application for leave to appeal against the Judge's costs judgment.

163 The appeal in CA 100/2020 has been partially allowed as a result of our decision in respect of the abuse of process issue. Having regard to the cost schedules submitted by the parties, we award costs of $80,000 and $3,000 in favour of the appellants for CA 100/2020 and CA 185/2020 respectively. The usual consequential orders apply.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Beverley Marian McLachlin
International Judge

Chin Li Yuen Marina, Alcina Lynn Chew Aiping, Siew Guo Wei, Darren Ng Zhen Qiang, Germaine Teo and Joseph Lim (Tan Kok Quan Partnership) for the appellants;
Davinder Singh s/o Amar Singh *SC*, Lin Xianyang Timothy, Tan Mao Lin, Gerald Paul Seah Yong Sing and Joshua Chia Sheng Rong (Davinder Singh Chambers LLC) for the respondents.