IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 247

Originating Summons No 156 of 2020

Between

Blasco Martinez Gemma

… *Plaintiff*

And

(1) Ee Meng Yen Angela
(2) Purandar Janampalli Rao

… *Defendants*

Originating Summons No 157 of 2020

Between

Javier Curtichs Moncusi

… *Plaintiff*

And

(1) Ee Meng Yen Angela
(2) Purandar Janampalli Rao

… *Defendants*

GROUNDS OF DECISION

[Agency] — [Evidence of agency]

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Kannan Ramesh J:

Introduction

1 Ms Blasco Martinez Gemma ("Ms Gemma") and Mr Javier Curtichs Moncusi are the Plaintiffs in Originating Summons No 156 of 2020 and Originating Summons No 157 of 2020 respectively. In their respective applications, the Plaintiffs sought to reverse the decision of the Defendants, the Judicial Managers of Epicentre Holdings Limited ("EHL"), rejecting their proofs of debt dated 27 September 2019 for the sums of S$610,012.81 and S$362,478.17 respectively ("the Proofs of Debt"). The Plaintiffs sought, instead, to have the claims admitted in full.

2 After hearing arguments, I dismissed both applications with brief grounds. The Plaintiffs have appealed, and I now give the full grounds for my decision.

Facts

3 EHL was a company listed on the Catalist Board of the Singapore Exchange Securities Trading Limited. Its business involved the retail of Apple brand products as well as complementary third-party and proprietary products through its stores in Singapore and Malaysia. Mr Kenneth Lim Tiong Hian ("Lim") was appointed to EHL's board on 24 June 2016. From 31 July 2016 to 30 July 2019, Lim was its Executive Chairman and Acting Chief Executive Officer ("Acting CEO"). At all material times, he was also the sole shareholder of Broadwell Limited ("Broadwell"), a company incorporated and having its registered address in the British Virgin Islands.

4 The Plaintiffs are citizens of Spain. They are husband and wife. Sometime in late 2014 or early 2015, they decided to invest in EHL on the recommendation of Mr Michael Lee ("Mr Lee"), their relationship manager in United Overseas Bank Limited. They each entered into agreements with Broadwell described as the "SGX Listed Company Financing Agreement" (collectively, "the Broadwell Agreements"). The Broadwell Agreements were signed by Lim on behalf of Broadwell. However, as I will elaborate below at [7], the Plaintiffs only met Lim on 6 November 2018.

5 Under the Broadwell Agreements, the Plaintiffs were to grant loans to Broadwell ("the Broadwell Loans") and receive monthly interest at a prescribed rate until the loans matured, whereupon they would become payable. The Broadwell Loans matured in 2017. The Broadwell Agreements provided that the Broadwell Loans were to be used towards "the investment in the shares, and

the funding of the projects" of EHL. The Plaintiffs duly disbursed the loans to Broadwell by telegraphic transfers and cheques on five separate occasions between 15 July 2016 and 15 February 2017. The Plaintiffs received monthly interest payments from Broadwell by cheques up to May 2019.

6 When the Broadwell Loans matured, they were offered to the Plaintiffs for renewal on substantially the same terms. The Plaintiffs agreed as the monthly interest payments had been prompt. Consequently, Broadwell issued letters confirming both the maturity and the renewal of the Broadwell Loans ("the Broadwell Confirmations"). The letters contained the corporate logos of both Broadwell and EHL, and were signed as "Kenneth Lim Tiong Hian, Broadwell Limited and Epicentre Holdings Limited". The Plaintiffs then signed fresh "SGX Listed Company Financing Agreements" with Broadwell on substantially the same terms as the Broadwell Agreements. These agreements were again signed by Lim on behalf of Broadwell. The renewed Broadwell Loans matured in 2019.

7 On 6 November 2018, Mr Lee arranged a meeting between the Plaintiffs and Lim at the latter's office. This was the first meeting between the Plaintiffs and Lim. Lim introduced himself as the CEO of EHL and its subsidiaries and discussed the Broadwell Loans with the Plaintiffs. According to the Plaintiffs, Lim explained that Broadwell was part of EHL's "structure" as a vehicle to drive investments in EHL. He also shared information on new investment projects and invited Ms Gemma to invest in them.

