

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 21

Civil Appeal No 196 of 2019

Between

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

... Appellants

And

Sengkang Town Council

... Respondent

Civil Appeal No 197 of 2019

Between

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

... Appellants

And

Aljunied-Hougang Town Council

... Respondent

Civil Appeal No 198 of 2019

Between

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

... Appellants

And

Sengkang Town Council

... Respondent

Civil Appeal No 199 of 2019

Between

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

... Appellants

And

Aljunied-Hougang Town Council

... Respondent

Civil Appeal No 200 of 2019

Between

Sengkang Town Council

... Appellant

And

- (1) Sylvia Lim Swee Lian

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

... Respondents

In the matter of Suit Nos 668 and 716 of 2017

Between

- (1) Aljunied-Hougang Town Council
... Plaintiff in S 668/2017

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

And

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

... Defendants

JUDGMENT

[Civil Procedure — Pleadings]

[Civil Procedure — Orders]

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

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

[2023] SGCA 21

Court of Appeal — Civil Appeals Nos 196, 197, 198, 199 and 200 of 2019
Sundaresh Menon CJ, Judith Prakash JCA, Tay Yong Kwang JCA, Woo Bih Li JAD and Andrew Phang Boon Leong SJ
30 November 2022

7 July 2023

Judgment reserved.

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

Introduction

1 In *How Weng Fan and others v Sengkang Town Council and other appeals* [2022] SGCA 72 (the “Judgment”), we delivered our judgment on the substantive merits of the appeals (the “Appeals”) concerning the liability of members and senior employees of Aljunied-Hougang Town Council (“AHTC”) to AHTC and to Sengkang Town Council (“STC”). These members are Ms Sylvia Lim (“Ms Lim”), Mr Low Thia Khiang (“Mr Low”), Mr Pritam Singh (“Mr Singh”), Mr Chua Zhi Hon (“Mr Chua”) and Mr Kenneth Foo (“Mr Foo”) (collectively, the “Town Councillors”). The senior employees are Ms How Weng Fan (“Ms How”) and Mr Danny Loh (“Mr Loh”) (collectively, the “Employees”).

2 In the Judgment, we reversed several of the trial Judge’s factual findings and legal conclusions. Among other things, we held that the Town Councillors and Employees did not owe fiduciary or equitable duties to AHTC. We also held that they had acted in good faith in the award of various contracts on behalf of AHTC. However, we held that the Town Councillors and Employees were grossly negligent in implementing AHTC’s payments process (the “System”), which led to the persistence of what were referred to by parties as “control failures” in the System. This was because the involvement of conflicted persons and the absence of safeguards created an inherent risk of overpayment. Furthermore, we held that Ms Lim was liable in negligence for AHTC’s award of a contract to Red-Power Electrical Engineering Pte Ltd (“Red-Power”), having failed to discharge her burden of proof that she had acted in good faith when she chose not to renew the contracts with Digo Corporation Pte Ltd and Terminal 9 Pte Ltd which offered the same services at significantly cheaper rates.

3 At [455] and [485] of the Judgment, we directed the parties to file further written submissions to address two issues arising out of what appeared to be AHTC’s inadequate pleadings on the following two areas (the “Outstanding Issues”):

- (a) The control failures in the System: First, in relation to the control failures in the System, AHTC’s pleaded case was that the relevant acts constituted a breach of *fiduciary* duties. However, AHTC did not plead that the Town Councillors had breached their duty of skill and care in tort and were negligent in implementing the payments process, leading to the control failures in the System. The question in these circumstances was what orders (on liability and apportionment), if any, this court could

make in respect of this claim. We shall refer to this as the “Control Failures Issue”.

(b) The award of a contract to Red-Power: Second, in relation to our finding that Ms Lim breached her duty of skill and care in tort and was negligent in causing AHTC to award a new contract to Red-Power, it appeared to us that AHTC did not plead this claim. In the circumstances, how, if at all, should Ms Lim’s liability towards AHTC and STC be apportioned on this issue? We shall refer to this as the “Red-Power Issue”.

4 Having considered the parties’ further submissions, we now address the Outstanding Issues and the appropriate orders to be made in this case. This case presents an opportunity for the court to clarify the relevant legal principles of pleadings and, in particular, when it may be appropriate for a court to find a party liable despite some possible shortcomings in the pleadings.

Brief background and court’s findings

5 We have, in the Judgment, set out the detailed procedural history of the suits, HC/S 668/2017 (“Suit 668”) and HC/S 716/2017 (“Suit 716”) (collectively, the “Suits”), leading up to the Appeals as well as a comprehensive summary of the subject matter of the Appeals (see the Judgment at [7]–[124]). We do not propose to repeat these matters. It suffices for present purposes to focus on the points relevant to the Outstanding Issues.

6 As the trial of the Suits was bifurcated, the Appeals only concerned the issue of liability and not damages. On the Control Failures Issue, we found that the Town Councillors and Employees had “breached their duty of care by permitting the ‘control failures’ to exist in the payment process” (see the

Judgment at [433]). Specifically, the involvement of conflicted persons for payments to FM Solutions & Services Pte Ltd (“FMSS”) and FM Solutions & Integrated Services (“FMSI”) and the absence of safeguards created an inherent risk of overpayment (see the Judgment at [450]–[454]). This was not mere negligence because the Town Councillors were aware of Ms How’s and Mr Loh’s potential conflict of interest as early as 19 May 2011. In these circumstances, we found that the Town Councillors and Employees had been grossly negligent in this respect, and we accordingly rejected the Town Councillors’ and Employees’ contention that they had acted in good faith in implementing the System (see the Judgment at [452]–[454]).

7 As we explain below at [51], it is important to appreciate that the Suits were *not* consolidated. Rather, with the parties’ consent, they were ordered to be tried together (see the Judgment at [7]). To put it another way, AHTC and STC ran independent cases, with independent causes of action, based on independent sets of pleadings. This was so, even though the claims in the Suits arose from a largely common factual substratum. As we observed in the Judgment at [65], AHTC’s pleadings in Suit 668 were narrower than STC’s pleadings in Suit 716.

