

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

[2022] SGHC 158

Suit No 447 of 2020

Between

Dways International Pte Ltd
(formerly known as D'way
International Pte Ltd and as
Longevite Pte Ltd)

... Plaintiff

And

- (1) Lim Seow Hui Ratna Irene
- (2) Lim Kim Hwa
- (3) Tang Lee Cheng
- (4) Chua Hong Chor

... Defendants

JUDGMENT

[Companies — Directors — Duties]
[Tort — Conspiracy — Conspiracy by unlawful means]
[Tort — Defamation]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND AND DWAYS' CLAIMS.....	2
THE EMPLOYMENT AGREEMENTS AND THE LIMS' ROLES IN DWAYS.....	4
ALLEGED EXCLUSIVE CONTROL OVER BANK ACCOUNTS, PRODUCTS, RECORDS AND INVENTORY FROM MARCH 2019 TO FEBRUARY 2020.....	9
OCBC ACCOUNT	9
UOB ACCOUNT.....	11
CONTROL OVER AND ACCESS TO PRODUCTS.....	11
CONTROL OVER AND ACCESS TO SALES RECORDS AND INVENTORY OF THE PRODUCTS.....	12
PAYMENTS MADE WITHOUT LEGITIMATE BASIS, THE LOAN TO THE CHUAS AND THE TLC INVESTMENT.....	15
DISPUTED PAYMENTS – PAYMENTS MADE WITH A LEGITIMATE BASIS	18
<i>Payments to Cosmo System Pte Ltd (“Cosmo”) of \$911.64 and \$252.51 (s/n 1 and 2 of Disputed Payments)</i>	<i>19</i>
<i>Payments to Norlin for CPF contributions of \$144 and \$178 (s/n 3 and 30 of Disputed Payments)</i>	<i>19</i>
<i>Payment to Karen of \$4,276.84 (s/n 9 of Disputed Payments)</i>	<i>20</i>
<i>Payment to WLP Pte Ltd of \$280 (s/n 15 of Disputed Payments).....</i>	<i>21</i>
<i>Payments of \$2,900, \$1,580, \$1,130 and \$520 to VSK Design (s/n 16, 26, 36 and 37 of Disputed Payments)</i>	<i>22</i>
<i>Debit card payments for meals (s/n 18–23 and 33 of Disputed Payments).....</i>	<i>25</i>

<i>Some payments for which Irene cannot recall their purpose (s/n 28, 31, 32 and 34 of Disputed Payments)</i>	26
DISPUTED PAYMENTS – PAYMENTS WITHOUT LEGITIMATE BASIS	28
<i>Season parking fees of \$192.60 (s/n 5 of Disputed Payments)</i>	29
<i>Payments relating to Enhance Life (s/n 4, 6 and 7 of Disputed Payments)</i>	30
<i>Payments to the Lims as allowances (s/n 8 of Disputed Payments)</i>	32
<i>Payment of \$980 for “preparation of accounts” (s/n 11 of Disputed Payments)</i>	34
<i>Refunds on 5 February 2020 to Dways’ distributors (s/n 10, 12, 13 and 14 of Disputed Payments)</i>	35
<i>Some payments for which Irene cannot recall their purpose (s/n 17, 27 and 35 of Disputed Payments)</i>	38
<i>Reimbursement to Irene for “meals and refreshments” and “cleaning services” (s/n 24, 25 and 29 of Disputed Payments)</i>	39
\$30,000 LOAN TO THE CHUAS	40
TLC INVESTMENT	43
CONCLUSION ON THE DISPUTED PAYMENTS	44
MISAPPROPRIATION OF PRODUCTS AND/OR REVENUE FROM SALES OF PRODUCTS	47
MISAPPROPRIATION OF REVENUE FROM SALES OF PRODUCTS	47
AGREEMENTS ON THE ENTITLEMENT TO PRODUCTS	47
WHETHER NANCY KNEW OF OR AUTHORISED THE REMOVAL OF PRODUCTS ON 23 AND 30 JANUARY 2020 BY THE LIMS	53
PRODUCTS REMOVED ON 23 AND 30 JANUARY 2020	56
<i>Products removed on 23 January 2020</i>	57
<i>Products removed on 30 January 2020</i>	58
TOTAL PRODUCTS MISAPPROPRIATED BY JUSTIN AND IRENE	62

TRANSFERRING AND DELETING INFORMATION BELONGING TO DWAYS	64
DEFAMATION	66
WHATSAPP MESSAGES	67
1ST LETTER	70
2ND LETTER	71
JUSTIFICATION	73
<i>Whether Products were safe for consumption.....</i>	<i>73</i>
<i>Whether misrepresentations were made about the manufacturing origin of Products.....</i>	<i>74</i>
<i>Conduct of business in dishonest or improper manner.....</i>	<i>81</i>
FAIR COMMENT	83
CONCLUSION ON THE DEFAMATION CLAIM.....	86
CONCLUSION.....	87

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.

Dways International Pte Ltd (formerly known as D'way International Pte Ltd and as Longevite Pte Ltd)

v

Lim Seow Hui Ratna Irene and others

[2022] SGHC 158

General Division of the High Court — Suit No 447 of 2020

Audrey Lim J

10–13, 24–27 August, 1–3, 28–30 September, 5 October 2021, 8 April 2022

6 July 2022

Judgment reserved.

Audrey Lim J:

Introduction

1 The plaintiff, (“Dways”), sells nutritional products, which at the material time were “HL Span”, “Purity” and “B’Glo” (“Product(s)”). It engaged individuals to distribute the Products via a direct-selling distribution method with a multi-tier compensation scheme.

2 In this suit (“the Suit”), Dways claims in the main against:

- (a) the first defendant (“Irene”), its former director, for breaches of duty as a director and of loyalty and fidelity as an employee;

- (b) the second defendant (“Justin”) for breaches of duty as Dways’ Chief Financial Officer (“CFO”) (which position of appointment he disputes);
- (c) Irene and Justin (collectively “the Lims”) for conspiracy to injure Dways by their acts;
- (d) Irene for defamation; and
- (e) the third and fourth defendants (“Karen” and “Steven”, collectively “the Chuas”) for the return of \$30,000 which Dways had lent to them.

Background and Dways’ claims

3 Dways was incorporated in November 2018 with Nancy Long (“Nancy”) as its director, and Nancy and Zulkifli bin Othman Curran (“Zul”) as its shareholders. On 8 March 2019, Irene became a director of Dways and the Lims became shareholders around the same period of time.¹ Where appropriate, I will refer to Nancy, Zul and the Lims collectively as the “Four Persons”, and to the Lims and the Chuas collectively as “the Defendants”.

4 Dways claims that in February or March 2019, the Four Persons agreed that Irene would be the director in charge of accounts and operations (“Irene’s Employment Agreement”); and Justin would be appointed as the CFO to assist Irene in and supervise the execution of her duties (“Justin’s Employment Agreement”) (collectively “the Employment Agreements”). It claims that the Lims had exclusive control over its bank records and accounts, and exclusive

¹ 2AB 1193; Statement of Claim (“SOC”) at [9]; 1st and 2nd Defendants’ Defence (“D1D2 Defence”) at [9]; Irene’s Affidavit of Evidence-in-Chief (“AEIC”) at [10].

access to and control over the Products and sales records, from March 2019 to February 2020. The Lims dispute the existence of the Employment Agreements. As for the Chuas, they were engaged as Dways' distributors and assisted with stock-taking and collection of Products by other distributors for the purpose of sales.²

5 By about November 2019, the working relationship between the Lims and Nancy/Zul soured, which Nancy claims was due partly to Irene's lack of transparency in managing Dways' accounts. The Lims claim that by January 2020: (a) they were unhappy with Nancy and Zul as Zul would misrepresent to potential distributors/customers about the country of manufacture of the Products; (b) they became increasingly suspicious as to the safety of the Products; and (c) they suspected that Nancy and Zul took Products in excess of their entitlement without paying or accounting for them.³

6 The disagreements between the Lims and Nancy/Zul came to a head during a meeting on about 17 January 2020 where the sale of the Lims' shares was raised, and thereafter Irene stopped communicating with Nancy. On 22 January 2020 Nancy and Justin discussed the sale of the Lims' shares to Nancy and/or Zul ("22 Jan 2020 Meeting").⁴ On 5 February 2020, Irene ceased to be Dways' director and the Lims ceased to be shareholders. In February 2020, the Chuas also ceased to be distributors for Dways.⁵

² SOC at [19]–[21A]; D1D2 Defence at [19]–[20A]; 3rd and 4th Defendants' Defence ("D3D4 Defence") at [5(d)], [6A]; Reply to the 3rd and 4th Defendants' Defence at [1A].

³ Nancy's AEIC at [201]–[204]; Defendants' Closing Submissions ("DCS") at [55]; Justin's AEIC at [14]–[15]; Irene's AEIC at [75], [84]–[85].

⁴ Nancy's AEIC at [237]–[241], [248]–[251]; Justin's AEIC at [17]; 27/8/21 NE 119.

⁵ SOC at [7A], [25], [25A]; D1D2 Defence at [7A] and [21(b)(iv)]; D3D4 Defence at [5(d)], [6D]; 7AB 3833–3836, 3852–3854; Nancy's AEIC at [301], [303].

7 On 27 May 2020, Dways commenced the Suit. Its main claims against the Lims are broadly for: (a) wrongfully making payments from Dways’ OCBC bank account (“OCBC Account”) and UOB bank account (“UOB Account”) (collectively the “Bank Accounts”), which were unauthorised and/or illegitimate commercial transactions; (b) misappropriating Products on 23 and 30 January 2020; and (c) defamation based on WhatsApp messages and letters which Dways’ distributors/customers had received from Irene in April 2020. Dways also claims repayment of US\$3,055.00 from the Lims pertaining to an investment in Throne Legacy Capital (“TLC Investment”), and further alleges that the Lims caused Dways to extend a \$30,000 loan to the Chuas that it had not approved and sought repayment of the loan from the Chuas.⁶

8 Dways also alleges that the Lims had failed to maintain a proper account of all transactions and inventory, failed to properly hand over its documents when they left the company, and removed or deleted information in its computer system without authorisation. I will deal with these at the appropriate juncture.

The Employment Agreements and the Lims’ roles in Dways

9 I start with the Employment Agreements, which Dways claims were concluded by oral agreement. Dways claims that, by Irene’s Employment Agreement, Irene had agreed to be appointed as the director in charge of accounts and operations, which included maintaining a proper account of: (a) all inventory of Products; (b) all sales records of Products; and (c) all transactions made pertaining to the Bank Accounts. Dways also claims that, by

⁶ SOC at [28], [28A], [32(i)], [32(j)], [37]; Nancy’s AEIC at [426]; Plaintiff’s Closing Submissions (“PCS”) at [95].

Justin’s Employment Agreement, Justin agreed to be appointed as the CFO to assist Irene in and supervise the execution of her duties.⁷

10 The Lims deny the existence of the Employment Agreements. They attested that initially Nancy and Zul had assured them that they would merely be “sleeping partners” and contribute money to the business. Although Irene subsequently aided Nancy in Dways’ operations and became a director, she did not agree to be in charge of Dways’ accounts and operations. Justin denied being appointed as the CFO or employed by Dways.⁸

11 I find that Dways has failed to show, on balance, the existence of the Employment Agreements. There were no documents to evidence the agreements or their terms. This is despite numerous WhatsApp chat groups created at the material time where parties would discuss and put on record matters pertaining to Dways’ business and operations, even in early 2019.⁹ Dways also could not state when the Employment Agreements were concluded. It pleaded that the terms were agreed “during the course of several meetings ... in or around February 2019 and/or March 2019” among the Four Persons, and that Irene was appointed director on 8 March 2019 and Justin was appointed the CFO on *12 March* 2019. However, Nancy attested that the discussions started in January 2019, and she and Zul claimed that Justin’s Employment Agreement was concluded with Justin appointed as the CFO on around *28 March* 2019.¹⁰ Further, Dways did not consistently represent who its CFO was to third parties.

⁷ SOC at [8], [10], [14]; Nancy’s AEIC at [28], [33], [36], [49]–[50].

⁸ D1D2 Defence at [6A], [8], [10], [13]; Irene’s AEIC at [12]–[15]; Justin’s AEIC at [5]–[6].

⁹ Exhibit B (List of WhatsApp chat groups); 27/8/21 NE 147; 1AB 243–249, 254–265, 269–274, 287–296, 308–312, 317–321.

¹⁰ SOC at [8]–[9]; Nancy’s AEIC at [48]–[49]; Zul’s AEIC at [32].

In an invoice from a vendor signed in July 2019 by Irene and Nancy, after the purported Employment Agreements were said to have been concluded, it was *Irene* and not Justin who signed off as “CFO” (with Nancy as “CEO”).¹¹

12 Dways relies on an unsigned partnership agreement (“PA”),¹² which Nancy claims Irene provided to her in mid-March 2019, that showed the Lims were intended to be officers of Dways. However, the PA (which was unsigned) did not embody the terms of the Employment Agreements which Dways claimed were oral, and instead contradicted Nancy’s claim as it stated that Irene would be the CFO with Justin as the Chief Operating Officer.

13 Dways also relies on name cards printed for the Four Persons and specifically Justin’s name card which stated he was “Founder and CFO”, to support the existence of Justin’s Employment Agreement. I find this to be equivocal. First, the WhatsApp chats showed the discussions pertaining to the name cards and the Four Persons’ respective designations in Dways started around mid-June 2019,¹³ more than two months *after* Justin’s Employment Agreement was purportedly concluded. Second, I accept Irene’s explanation that the Lims never used the name cards. A document entitled “Order of namecards”, which indicated the name and designation printed on each name card, was not signed by the Lims. This supported Irene’s claim that when the name cards were ready, the Lims chose not to acknowledge receipt of them or collect them as Justin did not eventually agree to being appointed CFO.¹⁴ Third, the name cards were also not accurate as they describe the Lims as “founders”

¹¹ 3AB 1378; 1/9/21 NE 32.

¹² Bundle of Documents to be Formally Proved at pp 21–30.

¹³ 3AB 1399–1409, 1421–1425; 9AB 4969.

¹⁴ 27/8/21 NE 145; 12AB 6525; Justin’s AEIC at [6].

of Dways, when Nancy and Zul claimed to be the only two founders.¹⁵ Fourth, Nancy's assertion that Justin had introduced himself as CFO to potential customers and distributors was a bare one. While there was evidence that a distributor of Dways had the impression that Justin was one of Dways' bosses, this did not show that he was thus its CFO.¹⁶ Justin was after all a substantial shareholder of Dways who participated in its business (see [15] below).

14 The state of affairs just described is unsurprising when one considers how Dways' business was run. Nancy and Zul attested that all the shareholders were to be involved in Dways. Zul explained the intent was for the Four Persons to be involved in all aspects of Dways' business because it was a small company and their roles would overlap. The informal manner in which Dways' business was run contradicts Nancy's testimony that the Four Persons had agreed that Justin should have a *formal* position in Dways.¹⁷

15 Hence, Justin was not a "sleeping partner", but (as I accept from Nancy's and Zul's testimony) was involved in Dways' business to some extent albeit informally. Before and after becoming a shareholder, he participated in Dways' business operations, as can be seen from the numerous WhatsApp chat groups discussing its business and operations. When the Lims exited Dways in February 2020, Nancy communicated with Justin for the return of Dways' keys, accounts and documents.¹⁸ However, as Dways has failed to show the existence of the Employment Agreements, the role and duties which Dways claimed Justin had to perform as the CFO (see [9] above)) are not made out.

¹⁵ Nancy's AEIC at [10]; Zul's AEIC at [10].

¹⁶ Nancy's AEIC at [53] and [55]; 1/9/21 NE 33–34.

¹⁷ Nancy's AEIC at [47]; 10/8/21 NE 43–44; 13/8/21 NE 20–21.

¹⁸ 1/9/21 NE 11–24; 1AB 245, 260, 339–340, 379, 409–410, 414; 2AB 642–643; 8AB 4503; 9AB 5228–5233; Justin's AEIC at [8]; Exhibit B.

16 As for Irene, although she was a director of Dways (and owed duties to it as such), that did not therefore show the existence of Irene’s Employment Agreement. Contrary to the submission of Plaintiff’s counsel, Mr Maniam, the Lims *did* dispute Dways’ claim that Irene had agreed to be employed as Dways’ director. The Lims had merely pleaded and agreed that Irene was a director, and no more, and had expressly challenged the existence of the Employment Agreements.¹⁹

17 Nevertheless, I find there was an agreement between Nancy and Irene for Irene to be the director primarily in charge of accounts and making payments. Irene admitted to being one of the directors in charge of Dways’ accounts. Various messages from her showed that she took charge of Dways’ accounts and payments. For instance, on 20 December 2019, when Nancy said that she did not have the tokens for the Bank Accounts and requested to be able to make transfers and payments online while Irene was travelling, Irene assured Nancy that she (*ie*, Irene) would still be able to make payments even if she were away as she “[took] charge of accounts”. In court, Irene agreed that she was in charge of making payments for Dways and she had prepared a spreadsheet of payments Dways had made to its suppliers and vendors. Likewise, Irene had signed off as “CFO” on an invoice (see [11] above). She also updated Nancy on the balances in Dways’ accounts and kept a record of the transactions in its accounts.²⁰

¹⁹ PCS at [27]; DCS at [111]; D1D2 Defence at [6A(d)], [8(a)]–[8(b)]; Irene’s AEIC at [10(b)]–[10(c)], [12]; Justin’s AEIC at [4(e)].

²⁰ Nancy’s AEIC at [153]–[156]; 1AB 407; 2AB 921–923, 940, 1019; 2AB 940; 4AB 2041–2047; 24/8/21 NE 124, 129, 131–132, 138–142, 144, 157–163; 27/8/21 NE 146–150.

Alleged exclusive control over Bank Accounts, Products, records and inventory from March 2019 to February 2020

18 I turn to the issue of whether the Lims had exclusive or sole control over the Bank Accounts, Products, records and inventory from March 2019 to February 2020 (the “Relevant Period”) as Dways claimed.