8 When the renewed Broadwell Loans matured in 2019, they were once again renewed between 15 January 2019 and 15 March 2019. This time, however, there was a significant difference. The renewal confirmations ("the EHL Confirmations") this time only bore EHL's corporate logo. They were

signed by Lim as a representative of EHL. By confirming the maturity and renewal of loans originally disbursed under the Broadwell Agreements, the EHL Confirmations purported to roll over and "renew" the Broadwell Loans as debts owed by EHL to the Plaintiffs. For ease of reference, I shall refer to the loans that were purportedly rolled over and renewed on this occasion as "the EHL Loans".

9 New "SGX Listed Company Financing Agreements" were executed between the Plaintiffs and EHL ("the EHL Agreements"), not Broadwell, on substantially the same terms as the Broadwell Agreements. The EHL Agreements were signed by Lim "[f]or and on behalf" of EHL. Clause 3 of the EHL Agreements provided for fresh loans to be made by the Plaintiffs to EHL. In particular, it provided that "the proceeds of the [EHL Loans] shall be disbursed to [EHL] in *one lump sum on the date of* [the EHL Agreements] and made payable to [EHL] in the form of a cheque or cashier's order" [emphasis added]. However, notwithstanding the terms of the EHL Agreements, it was common ground that no fresh loans were in fact made. As far as the Plaintiffs were concerned, by the EHL Agreements, the Broadwell Loans were being rolled over and renewed upon maturity in the same way they were in 2017, except that this time, they were rolled over and renewed as loans due from EHL (instead of Broadwell). In other words, EHL assumed Broadwell's debts without receiving the proceeds of any fresh loans. Clause 8(iv) of the EHL Agreements made this plain by stating that the EHL Loans (previously the Broadwell Loans) were enforceable against EHL. The clause provided as follows:

> **8. WARRANTIES**
>
> [EHL] hereby represents and warrants to and for the benefit of the [Plaintiffs] that:-
>
> …

> (iv) a*ll actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents from third parties) in order* (a) to enable [EHL] lawfully to enter into, exercise its rights and perform and comply with its obligations under this Agreement and (b) *to ensure that those obligations are valid, legally binding and enforceable have been taken, fulfilled and done*; …
>
> (emphasis added)

The Plaintiffs' claims are therefore brought on the basis of the EHL Agreements for the purported debts owed thereunder.

10 As before, the Plaintiffs continued to receive monthly interest payments until payments completely ceased in June 2019. When that happened, Ms Gemma made inquiries with Mr Lee to understand the reasons for the cessation. The Plaintiffs discovered that: (a) Lim had gone missing and (b) in an announcement on 30 May 2019, EHL had disclosed based on a report by Deloitte & Touche LLP ("the D&T Report") that EHL's management had considered it prudent for certain funds to be received by Broadwell as a conduit, before onward transmission to EHL. Notably, the D&T report did not conclude that the EHL Loans were raised for EHL using this arrangement.

11 On 11 July 2019, the Plaintiffs issued statutory demands against EHL for repayment of the EHL Loans. EHL's solicitors replied on 16 July 2019, disputing the Plaintiffs' claims on the grounds that EHL and its Independent Directors had "no knowledge of [the EHL Loans] or their existence at all times" until the receipt of the Plaintiffs' statutory demands, and stated that Lim had no authority to enter into the EHL Agreements on behalf of EHL at any material time.

12 The Defendants were appointed the Interim Judicial Managers and Judicial Managers of EHL on 2 August 2019 and 4 September 2019

respectively. On 27 September 2019, the Plaintiffs submitted the Proofs of Debt. The Proofs of Debt were for the loans which the Plaintiffs had disbursed to Broadwell (*ie*, the Broadwell Loans) under the Broadwell Agreements and interest thereon, which according to the Plaintiffs became liabilities owed by EHL upon the issuance of the EHL Confirmations and the execution of the EHL Agreements. The Proofs of Debt were met with a request for documents from the Defendants. The documents sought by the Defendants pertained to two things: first, whether the Plaintiffs had disbursed loans to EHL in accordance with and in performance of the terms of the EHL Agreements, and second, whether monthly interest payments had been made by EHL to the Plaintiffs pursuant to the EHL Agreements. On 24 December 2019, the Plaintiffs responded by furnishing proof of their transfers of funds to Broadwell under the Broadwell Agreements as well as proof that they had received interest payments in 2019 (which did not, however, show that the payments were from EHL).