The parties’ arguments

8 We first summarise the parties’ arguments on the Outstanding Issues.

9 AHTC’s position on the Control Failures Issue is that it did adequately plead its claim in tort against the Town Councillors in relation to the control failures in AHTC’s payments process. In the alternative, AHTC submits that this court should nevertheless find the Town Councillors liable to it for the control failures because the Town Councillors were apprised of AHTC’s case in tort and were not taken by surprise at the trial below. Further and in the

alternative, AHTC submits that it should be allowed, if necessary, to amend its pleadings now to include a claim in tort against the Town Councillors in relation to the control failures in the System. As for the Red-Power Issue, AHTC concedes that this was a claim made by STC only and therefore does not pray for an order in this respect.

10 STC takes no position on the Control Failures Issue as it concerns the possible liability of the Town Councillors and the Employees to AHTC in negligence. STC submits that the issue of apportionment of damages between STC and AHTC, assuming that liability is established, is a question that ought to be left to the assessment of damages tranche of the Suits.

11 The Town Councillors submit that AHTC's case should stand or fall on its pleadings. Because AHTC did not plead its case in tort against the Town Councillors in relation to the control failures in AHTC's System and AHTC likewise did not plead any case against Ms Lim in relation to the award of a contract to Red-Power, AHTC should not be allowed to pursue these claims.

12 The Employees and FMSS submit that it is not that AHTC failed to plead a claim in tort against the Town Councillors, but rather that their attempt to do so was ineffective, resulting in the Employees being held solely liable for AHTC's claim. They contend that it would be unjust to hold only the Employees liable to AHTC for the control failures when this court had found that all the Town Councillors and Employees were grossly negligent in this regard. Thus, the Employees and FMSS submit that the Town Councillors should be held liable to AHTC for the control failures in AHTC's System. The Employees and FMSS also submit that any issues on the apportionment of damages should be determined when damages are subsequently assessed.

13 Finally, the Employees and FMSS highlight a minor issue concerning a consequential order to be made regarding an earlier order made by the Judge in a separate set of proceedings – HC/OS 835/2017 (“OS 835”) – to stay arbitration proceedings between AHTC and FMSS. We address this at [64] below.

Issues

14 As mentioned at [9] above, AHTC accepts that it did not plead a claim against Ms Lim regarding the award of a new contract to Red-Power, and AHTC confirms that it does not pray for an order in its favour in respect of this claim made by STC. It follows that we hold that Ms Lim is liable only to STC in relation to the award of the contract to Red-Power.

15 The following remaining issues lie for determination in this case:

- (a) Regarding the control failures in the System:
 - (i) Did AHTC adequately plead that the Town Councillors breached their duty of skill and care in tort in relation to the control failures in AHTC’s System?
 - (ii) If not, should the Town Councillors nevertheless be held liable to AHTC for the control failures in the System?
 - (iii) In the alternative, should AHTC be permitted to bring a fresh application to amend its pleadings to include a claim against the Town Councillors for the breach of their duty of skill and care in tort in relation to the control failures of the System?
- (b) Finally, if the answer to any of the questions at [15(a)] above is in the affirmative, how should the Town Councillors’ liability owed towards AHTC and STC on the control failures issue be apportioned?

16 Before we address these issues, we first turn to the applicable legal principles.

The legal principles

17 It is apposite to begin with the law on pleadings. Pleadings form the cornerstone of our civil justice system. They serve at least a dual function. First, pleadings critically define the parameters within which a plaintiff’s claim and a defendant’s defence are mounted. This delineation is crucial in an adversarial system of civil litigation such as ours where “[c]onfrontation and the opportunity for cross-examination is of central significance” (*Lee v The Queen* (1998) 195 CLR 594 at [32]). The plaintiff has to plead a cause of action so as to enable the defendant to know the case that is being mounted against it and, likewise, the defendant has to particularise the defence to enable the plaintiff to know the nature and substance of the defence. This prevents either party from being taken by surprise. Second, and relatedly, pleadings assist the court by defining with clarity and precision the factual and legal issues that are in dispute and which fall to be determined by the court. This is vital to ensure the efficient conduct of the proceedings while also helping to conserve judicial resources. In overall terms, the purpose of pleadings is to ensure certainty, fairness and transparency in our dispute resolution processes.

18 The general rule therefore is that the parties are bound by their pleadings and the court is precluded from deciding matters that have not been put into issue by the parties (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1442 (“*V Nithia*”) at [38] and *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 (“*OMG Holdings*”) at [21]). The rationale of disallowing a claim, or a defence, that is not pleaded, is to prevent injustice from being

occasioned to the party who, because of the failure of the opposing party to plead, did not have a chance to respond to the claim or defence in question (see *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [34]–[35]).

19 There are two important principles that qualify the foregoing principle. First, only *material* facts need to be pleaded. Specifically, it is the material facts supporting each *element* of a legal claim that must be pleaded (*V Nithia* at [43]–[44]). We shall refer to this as the “Material Facts Principle”. On this basis, the particular legal result flowing from the material facts that the claimant wishes to pursue need not always be pleaded. Equally, the relevant propositions or inferences of law need not be pleaded (see *Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd* [2002] 2 SLR(R) 693 (“*Bok Chee Seng Construction*”) at [24]–[26]). Therefore, for instance, a court may find a landlord liable to a tenant for trespass even if the tenant only pleaded a claim for a breach of covenant on quiet enjoyment, as long as the material facts pertaining to a claim in trespass were sufficiently pleaded (see the decision of the English Court of Appeal in *Drane v Evangelou* [1978] 1 WLR 455 (“*Drane*”) at 458, cited with approval by this court in *Bok Chee Seng Construction* at [26]).

20 Second, a narrow exception exists where the court may permit an unpleaded point to be raised (and to be determined) where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so (*V Nithia* at [40]). We shall refer to this as the “Prejudice Principle”. As we observed in *OMG Holdings* at [18]:

... It is trite law that the court may permit an unpleaded point to be raised if no injustice or irreparable prejudice (that cannot be compensated by costs) will be occasioned to the other party (see *Lu Bang Song v Teambuild Construction Pte Ltd* [2009]

SGHC 49 (*‘Lu Bang Song’*) at [17] and *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Ltd* [1995] 3 MLJ 331 (*‘Boustead Trading’*) at 341–342). In the same vein, evidence given at trial can, where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced (see *Lu Bang Song* at [17]).