OCBC Account

19 The OCBC Account was set up in November 2018 with Nancy and Zul as authorised signatories for cheques and Nancy as the sole authorised person to conduct internet-banking transactions. Irene was added as an authorised signatory to the account around end March 2019. I find that Nancy had also, until November 2019, control over and access to the OCBC Account. She admitted to having joint control with Irene of that Account until November 2019 and that until September 2019 the bank statements were sent to her home.²¹

20 I disbelieve Nancy’s claim that when the mailing address for the OCBC Account was changed to Dways’ office address in October 2019, she did not have access to Dways’ mailbox as the Lims held the key to the mailbox. The evidence showed that she had access to a set of Dways’ keys including for the mailbox. On 8 November 2019, Karen informed Nancy to bring her “2 sets of office keys” to be duplicated for Dways’ new staff.²² Whilst there were seven keys to different parts of the office (including the mailbox), I disbelieve that Nancy only had the keys to the main door, glass door and wooden cabinet; but not for the mailbox, metal lockers, storeroom and mezzanine level where the Products were kept.²³ It is unbelievable that, being a founder and one of two

²¹ 11/8/21 NE 8–9, 11–12, 15.

²² Nancy’s AEIC at [159], [161], [167]; 11/8/21 NE 10; 7AB 3637.

²³ 11/8/21 NE 58–60.

directors of Dways, she would not have had the keys to access various parts of Dways' office, and there is no evidence that she had ever asked for the keys or that she was not handed them despite asking. A WhatsApp message from Karen on 24 October 2019 showed the store and locker keys were kept in the office drawer and Nancy did not then reply to dispute this.²⁴

21 In fact, Nancy had, on about 25 November 2019, signed an OCBC form for any one director to apply for account and banking services. I disbelieve that she could not recall if she had seen the form in its entirety, given that her signature appeared in numerous places on it.²⁵ I find that she had signed the form knowing the purport of it. In my view, Nancy was not excluded from accessing the OCBC Account. Rather, she did not care to do so.

22 Nevertheless, I accept that on or about 20 December 2019, when the relationship was deteriorating, Irene excluded Nancy from accessing internet banking by withholding the bank token from Nancy (see [17] above). Irene admitted that she wanted to control the Bank Accounts because she suspected Nancy was taking Products without paying for them and, if she relinquished the bank tokens to Nancy, she would lose access to online banking to check the Bank Accounts. This showed that Irene was at that time the sole person effecting transfers and making payments from the Bank Accounts. Hence, even if Nancy was still able to sign cheques independently as the Lims claimed, Irene was by December 2019 in sole control over the OCBC Account.²⁶

²⁴ 4AB 2340.

²⁵ 6AB 3018–3027; 11/8/21 NE 40–42.

²⁶ 24/8/21 NE 161–164; DCS at [190].

UOB Account

23 Likewise, I find that up until November 2019, Nancy was not excluded from accessing or performing transactions with the UOB Account. Both Nancy and Irene were authorised signatories of the account. Nancy agreed that any internet-banking transaction had to be approved and performed by both of them. Whilst Nancy sought to show that the mailing address for the UOB Account was Irene’s home address to portray Irene being in complete control over that account from its inception, Nancy had agreed to the use of Irene’s home address as at that time Dways’ office premises were not ready.²⁷

24 However, on about 25 November 2019, the signatory for the UOB Account was changed solely to Irene, and Nancy had signed a form to authorise a single user to transact.²⁸ For the same reasons as at [22] above, I find that by December 2019 Irene had excluded Nancy from accessing internet banking for the UOB Account as Irene had the token and was solely controlling the Account.

Control over and access to Products

25 Next, Dways claims the Lims had exclusive control over the Products. HL Span and Purity were kept at the mezzanine level of Dways’ office and in the display cabinet and metal lockers in the office.²⁹ As for B’Glo, they were stored at the Lims’ home (“the Lims’ Home”).

26 I find that all Four Persons and the Chuas had access to and control over the stock of HL Span and Purity. Nancy admitted that she had access to Products whenever she requested as she was a director and doing sales; that from

²⁷ Nancy’s AEIC at [162]–[163]; 11/8/21 NE 15–21, 30; 3AB 1263, 1266–1269, 1277.

²⁸ 11/8/21 NE 35–37; 24/8/21 NE 109; 6AB 3028–3032.

²⁹ PCS at [64]–[65].

3 December 2019, she had access to Products without having to make a request; and that in January 2020, she had taken HL Span from Dways' cabinet.³⁰ I have also found that Nancy had the keys to Dways' premises. Even around 28 November 2019, Carol (Dways' staff) was updating Irene that Nancy had taken 12 boxes of Purity ("28 Nov 2019 Message").³¹ It should be noted that HL Span, Purity and B'Glo were received by Dways from the manufacturers only on 21 October, 1 November and 17 November 2019 respectively. As for B'Glo, there is no evidence that Nancy was denied access to it. In court, Nancy admitted (contrary to her affidavit of evidence-in-chief ("AEIC")) that she had instructed the manufacturer to deliver B'Glo to the Lims' Home and there is no evidence that she had objected to B'Glo being stored there.³²

Control over and access to sales records and inventory of the Products

27 Next, whilst the Lims had access to and control over the sales records and inventory of the Products, I find that they were not in exclusive control such that Nancy did not have access to or control over them.³³ I reiterate that the Relevant Period started from March 2019, whereas Dways started receiving Products from only 21 October 2019.

28 Nancy admitted that Dways' staff recorded information pertaining to Products in its books and computer system. This included a record pertaining to the movement of HL Span. I disbelieve that Nancy had been unaware of the existence of this record until the Lims exited Dways. Even if this were true, this did not show that the Lims had hidden the records from Nancy (as Nancy had

³⁰ DCS at [205]; 11/8/21 NE 66–68; 8AB 4571–4572.

³¹ 6AB 3063.

³² Nancy's AEIC at [345]; 10/8/21 NE 34, 111–112; 5AB 2948.

³³ DCS at [209]; Nancy's AEIC at [3(b)] and [145].

tried to portray). Dways had a computer system which recorded information regarding its distributors, including the Products they purchased and the amounts paid to Dways, and I accept Irene's testimony that Nancy and Dways' staff had access to this system. I have also earlier found that the store and locker keys were kept in a drawer in Dways' office which Nancy claimed had no lock.³⁴ If Nancy claimed not to know about the inventory of stocks (or Dways' financial position), it was because she did not at the material time bother to find out. Nancy was also a director of Dways and, as Zul attested, the intent was for the Four Persons to be involved in all aspects of Dways' business.

29 In this regard, Dways also claims that the Lims failed or refused to hand over Dways' sales records and inventory after their exit. It points to WhatsApp messages from early February 2020 where Nancy had asked Justin to return "stocks records" and "updated stock accounts". However, the WhatsApp messages showed Nancy subsequently acknowledging the Lims' handing over of invoices and records of bank statements (although Nancy claimed they were incomplete). On Nancy's account, Irene also left behind inventory records in Dways' office which Nancy relied on to show the shareholders' Arrangement that she claimed existed among the Four Persons (see [110] below on this Arrangement).³⁵ Hence it is unclear what other sales records and inventory the Lims were to hand over but failed to.

30 Further, I find the Lims were not responsible for maintaining the inventory and sales records of Products contrary to Dways' claim.³⁶ Dways could not rely on the Employment Agreements which I have found not to exist.

³⁴ 8AB 4269; 10/8/21 NE 35–36; 25/8/21 NE 45–47; 11/8/21 NE 56–58, 61.

³⁵ SOC at [24]; 9AB 5226–5235; Nancy's AEIC at [129]–[132].

³⁶ PCS at [34].

Moreover, Nancy agreed that it was the Chuas who conducted stock checks and made a record of the stocks. This is supported by the WhatsApp messages and Karen's testimony that the Chuas were tasked to do so and that the records for the stock checks were placed in Dways' office drawers. Indeed, Dways' system of managing its inventory was decentralised and honour-based, where each person would record what he or she had taken. For instance, on 6 January 2020, when Karen stated in a WhatsApp message that there was a shortfall of 17 boxes of HL Span, Nancy responded to say that she had taken them a few days earlier and had "[a]lready written down today what [she had] taken". Nancy also attested to an occasion in December 2019 where she took the Products first and made a record in Dways' books later.³⁷

31 At trial, Dways pointed to Carol's 28 Nov 2019 Message (and the subsequent exchanges with Irene) to show that Irene was the director in charge of Dways' stocks. However, these messages do not show a general system in which Products taken were reported to Irene regularly as part of her purported stewardship of Dways' inventory. Rather it showed that Nancy could take Products on her own without prior approval.³⁸ As for the WhatsApp messages between Karen and Irene on 21 to 22 December 2019 and 30 January 2020 (which Dways relies on to show Irene's alleged control over the inventory and sales records), they do not evidence a practice of Irene tallying Dways' sales records or payments made for Products against its inventory. By this time, the relationship between the Lims and Nancy had deteriorated and the messages thereby related to Irene's suspicion of Nancy taking Products without paying

³⁷ 11/8/21 NE 50, 83, 122; 6AB 3577; 8AB 4564–4566; Karen's AEIC at [39], [43].

³⁸ 6AB 3063–3067; 24/8/21 NE 182–185.

and to the Shareholders' Entitlement to Products (see [110] below on the Shareholders' Entitlement).³⁹

32 On the above bases, I reject Dways' claim that the Lims had failed or refused to hand over or maintain a proper account of Dways' sales records and inventory of Products and that they should provide a true and full account of them. The Lims did not undertake to maintain such an account. Dways has also failed to show that the sales records and inventory were in the Lims' exclusive control or that they failed to return these when they left Dways.

Payments made without legitimate basis, the loan to the Chuas and the TLC Investment

33 I turn to the first main claim by Dways, namely that the Lims had caused Dways to make payments which were essentially unauthorised, without legitimate commercial basis or not in Dways' best interests ("Disputed Payments"). At the close of trial, Dways pared the number of Disputed Payments down to 37 payments, which total \$69,336.00 in value, as follows:⁴⁰

No	Date	Purpose of payment	Disputed amount
1	12/09/2019	To Cosmo System Pte Ltd	\$911.64
2	04/12/2019	To Cosmo System Pte Ltd	\$252.51
3	04/12/2019	To Norlin for Central Provident Fund ("CPF") contribution	\$144.00
4	04/12/2019	ACRA Business Profile Search	\$5.50
5	04/12/2019	Season parking fees	\$192.60

³⁹ PCS at [32]–[34]; 12AB 6447–6456; 25/8/21 NE 115; 27/8/21 NE 125.

⁴⁰ PCS at [96]–[97] and Annex A.

No	Date	Purpose of payment	Disputed amount
6	09/01/2020	To Enhance Life	\$10,210.00
7	15/01/2020	To WLP Pte Ltd	\$400.00
8	01/02/2020	To the Lims as “allowances”	\$21,000.00
9	01/02/2020	To Karen for “commission”	\$4,276.84
10	05/02/2020	To Srii Wilano (“Wilano”)	\$1,000.00
11	05/02/2020	Preparation of accounts	\$980.00
12	05/02/2020	To CMS Global	\$3,000.00
13	05/02/2020	To Wilano	\$2,000.00
14	05/02/2020	To Sandra Ai Choo	\$3,000.00
15	05/02/2020	To WLP Pte Ltd	\$280.00
16	31/07/2019	To install 4-panel black aluminum frame with mirror	\$2,900.00
17	29/08/2019	Cheque for \$325.51	\$325.51
18	02/09/2019	Debit card payment to Ya Kun Kaya Toast	\$6.80
19	02/09/2019	Debit card payment to Tim Ho Wan	\$77.55
20	02/09/2019	Debit card payment to Au Croissant	\$24.00
21	02/09/2019	Debit card payment to Tim Ho Wan	\$81.10
22	18/09/2019	Debit card payment to Crown Coffee	\$20.22

No	Date	Purpose of payment	Disputed amount
23	18/09/2019	Debit card payment to Tim Ho Wan	\$75.21
24	23/09/2019	Refreshments	\$156.10
25	23/09/2019	Meals and refreshments	\$530.46
26	25/09/2019	Fabrication of a mirror	\$1,580.00
27	26/09/2019	Cheque for \$1,619.37	\$1,619.37
28	27/09/2019	Cheque for \$3,000	\$3,000.00
29	30/09/2019	Cleaning services	\$230.00
30	30/09/2019	To Norlin for CPF contribution	\$178.00
31	30/09/2019	Cheque of \$1,045.45	\$1,045.45
32	30/10/2019	Cheque of \$3,959	\$3,959.00
33	06/11/2019	Debit card payment to Tim Ho Wan	\$45.79
34	19/11/2019	Cheque of \$3,664.75	\$3,664.75
35	29/11/2019	Cheque of \$513.60	\$513.60
36	31/12/2019	Construct and install table cabinet and additional step	\$1,130.00
37	31/12/2019	Fabricate and install door	\$520.00

34 To begin with, Nancy was perfectly content to leave the management of Dways' finances, including payments to vendors/suppliers, to Irene. She claimed that Irene was in charge of operations and bank transactions and made

all payments for Dways.⁴¹ I accept that during the Relevant Period cheques were pre-signed by Nancy and she was thus unaware of the recipients and purposes of the payments. Nancy explained that she pre-signed the cheques because she trusted Irene and this arrangement was convenient as Dways had many payments to make and she did not meet Irene very often. Hence, it was not as if Nancy wanted to jointly operate Dways' accounts or deal with transactions from the outset, but rather she willingly ceded control to Irene because she trusted her. She did not bother to look at the bank statements of the OCBC Account even when they were mailed to her home nor find out how to access internet banking for the UOB Account.⁴²

35 As such, that Nancy was unaware of or did not expressly approve each payment at the time it was made on Dways' behalf is not in itself a ground to find a breach of duty by Irene. Rather the issue is whether the payments were made for a legitimate commercial purpose. It should also be noted that Dways operated on the basis that Nancy, Zul or one of the Defendants would sometimes make payment on Dways' behalf and claim reimbursement from Dways.⁴³

Disputed Payments – Payments made with a legitimate basis

36 I turn first to the subset of Disputed Payments which I find were made with a legitimate basis and thus for which there was no breach of duty by Irene in causing such payments to be made by Dways.

⁴¹ 10/8/21 NE 75.

⁴² Reply to 1st and 2nd Defendants' Defence ("D1D2 Reply") at [13(a)]; 11/8/21 NE 9–19, 22–23; 12/8/21 NE 114.

⁴³ 10/8/21 NE 49–50, 54–55; 12/8/21 NE 112; 24/8/21 NE 68–70; Irene's AEIC at [11]; 3AB 1303, 1510.

Payments to Cosmo System Pte Ltd (“Cosmo”) of \$911.64 and \$252.51 (s/n 1 and 2 of Disputed Payments)

37 Dways claims there was no commercial justification to make two payments to Cosmo as the services provided by Cosmo were a duplicate of services already provided by one Scrollless Pte Ltd.⁴⁴ I find this claim that the services by Cosmo were duplicate services to be Nancy’s bare assertion.

38 I accept Irene’s explanation that Cosmo had provided cloud servers for Dways’ computer system and set up its website domain. The payments are supported by Cosmo’s invoices. The invoice from Scrollless Pte Ltd showed a different service provided, namely for Dways’ “Customised Business Application”. Pertinently, Nancy was at the material time aware that Cosmo was providing services to Dways. On 7 October 2019, Cosmo’s tax invoice (for the sum of \$252.51) was posted on a WhatsApp chat group, of which the Four Persons were members.⁴⁵ Hence it is disingenuous for Nancy to claim that Irene had engaged Cosmo’s services without informing her of this and that she only discovered this in July 2020.

Payments to Norlin for CPF contributions of \$144 and \$178 (s/n 3 and 30 of Disputed Payments)

39 Irene had reimbursed herself from Dways the sums of \$144 and \$178 which she claims were CPF contributions paid directly to one Norlin, Dways’ employee. Irene claims that Dways’ policy was to pay the CPF contributions directly to its staff and for the staff to declare the same to the CPF Board, because at that time Dways did not have a valid CorpPass account to declare its

⁴⁴ Nancy’s AEIC at [196] and [198]; 11/8/21 NE 184–186.

⁴⁵ 3AB 1363; 4AB 1854–1855, 2211–2214; Irene’s AEIC at [108], [132], [261]; 27/8/21 NE 57–58.

employees' CPF contributions. Dways claims the payments could not be for the purpose of paying Norlin's CPF because its records showed that it did not make CPF contributions for employees prior to December 2019.⁴⁶

40 I accept Irene's explanation and find the payments that she had first made on Dways' behalf as Norlin's CPF contributions to be legitimate. Mr Maniam accepted that Norlin should have been paid CPF. A contemporaneous Dways voucher also suggests that Norlin was paid \$1,294 comprising \$1,150 in salary and \$144 in CPF contributions as her October 2019 remuneration.⁴⁷ However, Dways' CPF records (adduced by Dways) showed that it did not make CPF contributions for employees prior to December 2019. All these supported Irene's explanation that the arrangement in September and October 2019 was for Dways to pay CPF contributions to its staff directly.

Payment to Karen of \$4,276.84 (s/n 9 of Disputed Payments)

41 On 1 February 2020, Dways transferred \$4,276.84 to Karen which Irene claimed was commissions and bonuses due to Karen as a distributor for Dways ("Karen's Commission"). This was the net sum due to Karen after deducting a referral bonus fee which she was no longer entitled to when her customer (or downline) in Dways, one Sandra Ai Choo ("Sandra"), had requested for a refund on the Products that Sandra had purchased.⁴⁸

42 I find the payment was legitimate. Nancy admitted that she gave Karen approval to withdraw her commission and that the referral fee pertaining to

⁴⁶ Irene's AEIC at [36], [138], [372]; 25/8/21 NE 77–78; 12AB 6715.

⁴⁷ 25/8/21 NE 78; 4AB 2307.

⁴⁸ Irene's AEIC at [188]–[189]; 7AB 3797–3798.

Sandra's case had been taken into account. Irene also stated that she had released Karen's Commission to Karen only after she had seen Nancy's approval.⁴⁹

43 At trial, Dways claimed the payment to Karen was nevertheless in breach of Irene's duty because when Irene made this payment, she intended to instigate Karen's downlines to seek refunds from Dways. However, this argument was not pursued in Dways' closing submissions. Instead, Dways argued that the \$4,276.84 paid to Karen did not take into account that Karen's other downlines (such as Vivianne Sua or "Vivianne") had also sought refunds from Dways on Products that they had purchased.⁵⁰ I find this argument to be without merit. Nancy has not shown who were Karen's other downlines that had sought a refund prior to Karen's Commission being paid out on 1 February 2020. Vivianne sought a refund only around 13 February 2020.⁵¹ Likewise, there is no evidence that prior to 1 February 2020, Irene had instigated Karen's downlines to seek a refund on Products they had purchased.