13 On 13 January 2020, the Defendants issued Notices of Rejection of the Proofs of Debt. The grounds of rejection were as follows:

(a) First Ground of Rejection: The Judicial Managers did not have sight of any documents or records (including bank statements) showing any receipt of funds or payment of interest by EHL to either of the Plaintiffs in respect of the EHL Loans.

(b) Second Ground of Rejection: The Company Registration Number indicated in Part C of the Schedule to the EHL Agreements belonged to Epicentre Pte Ltd ("EPL"), not EHL.

(c) Third Ground of Rejection: The Judicial Managers did not have sight of any documents or records showing that the board of directors of EHL had approved the execution of the EHL Agreements.

14 The Plaintiffs were dissatisfied with the outcome and commenced the present proceedings against the Defendants.

The parties' cases

The Plaintiffs' case

15 The Plaintiffs' case essentially was that there was no basis to reject the Proofs of Debt as they were creditors of EHL for the EHL Loans. The claims were based entirely on the EHL Agreements. The Plaintiffs contended that with the issuance of the EHL Confirmations and the execution of the EHL Agreements, EHL was the borrower for the EHL Loans. In substance, the argument was that EHL replaced Broadwell as the debtor for the Broadwell Loans, with the Broadwell Loans being re-characterised as the EHL Loans under the EHL Agreements. Accordingly, EHL was liable for the debt submitted in the Proofs of Debt.

16 As regards the First Ground of Rejection, the Plaintiffs contended that they had disbursed loans (ostensibly to EHL under the EHL Agreements) and received interest (ostensibly from EHL), and whether EHL had actually received the loans or caused the interest payments to be made was a matter internal to EHL which did not affect their right to repayment. This argument of course skirted the fact that the Plaintiffs did not in fact make fresh loans as provided in the EHL Agreements (see [9] above). The Plaintiffs further relied on findings in the D&T Report that Broadwell had at times acted as a "conduit" for transmitting funds to EHL, though they were not able to point to any part of the report that found that to be the case as regards the EHL Loans.

17 As regards the Second Ground of Rejection, the Plaintiffs contended that the inaccurately-stated Company Registration Number was not a valid reason

for rejecting the Proofs of Debt as the EHL Agreements clearly stated that the borrower was EHL, not EPL. They further argued that for this reason, the inaccuracy was not evident on the face of the EHL Agreements.

18 As regards the Third Ground of Rejection, the Plaintiffs submitted that as the Executive Chairman and Acting CEO of EHL, Lim had the authority (either actual or apparent) to enter into the EHL Agreements on EHL's behalf. The argument was that the office held by Lim carried with it the authority to enter into the EHL Agreements.

19 In their written submissions, the Plaintiffs alternatively argued that EHL was "vicariously liable" for Lim's conduct in procuring the EHL Loans. They did not, however, pursue this point in their oral submissions. I nonetheless address this point briefly in these grounds at [67]–[68] below.

The Defendants' case

20 The Defendants' case was essentially that Lim did not have actual or apparent authority to enter into the EHL Agreements. As regards apparent authority, the Defendants asserted that the Plaintiffs had constructive, if not actual, knowledge, that Lim did not have the requisite authority as it was evident that the loans were made to Broadwell, not EHL. Further, the Defendants submitted that liability for the debts claimed in the Proofs of Debt rested with Broadwell, and not EHL as, contrary to the terms of the EHL Agreements, no loans were in fact disbursed to EHL under the EHL Agreements.

Issues to be determined

21 The following issues fell for determination:

(a) whether Lim had authority (actual or apparent) to enter into the EHL Agreements so as to cause EHL to assume Broadwell's liability for the Broadwell Loans, and as regards Lim's apparent authority, whether the Plaintiffs had notice of his absence of authority;

(b) further or in any case, whether EHL was liable to the Plaintiffs in the sum stated in the Proofs of Debt; and

(c) alternatively, whether EHL was vicariously liable to the Plaintiffs for Lim's conduct.

