IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 79

Civil Appeal No 168 of 2015

Between

(1) TURF CLUB AUTO EMPORIUM PTE LTD
(2) SINGAPORE AGRO AGRICULTURAL PTE LTD
(3) KOH KHONG MENG
(4) TURF CITY PTE LTD
(5) TAN CHEE BENG

… *Appellants*

And

(1) YEO BOONG HUA
(2) LIM AH POH
(3) TEO TIAN SENG

… *Respondents*

Civil Appeal No 171 of 2015

Between

TAN HUAT CHYE

… *Appellant*

And

(1) YEO BOONG HUA
(2) LIM AH POH
(3) TEO TIAN SENG

… *Respondents*

In the matter of Suit No 27 of 2009

Between

(1) YEO BOONG HUA
(2) LIM AH POH
(3) TEO TIAN SENG

… Plaintiffs

And

(1) TURF CLUB AUTO EMPORIUM PTE LTD
(2) SINGAPORE AGRO AGRICULTURAL PTE LTD
(3) KOH KHONG MENG
(4) TURF CITY PTE LTD
(5) TAN HUAT CHYE
(6) NG CHYE SAMUEL
(7) TAN CHEE BENG
(8) ONG CHER KEONG

… Defendants

JUDGMENT

[Damages] — [Measure of damages] — [Contract]
[Civil Procedure] — [Costs]

Turf Club Auto Emporium Pte Ltd and others
v
Yeo Boong Hua and others and another appeal

[2018] SGCA 79

Court of Appeal — Civil Appeals Nos 168 and 171 of 2015
Sundaresh Menon CJ, Andrew Phang Boon Leong JA, Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA
7 September 2018

22 November 2018 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 The present judgment deals with the remaining issues arising from our decision in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boon Hua and others and another appeal* [2018] 2 SLR 655 ("the Judgment") which we delivered on 2 August 2018. To briefly summarise our holdings (and using the same terms as defined therein), we held, *inter alia*, that:

(a) SAA and Koh KM are liable in contract for the Repudiatory Breaches. Specifically, SAA breached cl 11 and the implied term of the Consent Order by acquiring the 2007 Head Lease without subsequently granting sub-tenancies to the JV Companies (*ie*, TCAE and TCPL); and both SAA and Koh KM breached cl 5 of the Consent Order by failing to

disclose the existence of the 2007 Head Lease to the KPMG Entities, therefore hindering them in the discharge of their duties (at [90] of the Judgment). With regard to the issue of what contractual remedies are available for the breaches of the Consent Order, neither an award of *Wrotham Park* damages nor *AG v Blake* damages is an appropriate remedy on the facts. Rather, the Respondents are to be awarded compensatory damages assessed by reference to the value of the Respondents' 37.5% shareholding in the JV Companies at the time of the Repudiatory Breaches, with a premium of 15% to more accurately reflect their expectation loss (at [289] and [295] of the Judgment).

(b) Tan CB, Tan Senior and Koh KM are liable for the torts of conspiracy and inducement of breach of contract by causing SAA to appropriate the benefit of the 2007 Head Lease for itself, in breach of the Consent Order (at [385] of the Judgment). The quantum of damages due to the Respondents under these tortious claims is identical to that due under the contractual claim (at [387] of the Judgment).

(c) Accordingly, SAA, Koh KM, Tan CB and Tan Senior are jointly and severally liable to the Respondents for compensatory damages assessed by reference to the value of the Respondents' 37.5% shareholding in the JV Companies at the time of the Repudiatory Breaches, with a premium of 15% (at [388] of the Judgment).

2 We then directed the relevant parties to file further written submissions on the value of the shares in the JV Companies at the time of the Repudiatory Breaches, so as to determine the quantum of damages payable to the Respondents (at [306] and [389] of the Judgment). We also directed parties to

submit on the appropriate cost orders to be made in relation to these two appeals (at [390(c)] of the Judgment).