Payment to WLP Pte Ltd of \$280 (s/n 15 of Disputed Payments)

44 On 5 February 2020, a sum of \$280 was transferred from the OCBC Account to WLP Pte Ltd ("WLP"), for an invoice that WLP had rendered to Enhance Life International Pte Ltd ("Enhance Life") for that amount. Irene explained that WLP had made a lodgement with the Accounting and Corporate Regulatory Authority ("ACRA") regarding her resignation from Dways and the transfer of the Lims' shares to Nancy and Zul. WLP was the accounting firm

⁴⁹ SOC at [27(h)]; PCS at Annex A (s/n 7); 6AB 3220–3221; 11/8/21 NE 104–107; 27/8/21 NE 167.

⁵⁰ 25/8/21 NE 138; PCS at Annex A (s/n 7).

⁵¹ Vivianne's AEIC at [27]–[30].

engaged by Enhance Life, and Dways had engaged WLP (through Enhance Life) to effect the ACRA lodgement.⁵²

45 Enhance Life was incorporated in October 2016 with Irene as its shareholder and director. Subsequently all Four Persons became its shareholders, and Nancy stated that she was a director from 11 June 2019 to April 2021.⁵³

46 I accept Irene’s explanation that WLP had made the ACRA lodgement pertaining to her resignation as a director in Dways and the share transfer, and that Dways had engaged WLP for this purpose. WLP’s invoice dated 3 February 2020 recorded the purpose of WLP’s fee as “Transfer of Shares” and “Resignation of Director”.⁵⁴ It is not disputed that Irene ceased to be a director and shareholder of Dways around 5 February 2020, and WLP’s invoice regarding “Resignation of Director” could not have applied to the resignation of any director in Enhance Life since Nancy and Irene were still its directors. As such, the payment to WLP was for the purposes of Dways’ business operations and thus legitimate, even if WLP had addressed the invoice to Enhance Life.

Payments of \$2,900, \$1,580, \$1,130 and \$520 to VSK Design (s/n 16, 26, 36 and 37 of Disputed Payments)

47 Next, Dways disputes four sums paid to VSK Design Pte Ltd (“VSK Design”), an entity owned by Steven, pertaining to works it did for Dways, as follows (“Four Items”):

⁵² Irene’s AEIC at [211]–[212]; 7AB 3850–3851.

⁵³ Irene’s AEIC at [145]; Nancy’s AEIC at [405]–[408]; 27/8/21 NE 59; 3AB 1338–1341.

⁵⁴ 7AB 3850–3851.

(a) On 31 July 2019, VSK Design was paid for renovation works for Dways' office totalling \$11,676.75. From this sum, Dways disputes \$2,900 pertaining to the supply and installation of a four-panel aluminium frame with mirror for Dways' office ("the Frame"). Nancy claims she was not informed of the procurement of the Frame.⁵⁵

(b) On around 23 September 2019, VSK Design was paid \$2,340 for three items. Of this \$2,340, Dways disputes the sum of \$1,580 pertaining to the fabrication and installation of a "[m]irror beside existing [f]olding door" ("the Mirror"), which Nancy claims Dways did not authorise.⁵⁶

(c) On 31 December 2019, VSK Design was paid \$2,220 for items of work. Dways disputes two items, namely the fabrication and installation of a "[t]able [c]abinet beside stage and additional step for stage" and "[s]lide & [f]old door [with] key lock at [s]tore [r]oom downstairs", for \$1,130 and \$520 respectively. Nancy claims she was not informed of these payments and did not authorise the procurement of these items.⁵⁷

48 Dways claims the Four Items were not procured in its best interests and were unnecessary at the time. It states that in July and September 2019, it did not have any income as it had not started selling Products; and that even in December 2019, it was only starting to sell Products and build its distributor base, such that it was still in a precarious financial situation.⁵⁸ I find Dways'

⁵⁵ PCS at Annex A (s/n 39); 3AB 1452; 10/8/21 NE 77.

⁵⁶ PCS at Annex A (s/n 55); 4AB 2031; Irene's AEIC at [351]–[352]; Karen's AEIC at [26(b)]; 10/8/21 NE 85.

⁵⁷ PCS at Annex A (s/n 86); 6AB 3362; Irene's AEIC at [430]–[432]; Karen's AEIC at [26(c)].

⁵⁸ 10/8/21 NE 77; PCS at Annex A (s/n 39, 55, 86).

claim to be without merit and there was no evidence pointing to a lack of *bona fides* in the transactions.

49 First, the WhatsApp chat group “DWay Office Reno” (of which Nancy and the Defendants were members) showed discussions between 20 and 21 July 2019 on procuring the Frame and the cost of it. Yet, Nancy did not, then, object to its installation or express any concern as to its price. On 20 July 2019, Nancy had also in a separate WhatsApp chat with Karen asked Karen about the “mirror door”, which Karen replied to and exhibited photographs (being the same reply given on the Dway Office Reno chat).⁵⁹ Thus, Nancy knew of the decision to procure the Frame. Nancy’s explanation that she did not see the messages in the Dway Office Reno chat cannot be believed, as she had separately spoken to Karen at the same time about a “mirror door”. Second, in the “DWay Accounts Updates” WhatsApp chat group (of which Nancy was a member), Irene had, on 23 September 2019, set out a list of items with corresponding amounts unpaid by Dways. This included the item “Office Mirror: (S\$1580.00)”. Nancy did not express any concerns as to the installation or cost of the Mirror, despite expressing concerns on another item.⁶⁰

50 Pertinently, the Four Items were installed at Dways’ premises and would have been apparent to Nancy who was operating the business from its premises. Yet she did not at that time query the necessity for or object to them.

51 On balance, the evidence showed that Nancy was cognisant of and agreed to the procurement of the Four Items. Even if Dways had yet to or had only begun to generate revenue, this was immaterial. Dways’ directors could

⁵⁹ 3AB 1720–1722; 10/8/21 NE 77–78; 27/8/21 NE 78, 81; Karen’s AEIC at [25(e)], pp 361–362 (Tab 17).

⁶⁰ 4AB 2042–2044.

have deemed it necessary to renovate or refurbish its premises to start business. Indeed, despite knowing on around 4 September 2019 from Irene that Dways required its shareholders to top up its accounts (a point Dways relies on to show it was short of funds then), Nancy did not object to the procurement and installation of the Four Items.⁶¹

Debit card payments for meals (s/n 18–23 and 33 of Disputed Payments)

52 Next, Irene had used Dways’ debit card to pay for refreshments and meals comprising the following (“Food Expenses”):⁶²

(a) On 30 August 2019, payments of \$6.80 at Ya Kun, \$77.55 at Tim Ho Wan, \$24.00 at Au Croissant, and \$81.10 at Tim Ho Wan were made. Irene claims she had purchased meals and refreshments for the Chuas who were installing furniture at Dways’ office.

(b) On 14 September 2019, \$20.22 was spent on refreshments at Crown Coffee, which Irene claims was coffee for the Four Persons.

(c) On 13 September 2019, \$75.21 was spent on dinner at Tim Ho Wan for the Chuas who had assisted Dways in setting up an Opportunity Product Presentation (“OPP”) conducted by Zul. An OPP is to promote Dways’ products and recruit distributors.

(d) On 2 November 2019, \$45.79 was spent on meals purchased from Tim Ho Wan for the Chuas, who were assisting with Dways’ OPP on that day.

⁶¹ 1AB 177.

⁶² Irene’s AEIC at [322]–[323], [337], [339], [392].

53 I disagree with Nancy that these expenses were not authorised by Dways or were not in its best interests. The evidence showed that Irene was authorised to charge meal expenses to Dways' account, including meals for the Chuas, as can be seen from various payments in which Dways' debit card was used and which claims Dways is no longer pursuing against Irene. Dways had also paid for dinner for the Lims, one Doria (Dways' distributor) and Doria's friend who was keen to become a distributor – another claim no longer pursued by Dways.⁶³

54 Hence, I find that Irene was given the discretion to charge reasonable expenses for meals and refreshments even for persons who were not Dways' employees and particularly where Dways might obtain an indirect benefit. I accept the expenses on 13 September and 2 November 2019 related to the Chuas assisting in Dways' business operations, and the expense on 14 September 2019 was made in relation to the Four Persons. Whilst Nancy claimed otherwise, the evidence showed the Chuas assisted Dways in its business operations and were not merely distributors for its Products. The WhatsApp chats showed Nancy instructed Karen on various matters, such as preparing Dways' compensation plan for distributors and communication materials, and arranging appointments with vendors.⁶⁴ I disbelieve Nancy that the Chuas were managing the Products and daily operations at only the Lims' request.

Some payments for which Irene cannot recall their purpose (s/n 28, 31, 32 and 34 of Disputed Payments)

55 Finally, I turn to some of the payments made by way of cheques from the UOB Account, between September to November 2019. Irene claims she

⁶³ SOC at [27(x)]–[27(z)], [27(aa)], [27(dd)]–[27(ff)], [27(ww)], [27(xx)], [27(hhh)]–[27(iii)], [27(qqq)], [27(sss)], [27(ttt)], [27(vvv)]; Irene's AEIC at [245], [249], [251], [253], [263], [265], [267], [328], [330], [362], [390], [394], [396] and [400].

⁶⁴ 6AB 3132–3137, 3142–3143, 3164, 3340; 8AB 4432–4433; 11/8/21 NE 112–121.

cannot recall the purposes of these payments, but that Nancy knew and authorised them at the material time as she had co-signed the cheques.⁶⁵ They are for the sums of \$3,000, \$1,045.45, \$3,959 and \$3,664.75.

56 First, a UOB cheque for \$3,000, dated 27 September 2019, was made to one Yang Tjun Yu (“Yang”) – this was pointed out by the Defendants’ counsel, Mr Lim, in closing submissions.⁶⁶ Mr Lim submits that Yang, also known as Lewis, was part of the “DWay Executives” WhatsApp chat group (of which the Four Persons were also members) and that he had carried out works for Dways in respect of its website; hence the payment was likely made for such works. I accept this payment to Yang was legitimate and for Dways’ benefit. The WhatsApp chats, contemporaneous with the time of payment of the \$3,000, support Mr Lim’s submission that Yang was engaged for Dways’ purposes.⁶⁷

57 Second, the cheque for \$1,045.45 was again brought to the court’s attention by both counsel in closing submissions. This cheque was dated 27 September 2019 and made payable to Norlin (Dways’ employee). A payment voucher from Dways showed a payment of \$1,150 to Norlin in the subsequent month, this being her October 2019 salary.⁶⁸ Hence, more likely than not, the \$1,045.45 was made to Norlin as her remuneration.

58 Third, in closing submissions, both parties also referred to a cheque for \$3,959, dated 18 October 2019, and which was paid to “Global Premiums &

⁶⁵ Irene’s AEIC at [358]–[360], [374]–[375], [387]–[388], [404]–[405].

⁶⁶ 4AB 2112; DCS at Annex A (s/n 58).

⁶⁷ 2AB 709; 4AB 2233; 8AB 4575–4805.

⁶⁸ 4AB 2111, 2307; PCS at Annex A (s/n 63); DCS at Annex A (s/n 63).

Gifts Pte Ltd”.⁶⁹ I accept that this entity was more likely than not Dways’ vendor or supplier and hence the payment was made for Dways’ purposes.

59 Fourth, both counsel in closing submissions pointed to a cheque dated 14 November 2019 of \$3,664.75 paid to one Stratgeist Pte Ltd (“Stratgeist”). This payment was supported by contemporaneous invoices from Stratgeist and Dways’ payment voucher. Irene attested that Stratgeist was engaged by Dways to produce its promotional videos, which is not disputed by Dways. Pertinently the \$3,664.75 was part of a larger sum of \$6,473.50 due to Stratgeist. Of this larger sum, \$2,800.70 had been paid without Dways disputing this payment.⁷⁰

60 In the round, I find Dways has not proved on balance that the above payments were not made in its best interests or for a proper purpose. Pertinently Yang and Stratgeist were Dways’ vendors or suppliers and Norlin was its employee – hence it is unlikely that Irene would have caused Dways to make payments to them if there was no legitimate basis for the payments. Whilst I had found that Irene was the director primarily in charge of accounts and payments, copies of the cheques were in Dways’ possession at the start of trial and should have been (but were not) put in cross-examination of Irene for her to explain.

Disputed Payments – Payments without legitimate basis

61 I turn to the remaining Disputed Payments, which I find Irene had caused to make without legitimate basis and in breach of her directors’ duties.

⁶⁹ 4AB 2319; PCS at Annex A (s/n 67); DCS at Annex A (s/n 67).

⁷⁰ 5AB 2618–2619; 12AB 6524; PCS at Annex A (s/n 74); DCS at Annex A (s/n 74); Irene’s AEIC at [151] and pp 552–556 (Tab 61).

Season parking fees of \$192.60 (s/n 5 of Disputed Payments)

62 Irene claims that Dways paid a sum of \$192.60 for season parking for the month of October 2019 for Karen and that Dways had agreed to do so as Karen assisted Dways substantially during that time and went to Dways' office every day. Dways claims that this payment provided no commercial benefit to it and was not authorised by Nancy; the Chuas were not Dways' employees.⁷¹

63 Whilst Irene claimed that the \$192.60 "must have been" authorised by or known to Nancy at the material time because Nancy had signed a cheque for \$36,783.22 to reimburse Irene for expenses made on Dways' behalf (which she claims included the \$192.60),⁷² I find that this was not the appropriate conclusion to draw. I have accepted that Nancy had pre-signed blank cheques (see [34] above). In any case, it would not have been apparent from the \$36,783.22 cheque (made out to Irene) what expenses it comprised. As for the Lims' assertion that both Nancy and Irene would together review underlying invoices, bills and receipts before cheques were signed and reimbursements approved, I reject this as unsupported by evidence.⁷³ As I have found earlier (see [17] above), it was Irene who was primarily in charge of accounts and payments.

64 In any event, Irene claimed in court that the payment for Karen's season parking was agreed orally with Nancy. This implied that authorisation had to be sought for such an item of expense (regardless of whether it provided any commercial benefit to Dways). But there was no evidence that Nancy had knowledge of or agreed to the payment at the material time. Irene did not mention in her AEIC such agreement or authorisation by Nancy at or before the

⁷¹ PCS at Annex A (s/n 2).

⁷² Irene's AEIC at [124]–[125].

⁷³ Irene's AEIC at [99]; 24/8/21 NE 155; 27/8/21 NE 82, 148; 2AB 922–923.

time the fees were paid by Dways.⁷⁴ Hence, Irene was in breach of her directors' duties in causing Dways to bear this sum of \$192.60 for the Chuas, who were not Dways' employees. There was no legitimate commercial basis to do so, as there was no agreement for them to be remunerated.⁷⁵

Payments relating to Enhance Life (s/n 4, 6 and 7 of Disputed Payments)

65 Next, three payments were made in relation to Enhance Life.

66 First, Irene had reimbursed herself from Dways \$5.50 for an ACRA business profile search relating to Enhance Life made around 30 October 2019. Irene claims that this was made at the request of Nancy who stated to her that Dways would ultimately pay for the search.⁷⁶ Dways claims that there is no reason for it to bear this cost, as the two entities are unrelated in that Dways is neither a subsidiary nor holding company of Enhance Life.

67 Whilst Irene claims that Nancy had authorised Dways to incur this cost, there was no evidence of such authorisation. More importantly, there is no legitimate basis for Dways to make this payment which was made for Enhance Life's benefit. This is even if Nancy was at the material time a director of Enhance Life, as it and Dways are two separate entities.

68 Second, on 9 January 2020, Irene caused Dways to transfer \$10,210 from the UOB Account which Irene claims was a transfer to Enhance Life. Irene claims that Nancy had authorised Dways to transfer the money to Enhance Life

⁷⁴ 27/8/21 NE 67–68; Irene's AEIC at [130].

⁷⁵ 10/8/21 NE 44–45; 11/8/21 NE 112; 2/9/21 NE 87.

⁷⁶ Irene's AEIC at [145]; 27/8/21 NE 59–61.

as the latter required a minimum of \$10,000 in its DBS bank account to avoid incurring a “fall below” fee. Nancy denies authorising this transfer.⁷⁷

69 I find there was no legitimate basis for Irene to have transferred \$10,210 from the UOB Account and Irene’s claim that it was done to top up Enhance Life’s DBS account to avoid incurring the “fall below” fee is contradicted by the documents. Whilst Irene claims and had recorded in Dways’ payment voucher dated 9 January 2020 that \$10,210 was paid to Enhance Life, the bank transaction slip shows the money was transferred to *Irene’s* DBS account on that date. This casts doubts on her claim as to the purpose of this transfer. Further, Enhance Life’s bank statement showed that it had \$10,210 in its DBS account even at 31 December 2019, such that it had met the minimum \$10,000 threshold even without the transfer. Irene did not produce the January 2020 bank statement to show that its bank balance fell below \$10,000 by that time although she was in a position to do so (as Enhance Life’s bank statements at that time reflected her home address).⁷⁸

70 Third, Irene had on 15 January 2020 transferred \$400 from the UOB Account to WLP as accounting fees, as WLP was Enhance Life’s accountant. Irene claims Enhance Life was the entity through which the Four Persons would receive their commissions for selling Products or introducing customers to Dways, and Nancy had authorised Dways to pay WLP. Nancy denied authorising the payment to be made by Dways, which was for Enhance Life’s purposes.⁷⁹

⁷⁷ Nancy’s AEIC at [405], [409]; Irene’s AEIC at [170]–[172]; 27/8/21 NE 62–64.

⁷⁸ 6AB 3591–3593; 25/8/21 NE 142.

⁷⁹ Irene’s AEIC at [171], [177]–[179]; 7AB 3668–3670; 27/8/21 NE 64–65; PCS at Annex A (s/n 5).