That said, we emphasise that cases “where it is clear that no prejudice will be caused by the reliance on an unpleaded cause of action or issue that has not been examined at the trial are likely to be uncommon” (*V Nithia* at [41]).

Case illustrations

21 We consider a few cases to illustrate the Material Facts Principle and the Prejudice Principle. It will be seen that though these are distinct principles, they may often both be relevant in a given case.

22 In *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173 (*“Asia Business Forum”*), the appellant applied to amend its pleadings *on appeal* to reclassify certain documents as “confidential information” rather than as “trade secrets” and *vice versa*. The respondent resisted the application on the basis that it would be denied the opportunity of arguing why certain information could not be “trade secrets” and that it might have adduced additional evidence to meet the case that was reflected in the proposed amendments. Further, the respondent contended that the cross-examination of the witnesses might have taken on a different character. We refused to grant leave to amend the pleadings and observed that evidence had been led and the parties had been cross-examined on the categorisation of trade secrets and confidential information as pleaded. These were distinct concepts and allowing the amendments at the appeal would have “presented the respondents with a somewhat different ‘battle’”, which “was not a problem which could be taken care of just by way of an order for costs” (*Asia Business*

Forum at [19]). This illustrates the Prejudice Principle, because allowing the unpleaded point to be raised would have caused irreparable prejudice to the respondent, since the respondent did not have the opportunity to adduce evidence to address the unpleaded point.

23 In *V Nithia*, the lower court allowed a claim based on proprietary estoppel and consequently awarded the first respondent a 21.43% share in the net proceeds of sale of the property. The appellant appealed, contending that proprietary estoppel had not been pleaded. It was undisputed that the first respondent’s pleaded case was founded on a resulting and constructive trust. In allowing the appeal, we considered that, while the words “proprietary estoppel” did not have to be specifically pleaded, the “pleadings should at the very least disclose the material facts which would support such a claim, so as to give the opponent fair notice of the *substance* of such a case” [emphasis in original] (*V Nithia* at [43]). The court emphasised the Material Facts Principle that *the facts relevant to each element of a claim* in proprietary estoppel should be pleaded specifically so that the defendant is not left to guess at what the plaintiff is really asserting (*V Nithia* at [44]).

24 On the facts of *V Nithia*, all the witnesses had testified on the basis of a claim based on resulting trust and the first respondent’s affidavit of evidence-in-chief maintained the same narrative as his pleadings (*V Nithia* at [49]). The Court of Appeal agreed that the appellant had been irreparably prejudiced by the lower court allowing the unpleaded claim of proprietary estoppel to proceed (*V Nithia* at [52] and [53]). Given the significant differences in the factual underpinnings between a case of proprietary estoppel and resulting trust, it could not have been said that the issue of proprietary estoppel involved “only pure issues of law” (*V Nithia* at [55]). Simply put, “the case for proprietary estoppel (based on the representation found by the Judge) was largely untested

because no one knew there was such a case to test” (*V Nithia* at [58]). This is also an illustration of the Prejudice Principle, because the appellant did not have the opportunity to adduce evidence to meet the unpleaded claim of proprietary estoppel.

25 In *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2022] SGHC 45 (“*Acute Result Holdings*”), the defendant argued that the plaintiff had changed its case from asserting that a company was in a trustee/beneficiary relationship with the plaintiff by virtue of certain contractual terms to one based on a resulting trust when the plaintiff had transferred shares to the company. In allowing the plaintiff to advance its case despite accepting that the plaintiff had changed its case between its pleadings and its closing submissions, the court considered that doing so would cause the defendant no prejudice given that the defendant was aware of the changed case from the time of the plaintiff’s oral opening statement at trial, and the cross-examination of the plaintiff’s witnesses proceeded on the basis of this understanding (*Acute Result Holdings* at [66]). This illustrates the Prejudice Principle in that the plaintiff was permitted to advance an unpleaded claim because the defendant clearly knew it had to address that claim, and it had the opportunity to do so. The court also alluded to the Material Facts Principle by observing that a pleader’s duty is to plead facts and not law. Therefore, “[o]nce the material facts have been pleaded, the pleader can develop the legal consequences of those facts in submissions”, with the “proviso that the legal consequences which the pleader develops in submissions must not take the opposing party by surprise so as to cause it prejudice which cannot be remedied” (*Acute Result Holdings* at [64]).

26 In *Ho Soo Tong and others v Ho Soo Fong and others* [2023] SGHC 90 (“*Ho Soo Tong*”), the court first applied the Material Facts Principle by

considering that, although the plaintiffs’ pleadings did not expressly mention the doctrine of common intention constructive trust, their pleadings were nonetheless sufficient to allow them to mount such a claim because the “material facts required which support a claim of common intention constructive trust have been pleaded by the [p]laintiffs” (*Ho Soo Tong* at [44]). The court did not stop there, but went on to observe that the defendant’s defence would be “the same whether the [p]laintiffs rely on an express trust or a common intention constructive trust” (*Ho Soo Tong* at [46]). Underlying this is the essential finding that the defendants would not suffer any irremediable prejudice if the plaintiffs were allowed to pursue the unpleaded claim of common intention constructive trust. As such, the court appeared to have implicitly applied the Prejudice Principle as well.

27 More recently, in *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2023] SGCA(I) 1 (“*BCBC*”), this court considered whether the respondents to the appeal had properly pleaded their claim that the first respondent would have wound up PT Kaltim Supacoal for defaulting on its payment obligations. While the court observed that the respondents’ pleaded position on this issue was not clear, it held that the respondents should be allowed to take the point that the first respondent would have taken steps to wind up the company upon it defaulting on the payments due under the various loans. This was because the expert’s report and the respondents’ opening statement at trial, coupled with the appellants’ failure to take a more substantive objection, were enough to put the point in issue (at [38]). This illustrates the Prejudice Principle, as the court allowed the point to be advanced, despite the pleadings being unclear on this issue, because the opening statement and evidence had sufficiently put the appellants on notice that this was a case which they had to meet.