3 Having carefully considered the parties' submissions, we now give our decision. We shall first deal with the issue of damages, before turning to the issue of costs.

Quantum of damages payable to the Respondents

4 The first issue essentially turns on which of the two competing valuations of the JV Companies placed before this Court should be accepted. The Respondents rely on the expert report of Mr Timothy James Reid, director of Ferrier Hodgson Pte Ltd, dated 19 September 2012 ("the Ferrier Hodgson report"). This report employed the discounted cash flow ("DCF") and residual income model ("RIM") methods to derive a valuation of TCAE at $18.6m, and of TCPL at $21m, as of 31 May 2006. If the Ferrier Hodgson report is accepted, the Respondents' 37.5% shareholding in the JV Companies works out to $14.85m. Using that figure as a base and applying some adjustments, the Respondents submit that damages should be quantified at $19,923,750.

5 On the other hand, the Appellants rely on the valuation reports of KPMG Corporate Finance Pte Ltd dated 10 August 2007 ("the KPMG CF reports"). It will be recalled that these reports were produced pursuant to the Consent Order: the KPMG Entities had been engaged to investigate the financial affairs of the JV Companies and to conduct an independent and fair valuation of their shares (at [10] of the Judgment). Using the net asset valuation ("NAV") method, TCAE's shares were given a nil value while TCPL's shares were valued at $1.33 per share, as of 31 May 2006. If the KPMG CF reports are accepted, this puts the Respondents' 37.5% shareholding in the JV Companies

at $997,500. Using that figure as a base and applying some adjustments, the Appellants submit that damages should be quantified at $481,500.

6 Unfortunately, both the Ferrier Hodgson report and the KPMG CF reports are eminently unsatisfactory because the valuation date used in each (*ie*, 31 May 2006) is incorrect for the purposes of quantifying the damages payable to the Respondents. The proper valuation date is the time of the Repudiatory Breaches, which is essentially the time at which SAA should have granted (but did not grant) the sub-tenancies to the JV Companies after receiving the 2007 Head Lease from SLA. Historically, SAA entered into its sub-tenancy agreements with the JV Companies on the same day that it received the corresponding Head Leases from SLA (see *Turf Club Auto Emporium and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 at [19]–[20] and [25]–[26]). A strong inference may thus be drawn that SAA should have granted the sub-tenancies to the JV Companies on the same day that it received the 2007 Head Lease from SLA, which was 22 May 2007. On this basis, 22 May 2007 should be taken as the time of the Repudiatory Breaches, and hence the proper valuation date. However, neither of these reports used 22 May 2007 as the valuation date, and none of the parties proposed any way to account for this disparity. We note that the Ferrier Hodgson report and the KPMG CF reports are the *entirety* of the evidence on quantification that the parties had thought to adduce at the trial below. We had also disallowed the parties from adducing any further evidence on this issue, for the reason that absent an order for bifurcation of the proceedings, the Court should not in effect now make such an order by permitting the parties to adduce further evidence (at [304]–[305] of the Judgment). In the circumstances, this Court can only proceed on the basis of the limited evidence before it.

7 The incorrect valuation date is not the only reason why each of these reports is unsatisfactory. We begin with the Ferrier Hodgson report prepared by the Respondents' expert, Mr Reid. In our judgment, this report was an obvious *over-valuation* of the JV Companies due to the unreliability of the main source material. As the Appellants pointed out, the DCF and RIM methods are earnings-based valuation methodologies for which it was necessary to have projections of the JV Companies' financial performance. Mr Reid could have developed these projections based on the JV Companies' audited accounts for FYs 2002–2006. However, he did not do so because of his "concerns" about the apparent inaccuracy of these accounts. Specifically, Mr Reid said he had been "instructed" by the Respondents that, among other things, they had been excluded from the management of the JV Companies and that the accounting work had been done by Koh KM's daughter who may not have been properly qualified to do so. Accordingly, Mr Reid adopted what he called a more "objective approach" to valuation, which involved: (a) assessing the premises available for lease; (b) assessing a reasonable level of occupancy; (c) determining a reasonable rate of rental; (d) identifying a reasonable level of expenditure; and (e) assessing a reasonable level of profitability. He did this by visiting the Turf City site to "understand the potential revenue streams that existed at the site", and shortly thereafter, meeting with the Respondents "to assess and detail the likely profitability, both historical and projected, of both [JV Companies] based on the estimated revenue streams. [Ferrier Hodgson] assisted in the formulation of the calculations but the assessment of the inputs was provided by the client[s]." In his oral testimony, Mr Reid made clear that he had been "*instructed* as to the revenue streams" [emphasis added] by the Respondents, and from there "compile[d] what was effectively a proforma revenue stream". In other words, the two pillars forming the foundation of the