Whether Lim had authority to enter into the EHL Agreements

22 I turn first to the question of whether Lim had the authority to enter into the EHL Agreements. This raises the related question of whether Lim's authority extended to EHL assuming Broadwell's liability for the Broadwell Loans because that was the substance of the transaction. As noted at [9] above, the intended effect and result of transactions under the EHL Agreements was the roll-over and re-characterisation of the Broadwell Loans as the EHL Loans, with EHL thereby purporting to become the debtor to the Plaintiffs in place of Broadwell. It follows that if Lim had no authority to enter into a transaction of this nature, the Plaintiffs' case must fail *in limine.*

23 The law as to an agent's authority, actual and apparent, was summarised by Lord Denning MR in *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 ("*Hely-Hutchinson*") at 583a, which is worth quoting *in extenso*:

> I need not consider at length the law on the authority of an agent, actual, apparent or ostensible. That has been done in the judgments of this court in *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.* It is there shown that actual authority may be express or implied. It is *express* when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign

> cheques. It is *implied* when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorize him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.
>
> Ostensible or apparent authority is the authority of an agent as it *appears* to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his *ostensible* authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. …
>
> (emphasis added in underline)

I therefore dealt with the question of authority from the perspective of actual authority as the Plaintiffs' case on apparent authority rested on the same basis as their case on actual authority *ie*, that Lim had authority, actual or apparent, by reason of his position as Executive Chairman and Acting CEO of EHL. Accordingly, if that question is answered in the negative, then absent other circumstances that clothed Lim with apparent authority, it could not be said that his position carried with it apparent authority.

24 Accordingly, Lim's actual authority may be analysed as follows. It was not disputed that there was no resolution by EHL's board of directors authorizing Lim to enter into the EHL Agreements and cause EHL to assume liability for the Broadwell Loans as the EHL Loans. As such, it could not be

said that Lim had express authority. Next, did he have implied authority by reason of his position as the Executive Chairman and Acting CEO of EHL to enter into the EHL Agreements? As noted above, if he did not, he would not also have apparent authority unless he had apparent authority on other grounds, for example, if EHL's conduct or representations had clothed him with authority. I shall deal with each of these questions in the analysis below.

Whether Lim had actual authority by reason of his position

25 The Plaintiffs' argument was that Lim had the actual (implied) authority by reason of his position as Executive Chairman and Acting CEO of EHL to enter into the EHL Agreements and to cause EHL to assume liability for the Broadwell Loans. They relied on three authorities in support of their submission namely, *Biggerstaff v Rowatt's Wharf, Limited* [1896] 2 Ch 93 ("*Biggerstaff*"); *Hely-Hutchinson* and *SPP Ltd v Chew Beng Gim and another* [1993] 3 SLR(R) 17 ("*SPP*").

26 I start first with *Biggerstaff*. In that case, the company, Rowatt's Wharf Ltd ("RW"), was in financial difficulties, and unable to pay its workers. Mr Davy, the managing director of RW, contracted on RW's behalf with one of RW's creditors, Harvey, Brand & Co ("HBC"), that if HBC advanced RW enough money to pay its workers, RW would assign to HBC some of the debts it was owed as security for the advance as well as for the existing debt it owed to HBC. To effect the assignment, Mr Davy issued on behalf of RW several "letters of hypothecation" to its debtors, informing them that they owed their debts to HBC instead of RW. When disputes arose between RW and HBC, RW claimed that Mr Davy had acted without authority in contracting for the advance and also in issuing the letters of hypothecation. The Articles of Association of RW provided that the directors might delegate to the managing director "all the

powers of the directors except as to drawing, accepting or indorsing bills of exchange and promissory notes", but there was no evidence that such powers were in fact delegated to Mr Davy. Notwithstanding this, the English Court of Appeal held that Mr Davy was authorised to contract for the advance and to issue the letters of hypothecation. As Lindley LJ (as he then was) observed at 102:

> … The *persons dealing with [Mr Davy] must look to the articles*, and see that the managing director *might have* power to do what he purports to do, and *that is enough for a person dealing with him bona fide*. It is settled by a long string of authorities that, where directors give a security which according to the articles they *might have* power to give, the person taking it is entitled to assume that they had the power.
>
> [emphasis added]

27 The precise basis of Mr Davy's authority in *Biggerstaff* was unclear from Lindley LJ's judgment. However, a close reading of *Biggerstaff* suggests that the English Court of Appeal had decided the case on Mr Davy's *apparent* authority stemming from the provision in RW's Articles of Association which permitted the directors to delegate their powers to him. The English Court of Appeal's focus on "the persons dealing with [Mr Davy]" having constructive notice of RW's Articles of Association speaks to this (see *Biggerstaff* at 102 (*per* Lindley LJ); 104 (*per* Lopes LJ) and 106 (*per* Kay LJ)). Further, Lindley LJ's reference in the passage cited above to RW's Articles of Association as the basis for the belief of persons dealing with RW's managing director and directors that they "might have" authority pointed to the same conclusion. This was not an actual authority analysis. Further, there was also no analysis by the court of whether Mr Davy had implied authority by reason of being RW's managing director to borrow money and give security over RW's property on its behalf (a point which I shall deal with in more detail at [31] below). Accordingly, *Biggerstaff* should be understood as a case decided on the basis of

the apparent authority of the managing director, arising by reason of the specific provision in the company's Articles of Association.

28 Further, even as regards apparent authority, I am of the view that the view expressed in *Biggerstaff* is questionable. In this regard, I agree with the reasons offered by Sargant LJ in *Houghton and Company v Northard, Lowe and Wills, Limited* [1927] 1 KB 246 ("*Houghton*") (see [29] below). It seemed incorrect to conclude that Mr Davy had apparent authority by reason of a provision in RW's Articles of Association that permitted the directors to delegate their powers to him. The provision provided that actual authority could be conferred through an act of delegation. It appeared incorrect to say that Mr Davy, as the managing director, had apparent authority because third parties who dealt with him might assume that the board of directors had delegated its powers to him pursuant to provisions of the Articles of Association. It seemed to me that third parties could not make that assumption as to do so would be to ignore the specific language of the Articles of Association which they had actual or constructive notice of. The analysis in *Biggerstaff* thus conflated the power of the directors under the Articles of Association to delegate, with the separate issue of the authority of Mr Davy. In any case, this point was not pertinent to the issue at hand. For present purposes, it sufficed to note that *Biggerstaff* was an apparent, not an actual, authority analysis arising from the specific provision in RW's Articles of Association.

29 For reasons that are not clear, later authorities appear to have interpreted *Biggerstaff* as a case decided on the basis of Mr Davy's *actual* authority as managing director. In *Houghton*, the Articles of Association of the defendant company, NLW, empowered the directors to "delegate to any managing director, local board, head manager, manager, attorney or agent any of the powers … for the time being vested in the directors", and also to "delegate any

of their powers to committees consisting of such member or members of their body as they think fit". The provisions were therefore similar to the provision in *Biggerstaff*. Mr Maurice Lowe, a director of both NLW and another company P, contracted with the plaintiffs that in consideration of the plaintiffs advancing a certain sum of money to P, the plaintiffs would have a right to sell on commission all the fruit imported by NLW and P, and retain the proceeds of sale as security for the advance. Mr Maurice Lowe in fact had not been conferred authority by NLW's directors to contract. Sargant LJ held that the plaintiffs could not rely on NLW's Articles of Association as a basis of Mr Maurice Lowe's authority because the power of delegation had not been exercised by the directors. The plaintiffs could not assume that the power of delegation had been "exercised in favour of a director, secretary or other officer of the company so as to validate the contract": *Houghton* at 266. Sargant LJ also took the view that the plaintiffs could not assume that anything necessary to delegate any of the functions of the board to Mr Maurice Lowe had been done as this would "place limited companies, without any sufficient reason for so doing, at the mercy of any servant or agent who should purport to contract on their behalf" on the ground that the power to contract "might conceivably have been entrusted to him": *Houghton* at 267. Sargant LJ did not accept the view expressed in *Biggerstaff* that Mr Davy had authority by reason of RW's Articles of Association as there was no evidence that the board's authority had been delegated to him. Accordingly, Mr Maurice Lowe did not have apparent authority by reason of NLW's Articles of Association. As I stated above at [28], I am of the view that he was right in those observations.