Summary of the principles

28 What follows from that brief survey of the cases is that the overarching enquiry is one of irremediable prejudice, or, in other words, prejudice that cannot be compensated by an order of costs (see [20] above). The assessment of prejudice is necessarily a fact-sensitive one and entails close scrutiny of, among other things, a party's pleadings, written submissions and the manner in which evidence was led and adduced at trial. If all the material facts of each element of the claim have been pleaded, the party will generally be allowed to proceed to advance the legal claim premised on those material facts, even if the legal result was not pleaded (such as in *Drane* (see [19] above)). However, in such cases, the courts have generally gone on to examine whether there would be any irreparable prejudice occasioned to the opposing party if the reformulated claim were allowed to proceed (see, for instance, *Ho Soo Tong* at [26] above). If the material facts of each element of the claim have not been pleaded, but the unpleaded point has been put into issue (whether through the parties' opening statements, submissions, or the evidence) such that it is clear to the opposing party that the unpleaded issue was a case it had to meet, then the court may nonetheless allow the unpleaded claim to be advanced, as there would have been no irreparable prejudice occasioned to the opposing party (see, for instance, *BCBC* at [27] above and *Acute Result Holdings* at [25] above).

29 The principles may thus be summarised as follows:

- (a) Where the material facts of each element of the legal claim *have been pleaded*, albeit in support of a different legal conclusion than that which is subsequently advanced, the court will be more inclined to allow the legal claim unless there is clear evidence that the defendant will be unduly prejudiced. It will generally be for the party resisting the reformulated claim to show such prejudice.

(b) Where the material facts of each element of the legal claim *have not been pleaded*, the court will only allow the legal claim if the court is satisfied that there will be no prejudice occasioned as a result because both sides engaged with the issue at trial. It will generally be for the party advancing the unpleaded claim to show that there is no prejudice and this could be shown, for instance, by establishing that the issue was raised in evidence, it was clearly appreciated by the other party, and no reasonable objections were taken at the trial to such evidence being led and the point in question being put into issue.

30 In our view, a plaintiff's failure to adequately plead a legal claim or cause of action would generally have one of the consequences set out below. Assume hypothetically that the unpleaded cause of action lies in negligence:

(a) Where a plaintiff *does* plead the material facts underlying a claim in negligence but does not frame this specifically as a claim in negligence, the court can, applying the Material Facts Principle (see [19] above), find the defendant liable for negligence unless there is clear evidence that the defendant will be unduly prejudiced (see [29(a)] above).

(b) Where a plaintiff *does not* plead the material facts and legal claim of negligence, but the plaintiff had adduced the evidence supporting each element of negligence and cross-examined and put to the defendant its case of negligence, this was understood by the other party, and there were no objections by the defendant to such evidence being led, the court may, applying the Prejudice Principle (see [20] above), find the defendant liable for negligence.

- (c) Where a plaintiff has neither pleaded the material facts and legal claim of negligence nor adduced any evidence in support of a case in negligence, the court will not find the defendant liable for negligence.

31 It is important to note that these principles are inherently limited. Thus, it is not the case that, as long as a plaintiff pleads a certain fact, a court may find a defendant liable for *any* legal consequence arising from that fact. It follows, for instance, that it will not be sufficient for a plaintiff to plead and adduce evidence of a breach of contract (for non-performance of the contract) and seek an award after the trial of a remedy in unjust enrichment, if the facts pleaded and adduced do not support each element of a claim in unjust enrichment. Even then, the court will scrutinise the position to ensure that no injustice would ensue in such a situation.

32 Accordingly, in our judgment, what is critical in the present Appeals is not whether AHTC specifically pleaded that the Town Councillors and Employees breached a “duty of care” in “tort”. Rather, what is key is whether AHTC pleaded material facts which supported each element of a claim in negligence against the Town Councillors and Employees (that is, whether the Material Facts Principle had been adhered to): that a duty of care was breached by the Town Councillors and Employees, and this breach caused AHTC damage. If not, we will have to consider the Prejudice Principle to determine whether the evidence adduced at trial supported *each element* of negligence such that the Town Councillors and Employees knew the case they had to meet, and it would not cause irremediable prejudice to find them liable for negligence for permitting the control failures to exist in the System.

The Control Failures Issue

33 Bearing these legal principles in mind, we first turn to the Control Failures Issue. This requires an analysis of the parties’ respective pleadings, followed by an examination of the evidence and AHTC’s trial submissions. We first outline AHTC’s pleadings, the evidence that was adduced, and the trial submissions.

AHTC’s pleadings

34 At [66] and [455] of the Judgment, we observed that AHTC did not plead that the Town Councillors breached any tortious duties in relation to the control failures in the System. AHTC pleaded in its Statement of Claim (Amendment No 1) dated 27 August 2020 (“SOC1”) that:

(a) “AHTC had a *flawed system of governance* which, absent any meaningful financial prudential measures, *caused, facilitated and/or contributed to improper payments made to FMSS and FMSI* which AHTC seeks to recover by way of these proceedings.” [emphasis added] (SOC1 at [5.1.1])

(b) “By awarding the 1st and 2nd MA Contracts to FMSS and/or appointing FMSS as the Managing Agent of AHTC, *Sylvia Lim and Low Thia Khiang have set up and/or allowed a system at the Town Council (the ‘System’)*, which has effectively enabled Loh and How to be responsible for certifying work done, approving payments and/or signing cheques to FMSS/FMSI, to benefit themselves from the very same payments.” [emphasis added] (SOC1 at [5.1.2])

(c) “The KPMG Report found that under this System: ... (d) The Town Council’s governance of matters relating to FMSS and FMSI was

‘seriously flawed’, involving pervasive control failures (including a lack of financial operations and record-keeping), and an unacceptably high degree of financial responsibility was relinquished by the Town Councillors to the conflicted officers of AHTC. (e) This exposed public funds to risks of erroneous payments, overpayments, payments for which services had not been sufficiently verified and payments without proper authority, as well as the potential for actual misappropriation or civil or commercial breach of trust.” (SOC1 at [5.1.5(d)] and [5.1.5(e)])

(d) “AHTC avers that the System is inherently flawed as it is clearly incapable of providing: (a) [a]ny independent and/or effective check against payments made by the AHTC to FMSS/FMSI; nor (b) [a]ny safeguard to public monies held by AHTC and/or AHTC’s interest. *Accordingly no Town Councillor could have reasonably approved the System, without being in breach of his or her duties.*” [emphasis added] (SOC1 at [5.1.7])

(e) “AHTC also avers that *Loh and How breached their duty of care and skill qua fiduciary and/or duty of care and skill in tort to AHTC: (a) [b]y causing and/or procuring and/or authorising and/or permitting AHTC to make payments to FMSS under the System, in the circumstances set out at paragraphs 5.1 to 5.7; and/or (b) [b]y failing to disclose to and/or inform AHTC of and/or set right and/or rectify the flaws in the System and/or aforementioned breaches of duties.*” [emphasis added] (SOC1 at [5.17(A)])

35 Therefore, the only express pleading made by AHTC regarding a breach of a duty of care in tort was against the Employees, as shown at [34(e)] above. AHTC did not plead that the Town Councillors breached any tortious duty of

care. This was our finding in the Judgment at [66] and [455]. The pleadings at [34(a)] to [34(d)] above were contained in AHTC’s original Statement of Claim dated 21 July 2017, while the pleading at [34(e)] above was introduced by AHTC pursuant to an amendment application made after trial. We elaborate on this at [44] to [46] below.