71 I find there was no legitimate basis for Dways to make this payment for Enhance Life. Even if I accept Irene’s (bare) assertion that Enhance Life was the vehicle from which the Four Persons would receive their commissions from Dways’ business, the two are nevertheless separate entities and WLP’s fees were for work done for Enhance Life. Further, Irene has not produced any evidence of Nancy having authorised this payment although she claims there was a “series of WhatsApp” messages in this regard.⁸⁰

Payments to the Lims as allowances (s/n 8 of Disputed Payments)

72 On 1 February 2020, Irene caused \$21,000 to be transferred from the UOB Account to her account. She claims that this comprises her director’s allowance of \$10,500 and Justin’s shareholder’s allowance of \$10,500 (“the Allowances”), both of which were orally approved by Nancy on a date that Irene cannot recall. The Lims claim that in about June 2019, the Four Persons orally agreed that Nancy and Irene would be entitled to directors’ allowances, that Zul and Justin would be entitled to shareholders’ allowances, and that these sums were not fixed but would vary depending on Dways’ profits (“June 2019 Agreement”). Nancy denies there was any such agreement.⁸¹

73 I find the Lims have not shown that any such agreement was made. This is despite the existence of more than 70 WhatsApp chat groups which Irene had created for Dways’ purposes.⁸² Even if the June 2019 Agreement existed, it was not an agreement that the Four Persons would be paid allowances on a pre-determined periodic basis, much less that the Lims would be paid \$21,000 in

⁸⁰ 27/8/21 NE 65.

⁸¹ Irene’s AEIC at [27], [182]–[184]; Justin’s AEIC at [8(a)]; Nancy’s AEIC at [410]–[411].

⁸² 25/8/21 NE 125–126; 1/9/21 NE 35–36, 52.

total; rather it was that an allowance or a payment *might* be declared in the future depending on Dways' profitability and of a yet undetermined sum. Indeed, Justin explained that on previous occasions in 2019, there was a need for further approval before any form of allowance would be disbursed.⁸³

74 In the above regard, I disbelieve Irene's assertion in court that the Lims had *informed* Nancy of payment of the Allowances on 17 January 2020. This assertion is contradicted by Irene's claim in her AEIC that the \$21,000 payment was orally approved by Nancy "on a date [Irene was] unable to recall".⁸⁴ In any event, this is a claim that is dubious and unsupported by any documents. By this time, the relationship between the Lims and Nancy/Zul had deteriorated to the extent that Irene stopped communicating with Nancy. Hence, it is doubtful that Nancy would have approved the Allowances.

75 Next, the Lims claim they were entitled to \$10,500 each to bring their allowances in line with payments that Zul had received on previous occasions.⁸⁵ I do not accept this argument. As I have found, the June 2019 Agreement does not exist. I accept Dways' position that the payments to Zul were unique to him and even a payment that had been made to Nancy was only made on an *ad hoc* basis. There was documentary evidence (such as the WhatsApp chats) in those cases to show an agreement to such payments being made whilst there was none to show any agreement among the Four Persons that the Lims were entitled to the Allowances.⁸⁶

⁸³ Justin's AEIC at [8(a)(i)], [8(a)(ii)], [8(a)(iii)].

⁸⁴ 25/8/21 NE 122, 126; Irene's AEIC at [182].

⁸⁵ DCS at [239]–[241]; 7AB 3800; Irene's AEIC at [185]; 25/8/21 NE 121, 127–128.

⁸⁶ 2AB 967–970; 3AB 1370–1376; 11/8/21 NE 141–143; 13/8/21 NE 57; 1/9/21 NE 36–37, 47–48.

76 Irene’s disbursement of the \$21,000 to Justin and herself was thus in breach of her duties to Dways, including the no-profit and no-conflict rules.

Payment of \$980 for “preparation of accounts” (s/n 11 of Disputed Payments)

77 On 5 February 2020, Irene caused Dways to transfer \$980 to her friend Lionel Lem (“Lionel”), whom she claims she had engaged to prepare its audited accounts. Irene claims that Dways had agreed to pay \$980 as a non-refundable deposit in preparation of the work that Lionel was to do for it and that she had informed Nancy of this arrangement, to which Nancy did not object.⁸⁷

78 I find this payment was of no commercial benefit to Dways. I disbelieve Irene’s claim that the agreement to engage Lionel was oral and find that he had not been engaged by Dways to prepare its audited accounts. There is no evidence of discussions pertaining to Lionel’s engagement by Dways, to show that Irene had informed Nancy of this arrangement to engage Lionel, or of the purported non-refundable deposit which was to be paid and which Nancy had agreed to. Pertinently, there is no evidence of Lionel having done any preparatory work for Dways to justify the \$980 payment to him.⁸⁸ Strangely, despite claiming to have engaged Lionel in December 2019 to prepare Dways’ accounts, the \$980 “deposit” was only paid to him on 5 February 2020 – this was after Lionel had purportedly sought a refund from Dways (on 1 February 2020) for Products that he had purchased and when the Lims had exited Dways’ business. Lionel has also not testified in support of Irene’s assertions.

⁸⁷ Irene’s AEIC at [200]–[201]; 27/8/21 NE 70–71.

⁸⁸ 27/8/21 NE 70–72.

Refunds on 5 February 2020 to Dways' distributors (s/n 10, 12, 13 and 14 of Disputed Payments)

79 On 5 February 2020, Dways transferred moneys to its distributors, namely: (a) \$1,000 and \$2,000 purportedly to Wilano; (b) \$3,000 to Lionel at CMS Global; and (c) \$3,000 to Sandra. Irene claims that Wilano, Lionel and Sandra had asked for refunds on the Products they had purchased and she caused Dways to refund them in accordance with its refund policy (which according to the Lims had no time limit).⁸⁹

80 Whilst there was some dispute on Dways' refund policy between Nancy and the Lims, this was not material to my findings. Although Nancy initially claimed that Dways would offer a full refund if requested within 30 days of purchase of Products and the unconsumed Products were returned, she later stated that even if Dways' customers asked for a refund after 90 days, Dways would still make the refund in genuine cases. Nancy herself had acceded to a refund for a customer Susan more than four months after Susan had purchased Products. It is also undisputed that one director can exercise the refund policy independently of, and without having to seek prior approval from, the other.⁹⁰

81 The issue is thus whether Wilano, Lionel and Sandra did in fact seek refunds from Dways, with Irene then transferring Dways' moneys to them on that basis. To support their claim, the Lims produced the following documents ("the Letters"), the authenticity of which was challenged by Dways:⁹¹

⁸⁹ Irene's AEIC at [191]–[193], [204], [206]–[207], [209]; 11/8/21 NE 92–93.

⁹⁰ Nancy's AEIC at [472]; 11/8/21 NE 86–89, 95; 12/8/21 NE 6774; 25/8/21 NE 108–109; 9AB 5061–5072.

⁹¹ Bundle of Documents to be Formally Proved at pp 3–5.

- (a) A letter from Sandra dated 1 February 2020, addressed to Karen, requesting for a refund of \$3,000 (“Sandra’s Letter”);
- (b) A letter from Lionel (for CMS Global) dated 1 February 2020, addressed to Justin, requesting to return his Products to Dways in exchange for a refund, as he did not find the Products suitable for him (“Lionel’s Letter”); and
- (c) A letter from Wilano dated 5 February 2020, addressed to Irene, acknowledging receipt of a \$3,000 cash refund.

82 I find that Irene has failed to show that the purpose for transferring moneys from Dways was to refund Wilano, Lionel and Sandra for the Products that they had purchased. I also find the authenticity of the Letters was suspect. Irene did not call the three persons to testify and corroborate her case.

83 Irene could not maintain a consistent account of how the Letters came to be. In her AEIC, she claimed that Lionel’s Letter was sent to Dways on around 1 February 2020. However, in court, she claimed that the Lims met with Lionel on 1 February 2020, whereupon Lionel requested for a refund, and they asked him to provide something in “black and white”. Irene claimed that she then made a copy of Lionel’s Letter before Justin handed the original to Nancy on 6 February 2020.⁹² Pertinently, there was no evidence of Lionel having returned any Products and, when confronted, Irene claimed that Lionel had not even collected Products in the first place.⁹³ This was unbelievable and contradicted Lionel’s Letter, which stated that Lionel did not find the Products suitable and that he was returning them. All these undermined the authenticity

⁹² Irene’s AEIC at [204]; 24/8/21 NE 7; 25/8/21 NE 112.

⁹³ 25/8/21 NE 116.

of Lionel's Letter and the Lims' claim that the payment to Lionel was a refund for returned Products. In any case, even if I accept that Lionel had requested for a refund, I would have found that Irene should not have caused Dways to refund moneys without Lionel returning the Products.

84 As for Sandra's Letter, Irene's account in her AEIC was simply that Sandra had sent a letter to Dways on or about 1 February 2020. In court, she claimed that Karen had passed her the said letter on 1 February 2020 and told her that Sandra wanted a refund. Irene then made a copy of Sandra's Letter before Justin handed the original to Nancy on 6 February 2020.⁹⁴ But this account was absent in both Irene's AEIC and Karen's AEIC. Indeed, Karen did not appear to be familiar with Sandra (although she claimed that Sandra was her downline) and merely explained her encounters with Sandra in general terms. It was only when she was confronted with Sandra's Letter that she claimed that Sandra had met her and passed her the letter to request a refund.⁹⁵ Similarly, Irene claimed that Sandra had not even collected any Products when the refund was made to her. Again, I find this unconvincing and an afterthought made to explain away the lack of any Products being returned to justify a refund. All these undermined Irene's purported purpose for making the payment to Sandra.

85 Likewise, I disbelieve that the two payments which Irene claimed were made to Wilano were for the purpose of refunding Wilano for Products that she had purchased. Dways' bank transaction slips showed the two payments were made to *Irene's bank account* and not to Wilano, contrary to what Irene had claimed in her AEIC. Even if Irene had passed \$3,000 in cash to Wilano as she claimed in court, there was no reason to first transfer the moneys from Dways

⁹⁴ Irene's AEIC at [209]; 24/8/21 NE 6.

⁹⁵ 3/9/21 NE 133–137.

to her bank account, when she could have easily withdrawn cash from Dways' Bank Accounts to hand to Wilano.⁹⁶ Her action as such casts doubts on her claim that the \$3,000 was made to Wilano and to refund her for Products that she had purchased. Likewise, Irene's claim that Wilano had not yet collected any Products when the refund was made further undermined her purported purpose for making the payment to Wilano (even assuming the moneys were in fact paid to her).

86 In the round, Irene has failed to show the transfers of the moneys from Dways were for the purpose of refunding its distributors for Products that they had purchased. Irene has failed to act *bona fide* in Dways' best interests or for a proper purpose. The payments which were all made within a short span of time and purportedly as "refunds" to Wilano, Lionel and Sandra, coincided with the Lims exiting Dways after a deterioration in their relationship with Nancy. As Mr Maniam pointed out, Irene had sent a letter to some distributors in April 2021 which evinced her intent to deplete Dways of its moneys through refunds to the Lims' friends and to leave a minimal amount in the Bank Accounts.⁹⁷

Some payments for which Irene cannot recall their purpose (s/n 17, 27 and 35 of Disputed Payments)

87 I turn to a series of payments which were made by cheques from the UOB Account between August to November 2019. Irene could not recall the purpose of these payments but claimed that Nancy knew of and authorised them at the material time as she had co-signed the cheques.⁹⁸ They are for \$325.51, \$1,619.37 and \$513.60 ("Three Sums").

⁹⁶ Irene's AEIC at [192]; 7AB 3820, 3822; 24/8/21 NE 7.

⁹⁷ 9AB 5106; 25/8/21 NE 103–106, 115–116; 27/8/21 NE 124–125.

⁹⁸ Irene's AEIC at [320], [358]–[360], [409]–[411].

88 I find there is insufficient evidence to show the payments were for a legitimate commercial benefit to Dways. The payees of the Three Sums are not identifiable, much less the purpose of the payments. Irene, who had caused Dways to pay the Three Sums, could not merely assert that she could not recall to whom they were made. As I have found, Irene was the director primarily in charge of accounts and payments. She agreed that she was in charge of making payments to vendors and suppliers and she had even prepared a spreadsheet to show payments that Dways had made to them (see [17] above). Hence, the payments of the Three Sums would have been within Irene's knowledge and the burden was on her to explain what they were for. Indeed, in other transactions where Irene caused Dways to issue cheques with a lump sum payment to reimburse her for Dways' expenses, she could recall the breakdown of each item and its transaction value and she even kept her own internal records.⁹⁹

89 I add that Irene's claim that Nancy would have known of and authorised the payment of the Three Sums because she co-signed the cheques does not assist Irene's case. I have accepted that Nancy had pre-signed blank cheques for business expediency and because she trusted Irene (see [34] above).

Reimbursement to Irene for "meals and refreshments" and "cleaning services" (s/n 24, 25 and 29 of Disputed Payments)

90 Finally, I turn to three sums paid to Irene on 23 and 30 September 2019, which she claimed were: (a) \$156.10 for refreshments for Dways' OPP on 14 September 2019; (b) \$530.46 for refreshments and meals for Dways' directors, shareholders and staff in or around August/September 2019; and (c) \$230 for the engagement of a cleaning company to clean Dways' premises

⁹⁹ See for example Irene's AEIC at [106]–[107], [124]–[125], [195]–[198], [313]–[314].

in about September 2019 (collectively “the Expenses”).¹⁰⁰ I find the Expenses were not for any legitimate commercial benefit to Dways.

91 Compared to the Three Sums, Irene’s claims pertaining to the Expenses are even more tenuous. Irene’s claims for meals and refreshments were part of a larger cheque of \$3,263.56, and the claim for cleaning services was part of a larger cheque of \$3,008, both made to purportedly reimburse her for various expenses she expended for Dways. However, the goods and services which generated these Expenses could not be objectively identified from the evidence. Irene has not provided any documents to show that she had expended moneys for the stated purposes or to identify the suppliers/vendors, much less the amounts expended. It is unbelievable and improbable that she could recall the purpose of each of the Expenses or even the exact figure that she spent on each of them, if she claimed to be unable to locate any bills or receipts pertaining to these expenses and there being no evidence of a distinct sum having been paid to a third party for each of the Expenses.

92 Again, I accept that Nancy had pre-signed blank cheques. Even if the cheques were signed after the particulars were filled in, it would not have been apparent on the face of the cheques what components of expenses they comprised.

\$30,000 loan to the Chuas

93 I turn to the \$30,000 loan to the Chuas (“the Loan”). Dways claims that: (a) the Loan was a personal loan from the Lims; (b) Dways did not authorise the Loan to be made from it; and (c) in any event, the Loan remains due and owing from the Chuas. The Lims however claim that the Loan was authorised by and

¹⁰⁰ Irene’s AEIC at [341]–[342], [345], [348], [368]–[369], [371].

came from Dways, and that Nancy subsequently approved writing it off as a way of compensating the Chuas for having contributed substantially to Dways' business and in exchange for them continuing to do so.¹⁰¹

94 I find that the Loan was from Dways and authorised by both its directors. This is supported by the WhatsApp chat group “*DWay Loan to Steven Karen*” [emphasis added] and the messages therein.¹⁰² The members of this chat group were Nancy and the Defendants. On 4 July 2019, Irene sent a message stating that “*DWay has agreed to loan S\$30,000 to Steven Karen on 4 July 2019*” [emphasis added] with “[l]oan repayment in 4 months’ time”. After disbursement of the Loan, there was a message requesting the Chuas to acknowledge receipt of the Loan from “DWay to [you]”. Nancy’s explanation in court, that she did not contradict Irene (when Irene stated that Dways had agreed to make the Loan) because she thought it was the Lims who were lending money to the Chuas,¹⁰³ is unbelievable given the clarity of the name of the chat group and the messages therein. As such Dways’ claim against the Lims in relation to the Loan fails.

95 Nevertheless, I find that the Loan remains due and owing by the Chuas to Dways and has not been written off. The Defendants claim that at a 14 August 2019 meeting with Nancy at Crown Café, they agreed to write off the Loan, and point to WhatsApp messages to show the meeting took place.¹⁰⁴ However, the WhatsApp messages do not show any discussion on the Loan. Hence the

¹⁰¹ Nancy’s AEIC at [193], [430]–[435]; D1D2 Defence at [26(c)]–[26(g)]; Irene’s AEIC at [44]–[51].

¹⁰² 3AB 1380–1382.

¹⁰³ 11/8/21 NE 109–112.

¹⁰⁴ 8AB 4422–4426; 11/8/21 NE 123.

Defendants' claim that Nancy had agreed to write off the Loan at that meeting was but a bare assertion.

96 Instead, the documentary evidence, which spans from 23 September 2019 to 1 April 2020,¹⁰⁵ all point to the Loan being outstanding from the Chuas. On 23 September 2019, when Irene was providing reports in the “DWay Accounts Updates” WhatsApp chat group (which comprised the Four Persons), she stated “there is a loan amount to Steven Karen of S\$30,000”. Irene herself thus treated the Loan as outstanding, even after the 14 August 2019 meeting at Crown Café. On 5 December 2019, Nancy messaged the Chuas to state that the outstanding Loan was supposed to have been settled in October but it was now December. Yet the Chuas did not refute her claim. Their explanation, that they had been on holiday and had subsequently clarified with Nancy about the Loan which Nancy then acknowledged had been written off, was but a bare assertion and unbelievable.¹⁰⁶ In fact, WhatsApp messages even on 6 January 2020 showed Nancy and Justin discussing the repayment of the Loan. Finally, on 1 April 2020, Irene stated in an email to Nancy that “[s]ince it is a DWay loan to [the Chuas], it is only proper that DWay to go after them to pay back S\$30,000 to DWay.” Although the Lims had by then fallen out with Nancy and left Dways, Irene did not say that Nancy had agreed to write off the Loan.¹⁰⁷

97 Strangely, whilst Irene was quick to record that Dways had agreed to lend the Chuas \$30,000 in a WhatsApp chat, none of the Defendants made a record of the purported agreement to write off the Loan. This was despite them

¹⁰⁵ 6AB 2984; 7AB 3654–3656; 9AB 5048; 25/8/21 NE 146–152.

¹⁰⁶ 2/9/21 NE 71–72; 28/9/21 NE 177–178; DCS at [278]–[279].

¹⁰⁷ 9AB 5050, 5216–5217; 1/9/21 NE 90–92.

claiming that Nancy had been prevaricating on the issue of writing off the Loan (which I disbelieve).¹⁰⁸ As such, Chuas are liable to Dways for the Loan amount.