30 However, Sargant LJ then went on to distinguish *Biggerstaff* on the basis that:

> … there the agent whose authority was relied on had been acting to the knowledge of the company as a managing director,

> and the *act done was one within the ordinary ambit of the powers of a managing director in the transaction of the company's affairs. It is I think clear that the transaction there would not have been supported had it not been in this ordinary course*, or had the agent been acting merely as one of the ordinary directors of the company. I know of no case in which an ordinary director, acting without authority in fact, has been held capable of binding a company by a contract with a third party, merely on the ground that that third party assumed that the director had been given authority by the board to make the contract.
>
> [emphasis added]

31 In the passage cited above, Sargant LJ appeared to have considered the source of Mr Davy's authority in *Biggerstaff* ([25] *supra*) to borrow money and give security on RW's behalf to be the "ordinary ambit of the powers of a managing director in the transaction of the company's affairs". With respect, as stated earlier, that was not what *Biggerstaff* said or was about. *Houghton* appeared to suggest that *Biggerstaff* stood for the proposition that the ordinary ambit of the authority of a managing director of a company included the power to borrow and give security on behalf of the company *ie* that he had such authority *by reason of his position*. *Biggerstaff* was also cited as authority for this proposition in *Bowstead and Reynolds on Agency* (Peter Watts gen ed) (Sweet & Maxwell, 21st Ed, 2018) at 3.029; see also *Walter Woon on Company Law* (Tan Cheng Han SC ed) (Sweet & Maxwell, 3rd Ed, 2009) at 3.14. As noted earlier, *Biggerstaff* did not address the issue of whether the managing director had actual authority *by reason of his position* to borrow money and give security on the company's behalf. Each member of the court in *Biggerstaff* emphasised the importance of persons transacting with Mr Davy as managing director to have regard to RW's Articles of Association to ascertain whether he had the power which he purported to exercise, *ie* the power to borrow money and give security. This was at best an issue of apparent authority, as noted earlier.

32 Thus, in so far as *Houghton* relies on *Biggerstaff* as authority for the proposition that a managing director has the implied authority to borrow money and give security *by reason of his position*, it was questionable authority. Further, it is difficult to accept that a managing director has implied authority to borrow money and give security on behalf of the company as a general or universal proposition. This must, at best, be a context-driven inquiry depending on a variety of factors such as, for example, the constitution of the company, the nature of the company, the nature of the transaction, and the conduct of the company. It seemed to me that it would be more reasonable to say that lenders should require, as a matter of proper due diligence, express evidence of authorisation, such as a resolution of the board of directors, to enter into borrowing arrangements with a company. In this connection, I make two points.

33 First, such an approach comports with commercial reality, where lenders generally expect authorisations of the board of directors of the debtor company to be furnished before entering into loan agreements. For instance, in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 ("*Skandinaviska*") at [104], the Court of Appeal observed that a bank was negligent in readily accepting as genuine forged resolutions of the board of directors of a company without verifying the directors' signatures on that resolution. While this observation did not deal with the point on whether the company was bound by the loans granted by the bank, it showed that lenders were expected to request for a resolution of the board of directors authorising the borrowing. It follows *a fortiori* that a managing director does not ordinarily have the implied authority to borrow monies and give security on behalf of the company.

34 Secondly, a general proposition such as that advanced by the Plaintiffs raises serious issues with regard to listed entities such as EHL. It is common knowledge that such entities are subject to strict regulatory and governance structures. The board of directors and its various committees play a key role in the governance and management of risk, in order to safeguard the interests of the company and its shareholders: see *eg*, the Singapore Code of Corporate Governance 2018 at para 9. In this context, it seems incorrect to suggest that the managing director, CEO or other senior officers of a listed company would generally have, by reason of their office, the implied authority to borrow money and give security on behalf of the company as a matter of ordinary business practice.