valuation in the Ferrier Hodgson report were (a) Mr Reid's observations from his site visit and (b) the Respondents' instructions.

8 In our judgment, Mr Reid's chosen methodology was far from the "objective approach" that he said it was. Rather, the Ferrier Hodgson report was highly subjective, having been based *very heavily* on *the Respondents' instructions*. This was problematic on several counts. Any instructions given by the Respondents would have been based on their subjective interpretation and understanding of perceived facts, and would therefore be in the nature of opinion. Since the Respondents are not experts, the Ferrier Hodgson report is premised on fundamentally inadmissible evidence. Even if the Respondents' instructions were in the nature of facts, it would be inadmissible as hearsay. It is important to note that the Respondents did not adduce any evidence of these instructions either on affidavit or at trial. While Mr Reid did refer to an "Affidavit of Yeo Boong Hua, 28 June 2012" as part of his information sources and stated that this affidavit documented the "assessment of the inputs … provided by the clients", no such affidavit appears to have been filed in the proceedings. Thus, the Respondents' instructions, which form the main source material for the Ferrier Hodgson report, have not been tested in court.

9 But even if such material were admissible, the weight to be placed on the resultant report must be significantly reduced for several reasons. First, as mentioned, the Respondents have not referred to any evidence to substantiate their instructions to Mr Reid. It is therefore impossible to verify or evaluate the overall accuracy of the Ferrier Hodgson report. Secondly, the Respondents had ceased to be directors of the JV Companies in 2002. It stands to reason that any input which they had regarding the JV Companies' financial performance in the years thereafter would not be entirely reliable, by mere virtue of the fact that they were no longer involved in the management of the JV Companies by that

time. As it transpired, the Respondents had provided input on FYs 2002–2006 (concerning the *historical* financial performance of the JV Companies, since the Ferrier Hodgson report uses 31 May 2006 as the valuation date), and FYs 2007–2010 (concerning the *projected* financial performance). In our view, the Respondents' input regarding both these periods was not only unreliable, but also clearly self-serving.

10 It is important to bear in mind that as the parties who claim to have suffered financial losses as a result of being deprived of the opportunity to participate in the Bidding Exercise to acquire the whole of the shareholding in the JV Companies (at [291] of the Judgment), the Respondents have a strong incentive to provide as optimistic a representation of the JV Companies' financial performance as possible. In our view, this was indeed the case: on the face of the available historical information, the projections used in the Ferrier Hodgson report are evidently overly sanguine. Take, for instance, the projected revenue figures which show a marked increase of nearly 80% from FY 2006 to 2007: for TCAE, it was an increase from approximately $3.2m to $5.8m; while for TCPL, it was an increase from approximately $4.5m to $8.4m. Overall, the projected revenue figures are higher than the JV Companies' historical highs, and are rather difficult to reconcile with the trend of falling revenue between FYs 2005 and 2006, caused by declining occupancy rates at the site. Apparently, some tenants had terminated their leases prior to expiration as they considered the rental rates too high. There is thus little or no basis to support the Ferrier Hodgson report's assumptions (*ie*, the Respondents' instructions) that the occupancy rates would increase between FYs 2006 and 2007 and subsequently be maintained at 80% or higher from then on.