TLC Investment

98 As for the TLC Investment, Dways invested a sum of money in the TLC Investment through Justin, and Nancy claims that Justin had represented that the interest payable to Dways included the sums of US\$699, US\$829 and US\$1,527.20, which have not been paid to Dways.¹⁰⁹ The Lims deny being liable to Dways for the claimed amount of US\$3,055. They pleaded that any profits from the TLC Investment is generated through trading in foreign currencies and not through accruing interest. Further, the amount due to Dways was only US\$1,527.20, as the profits generated was an accumulated amount of US\$1,527.20 before it was withdrawn. The Lims pleaded that Dways then used the profits to make a donation of \$1,500 to Psalt Care Ltd (“Psalt”) for its charity dinner on 25 October 2019 and to pay Zul \$1,500 on 1 August 2019 as he was in need of money. As such, there was no moneys owing to Dways.¹¹⁰

99 I find that the Lims owed Dways profits of US\$1,527.20 from the TLC Investment, which has not been paid over to Dways. Nancy’s claim of three sums (of US\$699, US\$829 and US\$1,527.20) was based on a misreading of the electronic cash wallet for the TLC Investment (“the Wallet”). The WhatsApp messages between Justin and Nancy (containing screenshots showing the total assets in the Wallet) reflected a sum of US\$699 on 28 July 2019, which became US\$829 on about 31 July 2019, and then US\$1,527.20 on about 11 November

¹⁰⁸ 25/8/21 NE 149–152; 2/9/21 NE 71–72; 28/9/21 NE 35.

¹⁰⁹ 5AB 2612–2617; Nancy’s AEIC at [426].

¹¹⁰ D1D2 Defence at [25(c)]; Justin’s AEIC at [87]; 27/8/21 NE 129; 1/9/21 NE 100–106; 2/9/21 NE 15–16, 18–19; 8AB 4799; DCS at [253]–[254].

2019. Indeed, Justin’s 31 July 2019 WhatsApp message to Nancy described what was in the wallet as “[p]rofit US\$829 in less than 2 weeks for DWAY888 invested 10,500”. The Wallet would show only one amount, which would increase or decrease depending on whether more profits were made or moneys withdrawn from it. There was therefore only one figure of US\$1,527.20 that was due. As an aside, Justin explained that the amount in the Wallet was denominated in the cryptocurrency USDT, but this distinction was immaterial as 1 USDT is equivalent to US\$1. In any event, the parties’ submissions did not distinguish between 1 USDT and US\$1.¹¹¹

100 This sum of US\$1,527.20 remained owing to Dways. The \$1,500 donation to Psalt and \$1,500 payment to Zul did not change this conclusion. Whilst there was a message from Justin to Nancy on 28 July 2019 to say “[n]ext week we can pay Zul S\$1500 without using company fund, instead we can withdraw profit from TLC”, the fact remained that on 11 November 2019, there was an accumulated amount of US\$1,527.20 in the Wallet and there is no evidence that this sum was subsequently withdrawn and paid to Dways. Likewise, even if the donation of \$1,500 to Psalt was made using the profits from the TLC Investment, this sum would have been withdrawn from the Wallet before 11 November 2019 as the dinner took place in October 2019. Hence, I find the Lims liable to pay this amount to Dways.

Conclusion on the Disputed Payments

101 In summary, I find the Chuas jointly and severally liable for \$30,000 to Dways on the Loan and the Lims jointly and severally liable for US\$1,527.20 to Dways on the TLC Investment.

¹¹¹ 5AB 2612–2617; 1/9/19 NE 104; 2/9/21 NE 15–19.

102 Further, I find Irene liable to Dways on those Disputed Payments that I have found to have been made without legitimate basis and/or in breach of her directors' duties, namely items 4 to 8, 10 to 14, 17, 24, 25, 27, 29 and 35 of the Table at [33], and for the amounts stated therein. However, Dways has not proved on balance that Justin was equally liable whether by causing and procuring these transactions or by conspiring with Irene, as Dways has pleaded, save for the \$21,000 that was transferred to Irene's bank account that included his purported "shareholder's allowance" (see [72] above), a point which I will return to. I accept that the Lims worked closely with each other, both in Dways and in preparing for the trial.¹¹² However, this does not therefore mean that Justin was privy to the payments that Irene was making from the Bank Accounts, much less that he conspired with her to cause Dways to make them.

103 In the above regard, I also find that Dways has not shown that Justin was a custodial fiduciary (see in this regard *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 at [106]). I find that Dways has not shown that Justin had control over Dways' funds and the existence of Justin's Employment Agreement. As for Irene, I find that she was a custodial fiduciary of Dways' Bank Accounts, based on my earlier findings on her role in Dways. Also, by December 2019, Irene took steps to give herself greater control over the Bank Accounts (see [22] and [24] above).

104 That said, it is unnecessary to order an account of Dways' accounts or the Disputed Payments made without legitimate or proper basis. The partnership between the Lims and Nancy/Zul lasted merely a year from early 2019 to February 2020 and Dways would have identified all the transactions from the Bank Accounts during this period to arrive at its list of Disputed Payments (and

¹¹² 24/8/21 NE 18; 1/9/21 NE 7.

which it even pared down at the close of the trial). Dways' loss is already quantifiable by reference to the amounts that were withdrawn from the Bank Accounts for each of the transactions that I have found Irene to be liable on. While Dways may elect whether to call for an account, it is the court which always has the last word (*UVJ and others v UVH and others and another appeal* [2020] 2 SLR 336 at [27]).

105 As for the Allowances, I find that Justin had conspired with Irene to withdraw the \$21,000 from the UOB Account and that they did so with intent to injure or damage Dways. The Lims were not entitled to the Allowances and Nancy was unaware of and did not consent to its withdrawal at the material time. I find that Irene had made the withdrawal with Justin's agreement and knowledge as he would benefit from a share of the Allowances.

106 I accept Dways' assertion that the \$21,000 withdrawal (as with other Disputed Payments such as items 6, and 10 to 14 of the Table at [33], all made when the Lims were intending to exit or were exiting Dways) was intended to deplete its accounts when the Lims exited the company. In particular, the \$21,000 withdrawal was done to deplete the UOB Account by Irene in concert with Justin. On 1 February 2020, the UOB Account had \$27,981.19 before the \$21,000 was transferred out on the same date, leaving a balance of \$6,981.19. When Irene ceased to be a director on 5 February 2020, the UOB Account had about \$150. This was partly because she had caused further payments to be made that were not for proper purposes (items 10 and 11 of the Disputed Payments amounting to \$1,980).¹¹³ Irene's act of withdrawing the Allowances on 1 February 2020 also occurred shortly after the Lims had removed Products from Dways' office on 23 and 30 January 2020, and as I find below, were

¹¹³ 7AB 3760–3761; 1/9/21 NE 51–53.

removed without Nancy’s knowledge at the material time. As such, I find Justin jointly and severally liable to Dways for the sum of \$21,000.

Misappropriation of Products and/or revenue from sales of Products

107 Next, Dways claims the Lims had misappropriated or removed Products without its authorisation on 23 and 30 January 2020. Dways also claims the Lims had misappropriated revenue from sales of Products.¹¹⁴

Misappropriation of revenue from sales of Products

108 I find Dways has failed to make out a claim for misappropriation of revenue from sales of Products. Dways did not plead particulars of such misappropriation. This issue was also not canvassed in any detail at trial and Dways’ closing submissions did not deal with how revenue from sales of Products was misappropriated but focused on the misappropriation of Products. There was a paucity of evidence, if at all, on this issue. It was insufficient for Nancy to simply state that she was unable to tell whether the Lims had deposited the moneys generated from their sales of Products into Dways’ bank accounts.¹¹⁵

Agreements on the entitlement to Products

109 As for the misappropriation of Products, it is not disputed that Justin had on 23 January 2020, and the Lims (with the Chuas’ assistance) had on 30 January 2020, removed Products from Dways’ office. The Lims claim the removal of Products was lawful and relied on two purported agreements among the Four Persons, which is an issue I will deal with first.

¹¹⁴ SOC at [30B], prayer (A)(1)(d).

¹¹⁵ PCS at [140]–[149]; 12/8/21 NE 130.

110 The Lims claim that in about September or October 2019, it was orally agreed among the Four Persons that they would each be entitled to 12 boxes of HL Span, six boxes of Purity and six boxes of B’Glo per month (“Shareholders’ Entitlement”). Nancy attested however that in about October or November 2019, the Four Persons agreed that they could each take, in each month, two boxes of HL Span and three boxes of Purity for personal consumption and two boxes of HL Span and two boxes of Purity to distribute as samples to potential distributors or customers (“the Arrangement”). This adds up to four boxes of HL Span and five boxes of Purity per month.¹¹⁶

111 Justin further claims that at the 22 Jan 2020 Meeting with Nancy, when they were discussing the sale of the Lims’ shares in Dways, he informed Nancy that he would like to have HL Span and Purity for his and his family’s consumption. Nancy then agreed to give Justin 120 boxes of HL Span and 120 boxes of Purity, being four months of consumption for him and his family (“Family Entitlement”).¹¹⁷ Dways claims there was no such Family Entitlement.

112 I find on balance the Shareholders’ Entitlement existed. Dways’ claim of the Arrangement is contradicted by Zul and various WhatsApp messages.

113 First, Zul stated that each of the Four Persons could take, per month, two to three boxes each of HL Span and Purity for personal consumption and the same amount to provide as samples to potential distributors or customers. This amounts to up to six boxes each of HL Span and Purity per month. This was *more than* the amount under the Arrangement claimed by Nancy. Second, Zul claimed it was also agreed that the Four Persons could each take a few boxes of

¹¹⁶ Irene’s AEIC at [35]; Justin’s AEIC at [8(c)]; Nancy’s AEIC at [121], [124].

¹¹⁷ Justin’s AEIC at [17(c)].

B’Glo, This contradicted Nancy’s version of the Arrangement, which did not include any B’Glo.¹¹⁸ Whilst Nancy also mentioned in her AEIC that Dways’ records showed that a certain number of HL Span, Purity and B’Glo were set aside pursuant to the Arrangement, this contradicted Nancy’s earlier evidence that the Arrangement pertained only to HL Span and Purity, which evidence she had elaborated on at length (without mentioning B’Glo). Nancy also maintained in court that the Arrangement pertained only to their entitlement to HL Span and Purity.¹¹⁹ Hence, Dways’ version of the Arrangement was inherently inconsistent and Zul’s version instead lent support to the existence of the Shareholders’ Entitlement, which included the distribution of B’Glo.

114 Next, various WhatsApp messages provide support for the quantity of Products as set out in the Shareholders’ Entitlement. On 28 November 2019, Carol informed Irene that Nancy had taken 12 boxes of Purity for herself and Zul, which Nancy confirmed was correct during cross-examination.¹²⁰ On 22 December 2019, Karen informed Irene that Nancy and Zul had taken 12 boxes of HL Span on 3 December and the same amount on 21 December, 12 boxes of Purity on 26 November and eight boxes of Purity on 21 December, and a total of 13 boxes of B’Glo between 21 and 30 November and a further eight boxes of B’Glo on 21 December. Again, Nancy confirmed this was largely correct and in fact admitted that she probably took more than 24 boxes of HL Span in December because there were a lot of sales then.¹²¹ Nancy’s conduct of taking for herself at least six boxes of Purity in November and 12 boxes of HL Span in December as well as taking B’Glo, was more consistent with the

¹¹⁸ Zul’s AEIC at [77]–[78]; Nancy’s AEIC at [121]; 13/8/21 NE 51; 27/8/21 NE 44.

¹¹⁹ Nancy’s AEIC at [121]–[127], [131]; 11/8/21 NE 70.

¹²⁰ 6AB 3063–3067; 8AB 4258–4259; 11/8/21 NE 71–76.

¹²¹ 8AB 4258–4259; 11/8/21 NE 74–84.

numbers in the Lims' claim of the Shareholders' Entitlement than with Dways' claim of the Arrangement.

115 As for Mr Maniam's suggestion that the Shareholders' Entitlement could not be true as this would mean the shareholders were taking Products worth a total of \$17,664 per month, this argument is flawed. Mr Maniam has used the retail price of the Products to arrive at the figure of \$17,664, whereas the cost price would have been less than \$1,500.¹²²

116 However, I find the Lims have not on balance shown the existence of an agreement to the Family Entitlement. The lack of any documentary evidence of such an agreement is particularly telling.¹²³ By the 22 Jan 2020 Meeting, the relationship between Nancy and the Lims had deteriorated. It was unlikely that Nancy would have agreed to give the Lims 120 boxes each of HL Span and Purity. It was equally unlikely that Justin would not have documented this purported agreement (if it existed), such as by a WhatsApp message to Nancy, given the proliferation of chat groups among the Four Persons and Irene's claim to prefer to record matters in writing.¹²⁴ The assertion of a Family Entitlement was not even raised in the Lims' Defence until Dways disclosed evidence from the CCTV cameras in and around Dways' office ("CCTV Footages") showing the Lims removing Products on 23 and 30 January 2020. This suggests that the Lims' claim to a Family Entitlement was but an afterthought.¹²⁵

117 Irene claims that the Family Entitlement was part of the agreement for the Lims to sell their shares. I disbelieve this. It does not cohere with the Lims'

¹²² 27/8/21 NE 51–54.

¹²³ 1/9/21 NE 109.

¹²⁴ 25/8/21 NE 178.

¹²⁵ 25/8/21 NE 159–161, 164–165, 180–181.

own version of events. According to the Lims, at the 22 Jan 2020 Meeting, no purchase price for the shares was even proposed.¹²⁶ As such it was unlikely that Nancy would have agreed to the Family Entitlement on this date.

118 Having found the existence of the Shareholders' Entitlement, I next consider whether the agreement provided that a certain quantity of Products would be for personal consumption whilst the rest would be provided as samples to potential distributors or customers. This would affect what (if any) the Lims were entitled to take 23 and 30 January 2020.

119 Whilst Nancy (as I have found) might have understated the quantity of Products which each of the Four Persons was entitled to per month, this did not therefore mean that she was lying about the purpose behind the taking of the Products. Nancy attested that it was important that the Four Persons personally consumed the Products to experience the health benefits so that they could market the Products better. However, one to two boxes each of HL Span and Purity would have been sufficient for an individual's consumption per month, and hence the rest were meant for distribution to potential distributors or customers. As the purpose for this arrangement was to allow the Four Persons to better market the Products, if any one of them ceased to be a shareholder, he or she would no longer be allowed to take any Products.¹²⁷

120 I accept Nancy's testimony in relation to the dual purposes for taking the Products (*ie*, for personal consumption and distribution to potential distributors or customers). This was also attested to by Zul whom I had no reason to doubt. In court, Irene also agreed that part of the Shareholders'

¹²⁶ Justin's AEIC at [17(b)]; 25/8/21 NE 160, 177; 1/9/21 NE 111.

¹²⁷ Nancy's AEIC at [121]–[128].

Entitlement was meant for distribution to potential distributors and customers.¹²⁸ It is not disputed that where an individual wishes to consume the Products, the recommended monthly dosage is up to two boxes of HL Span and 1.5 boxes each of Purity and B’Glo.¹²⁹ In the final analysis, I find that each of the Four Persons were entitled to no more than two boxes of HL Span, three boxes of Purity and two boxes of B’Glo per month for personal consumption (“Personal Entitlement”). In particular, in relation to Purity, whilst I have rejected Nancy’s account of the Arrangement pertaining to the *total* number of boxes of each Product that each of the Four Persons was entitled to in a month (being less than the total under the Shareholders’ Entitlement), I accept Nancy’s account that for the purposes of personal consumption, each of them was entitled to take three boxes of Purity (see [110] above).

121 I also accept Nancy’s testimony that the entitlement to Products would cease to apply to a shareholder who leaves Dways. The Lims were thus entitled to their respective Personal Entitlement up to January 2020, pursuant to the Shareholders’ Entitlement which had already been agreed on in 2019. When Justin met Nancy on 22 January 2020 to discuss the sale of the Lims’ shares, their relationship with Nancy had deteriorated and it was unlikely that the Lims intended to continue distributing Products for Dways, nor was there evidence that they did so. Consequently, when the Lims removed Products in January 2020, they were not entitled to take anything in excess of their Personal Entitlements. As for the Lims replacing B’Glo with Purity (which they claimed they were entitled to do) because they preferred the latter Product,¹³⁰ I see no legitimate basis for this as there was no agreement to vary the terms of the

¹²⁸ Zul’s AEIC at [77]; 25/8/21 NE 169.

¹²⁹ 25/8/21 NE 165–166.

¹³⁰ Irene’s AEIC at [69].

Shareholders' Entitlement. Additionally, the Lims were not entitled to remove Products at any time pursuant to a Family Entitlement which did not exist.

122 In sum, the Lims were entitled to four boxes of HL Span, six boxes of Purity and four boxes of B'Glo per month from November 2019 to January 2020, pursuant to their Personal Entitlements which accrued up to then. As for the actual quantity of Products already taken (prior to 23 January 2020) and how many more the Lims were thus entitled to remove on 23 or 30 January 2020 pursuant to their Personal Entitlements, and the consequent damage to Dways by the Lims' removal of excess Products, these matters are to be determined at the assessment of damages stage.

Whether Nancy knew of or authorised the removal of Products on 23 and 30 January 2020 by the Lims

123 It is clear from Dways' pleadings that it relies specifically on the occasions of 23 and 30 January 2020 to claim that the Lims misappropriated Products, and Dways has also attributed the shortfall in the number of Products in its inventory to the Lims' removal of Products on these two dates.¹³¹ While it caveats that there may be more occasions of such misappropriation, there is no evidence as such and Dways has not in cross-examination of the Lims alleged that they had taken Products on other occasions without authorisation.¹³² As such, my findings are confined only to the occasions of 23 and 30 January 2020.

124 For completeness of my analysis on the removal of Products, I accept that Nancy was not informed of, nor did she know about, the removal of

¹³¹ SOC at [30B]; Nancy's AEIC at [379]–[380]; PCS at [194]–[196].

¹³² 25/8/21 NE 190–191; 1/9/21 NE 155–156.