Evidence

36 The foregoing pleadings were supported by the evidence led by AHTC. AHTC relied on a series of reports prepared by KPMG LLP (the “KPMG Reports”) for this, and the KPMG Reports made the following key findings (see the Judgment at [92]–[96]):

- (a) The Town Councillors relinquished an unacceptably high degree of financial responsibility to conflicted persons, who were in a position to approve payments to themselves without meaningful independent oversight. These conflicted persons included Mr Loh, Ms How and several AHTC’s employees who simultaneously held shareholdings in FMSS at the material time (see the Judgment at [14(g)] and [94]).
- (b) The Town Council did not have protocols or processes in place to independently and objectively assess the service levels of the work done by FMSS and FMSI.
- (c) The nature of the System was such that it hindered and/or concealed the ability of independent third parties to assess the true extent of loss suffered by AHTC.
- (d) Payments made to FMSI were not subject to any safeguards.

37 The evidence also showed that the only safeguard in the System for payments made to FMSS was a standing instruction (the “Standing Instruction”) that, at the final stage in the payment process, cheques to FMSS were to be co-signed by the Chairman (Ms Lim) or Vice Chairman (Mr Low or Mr Singh) of the Town Council, who were not Conflicted Persons (see the Judgment at [64] and [418]).

38 However, at the trial, AHTC had “no questions” for any of the Town Councillors or Employees. Instead, in its trial closing submissions, AHTC relied on the cross-examination and questions put by counsel for Pasir Ris-Punggol Town Council (“PRPTC”) at the trial. As PRPTC was later substituted by STC in these Appeals (see the Judgment at [112]–[114]), any references in this judgment to PRPTC should be construed as referring to STC as well. That cross-examination brought out the following points:

- (a) Mr Low, Ms Lim, and Mr Singh accepted that, in signing the cheque, they would rely on supporting documents prepared by FMSS, and on FMSS having done a proper job in verifying and calculating the sums owing to it.
- (b) The standard procedure in the Town Council was for the cheques and supporting documents to be passed to the Chairman during the Chairman’s meetings for her to approve and sign on the spot. Ms Lim’s evidence was that the Chairman’s “scope of work is “to meet with the Managing Agent to plan Town Council work, discuss feedback from residents and coordinate service levels” and “[t]o make decisions on ad hoc expenditure within the Chairman’s authority”. Thus, AHTC submitted that this System did not enable the Chairman or Vice Chairman to effectively review the supporting documents.

(c) There was no written record that the works were checked and found to have been satisfactorily performed. Ms How, Ms Yeo Soon Fei, and Mr Ronley Ng (the latter two being witnesses for Ms How, Mr Loh and FMSS) all testified that their signatures on the Work Orders and invoices were not certifications that FMSS had performed its work satisfactorily.

Trial submissions

39 AHTC’s trial closing submissions raised the fact that the System was flawed:

(a) “7.2.2 All this was done to put FMSS in a position to profit as AHTC’s managing agent. In furtherance of this objective, [Ms Lim] and [Mr Low] set up and/or permitted a failed control environment in AHTC which prevented any meaningful oversight of FMSS – i.e. the System.”

(b) “7.6.1 As demonstrated above, the System was fundamentally flawed and could not be relied upon to provide meaningful oversight over FMSS. ...”

40 However, in AHTC’s trial closing submissions, AHTC’s specific claims regarding the System were only made against Ms Lim, Mr Low, Mr Loh, and Ms How for breaches of fiduciary duties:

(a) “7.6.2 Insofar as [Ms Lim] and [Mr Low] set up and/or permitted the System, AHTC respectfully submits that [Ms Lim] and [Mr Low] have breached their core fiduciary duties of loyalty and fidelity and their duty of good faith owed as Elected Town Councillors. ... In the alternative, [Ms Lim] and [Mr Low’s] actions were so reckless in their disregard of the interests of the residents of AHTC that they can

only be viewed as breaches of [Ms Lim] and [Mr Low’s] core fiduciary duties of loyalty and fidelity and their duty of good faith.” [emphasis added]

(b) “7.6.4 As regards [Mr Loh] and [Ms How], AHTC respectfully submits that their participation in the System amounts to a breach of their core fiduciary duties, namely, the no-conflict rule and the no-profit rule.” [emphasis added]

(c) “7.6.5 Further, AHTC submits that [Mr Loh], [Ms How] and FMSS have dishonestly assisted [Ms Lim] and [Mr Low’s] breaches of their fiduciary duties as outlined in the paragraphs above. FMSS has also dishonestly assisted in [Mr Loh] and [Ms How’s] breach of fiduciary duties.”

(d) “7.6.6 Finally, insofar as FMSS and FMSI have received payments through the System in breach of [Mr Low] and [Ms Lim’s] fiduciary duties, FMSS and FMSI are liable for knowing receipt.”

41 The only claims raised by AHTC in their trial submissions regarding any breaches of duties of care (whether in equity or tort) were regarding matters that did not involve the control failures in the System:

(a) The seven contracts awarded to LST Architects (as an alternative claim to AHTC’s primary claim for breach of fiduciary duties).

(b) The fact that Ms Lim and Mr Low caused material non-disclosures and misleading statements (in respect of issues concerning the waiver of tender for the “First MA Contract” (see [23(a)] of the Judgment)) to be made to the other Town Councillors at the Town Council meeting on 4 August 2011.

(c) The claim against Ms Lim and Mr Low for causing AHTC to enter into the First MA Contract and the “Second MA Contract” (see [23](b) of the Judgment).