11 Quite apart from providing these over-optimistic projections of the JV Companies' financial performance for FYs 2007–2010, the Respondents

also instructed Mr Reid to replace certain revenue figures in the audited accounts for FYs 2002–2006 with higher figures. This modified set of accounts, referred to as the "pro-forma earnings", was used in the DCF and RIM valuations in the Ferrier Hodgson report. To represent this "difference in reported earnings and the pro-forma earnings based on the clients' [*ie*, the Respondents'] estimate of actual revenue for FY2002 to FY2006", the net present values of the JV Companies used in the valuations had to be adjusted upward by significant amounts. For TCAE, this was an adjustment of $11.4m; and for TCPL, $7.28m. In our judgment, the Respondents' instructions to Mr Reid on this point were clearly self-serving: higher historical revenue figures would naturally justify higher revenue forecasts, which would obviously be to the Respondents' overall benefit.

12 Where the *basis* of an expert report is shaky or flawed, the conclusion arrived at will be of little or no use to the court (see the High Court decision of *Khoo Bee Keong v Ang Chun Hong and Another* [2005] SGHC 128 at [68]). Given that the Ferrier Hodgson report appears to be little more than a conduit for the Respondents' speculative and self-serving assertions regarding the JV Companies' financial performance, in the premises, we ***reject*** the valuation set out therein as a basis for quantifying the amount of damages payable to the Respondents.

13 For completeness, we add that Mr Reid's visit to the Turf City site was unlikely to have provided much assistance (indeed, if any at all) in accurately deriving the historical revenue streams of the JV Companies for FYs 2002–2006 or projecting its financial performance for FYs 2007–2010. As the Appellants pointed out, Mr Reid's site visit took place in 2012. This was *well after* the 2007 Head Lease expired in 2010, by which time SLA had already leased the site out to an entirely different head tenant. In the circumstances, it is

highly doubtful that Mr Reid's site visit in 2012 could have provided him with any meaningful insights for the purposes of valuing the JV Companies as of 31 May 2006 (or, as of the proper valuation date, 22 May 2007). Accordingly, the fact that the Ferrier Hodgson report was partly based on Mr Reid's observations was not, in our view, sufficient to outweigh or diminish the fundamental problems that we have set out at [8]–[12] above.

14 We turn now to consider the KPMG CF reports relied on by the Appellants. As already alluded to above, these reports are not free from fault either. It will be recalled that the existence of the 2007 Head Lease had been concealed from the KPMG Entities by some of the Appellants – this was one of the Repudiatory Breaches of the Consent Order (see [1(a)] above). The KPMG Entities thus assumed that there was no non-disclosure and the valuation of the JV Companies proceeded on the basis that the 2004 Head Lease would expire in 2007 without certainty of renewal for another three years. Since the JV Companies' main source of revenue was the rent or fees payable by the ultimate tenants, the KPMG CF reports naturally noted that this uncertainty raised concerns regarding the viability of the JV Companies to operate as going-concerns and their future earning capacities. In our judgment, because of the KPMG CF reports' omission to take into consideration the 2007 Head Lease, the key revenue-generating asset for FYs 2007–2010, a significant *under-valuation* of the JV Companies resulted. Indeed, as mentioned above, TCAE's shares were given a nil value while TCPL's shares were valued at $1.33 per share, bringing the total value of their shareholding to a mere $2.66m.

15 Despite this, we ***accept*** the Appellants' contention that the valuation contained in the KPMG CF reports should be used as the basis for quantifying the amount of damages payable to the Respondents. We emphasise that our doing so should *not* be taken as an unequivocal endorsement of the correctness

of the valuation of the JV Companies therein. Rather, it is a consequence of the fact that this Court simply cannot accept the Ferrier Hodgson report, which so clearly falls short of the standards expected of expert evidence. In other words, the valuation in the KPMG CF reports – as it stands – is the best of the limited evidence before the Court.