Products on 23 and 30 January 2020 at the material time. She only found out after she obtained the CCTV Footages. By then, the Lims had exited Dways.¹³³

125 Justin claims that he informed Nancy at the 22 Jan 2020 Meeting that he would be going to Dways' office the next day to take the Family Entitlement. He further claims that on 23 January 2020, he went to the office and left with one carton of HL Span (which contains 78 boxes of HL Span, a figure not disputed by the parties) as part of the Family Entitlement and an empty carton for disposal.¹³⁴

126 The Lims further claim that on the morning of 30 January 2020, they went to Dways' office to clear their personal belongings and to collect the Shareholders' Entitlement (for the months of November 2019 to January 2020) and the rest of the Family Entitlement. By this time, they were going to sell their shares in Dways. At a meeting that afternoon with Nancy, Justin told her that the Defendants had on that morning gone to Dways' office to clear the Lims' personal belongings and take the Family and Shareholders' Entitlements.¹³⁵

127 I disbelieve that Justin had informed Nancy on 22 January 2020 that he was going to Dways' office the next day to remove Products, and I find that he had deliberately concealed this from her. As there was no agreement on a Family Entitlement, there would have been no reason for Justin to tell Nancy in advance that he was going to take the Family Entitlement. Further, on 23 January 2020 at 8.02am, Nancy messaged Justin to ask if they were meeting that day, to which Justin replied at 8.38am to say that he could not. The CCTV Footages showed

¹³³ Nancy's AEIC at [360]–[369].

¹³⁴ Justin's AEIC at [17(d)], [43]–[44]; 27/8/21 NE 89–90; 3/9/21 NE 41.

¹³⁵ Justin's AEIC at [19]–[22], [45].

Justin at Dways' premises at about 7.51am until 8.35am.¹³⁶ Justin claims he did not see Nancy's 8.02am message until after he left the office. I disbelieve this. Nancy's 23 January 2020 message was a follow-up from a message that she had sent to Justin on 22 January at 8.54pm asking if they could meet up "tomorrow morning", which Justin did not even reply to.¹³⁷ I find on balance that Justin would have seen the 22 January 2020 message but chose to ignore it, as he did with Nancy's 23 January 2020 message, because he wanted to go to the office on 23 January 2020 morning to remove Products without telling Nancy. That was the reason why he did not want to meet Nancy that morning, and not because he "did not intend to stay long".¹³⁸ It is telling that even when Justin finally replied at 8.38am to say that he could not meet her that day, he failed to inform Nancy that he had taken some Products.

128 Likewise, I find that Nancy was unaware of the Lims' intent to remove Products on 30 January 2020. Whilst Irene had, on 29 January 2020, requested the Chuas to accompany the Lims to the office on 30 January, purportedly to witness and record the Products that the Lims were going to take, they did not see it fit to inform Nancy or Zul of the same.¹³⁹ By this time the relationship between Nancy and the Lims had broken down and there was a lack of trust between them. As such, it would have been natural to inform Nancy in advance that they were intending to take their entitlement of Products to ensure that there would be no dispute later with Nancy over missing Products.

¹³⁶ Exhibit D (Figures 2 and 19); 1/9/21 NE 117–118, 124; Justin's AEIC at [18(a)].

¹³⁷ 9AB 5224–5225.

¹³⁸ Justin's AEIC at [18(b)].

¹³⁹ Irene's AEIC at [63]–[64].

129 The Lims’ omission to inform Nancy that they were going to Dways’ office on 30 January 2020 to take Products was all the more glaring considering that on 29 January 2020 Nancy messaged Justin to ask if they could meet “tomorrow morning or afternoon”, to which Justin’s reply was merely that they could meet in the afternoon.¹⁴⁰ I disbelieve that Justin had, in the afternoon of 30 January 2020, then informed Nancy that the Defendants had in the morning gone to Dways’ office. Justin’s claim was not supported by any documentary record and was inconsistent with Irene’s account in court that he had informed Nancy *beforehand* of the Lims’ intention to remove Products on 30 January 2020. Irene’s attempt to explain the lack of documentary evidence, claiming that the Defendants’ method of communicating with Nancy was “always ... oral or meet up” and that the Lims never messaged Nancy, is unbelievable given the numerous chat groups that Irene created for Dways’ communication purposes.¹⁴¹

Products removed on 23 and 30 January 2020

130 Next, I turn to address the quantities of Products removed on 23 and 30 January 2020. Dways cites a shortfall of 415 boxes of HL Span, 415 boxes of Purity and 406 boxes of B’Glo, with a total retail value of \$205,094, as the basis for this claim in the Suit.¹⁴² The Lims claim that they only removed 78 boxes of HL Span on 23 January 2020, and 75 boxes of HL Span and 162 boxes of Purity on 30 January 2020.¹⁴³

¹⁴⁰ 9AB 5225.

¹⁴¹ 25/8/21 NE 181–182; Justin’s AEIC at [21]–[22].

¹⁴² SOC at [31(a)]–[31(d)], [32(g)]; Nancy’s AEIC at [388]–[389].

¹⁴³ Justin’s AEIC at [43(b)], [44(b)]; Irene’s AEIC at [65].

Products removed on 23 January 2020

131 I turn first to the incident on 23 January 2020. Whilst Justin claims, in his AEIC, to have removed only two cartons (*ie*, a carton of HL Span containing 78 boxes of HL Span and an empty carton to dispose of) the CCTV Footages showed Justin doing the following: (a) carrying a sealed carton to the lift lobby (not disputed by Justin); (b) returning to the lift lobby with another sealed carton (“2nd Carton”) and a tote bag (“Tote Bag”) filled with items; and (c) finally emerging from the office with an empty carton (“3rd Carton”) before entering the lift with three cartons and the Tote Bag (not disputed by Justin).¹⁴⁴

132 In court, Justin agreed that he had taken three cartons. He claimed that he was going to dispose the 2nd Carton which was empty. I disbelieve Justin and find the 2nd Carton was a sealed carton. The CCTV Footages showed the 3rd Carton as being empty (which Justin agreed to). The CCTV Footages also showed that when Justin walked into the lift with the empty 3rd Carton and Tote Bag, there were two unopened cartons that looked alike on the floor outside the lift. I thus accept on balance that the 2nd Carton (which was sealed) also contained 78 boxes of HL Span, and that Justin had removed two cartons containing a total of 156 boxes of HL Span.¹⁴⁵

133 I also accept that the Tote Bag contained Products. It is not disputed that Justin was at the mezzanine level of Dways’ office where boxes of HL Span and Purity were kept and that he was packing white boxes into a tote bag. It is also not disputed that HL Span and Purity came in white boxes. I disbelieve Justin’s claim in court that the Tote Bag contained the Lims’ personal items, including

¹⁴⁴ 1/9/21 NE 123–126, Exhibit D (Figs 13–19).

¹⁴⁵ PCS at [170].

items bought from IKEA and which came in white boxes.¹⁴⁶ Justin did not in his AEIC mention that he had gone to the office on 23 January 2020 to also remove the Lims' personal belongings, and only stated that he had informed Nancy on 22 January 2020 that he was going to Dways' office the next day to take his Family Entitlement without more. His lack of explanation in the AEIC is telling considering that he knew of Dways' pleaded case, which asserted that the Lims had misappropriated Products on 23 January 2020, and that he saw the CCTV Footages before preparing his AEIC. Whilst Justin claims that it was unnecessary to mention in his AEIC that he had removed personal items on 23 January 2020, the Lims had seen it fit to state on affidavit that they had gone to Dways' office on 30 January 2020 to clear their personal belongings.¹⁴⁷

134 That said, I am unable to determine what Products the Tote Bag contained. The CCTV Footages show that it was a large Dways tote bag that was completely filled. It would have thus been filled with 20 boxes of Purity or 30 boxes of HL Span, or a combination of both.¹⁴⁸ The issue of how this is to be assessed will be determined at the assessment of damages stage.

Products removed on 30 January 2020

135 In closing submissions, Dways claimed the following were removed by the Lims on 30 January 2020: (a) at least 16 large tote bags filled with HL Span and/or Purity ("16 Bags", which I will call "TB1" to "TB16" respectively); and (b) eight other tote bags which might have contained Products ("8 Bags", which I will call "TB-A" to "TB-H" respectively).¹⁴⁹

¹⁴⁶ Exhibit D (Figs 5–10, 16); 1/9/21 NE 118–121, 128–129.

¹⁴⁷ 1/9/21 NE 126–127; Irene's AEIC at [63]; Justin's AEIC at [22], [45]–[46].

¹⁴⁸ PCS at [172]–[174]; Exhibit D (Figs 9, 10, 16).

¹⁴⁹ PCS at [179].

136 The Lims claim that the 8 Bags did not contain Products. As for the 16 Bags, the Lims' position is as follows: (a) TB1, TB2, TB5 to TB9, and TB13 to TB16 were filled to the brim with Products; (b) TB3 was filled to the brim but appears to contain a mix of Products; (c) TB4 and TB12 were not filled to the brim with Products; and (d) TB10 and TB11 did not contain any Products. They also claim that different sizes of tote bags were used, and Dways has not shown that all of the tote bags contained either 30 HL Span or 20 Purity boxes.¹⁵⁰ The Lims claim that they removed only a total of 75 boxes of HL Span and 162 boxes of Purity on 30 January 2020.

137 For the 8 Bags, I am unable to find on balance that they contain any Products, after reviewing the CCTV Footages. In particular, TB-G and TB-H appeared to be filled with miscellaneous items of various shapes which did not look like the white boxes in which HL Span and Purity are stored, and Mr Maniam agreed that these tote bags were also used to contain other items.¹⁵¹ Likewise, from my observation of the CCTV Footages capturing TB-A to TB-F, the footages do not reveal their contents or any white boxes.

138 As for the 16 Bags, I accept that they were all large tote bags. Parties agree that a large tote bag can fill up to 30 boxes of HL Span (in five rows of six boxes each) or 20 boxes of Purity (in four rows of five boxes each). Additionally, the photographs show a HL Span box to be slimmer than a Purity box.¹⁵² Mr Lim accepted that the CCTV Footages show the Chuas packing 20 boxes of Purity in one tote bag and 30 boxes of HL Span in another tote bag. As such the two bags the Chuas packed would have been large tote bags, as Dways'

¹⁵⁰ DCS at [299]–[301]; 30/9/21 NE 108–110.

¹⁵¹ Exhibit D (Figs 57–58); Exhibit D2 (Figs 25–37, 40–61); 27/8/21 NE 99.

¹⁵² DCS at [297]; Exhibit F (Figs 3 and 27).

medium-sized tote bags can accommodate only up to 20 boxes of HL Span or 12 boxes of Purity. Parties further agreed that the two bags the Chuas packed were part of the 16 Bags. The CCTV Footages also show the 16 Bags to be of the same size, and whilst the Lims claim that they were of different sizes, they have not identified which bags were of which sizes.¹⁵³

139 Next, I find on balance that the tote bags contained as follows:

(a) TB1 was filled to the brim. I accept Mr Lim’s submission that it was filled with HL Span (*ie*, it contained 30 boxes of HL Span).¹⁵⁴

(b) For TB2 and TB3, parties agree that one bag was filled to the brim with Purity (20 boxes) but disagree on the other bag’s contents. Mr Lim submits that the other bag appeared to be filled with HL Span and two boxes of Purity, whilst Mr Maniam was unable to confirm whether there was a mix of Products.¹⁵⁵ I accept Mr Lim’s submission that one of the bags was a mix of Purity and HL Span and that based on his submissions the maximum number of Products that could be accommodated in the bag would have been 28 boxes of HL Span and two boxes of Purity.

(c) Parties agree that TB4 contained Purity and that the bag was not full.¹⁵⁶ Based on the CCTV Footages I find TB4 was three-quarters filled (*ie*, with three rows of five boxes) with an additional box on the top. Hence there were 16 boxes of Purity.

¹⁵³ 30/9/21 NE 110–115; Exhibit D3.

¹⁵⁴ Exhibit D2 (Figs 1–2); DCS at [301].

¹⁵⁵ 5/10/21 NE 1–2; DCS at [301]; Exhibit D2 (Figs 2–19); Exhibit D2A (Figs 2–5); Drew & Napier LLC’s letter dated 8 October 2021.

¹⁵⁶ 5/10/21 NE 2; Exhibits D2 and D2A (Fig 14); PCS at [185].

(d) I find TB5 to be filled completely with HL Span (*ie*, 30 boxes),¹⁵⁷ consistent with Mr Lim’s submissions.

(e) For TB6, TB7, TB8, TB9, TB15 and TB16, I observe them to be filled to the brim with Purity (*ie*, 20 boxes each),¹⁵⁸ consistent with Mr Lim’s submissions.

(f) For TB10 and TB11, I find they contain Products and appear to be almost filled to the brim with the top row empty.¹⁵⁹ However, it is unclear whether each bag contained 15 boxes of Purity or 24 boxes of HL Span or a combination of both. The issue of how this is to be assessed will be determined at the assessment of damages stage.

(g) For TB12, TB13 and TB14, the CCTV Footages show that two of the bags were filled to the brim with five boxes in a row. I find these to be boxes of Purity, totalling 40 (*ie*, 20 in each bag). I also find the remaining bag to contain Purity but filled only three-quarters up with one further box on top, thus totalling 16 boxes of Purity in the bag.¹⁶⁰

140 Additionally, Mr Maniam pointed to a carton (“Carton 1”) that Steven was seen pushing on the mezzanine level of Dways’ office. Dways claims that it also contained Products but was unable to identify what Products were in it.¹⁶¹ It is not disputed that Carton 1 was of a different shape and size from a carton of HL Span or Purity and that it had the words “Travelite Tote Bag” on it. As

¹⁵⁷ Exhibit D2 (Figs 5–6).

¹⁵⁸ Exhibit D2 (Figs 15–16, 21–24, 57–60); Exhibit D2A (Fig 27).

¹⁵⁹ Exhibit D2 (Figs 28–34); Exhibit D2A (Figs 8–9, 18–22).

¹⁶⁰ 5/10/21 NE 2; Exhibit D2A (Fig 26).

¹⁶¹ 30/9/21 NE 116–121; 5/10/21 NE 2; Exhibit D (Fig 20); Exhibit D4.

such I find that Dways has not shown Carton 1 to contain any Products – the description of the carton would suggest that it contained tote bags.

Total Products misappropriated by Justin and Irene

141 In the round, I find that Justin had conspired with Irene to remove: (a) on 23 January 2020, 156 boxes of HL Span and the Tote Bag (containing HL Span, Purity or both); and (b) on 30 January 2020, 88 boxes of HL Span, 214 boxes of Purity and TB10 and TB11 (containing HL Span, Purity or both), subject to any Products that they were entitled to under their Personal Entitlements. They did so with intent to cause damage or injury to Dways. In relation to the incident on 23 January 2020, although it was Justin who removed Products on that day, I find that Irene had combined with Justin to do so. As I have found at [102], the Lims worked closely with each other in Dways. Specific to the removal of the Products, Irene attested that Justin’s version of events (*eg*, on the Family Entitlement and his removal of Products pursuant to their Family Entitlement) matched her recollection, a version of events which I have not accepted to be true.¹⁶² In combining with Justin to misappropriate the Products, Irene has also breached her duties to Dways as a director, including the no-conflict and no-profit rules.

142 Dways claims the Lims removed far more Products on 23 and 30 January 2020 than what could be observed on the CCTV Footages. In particular, Nancy claims there was a shortfall (“the Shortfall”) of 415 boxes each of HL Span and Purity and 406 boxes of B’Glo, based on her calculations as well as stock checks she conducted on 2 February 2020 and on another date

¹⁶² Irene’s AEIC at [53]–[54].

(“Stock Checks”).¹⁶³ The Shortfall is derived from the number of boxes of each Product received by Dways from manufacturers (“Quantity X”) after deducting: (a) the number of boxes taken by Dways’ customers, Dways’ stockist and the shareholders under the Arrangement, namely 703 boxes of HL Span, 334 boxes of Purity and 172 boxes of B’Glo (“Quantity Y”); and (b) the remaining number of boxes with Dways pursuant to the Stock Checks (“Quantity Z”).

143 I am unable to accept Nancy’s calculations as showing the Shortfall. Nancy did not explain how she derived the number of Products for Quantity Y nor produce evidence to explain this, let alone give a breakdown of the quantities taken by Dways’ customers, stockist and shareholders.

144 Mr Maniam in closing submissions relied on a spreadsheet generated from Dways’ system (“Product Record”) for the above purpose.¹⁶⁴ But the Product Record was not complete nor accurate. First, it did not record the number of Products taken by the stockist (a component of Quantity Y). Second, the Product Record was inaccurate as to the quantities taken by each shareholder pursuant to the Arrangement (another component of Quantity Y). In this regard, Nancy claims the Product Record showed that, as at 10 November 2019, 50 boxes of HL Span, 35 boxes of Purity and 30 boxes of B’Glo were set aside pursuant to the Arrangement. But this is contradicted by: (a) Nancy’s assertion of the number of HL Span and Purity that each shareholder was entitled to take per month (which did not add up to the quantities in the Product Record); and (b) the exclusion of B’Glo from the Arrangement (whereas the Product Record recorded quantities of B’Glo being set aside). The Product Record is also

¹⁶³ PCS at [194]; Nancy’s AEIC at [388]; 11/8/21 NE 163, 165; 13/8/21 NE 53–55; 7AB 3825.

¹⁶⁴ PCS at [192]; 12AB 6781–6783.

contradicted by Karen's WhatsApp message to Irene on 22 December 2019, for instance, which showed that Nancy and Zul had taken 24 boxes of HL Span in December 2019 alone. Notably, Nancy admitted at trial that she probably took more than that (see [114] above). Nancy also admitted to having taken 17 boxes of HL Span in early January 2020 (see [30] above),¹⁶⁵ but it is unclear if this was recorded in the Product Record. Taken together with Nancy's claim that she was not responsible for keeping a record of sales or an inventory, and the evidence which showed she would take Products first and make a record later (see [30] above), I do not find her record of Quantity Y and its components and of the Product Record at the time the Lims exited Dways to be reliable.

145 As Dways' claim on the Products is premised on the Shortfall numbers, it falls on Nancy to show some evidence of how she derived the Shortfall. There is no dispute on Quantity X but even if I accept her evidence on Quantity Z (which to some extent is supported by a contemporaneous written note of the Stock Check on 2 February 2020),¹⁶⁶ she is unable to show any evidence of the figure for Quantity Y. Hence, on the best evidence available, I find that the total number of Products that the Lims took from Dways on 23 and 30 January 2020 (including their Personal Entitlements if any) amounted to: (a) 244 boxes of HL Span and 214 boxes of Purity; and (b) three tote bags which contained HL Span and/or Purity (the quantities of which are to be determined at the assessment of damages stage).