(d) The claim that Ms Lim failed to conduct proper checks before signing off on cheques in favour of FMSS.

The trial Judge’s findings

42 We next briefly outline the pertinent findings made by the Judge. The Judge held that the Town Councillors and the Employees had breached their *equitable* duties of skill and care to AHTC in permitting the control failures to exist in the payment process for payments to FMSS and FMSI (*Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 (the “Trial Judgment”) at [361]).

(a) As against the Employees, the Judge found that they “breached their equitable duties of skill and care in not having in place adequate safeguards in the payment process to address the conflicts of interest” (see the Trial Judgment at [356]).

(b) As against the Town Councillors, the Judge “reach[ed] similar conclusions” as “[t]hey, too, ought to have realised and taken steps to manage the conflicts of interest in the payment process. The fact that the standing instruction was put in place at a Town Council meeting suggests that the first to fifth defendants were cognisant of the issue. Yet, they did not take further steps to adequately address it” (see the Trial Judgment at [357]).

(c) The Judge also observed that “it is not the plaintiffs’ case that the defendants deliberately constructed a system with these control

failures and then allowed them to persist so that FMSS would be able to receive payments which were unjustified. This is critical to the analysis above. The absence of a deliberate intent changes the balance of the analysis from breach of fiduciary duties to breach of the equitable duties of skill and care” (see the Trial Judgment at [358]).

43 Therefore, the Judge’s specific finding was that the Town Councillors and Employees breached their *equitable* duties of skill and care in implementing the System, as they permitted the control failures in the System to exist.

44 Subsequently, following the release of the Trial Judgment, AHTC applied to amend its pleadings to introduce a new pleading that Mr Singh, Mr Chua and Mr Foo breached their equitable duties of care and skill in respect of the control failures in the System (see the Judgment at [110]). We note that that amendment application had been brought only *after* the trial had concluded and the Judge had delivered his decision on liability.

45 The following amendments in respect of Mr Singh, Mr Chua and Mr Foo, in particular, were disallowed by the Judge in an oral judgment dated 20 August 2020 (the “Oral Judgment”):

(a) Category 2a amendments: That Mr Singh, Mr Chua and Mr Foo breached their equitable duty of care and skill by failing to exercise proper scrutiny in causing AHTC to award the “First EMSU Contract” (see [23(c)] of the Judgment”), the First MA Contract and the Second MA Contract to FMSS without calling tender, and hence that AHTC was entitled to a declaration of breach and damages arising from such breach.

(b) Category 2b amendments: That Mr Singh, Mr Chua and Mr Foo breached their equitable duty of care and skill *in respect of the control*

failures concerning payments approved and made by AHTC and PRPTC to FMSS/FMSI and Mr Danny Loh’s estate for services rendered under the four contracts and a related contract for EMSU services respectively, and hence that AHTC was entitled to a declaration of breach and damages for such breach.

46 As for the category 2b amendments, which concerns the control failures in the System, the Judge disallowed the amendments because they would introduce a new cause of action against Mr Singh, Mr Chua and Mr Foo (see the Oral Judgment at [55] and [56]):

55 *It is clear what has not been pleaded in Suit 668 is that the 3rd to 5th defendants had ‘approved’ and/or ‘authorised’ the Payment System and the payments that were made thereunder. The allegations in this regard are levelled against the 1st, 2nd, 6th and 7th defendants only. There is no allegation that the 3rd to the 5th defendants were involved in setting up the Payment System and processing payments thereunder. It is crucial that this be pleaded and particularised for a cause of action against the 3rd to 5th defendants for breach of their duties in respect of the Payment System to be made out. It is again inconceivable that allegations which are specifically directed at the 1st, 2nd, 6th and 7th defendants can be said to be implicitly made against the 3rd to the 5th defendants.*

56 *Furthermore, as was the case with the Category 2a amendments, the 3rd to 5th defendants did not understand these allegations to be directed at them, and expressly pointed this out at paragraph 43 of their Defence to Suit 668. ...*

[emphasis added]

Analysis

Mr Low, Ms Lim, Ms How, and Mr Loh

47 In that light, we turn to analyse AHTC’s case against the Town Councillors and Employees. The elements of the tort of negligence are well-established: there must be a (a) duty of care that has been (b) breached by the defendant, and this breach must have (c) caused the plaintiff damage (see the

Judgment at [127]). As shown at [34] above, AHTC did plead, albeit loosely, that Mr Low and Ms Lim had set up the “flawed” System. These are the material facts going towards the elements of a breach of a duty of care. AHTC also pleaded that the flawed System caused AHTC damage, as the flaws allowed Mr Loh and Ms How to be responsible for certifying work done, approving payments and/or signing cheques to FMSS/FMSI to benefit themselves from the very same payments. As such, as against Mr Low, Ms Lim, Mr Loh, and Ms How, while AHTC did not expressly plead that the *legal result* of the pleaded facts resulted in the commission of the tort of negligence (that is, that a tortious duty of care was breached by Mr Low, Ms Lim, Ms How, and Mr Loh), AHTC did plead the material facts of the elements of this claim against the four of them. Therefore, we find that the Material Facts Principle is satisfied. In other words, we are satisfied that AHTC pleaded the material facts of each element of a claim in negligence against Mr Low, Ms Lim, Mr Loh, and Ms How for permitting the control failures to persist in the System.

48 Applying the principle set out at [29(a)] above, we next turn to consider if there is clear evidence that these four individuals would be unduly prejudiced by a finding of liability in negligence for the control failures. In our judgment, no prejudice would be occasioned. Evidence was adduced against these four individuals on the control failures, as outlined at [36] to [38] above. AHTC had also made submissions against these four individuals in relation to the control failures, albeit on the basis that this constituted a breach of fiduciary duties (see [40] above). Therefore, AHTC had clearly put into issue the question of whether Mr Low, Ms Lim, Mr Loh, and Ms How had breached their duty of care owed to AHTC by permitting the control failures in the System to exist. There is no prejudice in the court finding these four individuals liable for the tort of negligence for permitting the control failures to exist in the System.