16 In this regard, any argument that it is "unfair" to the Respondents that the damages payable to them are being quantified on the basis of an under-valuation must be rejected. A plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages. It is only where the plaintiff has attempted its level best to prove its loss and the evidence is cogent that the court should allow it to recover the damages claimed (see the decision of this Court in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 at [31]). In the present case, the Respondents had a fair opportunity to obtain a valuation report which took the 2007 Head Lease into account, and which was also fair and sensible as a whole. Instead, what they chose to put before the court was the Ferrier Hodgson report, which was not premised on any solid evidence, but on the Respondents' unsubstantiated and self-serving instructions. Now that the Ferrier Hodgson report has been rejected, it does not lie in the Respondents' mouth to decry the KPMG CF reports for providing an under-valuation of the JV Companies. The burden was ultimately on the Respondents to prove the *full* extent of their loss to the court's satisfaction, which they might have been able to do had they procured a more moderate valuation of the JV Companies. Having instead adduced a valuation that this Court finds entirely lacking in defensibility, the Respondents have only themselves to blame.

17 To reiterate, we ***accept*** the valuation contained in the KPMG CF reports as the basis for quantification. However, that valuation only provides the starting point, since the parties have raised two additional arguments which may potentially affect the precise quantum of damages payable to the Respondents – these are the adjustments alluded to at [4] and [5] above. We turn now to deal with these arguments.

18 We begin with the Respondents' argument that the sitting tenant, by the mere fact of holding the current lease, acquires the value of any possible extensions of the same and therefore that the valuation of the JV Companies should take into account any such extensions and not merely the original total lease period of nine years (*ie*, the three Head Leases spanning three years each). On the facts, the 2007 Head Lease was extended by 1.5 years, and came to an end in February 2012 instead of August 2010. The Respondents thus argue that the valuation should take this 1.5-year extension into account through a proportionate upward adjustment of the valuation as a whole (*ie*, divided by 9 and multiplied by 10.5), and the 15% premium should be applied on top of that.

19 Although the Respondents' argument was originally raised in the context of the Ferrier Hodgson report, we are of the view that this reasoning is also applicable in the context of the KPMG CF reports. It will be recalled that the KPMG CF reports employed the NAV method to value the JV Companies (see [5] above). A company's NAV is determined by marking each of its assets and liabilities, both on- and off-balance sheet, to current market values. Thus, in theory, the appropriate adjustment would involve the substitution of the market value of the 2007 Head Lease (as of the valuation date) with the market value of a 4.5-year lease spanning the period of August 2007 to February 2012 (as of the valuation date). Unfortunately, since the KPMG CF reports omit any

consideration of the 2007 Head Lease altogether, a proportionate upward adjustment of this specific asset is not possible. Nonetheless, since a lease of a longer duration must in principle and as a matter of logic be worth more than a lease of a shorter duration, we are prepared to accept the Respondents' method of applying a proportionate upward adjustment to the valuation of the JV Companies *as a whole* (see [18] above) in order to account for the longer total lease period. The relevant calculations are set out at [22] below.

20 We turn next to the Appellants' argument that the damages payable to the Respondents should be set off against certain amounts that the Respondents owe to TCPL. According to the Appellants, the Respondents each paid only $78,000 for their 37.5% shareholding in TCPL when they should have each paid $250,000. In other words, each Respondent owes TCPL $172,000. Thus, they argue that $516,000 (being $172,000 multiplied by 3) should be set off against whatever quantum of the damages is awarded to the Respondents.

21 We are unable to accept this argument. First, it is unclear whether it is even an accepted fact that the Respondents owe TCPL that amount. Secondly, even if the Respondents do owe that debt to TCPL, there is no reason why these amounts should be set off against the damages payable to the Respondent. This is because the parties jointly and severally liable to pay damages are Tan CB, Tan Senior, SAA and Koh KM – *not* TCPL. It is entirely inappropriate for the present appeals to be used as a forum to recover a debt from the Respondents. If the Respondents truly owe TCPL $516,000, then TCPL should claim that amount from the Respondents in a separate action. We see no reason why it should be deducted from the damages payable by Tan CB, Tan Senior, SAA and Koh KM insofar as these are damages arising from *their* contractual breaches or tortious liability.