Transferring and deleting information belonging to Dways

146 At this juncture I deal briefly with Dways' claim that Irene, with Karen's assistance, had transferred and/or deleted documents or information

¹⁶⁵ 6AB 3576–3577.

¹⁶⁶ 7AB 3825.

(collectively, “Information”) stored in Dways’ desktop computers.¹⁶⁷ Suffice to say, Irene had admitted in court that on 30 January 2020 (when the Defendants went to Dways’ office to take Products), Karen had assisted her to transfer Information belonging to Dways from its computer system into a thumb drive and then deleted the Information on Dways’ computers, and that she did not inform Nancy of this at the material time. The Defendants also did not challenge the expert report provided by Dways regarding the files that were transferred to an external storage device.¹⁶⁸

147 Irene’s actions as such were clearly in breach of her duties as a director and (taken together with the Lims’ acts of removing Products) meant to injure Dways’ business. I accept Mr Maniam’s assertion that Dways would have difficulty operating without the necessary records and the deletion of Dways’ Information would have made it more difficult for it to detect what Products might have been taken.¹⁶⁹

148 That said, this particular claim is made for the limited purpose of supporting Dways’ case on the need for an account of its inventory, sales records and bank records. In other words, this was essentially to assist Dways to discover what payments were made from its Bank Accounts (and whether they were for proper purposes) and what Products were taken by the Lims.¹⁷⁰ However such an account is unnecessary. Dways’ claim on the transactions in the Bank Accounts has been pared down specifically to the Disputed Payments, for which I have made my findings and explained why an account is

¹⁶⁷ SOC at [24A].

¹⁶⁸ 26/8/21 NE 20–27; 3/9/21 NE 65; 11AB 5873–6416; PCS at [89].

¹⁶⁹ 26/8/21 NE 29–30.

¹⁷⁰ PCS at [94].

unnecessary (see [104] above). It is also unnecessary to order an account of the inventory or sales records of Products, as Dways has defined its claim against the Lims as being the Shortfall amount, of which I have made my findings (see [145] above). Dways also has not specifically pleaded what other injurious acts (if any) have resulted from Irene’s removal and deletion of Dways’ Information.

Defamation

149 Finally, I turn to Dways’ claim for defamation against Irene based on WhatsApp messages and letters that Irene had sent, as follows:

- (a) on 10 and 11 April 2020, Irene sent WhatsApp messages (under the alias “Lisa Chew”) to Inge Listya Halim (“Inge”), Lee Yet Tit (“Lee”) and Ng Swee Kim (“Ng”), Dways’ distributors/customers (“WhatsApp Messages”);¹⁷¹
- (b) in April 2020, Irene sent an undated and unsigned letter to Inge, Lee and Ng (“1st Letter”);¹⁷² and
- (c) in April 2020, Irene sent another undated and unsigned letter to Lee (“2nd Letter”).¹⁷³

¹⁷¹ SOC at [33B]–[33C]; 9AB 5075–5080, 5087–5102, 5103–5104; Nancy’s AEIC at [482]–[483].

¹⁷² SOC at [33E]; Nancy’s AEIC at [488]–[489]; Irene’s AEIC at [443(b)]; 9AB 5105–5107; 25/8/21 NE 101–102.

¹⁷³ SOC at [33G]; Nancy’s AEIC at [491]; Irene’s AEIC at [443(c)]; 9AB 5108–5109; 26/8/21 NE 42.

150 Irene had sent the WhatsApp Messages, 1st Letter and 2nd Letter from a different phone number and pretended to be one “Lisa Chew” (“Lisa”) because she wanted to remain anonymous.¹⁷⁴

WhatsApp Messages

151 Dways relies on the following words, amongst others, in the WhatsApp Messages which it claims are defamatory (“the Words”):

- (a) “If u hv been told that the product was from USA or New Zealand or Australia ... then u hv bn cheated.”
- (b) “The capsules turn black easily, pls dun take as it may contain ‘mould’.”
- (c) “My name is Lisa ... I joined DWay buying their products. Hv bn cheated ... I hv returned the products n got back my refund.”
- (d) “These products were not made from USA, Australia or New Zealand ... The products were made from a country that do not meet the World Hygiene Standard.”
- (e) “If u know d country, u wil not buy at all!”
- (f) “U see d capsules turn black easily n is so scary!”
- (g) “... not to follow people that lie n cheat!”
- (h) “... u are putting your health at stake n wil get yourself into trouble!”

¹⁷⁴ Irene’s AEIC at [446]; 25/8/21 NE 99, 135, 185; 26/8/21 NE 41–42.

- (i) “You hv bn cheated by them”.
- (j) “We r coming fr good intention, to stop Nancy n Zul continuing to cheat people.”
- (k) “We hv bn chested [*sic*] n we dun want more people to b cheated!”
- (l) “I bought the products but I hv returned n got back my money ... they hv to return as they told me their products r made fr USA but it was not true ... they hv cheated many ppl ..”

152 Dways claims that the Words in their natural and ordinary meaning meant or were understood to mean: (a) that a genuine customer “Lisa Chew” had been cheated by Dways; (b) that the Products were dangerous, unhygienic or unsafe for consumption and its distributors and customers had been cheated and should seek a refund from Dways; and (c) that Dways’ business was conducted in a dishonest manner.¹⁷⁵ Irene denies the Words were defamatory and submits that even if they were, they were defamatory of Nancy and Zul (and not Dways).¹⁷⁶ I find the WhatsApp Messages referred to and were defamatory of Dways.

153 Irene admitted she was pretending to be “Lisa” and sought to portray “Lisa” as a former Dways distributor/customer who had been cheated and who had legitimate concerns about the safety and manufacturing origins of the Products. She used an alias to make her allegations appear objective.¹⁷⁷

¹⁷⁵ SOC at [33D]; Nancy’s AEIC at [484]–[485].

¹⁷⁶ D1D2 Defence at [30C]–[30D]; DCS at [327]–[330].

¹⁷⁷ Irene’s AEIC at [446]; 25/8/21 NE 135; 26/8/21 NE 35–36, 50.

154 I accept that the Words meant and were understood to mean that Dways' business had been conducted in a dishonest manner through misrepresentations to its customers as to where its Products were manufactured. When Lee informed "Lisa" that she had been told the products had been manufactured in the USA, "Lisa" replied that Lee was another person cheated by Dways. "Lisa" made multiple comments asserting that Dways had misrepresented the country of manufacture of its Products, *ie*, that they were from the USA, New Zealand or Australia.¹⁷⁸ It is not disputed that HL Span and Purity were manufactured in China while B'Glo was manufactured in Malaysia. As Irene stated, she had sent the WhatsApp Messages to warn distributors/customers of misrepresentations which had been made in relation to the Products.¹⁷⁹ The words "lie" and "cheat" also suggest dishonesty or business misconduct.

155 Additionally, the Words meant and were understood to mean that Dways sold products that were unsafe for consumption. In particular, "Lisa" stated that "[t]he capsules turn black easily, pls dun take as it may contain 'mould'" and added that the Products were manufactured in a country that did not meet the "World Hygiene Standard" (which Irene admitted at trial was a standard that did not exist). Irene agreed she was informing Inge, Lee and Ng that the Products were unsafe because they were made in a country that did not conform to minimum hygiene standards and that they should be careful.¹⁸⁰

156 It is also clear that the Words and WhatsApp Messages referred to Dways and its reputation. The WhatsApp Messages (which were sent to Dways'

¹⁷⁸ 9AB 5075, 5078–5080, 5091–5092, 5094–5097, 5099, 5103–5104.

¹⁷⁹ 12/8/21 NE 58; Irene's AEIC at [447]–[450].

¹⁸⁰ 26/8/21 NE 67–68, 70–75, 82–83.

distributors or customers) referred to its Products, and related to the conduct of Dways in selling its Products and to the safety of the Products.

1st Letter

157 Dways relies on the following words, among others, in the 1st Letter which it claims are defamatory:

- (a) “[T]hey discovered Nancy & Zul, that took many stocks to sell but the money they had collected went to their pockets instead of DWay accounts !”
- (b) “With Nancy & Zul malpractice w totally no integrity, d ex-directors refunded all d products’ amounts to some Product Purchasers (Distributors) which were their friends n left a minimal amount in d DWay accounts in return to Nancy !!”
- (c) “The Ungrateful & Ruthless Nancy & Zul – Do not trust them ! Whatever they say, seek for proof ! Such despicable character, better to stay away, if not, next time you wil suffer more than us !”

158 Dways claims the words in the 1st Letter in their natural and ordinary meaning meant or were understood to mean: (a) that its director Nancy and distributor Zul were untrustworthy and malicious; (b) that they had stolen Dways’ Products; and (c) that Dways’ business was conducted in a dishonest and improper manner. Moreover, reading the letter in its entirety, the 1st Letter suggested that Dways’ business was one where uplines could be abruptly terminated and unreasonably so.¹⁸¹ Irene denies that the words were defamatory,

¹⁸¹ SOC at [33E]–[33F]; Nancy’s AEIC at [489]–[490].

and submits that even if they were, they were defamatory of only Nancy and Zul.¹⁸² I likewise find the 1st Letter referred to and was defamatory of Dways.

159 Irene admitted to creating the impression that some other distributor had written the 1st Letter.¹⁸³ Whilst it referred to Nancy's and Zul's conduct in Dways and impugned their integrity and reputation, read in totality, it also: (a) referred to Dways' business being conducted in a dishonest and an improper manner by its "directors" (which was how Irene described the Four Persons); and (b) sought to weaken Dways' business reputation by citing its mismanagement in terminating distributors unjustifiably. For instance, at the beginning of the 1st Letter, Irene stated that "[o]ur uplines were terminated due to this reason, they discovered Nancy & Zul, that took many stocks to sell but the money they had collected went to their pockets instead of DWay accounts !" At the end of the letter, Irene stated "[f]or those that continue w DWay, good luck to you ! Do remember to withdraw your Commission. Do not work for FREE !" Finally, Irene admitted that when she wrote the words "Nancy felt that our uplines hv betrayed her by telling d ex-Directors of their stealing of stocks with no money banked into DWay accounts ! All of us did not expect Nancy to be so unscrupulous, unethical, immoral & full of crooks !", she wanted to create the impression that Dways was managed by a director who was unscrupulous, unethical, immoral and a crook.¹⁸⁴

2nd Letter

160 Finally, Dways relies on the following words, among others, in the 2nd Letter which it claims are defamatory:

¹⁸² D1D2 Defence at [30G]–[30I]; DCS at [327]–[330].

¹⁸³ 26/8/21 NE 50–51.

¹⁸⁴ 27/8/21 NE 12.

- (a) “Your HL Span capsules turn **black** easily which we hv no confidence in d quality of your products ;” [emphasis in bold in original]
- (b) “On your packaging box, there is no indication where the product is made from;”
- (c) “[Y]our money came from the stocks you took with no sales amount paid to DWay accounts”.

161 Dways claims the words in the 2nd Letter in their natural and ordinary meaning meant or were understood to mean: (a) that its Products were unsafe for consumption; (b) that its director Nancy and distributor Zul had stolen its Products; and (c) that its business was conducted in a dishonest and improper manner.¹⁸⁵ Irene denies the 2nd Letter was defamatory, and submits that in any event, it was defamatory of only Nancy and Zul.¹⁸⁶ Again, I find the 2nd Letter referred to and was defamatory of Dways.

162 The statements in the 2nd Letter meant and were understood to mean that Dways’ Products were unsafe for consumption. For instance, it stated that the “HL Span capsules turn **black** easily which we [have] no confidence in [the] quality of [Dways’] products” [emphasis in original]. It also stated that if consumers knew the country in which the Products were made, they would “never buy to consume” them. Further, the statements meant and were understood to mean that Dways’ business was conducted in a dishonest and improper manner. They included allegations that Dways had actively misrepresented to its customers where its products were manufactured. For instance, one line stated that “[i]n your Product Presentation, you have told us

¹⁸⁵ SOC at [33G]–[33H]; Nancy’s AEIC at [491]–[492].

¹⁸⁶ D1D2 Defence at [30L]–[30N]; DCS at [327]–[330].

that [Dways’] products are from one of these countries (USA or Australia or New Zealand), however, we later found out that you have lied to all of us! Your products are not made from any of these mentioned countries.”

163 In defence, Irene claims that even if the WhatsApp Messages, 1st Letter and 2nd Letter were defamatory, they were fair comment on a matter of public interest or alternatively that they were true in substance and in fact.¹⁸⁷

Justification

164 For the defence of justification, the onus is on Irene to prove that the defamatory statements in the WhatsApp Messages, 1st Letter and 2nd Letter are true in substance and in fact. I find that Irene has failed to make out this defence.

Whether Products were safe for consumption

165 In relation to the safety of the Products, Irene claims there were black spots on the Products and Dways began to receive complaints related to this from customers in around November or December 2019. Irene also claims that Vivianne’s father had passed away suddenly after consuming the Products.¹⁸⁸

166 I find that Irene has failed to show that Dways’ Products were unsafe for consumption (which is the sting of Irene’s defamatory statements in the WhatsApp Messages and 2nd Letter). She therefore fails to make out the defence in so far as this ground is concerned. Even if there were black spots on some of the Products or even if the Products were made in a particular country, neither of these would in itself cause a product to be unsafe.

¹⁸⁷ D1D2 Defence at [30E]–[30F], [30J]–[30K], [30O]–[30P].

¹⁸⁸ D1D2 Defence at [30E(c)]–[30E(d)]; Irene’s AEIC at [88], [93]–[94].

167 There was no objective evidence to show the Products were unsafe. Irene agreed there was no evidence that the Products contained mould and no such thing as a “World Hygiene Standard”.¹⁸⁹ She sought to rely on a report by Axiom Laboratory Pte Ltd (“Report”) dated 10 June 2021 based on tests conducted on HL Span,¹⁹⁰ which: (a) stated the black spots were likely plant based organic oil compounds “that had deteriorated and oxidized causing it to turn black”; and (b) further advised that HL Span should not be consumed until the possible cause of the spots was rectified in the manufacturing process. I give no weight to the Report (which was admitted through Vivianne’s AEIC) and its suggestion of possible safety issues. The maker of the Report was not called and his evidence not tested in cross-examination. It is unclear whether he was even qualified to give an opinion on the safety or effects of HL Span. There was also no explanation on the tests performed on the Product or the basis for any opinion on its safety for consumption.

168 Even if some of Dways’ distributors or customers expressed concerns about black spots being present (specifically on HL Span), this did not in itself prove the Products were unsafe for consumption. Whilst Vivianne sought to imply that her father’s daily consumption of HL Span caused or contributed to his death, she agreed that there was no evidence to show this causal link.¹⁹¹

Whether misrepresentations were made about the manufacturing origin of Products

169 Next, I find Irene has not shown that Dways represented to its distributors or customers that the Products were manufactured in the USA,

¹⁸⁹ 26/8/21 NE 67–71; 27/8/21 NE 11.

¹⁹⁰ Vivianne’s AEIC at [41]; 12AB 6483; 26/8/21 NE 80.

¹⁹¹ 29/9/21 NE 18–22, 25–27.

Australia or New Zealand. Irene sought to rely on the testimony of Dways' former customers and distributors to show that such representations were made. However, I find their testimony to be unreliable and partial, and made to support Irene's defence in the Suit. Whilst these customers and distributors claimed that Zul or Nancy had informed them of the specific place of manufacture, none of them have provided documentary evidence to support this. This is despite the fact that the Chuas had recorded some of the OPPs which Zul had spoken at.¹⁹²

170 First, Vivianne claimed that Zul stated at an OPP on 26 October 2019 that the Products were manufactured in the USA. She then decided to become a distributor as the USA is a reputable country with high manufacturing standards for health supplements. She claimed that Zul made the same representations again at OPPs in November 2019. I disbelieve Vivianne's claim that Zul had made such representations. Vivianne claimed that when she first found out from Justin on 13 February 2020 that the Products were manufactured in China, she became "extremely upset", and this further convinced her that her father's death was caused by his consumption of HL Span.¹⁹³ Yet, she did not confront and ask Zul why he had misrepresented the place of manufacturing, despite having sent a message to him on the same day asking why her father had suddenly passed away when he had been consuming the Products. This is also despite that she had on 15 December 2019 already queried Justin about her father's passing and told Justin that she had lost confidence in the Products.¹⁹⁴ I thus infer that she did not confront Zul with the purported misrepresentation because there was none made.

¹⁹² 3/9/21 NE 116–117; 28/9/21 NE 167–168; 29/9/21 NE 8, 85, 103–104; 30/9/21 NE 41–42.

¹⁹³ Vivianne's AEIC at [6(a)(iii)], [7(a)], [9]–[11], [13], [25], [26(b)].

¹⁹⁴ 8AB 4225, 4243; Vivianne's AEIC at [23], [27]–[29]; 29/9/21 NE 70–72.

171 Second, one Doria Teo (“Doria”) claimed that Zul told her in September 2019 that the Products were manufactured in the USA.¹⁹⁵ I disbelieve Doria. In around February or March 2021, Doria claimed not to recall where the Products were manufactured, so much so that when her friend (“Yang”) purportedly asked her for recommendations for health supplements, Doria had to check with another distributor, Denny, on this. In her AEIC in July 2021, however, Doria stated that she was now able to recall that Zul told her the Products were manufactured in the USA. In cross-examination in September 2021, she then claimed that she “had a very strong impression on USA” because of Zul’s presentation.¹⁹⁶ Her account is unbelievable. One would have thought that her recollection would have been better in February or March 2021, closer in time to her purchase of Products in 2019, rather than in July or September 2021.

172 I accept Dways’ submission that Doria tailored her evidence to assist Irene’s case. Doria had sent the WhatsApp messages to Denny to enquire on the Products’ country of manufacture on 7 March 2021, some five days before the Defendants informed Dways that they intended to call her as a witness in the Suit. Strangely, the only issue which Doria appeared to be interested in (when conversing with Denny) was the place of manufacture of the Products, despite claiming that she had messaged Denny because Yang had asked her over the phone to recommend health supplements and wanted more information about the Products.¹⁹⁷ I disbelieve Doria that Yang had approached her to find out more about Dways’ Products. There was no record of any calls made between them. I find, as Mr Maniam put to Doria, that she had agreed to be Irene’s witness in the Suit by the time she communicated with Denny. Doria was Irene’s

¹⁹⁵ Doria’s AEIC at [10].

¹⁹⁶ Doria’s AEIC at [14]–[15], [18]; 29/9/21 NE 133–134.