Mr Singh, Mr Chua and Mr Foo

49 We turn to the remaining Town Councillors: Mr Singh, Mr Chua, and Mr Foo. In our judgment, the position is different in relation to these three individuals. This is because AHTC did *not* plead that any of them were even involved in setting up or implementing the System. This was also recognised by the Judge in AHTC’s application to amend its pleadings (see [46] above).

50 Since AHTC did not plead that Mr Singh, Mr Chua and Mr Foo were involved in the setting up or implementation of the System, the next step is to consider the Prejudice Principle to determine whether the evidence adduced at trial was such that Mr Singh, Mr Chua and Mr Foo knew that they had to defend against a case that they had breached their duty of care owed to AHTC by permitting the control failures to exist in the System.

51 The unique situation here is that one of the plaintiffs in the Suits – PRPTC at the trial below – did run a case, and did adduce evidence, against the Town Councillors and the Employees regarding their breach of duty of care for the control failures in the System. Consequently, the Town Councillors and the Employees knew that this was a case which they had to meet, albeit against PRPTC and not AHTC. However, as rightly put by the Judge in his oral judgment in the amendment application, where there are two plaintiffs, it is important to distinguish between the plaintiffs’ individual claims and not conflate one party’s claim with another party’s claim, especially given the fact that the two suits were not consolidated but merely heard together (see the Oral Judgment at [15]):

Therefore, AHTC’s pleadings in Suit 668 define the matters to be decided by the court in Suit 668. *The court has to construe AHTC’s claims with reference to its pleadings, not PRPTC’s, and grant judgment on that basis.* Accordingly, insofar as Suit 668 is concerned, the Judgment could only have granted the claims

and reliefs pleaded by AHTC in the 668SOC. *AHTC's pleaded case should therefore not be conflated nor confused with PRPTC's.*

[emphasis added]

52 Furthermore, AHTC did not cross-examine or put its case to the Town Councillors and the Employees. Instead, AHTC relied on the cross-examination by PRPTC's counsel (see [38] above). It is thus important to consider how AHTC used that evidence in its trial closing submissions against Mr Singh, Mr Chua, and Mr Foo.

53 In this regard, the critical point in our judgment is that, in its trial closing submissions, AHTC *did not* make any claim against Mr Singh, Mr Chua, and Mr Foo regarding the control failures (see [40] and [41] above). This is consistent with the Judge's finding in the amendment application that "[t]here is no allegation that the 3rd to the 5th defendants were involved in setting up the Payment System and processing payments thereunder" and they "did not understand these allegations to be directed at them" (see [46] above). The 3rd to the 5th defendants as referred to by the Judge are Mr Singh, Mr Chua and Mr Foo, respectively. As such, AHTC:

- (a) did not plead that Mr Singh, Mr Chua, and Mr Foo breached any duties regarding the control failures in the System;
- (b) AHTC itself did not cross-examine Mr Singh, Mr Chua and Mr Foo regarding the control failures; and
- (c) AHTC did not submit in its trial closing submissions that Mr Singh, Mr Chua, and Mr Foo breached any duties regarding the control failures in the System.

54 In these circumstances, we find that AHTC did not run any case – much less a clear case – against Mr Singh, Mr Chua, and Mr Foo regarding the System. Consequently, the three of them did not know that they had to defend a case *against AHTC* that they had breached any duties in relation to the System. It would thus unduly prejudice them for the court to now find them liable to AHTC in tort for breach of duty in permitting the control failures to exist in the System.

Should AHTC be permitted to make a fresh application to amend its pleadings?

55 AHTC has made an alternative submission that it should be allowed to make a fresh application now to amend its pleadings, and that the Town Councillors will not be prejudiced by this. The other parties did not address this issue.

56 We cannot accept AHTC’s alternative submission. O 20 r 5 of the revoked Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the “Rules”) governs the regime on the amendment of pleadings. O 20 r 5(1) of the Rules provides as follows:

5.—(1) Subject to Order 15, Rules 6, 6A, 7 and 8 and this Rule, *the Court may at any stage of the proceedings allow the plaintiff to amend his writ*, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct. [emphasis added]

57 O 20 r 5(1) affords the court a wide discretion to allow pleadings to be amended at any stage of the proceedings on such terms as may be just (see this court’s decision in *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“*Review Publishing*”) at [110]; *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 (“*Sheagar*”) at [116]), including in the course of an appeal itself (see this court’s decision in *Asia Business Forum* at [17]). However, the later an amendment

application is made, the *stronger* the grounds required to justify it must be (*Asia Business Forum* at [12]; *Parakou Shipping Pte Ltd v Liu Cheng Chan* [2016] SGHC 48 (“*Parakou Shipping*”) at [13]).

58 The court must carefully consider two primary considerations before allowing an amendment. The first is whether the amendment sought would enable the real question and/or issue in dispute between the parties to be determined, thereby ensuring that the ends of substantive justice are met. The second requires that procedural fairness to the opposing party be maintained. A just outcome requires that neither consideration be made clearly subordinate to the other (*Sheagar* at [117]). The court must have regard to “the justice of the case” and must bear in mind two key factors: (a) whether the amendments would cause any prejudice to the other party which cannot be compensated in costs; and (b) whether the amendments are effectively giving the party who is applying for leave to amend a second bite at the cherry (*Review Publishing* at [113]; *Sheagar* at [116] to [117]; *Parakou Shipping* at [13]). All the relevant circumstances of the case at hand should be considered by the court in deciding whether to allow an amendment to pleadings (*Review Publishing* at [114]).

59 In this case, for the same reasons outlined at [51] to [54] above, it would cause Mr Singh, Mr Chua and Mr Foo substantial prejudice that could not be adequately compensated in costs if an amendment to include a claim in tort in relation to the control failures in the System were to be allowed against them now. It would be giving AHTC a second bite at the cherry when no case was ever run against them from AHTC at the trial below. This fresh application sought by AHTC is not only belated in the sense that it is being made after judgment has been rendered in the court below but further, that it is being made after judgment has been rendered on the Appeals.

60 Second, and as we have alluded to at [44] above, AHTC *did* in fact attempt to amend its pleadings after trial and before the Appeals were heard. The amendments in respect of Mr Singh, Mr Chua and Mr Foo were disallowed by the Judge because AHTC’s Statement of Claim did not allude to their roles in relation to the control failures in the System, as reflected in the Defence (see the Oral Judgment at [55] and [56]; see also [46] above). That being the case, the Judge also recognised and found that AHTC did not run a case that Mr Singh, Mr Chua and Mr Foo had approved or authorised the System, much less that they had breached any duty of care in relation to the control failures of the System. We agree with the Judge. In these circumstances, and bearing in mind the factors outlined at [53] above, we find that AHTC should not be permitted to bring a fresh application to amend its pleadings now to include a claim in the tort of negligence against the Town Councillors in relation to the control failures in the System.