22 To conclude, the quantum of damages payable jointly and severally by Tan CB, Tan Senior, SAA and Koh KM is to be computed as follows:

(a) Given that TCAE's shares are of nil value while TCPL's shares are valued at $1.33 per share, the Respondents' 37.5% shareholding in the JV Companies works out to $997,500.

(b) Applying the proportionate upward adjustment to account for the 1.5-year extension (see [19] above), the new base amount is $1,163,750 (*ie*, $997,500 divided by 9 and multiplied by 10.5).

(c) Finally, applying the 15% premium, the total quantum of damages payable to the Respondents amounts to **$1,338,312.50**.

Costs of the appeals

23 We turn next to consider the costs of the appeals in Civil Appeal No 168 of 2015 ("CA 168") and Civil Appeal No 171 of 2015 ("CA 171"). There are also four related summonses. Summons No 303 of 2015 and Summons No 304 of 2015 ("SUM 303" and "SUM 304", respectively), filed in CA 168 and CA 171 respectively, were the Respondents' applications for the filing of joint Respondents' cases. Both applications were dismissed and costs were reserved. Summons No 16 of 2016 and Summons No 17 of 2016 ("SUM 16" and "SUM 17", respectively), also filed in CA 168 and CA 171 respectively, were applications by the Respondents to strike out the replies filed by the Appellants. SUM 16 and SUM 17 were considered by this Court during the first hearing of these appeals in March 2016, and we held that no orders need be made on these summonses since their outcome would not have any bearing on the substantive appeals (see *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters* [2017] 2 SLR 12 at [183]).

24 The Respondents submit that they have succeeded in both appeals and are therefore entitled to costs and disbursements in the following amounts:

(a) in relation to CA 168, SUM 303 and SUM 16: costs of $346,000 and disbursements of $20,000; and

(b) in relation to CA 171, SUM 304 and SUM 17: costs of $156,000 and disbursements of $15,000.

25 Tan CB and Tan Senior each submit that the Respondents should pay 40% of the costs of CA 168 and CA 171 respectively, but do not propose any specific numerical figure. As for the first to fourth appellants in CA 168, they submit that the costs due to them should at least be equal to or more than that ordered in the Respondents' favour; or, alternatively, that there be no order made as to costs.

26 In our judgment, the Respondents are entitled to the costs of CA 168 and CA 171. When assessed on an overall basis, it is evident that the Respondents are the successful parties in these appeals, having succeeded in establishing, *inter alia*, that (a) SAA and Koh KM are liable in contract for repudiatory breaches of the Consent Order, (b) Tan CB, Tan Senior and Koh KM are liable in the torts of conspiracy and inducement of breach of contract, and (c) the aforementioned Appellants are therefore jointly and severally liable for compensatory damages arising from these two causes of actions.

27 In assessing the appropriate quantum of costs, it is critical to bear in mind the unusual manner in which these appeals unfolded. CA 168 and CA 171 were first heard by a three-judge *coram* in March 2016, following which the Court delivered its judgment in March 2017. However, that was not the end of the matter. Parties were directed to file submissions to address three issues:

(a) the Remedy Issue (*ie*, on the availability of *Wrotham Park* damages or *AG v Blake* damages), (b) the Party Issue (*ie*, which parties were liable in contract for the breaches of the Consent Order) and (c) the Fiduciary Duties Issue (*ie*, whether the Respondents breached fiduciary duties owed to the Appellants). In addition, Assoc Prof Goh Yihan was appointed as *amicus curiae* to deal with the Remedy Issue – in particular, to address the doctrinal basis of *Wrotham Park* damages. Hence, in addition to their own submissions, the parties filed responses to Prof Goh's submissions as well. Thereafter, in August 2017, the parties came before this Court again – by then, a five-judge *coram* had been convened – for the hearing on the Remedy, Party and Fiduciary Duties Issues. The Court then directed that the claims in the torts of conspiracy and inducement of breach of contract (*ie*, the Tort Issue) be remitted to the trial judge for determination. The judge delivered his judgment in October 2017. In March 2018, the parties came before this Court for the third time, for the hearing on the Tort Issue. We delivered judgment in August 2018. This brings us to the present day, where the parties have filed submissions to deal with the two outstanding issues.