¹⁹⁷ PCS at [258]; 29/9/21 NE 119, 126–127, 129; Doria’s AEIC at [14]; 9AB 4996–4997.

friend and her partiality to Irene can be seen from the fact that she attempted to downplay Irene's role in Dways by claiming (repeatedly) in court that Irene did not at that time inform her that Irene was selling Dways' Products, despite having said the contrary in her AEIC.¹⁹⁸

173 Third, one Neo Thiam Beng ("Neo") attested that at Dways' OPP on 20 November 2019, Zul informed him the Products were made in the USA. He then became a distributor. On about 29 November 2019, Vivianne informed Neo that her father had passed away and also told him that her father had consumed 12 capsules of HL Span daily. Neo was shocked to hear of her father's demise and he grew sceptical about the purported health benefits of HL Span. Then on 17 February 2020, Vivianne told him that she was going to seek a refund from Dways for the Products and he also decided to do the same. They finally obtained their refunds on around 18 February 2020.¹⁹⁹

174 I likewise find Neo's testimony (particularly that Zul had told him the Products were made in the USA) to be unreliable and made to assist Irene in her case. Neo's testimony that he grew sceptical about the alleged health benefits of the Products after the passing of Vivianne's father was undermined by the fact that he only sought a refund on the Products some three months later when Vivianne informed him that she was going to seek a refund. This is also despite the fact that he had purchased a very substantial amount of Products, namely, Dways' "platinum package" (being the most expensive package) at \$3,000. I disbelieve Neo that he did not seek a refund from Dways immediately upon discovering Vivianne's father's death (despite claiming to have then become sceptical of the Products and to have been informed by Vivianne that her

¹⁹⁸ 29/9/21 NE 114–116, 121, 126–127, 141–142; Doria's AEIC at [5(a)].

¹⁹⁹ Neo's AEIC at [4]–[11].

father's death was caused by consuming HL Span) because it was "inconvenient" to do so at that time. I disbelieve that he had to wait for Vivianne as he could only get his refund by going through her as she was his upline. Neo did not explain in his AEIC that he had already wanted to seek a refund but was merely waiting for an opportune time to do so through Vivianne.²⁰⁰ Vivianne was Karen's downline but that did not prevent her from going directly to Dways or Nancy to seek a refund.²⁰¹

175 Fourth, one Ong Chong Peng ("Ong") claimed that Zul first told him at an OPP on 7 September 2019 that the Products were manufactured in the USA, but when he met Zul on a few other occasions, Zul said that HL Span was made in the USA and Purity in Australia.²⁰² Despite Ong's assertion that the source of the Products was important to him, he did not seek clarification from Zul on his inconsistent representations of the place of manufacture, and even went on to purchase more Products from Dways. This casts doubts on Ong's evidence as to what Zul had actually informed him. The reliability of Ong's evidence was further called into question by the fact that he was unable to provide a satisfactory answer for why he made no genuine attempt to return the Products and seek a refund, despite claiming to have concerns about them after black spots appeared on HL Span capsules and to have a lot of remaining Products.²⁰³

176 Fifth, one Theresa Ong ("Theresa") claimed that in September 2019, Nancy informed her that Dways sold health supplements and tried to convince her to buy the Products by claiming, among other things, that they were

²⁰⁰ 29/9/21 NE 99–102; Neo's AEIC at [10]–[11].

²⁰¹ Vivianne's AEIC at [5], [8], [24], [27], [31].

²⁰² Ong's AEIC at [3(b)] and [5]; 30/9/21 NE 8–13.

²⁰³ Ong's AEIC at [6]–[7]; 30/9/21 NE 13, 16–19.

manufactured in New Zealand.²⁰⁴ I do not find Theresa to be a credible witness. Instead, I find that she was partial to Irene, her friend of two decades.

177 Theresa sought to portray herself as a neutral party in the Suit, claiming in court that she was a friend of both Nancy and Irene because they previously worked at AIA together and that she actually dealt with Nancy more than with Irene at AIA. But this was contradicted by her AEIC where she stated that when she was at AIA she was not acquainted with Nancy whereas she came to know Irene personally.²⁰⁵ In court, Theresa also acknowledged that she had raised her other past dealings with Nancy in her AEIC, despite these being irrelevant to the Suit, to show Nancy's poor character.²⁰⁶ Further, her account that she was so angry with Nancy at the end of 2019 when she discovered that black spots had appeared on some of the Products, so much so that she purportedly deleted all her messages with Nancy and threw away all the remaining Products, does not appear consistent with her behaviour in February 2020 when she attended a gathering organised by Dways and even spoke to Nancy at the gathering.²⁰⁷ Finally, her claim in a chat group (of which Nancy, Zul, the Defendants and her were members) that she knew "Lisa Chew" as someone she had met at Dways and her insistence that "Lisa" was not Irene, despite being informed in court that Irene had admitted she was "Lisa", showed up her partiality.²⁰⁸ I add that whilst Theresa claimed to have been informed by her friends Fenella and Delphin that Nancy had told them the Products were made in the USA, this was hearsay, and in any event, I disbelieve her account. It should be noted that the Defendants

²⁰⁴ Theresa's AEIC at [16(c)].

²⁰⁵ 30/9/21 NE 23–24, 33–35; Theresa's AEIC at [4], [21].

²⁰⁶ 30/9/21 NE 38–39.

²⁰⁷ 30/9/21 NE 43–47; Theresa's AEIC at [20], [22].

²⁰⁸ 30/9/21 NE 24–32.

had intended to call Fenella and Delphin as witnesses but subsequently decided against it.²⁰⁹ As such, I place no weight on Theresa's assertion that she was told the Products were manufactured in New Zealand or the USA.

178 Finally, as for Loy Sai Guat ("Loy"), it was clear that she had been called to support Irene in the Suit. Loy attested to matters relating to Nancy when she was selling health supplements in previous companies, which were clearly irrelevant and only raised to cast Nancy in a bad light.²¹⁰ Loy's claim that none of the Defendants asked her to testify in the Suit and that she had instead volunteered to do so was unbelievable.²¹¹ Loy further claimed that in July 2020, after trying the Products for a few days (at Nancy's and Zul's insistence), she experienced difficulty and pain in walking which had never occurred before. In court, Loy admitted that she failed to reveal that she was and is still suffering from lupus and rheumatoid arthritis which had caused her to experience difficulty and pain in walking.²¹² I accept Dways' submission that Loy was trying to create the impression that the cause of her health problem was due to the Products. It was clear that Loy's evidence was unreliable.

179 For completeness, I deal with the point made by Irene where Lee said to "Lisa" that Dways had told her that HL Span was manufactured in the USA.²¹³ I give no regard to this as Lee was not called as a witness and the statement is hearsay.

²⁰⁹ Theresa's AEIC at [25]–[26]; 30/9/21 NE 52–56.

²¹⁰ Loy's AEIC at [3]–[11]; 30/9/21 NE 67, 76.

²¹¹ 30/9/21 NE 77–79.

²¹² Loy's AEIC at [12]–[15]; 30/9/21 NE 63–64, 88–91.

²¹³ Irene's AEIC at [450]; 9AB 5091.

180 I accept Zul’s evidence, consistent his AEIC and in cross-examination, that he never informed customers or distributors of the manufacturing origin of the Products, and that he would reveal that HL Span and Purity were made in China and B’Glo in Malaysia only if he was asked.²¹⁴ In the round, I find that Irene has failed to show that Dways (through Zul or Nancy) had misrepresented to its distributors or customers the country of manufacture of its Products.

Conduct of business in dishonest or improper manner

181 Next, Irene claims that Nancy and Zul took Products without paying or accounting for them and that the Chuas were terminated as Dways’ distributors because they discovered what Nancy and Zul had done.²¹⁵ Again, I find that Irene has not shown this to be true.

182 Whilst Karen attested that Steven and her were unable to access the portal for Dways’ distributors (“Portal”) on about 10 February 2020 as Nancy had blocked their access rights,²¹⁶ this did not show that they had been terminated as distributors. I accept Nancy’s explanation that at that time (when the Lims had just exited Dways), she was concerned about missing Products and that the Chuas (who were close to the Lims) might have played a part in this. This led to her decision to temporarily block their access to the Portal, which contained personal data of Dways’ customers, but she did not terminate the Chuas’ accounts with Dways.²¹⁷ Karen attested that when she could not access the Portal, she did not pursue the matter further and just stopped

²¹⁴ Zul’s AEIC at [111] and [289]–[290]; 13/8/21 NE 31–37.

²¹⁵ D1D2 Defence at [30J(c)]–[30J(d)]; Irene’s AEIC at [75]–[80], [456(a)].

²¹⁶ Karen’s AEIC at [64]–[65].

²¹⁷ Nancy’s AEIC at [81], [325]–[329].

contacting Nancy.²¹⁸ Hence this was not a case in which the Chuas were terminated as Dways' distributors; rather, they chose to stop being involved in Dways. Indeed, Nancy's concerns turned out to be justified when the CCTV Footages showed the Chuas assisting the Lims to remove Products on 30 January 2020. There was in any event no evidence to show that the Chuas' distributorship was terminated *because* they discovered Nancy and Zul's purported misappropriation of Products or sale proceeds.

183 I mention briefly that there is insufficient evidence to show on balance that Nancy or Zul had taken Products without paying for them or pocketed the proceeds of sales of Products. The WhatsApp messages between Irene and Karen on 30 January 2020 which the Lims relied on to show that Nancy had taken Products without paying for them,²¹⁹ did not prove that Nancy had misappropriated Products or the proceeds of sale thereof. The messages were between only Irene and Karen, of which Nancy was unaware at the material time, and it was *Irene* who claimed in these messages that Nancy had taken Products without paying. In court, Karen admitted that she simply accepted what Irene had said without verifying it independently, and that what she asserted in her AEIC regarding Nancy and Zul taking Products without accounting for them was not supported by evidence.²²⁰ Pertinently, the 30 January 2020 messages were made when the Lims had already removed Products on 23 and 30 January 2020.

²¹⁸ Karen's AEIC at [67].

²¹⁹ 8AB 4266–4270; DCS at [363].

²²⁰ 3/9/21 NE 97–101, 107–108.

Fair comment

184 I turn to Irene’s defence of fair comment, in which she must establish the following (*Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 (“*Review Publishing*”) at [139]):

- (a) the words complained of are comments, though they may consist of or include inferences of fact;
- (b) the comment is on a matter of public interest;
- (c) the comment is based on facts; and
- (d) the comment is one which a fair-minded person can honestly make on the facts proved.

185 Irene claims that the words in the WhatsApp Messages, 1st Letter and 2nd Letter were fair comment on a matter of public interest in relation to the health and safety of those who consumed or intended to consume the Products and that they were made to allow these individuals to make an informed decision on whether to purchase or be a distributor of the Products.²²¹ I find the defence of fair comment is not made out.

186 First, an ordinary reasonable person reading the tone and language of the WhatsApp Messages, 1st Letter and 2nd Letter would have understood that the writer was making factual statements and not merely comments (*Review Publishing* at [144]). For instance, in the WhatsApp Messages, Irene categorically claimed that she “[had] been cheated”, that Dways “[had] cheated many people”, and that the Products were made in a country that did not meet

²²¹ D1D2 Defence at [30E], [30J], [30O].

the “World Hygiene Standard”. These were not words of opinion but assertions of fact that the Products were unsafe for consumption because they did not meet a specified standard and that Dways had in fact cheated many people. Likewise, the mention in the 1st Letter that distributors were terminated because they discovered Nancy and Zul had misappropriated the proceeds of sale of Products was not a comment but a definitive statement of fact. Irene’s claim in the 2nd Letter that Dways had informed distributors that the Products were manufactured in the USA, Australia or New Zealand, but that they subsequently discovered this to be untrue, was again putting across a factual statement.

187 Second, Irene failed to show that many of the statements, assuming they were comments, were based on true facts. For instance, she claimed that she was “Lisa” (which was false) and joined Dways to buy its Products but was cheated. If Irene claimed to have been cheated because *she* (as “Lisa”) was informed the Products were made in the USA, New Zealand or Australia, then Irene would have known this was not true. She had, even in March 2019, been aware that HL Span and Purity were manufactured in China. She also admitted in court that even when she was still a director of Dways, she was perfectly happy for it to sell products manufactured in China. Irene also knew that B’Glo was manufactured in Malaysia at the material time.²²² Her claim that the Products were made from a country that did not meet the World Hygiene Standard was also not based on true facts as there was no such standard.

188 Also, the defence of fair comment is defeated by malice. In this regard, I find that Irene did not genuinely believe in what she said. She knew the manufacturing origins of the Products and knew there was no “World Hygiene Standard”. Whilst she explained in court that what she had wanted to say in the

²²² 26/8/21 NE 61–65, 75; Irene’s AEIC at [58]–[59].

WhatsApp Messages was “fair standard”, she admitted that she *did* intend to type the words “World Hygiene Standard”. At trial, Irene attempted to distance herself from her statements that the *country* of manufacture was a cause for concern, claiming instead that she was actually concerned about the manufacturing *plant*.²²³ This showed that Irene did not genuinely believe that the country of manufacture was a cause for concern. In any event, I disbelieve that she had concerns about the manufacturer. The WhatsApp Messages referred in many instances to the manufacturing “country”. Contemporaneous messages showed the Lims were involved in Dways’ operations from the outset, and I reiterate that Irene knew very early on of the origins of the Products and was nevertheless perfectly happy for Dways to sell them.²²⁴

189 Next, I also find that Irene did not genuinely believe the Products (particularly HL Span) were unsafe for consumption just because they had black spots. Irene agreed there was no evidence that the Products contained mould.²²⁵ As late as in December 2019, Irene was explaining to distributors the reason for black spots on the Products and even requested they disseminate the information to their downlines. She had accepted the manufacturer’s explanation that the capsules turned black because of exposure to moisture, and she did not have any concerns then and in fact continued to promote the Products. Additionally, the Lims had in January 2020 brought home a few months’ worth of Products (pursuant to the purported Family Entitlement), which showed that Irene was not genuinely concerned about the safety of the Products for consumption.²²⁶

²²³ 26/8/21 NE 64–73.

²²⁴ 10/8/21 NE 98.

²²⁵ 27/8/21 NE 11.

²²⁶ D1D2 Reply at [18B(e)]–[18B(f)]; 5AB 2576–2577; 26/8/21 NE 85–92; Justin’s AEIC at [17(c)].

190 Pertinently, the Lims' removal of Products in January 2020 took place *after* Vivianne had informed Justin on 15 December 2019 about her father's passing and told Justin she had lost confidence in HL Span. Irene also agreed that she continued to promote the Products to various persons on 19 December 2019 even after knowing of Vivianne's father's passing. This undermined Irene's case that she became increasingly concerned about the safety of the Products for consumption after knowing of Vivianne's father's passing. Although Irene claimed that her concerns were confirmed when the Lims met with Vivianne on 13 February 2020, she agreed there was no proof that Vivianne's father's death was caused or contributed to by the Products.²²⁷

Conclusion on the defamation claim

191 In the round, I find that Dways has made out its case in defamation on the WhatsApp Messages, 1st Letter and 2nd Letter. The statements therein sought to undermine the Products and business reputation of Dways and I accept that by seeking to undermine the reputation of Nancy and Zul (who are the founders of and key persons in the company) and the safety of the Products, Irene was damaging the trust and confidence distributors and customers had in Dways and its Products.²²⁸

192 In closing submissions, Mr Lim raised for the first time that even if defamation is made out, the publications were made only to three persons. There was thus no real or substantial tort committed; further any damage to Dways would be minimal, as would any vindication to it should it succeed on the action. Hence, even if Dways succeeds, the cost of Dways pursuing the claim would

²²⁷ 26/8/21 NE 87–88, 92–93; 29/9/21 NE 51; 5AB 2582–2584; 8AB 4225–4226; D1D2 Defence at [30E(d)].

²²⁸ Nancy's AEIC at [493].

have been out of proportion to what has been achieved and an abuse of process (citing *Qingdao Bohai Construction Group Co, Ltd and others v Goh Teck Beng and another* [2016] 4 SLR 977 at [145] and *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946 (“*Jameel*”) at [69]–[70]).²²⁹

193 It should be noted that Irene has raised this issue belatedly (unlike in *Jameel* where the defendant applied for summary dismissal of the plaintiff’s claim) when this should generally be raised at an early stage to support a case that it would be disproportionate to permit the matter to proceed any further. Moreover, it is unclear at this stage whether the damage to Dways is minimal or wholly disproportionate to the cost of pursuing proceedings as the trial is bifurcated and the extent of publication is a matter for determination at the stage of assessment of damages. This is also given the seriousness of the allegations made (*ie*, the Products were unsafe for consumption and Dways’ business was conducted in a dishonest manner) and the fact that publication to a limited number of people may still be very damaging. (See *Yan Jun v Attorney-General* [2015] 1 SLR 752 at [118] and [119], citing *Gatley on Libel and Slander* (Alastair Mullis & Richard Parkes QC joint eds) (Sweet & Maxwell, 12th Ed, 2013) and *Carter-Ruck on Libel and Privacy* (Alastair Mullis & Cameron Doley gen eds) (Lexis Nexis, 6th Ed, 2010).) As such, I do not accept Mr Lim’s submission that Dways’ claim for defamation should be dismissed at this stage based on the extent of publication of the defamatory statements.

Conclusion

194 In so far as I have found any of the Defendants liable to Dways on claims in which damages need not be assessed, I summarise as follows:

²²⁹ DCS at [331]–[335].

(a) Irene is liable to pay the sum of those Disputed Payments which I found were made without any legitimate basis and/or in breach of her directors' duties and, of those Disputed Payments, Justin is jointly and severally liable with Irene in relation to the sum of \$21,000;

(b) Karen and Steven are jointly and severally liable to repay the Loan of \$30,000; and

(c) Irene and Justin are jointly and severally liable for US\$1,527.20 on the TLC Investment.

195 In addition, damages are to be assessed for Dways' claim against the Lims for misappropriation of Products and against Irene for defamation.

196 I will reserve the issue of costs.

Audrey Lim
Judge of the High Court

Adam Muneer Yusoff Maniam, Charmaine Yap Yun Ning and Liu
Siew Rong (Drew & Napier LLC) for the plaintiff;
Lim Wei Ming Keith and Derek Tan Chang Shen (Quahe Woo &
Palmer LLC) for the defendants.