61 Accordingly, we hold that Mr Singh, Mr Chua, and Mr Foo cannot be made liable to AHTC for the control failures in the System.

Apportionment

62 We next turn to the ancillary issue of apportionment. Regarding the Red-Power Issue, it follows from [9] and [14] above that there would be no issue of apportionment of liability between AHTC and STC on the Red-Power Issue, as AHTC has no claim relating to Red-Power.

63 As for the Control Failures Issue, all the parties agree that any issue of apportionment should be dealt with at the assessment of damages stage. We agree: there is no need to “apportion” liability owed to the plaintiffs, and this court only needs to find, at this stage, which defendant(s) are liable to which

plaintiff(s) for which claim(s). Any issue of apportionment of damages should be dealt with at the assessment of damages stage.

Final ancillary issue

64 Finally, we turn to the additional issue raised by the Employees and FMSS highlighted at [13] above. The Employees and FMSS highlight that, in a distinct application, OS 835, AHTC made an application against FMSS for a stay of arbitration proceedings between AHTC and FMSS. The Judge ordered a stay of the arbitration proceedings “until the disposal of [Suit 668]”, which is the Suit below brought by AHTC against the defendants including FMSS. As Suit 668 has not been fully disposed of, given that the trial below was bifurcated and damages remain to be adjudicated, the Employees and FMSS submit that the claim against FMSS in CA/CA 196/2019 and CA/CA 197/2019 should be dismissed with costs or a further order made that the stay order made in OS 835 against FMSS be lifted so that the arbitration proceedings may be proceeded with.

65 As we have made clear in the Judgment, in so far as the Judge found FMSS liable for dishonest assistance and knowing receipt with regard to the First MA Contract and the First EMSU Contract (see the Judgment at [99]), our conclusion that neither the Town Councillors nor the Employees owed fiduciary duties to AHTC means that those claims against FMSS must necessarily fail. We have reversed the Judge’s conclusions on these points in their entirety and FMSS is hence not liable to either AHTC or STC in any respect. That being said, we are not minded to make any orders in respect of the stay order in OS 835 to be lifted. This is because that was an order made by the Judge in OS 835 – an entirely separate application – and these Appeals do not concern OS 835. Any application to lift the stay should properly be brought before the Judge in

OS 835. These Appeals are not the proper forum to seek such relief, and certainly not without the benefit of both parties' submissions.

Conclusion

66 For the foregoing reasons, we make the following orders in respect of the Appeals:

- (a) In relation to STC:
 - (i) The Town Councillors and the Employees are liable to STC in negligence for permitting the control failures in the System to exist.
 - (ii) Ms Lim is liable to STC in negligence for causing AHTC to award a new contract to Red-Power.
- (b) In relation to AHTC:
 - (i) Mr Low, Ms Lim, Ms How, and Mr Loh are liable to AHTC in negligence for permitting the control failures in the System to exist.
- (c) All other findings by the Judge are overturned. Consequently:
 - (i) CA/CA 196/2019, which is an appeal brought by the Employees and FMSS against STC, is allowed in part, as the Judge's findings that the Employees are liable to STC for breach of fiduciary duties and breach of equitable duties of skill and care are overturned. However, we find that the Employees are liable to STC in negligence for the control failures in the System.
 - (ii) CA/CA 197/2019, which is an appeal brought by the Employees and FMSS against AHTC, is allowed in part, as the

Judge's findings that the Employees are liable to AHTC for breach of fiduciary duties and breach of equitable duties of skill and care are overturned. However, we find that Ms How and Mr Loh are liable to AHTC in negligence for permitting the control failures in the System to exist (see the Judgment at [499]).

(iii) CA/CA 198/2019, which is an appeal brought by the Town Councillors against STC, is allowed in part, as the Judge's findings that the Town Councillors are liable to STC for breach of fiduciary duties and breach of equitable duties of skill and care are overturned. However, we find that the Town Councillors are liable to STC in negligence for the control failures in the System, and Ms Lim is liable to STC for causing AHTC to award a contract to Red-Power.

(iv) CA/CA 199/2019, which is an appeal brought by the Town Councillors against AHTC, is allowed in part, as the Judge's findings that the Town Councillors are liable to AHTC for breach of fiduciary duties and breach of equitable duties of skill and care are overturned. However, we find that Mr Low and Ms Lim are liable to AHTC in negligence for permitting the control failures in the System to exist.

(v) CA/CA 200/2019, which is an appeal brought by STC relating to the legal principles governing reparative compensation (see the Judgment at [115]) necessarily falls away in light of our finding that the Town Councillors and the Employees did not owe fiduciary duties to AHTC. We accordingly dismiss CA/CA 200/2019.

Costs

67 Finally, on the issue of costs, we invited the parties to address us on two issues: (a) first, whether the costs of the trial ought be dealt with by the Judge or by the Court of Appeal; and (b) second, whether the costs of the trial and of the Appeals ought to be dealt with at this stage or only after damages had been assessed. The parties duly filed their responses to our queries.

68 Having considered the parties' submissions, we make the following orders. First, we reserve the costs of the trial to the Judge to be decided after damages have been assessed. In our judgment, he is best placed to assess the costs in light of our decision in the Appeals and in the context of the actual damages that may in due course be assessed. We note too, the fact that the parties to the Appeals had earlier agreed to orders being made by the Judge in the Suits below for the costs of the trial to be deferred until after the assessment of damages. We see no reason to change this. Second, as to the costs of the Appeals, we are satisfied that these costs should be determined by us and that we should do so at this time. This is because the Appeals were concerned with issues of liability, which have now been conclusively determined. There is no reason to leave the issue of costs in this regard unresolved. Bearing in mind the orders made above at [66], we now invite the parties to file their submissions on costs on the present Appeals, within 14 days of the date of this judgment. Those submissions shall be limited to 10 pages.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Andrew Phang Boon Leong
Senior Judge

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