28 The brief *précis* above suffices to demonstrate that these appeals were *highly exceptional* in their complexity and length. There were a total of three rounds of hearings before this Court, with three rounds of submissions on substantive issues, giving rise to three separate judgments of this Court (including the present judgment). Therefore, while the cost guidelines provide that the costs of appeals arising from complex trials should range between $60,000 and $100,000, the highly exceptional circumstances amply justify a significant deviation from these guidelines. Since there were effectively three rounds of appeals, it would be appropriate to apply a multiplier of three. As regards the appropriate base figure, for CA 168, we use a figure towards the

upper end of the scale to account for the fact that a greater number of Appellants were involved (*ie*, $90,000 multiplied by 3). Conversely, since CA 171 only involves Tan CB, we will use the lowest end of the scale (*ie*, $60,000 multiplied by 3).

29 However, given that a central part of the appeals concerned the doctrinal basis and applicability of *Wrotham Park* damages – a highly complex and contentious area of law for which an *amicus curiae* had to be appointed, and which undoubtedly resulted in the most substantial amount of work for the parties – and the Respondents failed in their argument that *Wrotham Park* damages are a gain-based remedy and applicable on the facts, we consider it appropriate, in the circumstances, to apply a downward adjustment of 30% to the figures set out at [28] above. In doing so, we also take into account the fact that the Respondents had failed on the Fiduciary Duties Issue (see [50] of the Judgment). We therefore award the Respondents a total of **$315,000**, with the breakdown as follows:

(a) Costs in relation to CA 168 and the related summonses: $189,000, inclusive of disbursements; and

(b) Costs in relation to CA 171 and the related summonses: $126,000, inclusive of disbursements.

30 We make one final point. Several parties had filed written submissions relating to the costs of certain matters other than CA 168 and CA 171, such as the underlying Suit 27 of 2009 ("Suit 27") and the appeal therefrom in Civil Appeal No 156 of 2012 ("CA 156"). We disregard these submissions because our directions in [390(c)] of the Judgment were only for submissions to be made on the appropriate costs orders in relation to *these two appeals*, *ie*, CA 168 and

CA 171, and nothing more. In any event, this Court had previously ordered that the costs of Suit 27 and CA 156 be reserved to the judge hearing the matter after its remission to the High Court for trial. Accordingly, we decline to make any cost orders in relation to Suit 27, CA 156, and any other matters which are unconnected to the present two appeals.

Conclusion

31 In summary, our orders are as follows:

(a) Tan CB, Tan Senior, SAA and Koh KM are jointly and severally liable to pay the Respondents damages in the amount of **$1,338,312.50**.

(b) Tan CB, SAA and Koh KM are to pay the Respondents their costs of **$189,000** (inclusive of disbursements) for CA 168 and the related summonses.

(c) Tan Senior is to pay the Respondents their costs of **$126,000** (inclusive of disbursements) for CA 171 and the related summonses.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

Kelvin Poon and Alyssa Leong (Rajah & Tann Singapore LLP) for the first to fourth appellants in Civil Appeal No 168 of 2015;
Irving Choh and Melissa Kor Wan Wen (Optimus Chambers LLC) for the fifth appellant in Civil Appeal No 168 of 2015 and the appellant in Civil Appeal No 171 of 2015;
Adrian Tan, Ong Pei Ching, Joel Goh Chee Hsien and Hari Veluri (TSMP Law Corporation) for the respondents in Civil Appeals Nos 168 and 171 of 2015.