35 I now return to *Hely-Hutchinson* ([23] *supra*), the second of the cases relied upon by the Plaintiffs. In that case, Mr Richards, the chairman of the company, also acted as its chief executive. In that capacity, he made decisions on matters concerning finance. He would often commit the company to contracts without the knowledge of the board of directors and reported the matter afterwards. Lord Denning MR took the view that while Mr Richards did not have, by virtue of his appointment as the chief executive, the authority to enter into guarantees and indemnities without the approval of the board of directors, *he had the implied authority to do so because for many months the board of directors had acquiesced in a state of affairs in which he had committed the company to contracts without the necessity of seeking the directors' sanction*: *Hely-Hutchinson* at 584. This was therefore a conclusion on actual (implied) authority based on the conduct of the company. This is significant as it differentiates this case from the present. It is also significant that having arrived at this conclusion, Lord Denning MR did not find it necessary to express an opinion on the trial judge's view that Mr Richards had acted within

the apparent authority he had as the *de facto* managing director or chief executive of the company: *Hely-Hutchinson* at 585.

36 Similarly, in *SPP* ([25] *supra*), Mr Ong, the managing director and CEO of the company, SPPL, was considered its "moving spirit". Board meetings were rarely held, and decisions were taken informally after discussions between the Mr Ong and the directors. The respondents, who were directors of SPPL, were persuaded by Mr Ong to execute personal guarantees in favour of a bank that provided hire-purchase financing to F, a subsidiary of SPPL. When F defaulted, the bank claimed against the respondents under their personal guarantees. The respondents in turn sought an indemnity from SPPL which contended that it was not liable as Mr Ong had acted without authority. In considering whether SPPL was liable to indemnify the respondents, the Court of Appeal observed that the facts were somewhat similar to that in *Hely-Hutchinson*: *SPP* at [22]. *Mr Ong ran SPPL as a "one man show" because the board of directors were content to let him manage and run SPPL in that they acquiesced in what he did.* They had therefore vested him with implied authority to authorize the execution of the personal guarantees by the respondents. SPPL was therefore liable to indemnify the respondents: *SPP* at [24].

37 *Hely-Hutchinson* and *SPP* did not, in my view, stand for the proposition that a managing director had the authority by reason of his position to borrow money and give security on behalf of the company. It was plain that the source of the agents' implied authority in both cases was the latitude given to them by their respective companies' board of directors to contract on behalf of the company without the board of directors' approval. This is a separate point which I will explore at [40] below. These cases therefore did not assist the Plaintiffs.

38 To summarise, I took the view that a managing director or CEO (acting or otherwise) did not, as a general rule, have the power to borrow money or give security on behalf of the company by reason of his position. This was, in my view, a context-sensitive issue and regard should be had to all the circumstances of the case. I therefore respectfully disagreed with the authorities that have construed *Biggerstaff* as standing for the proposition that a managing director has implied authority by reason of his position to borrow money and give security of behalf of the company. There was nothing on the evidence before me that suggested that as the Executive Chairman and Acting CEO of EHL, Lim automatically had the authority to borrow money or to give security on EHL's behalf. He therefore did not have the implied authority asserted by the Plaintiffs.

39 In the final analysis, I had difficulties following the Plaintiffs' argument on Lim's authority. The argument was made at a general level of abstraction and side-stepped the terms of the EHL Agreements. In my view, it was incorrect to contend that Lim had the actual (implied) authority to enter into the EHL Agreements when the Plaintiffs knew (or at the very least ought to have known) that, contrary to the terms of therein, they never intended to and did not make fresh loans. They were rolling over and migrating Broadwell's existing debt to EHL. To put it simply and bluntly, they were signing agreements which on their face did not square with the transaction on the ground. Having not lent money to EHL under the EHL Agreements, their assertion that their claim was based on the debts (the EHL Loans) that were due under the EHL Agreements, revealed the weakness of their case. I return to this point later in these grounds in the discussion on apparent authority at [55] below.

Whether Lim's actual authority can be found on other grounds

40 I now turn to consider the Plaintiffs' submission that EHL's board of directors had in fact authorised Lim to enter into loans and transactions below S$1m without requiring approval of the board of directors. The Plaintiffs relied on the D&T Report which stated that EHL had a policy which required the "[a]pproval by the Board of Directors … for loan amounts/transactions in excess of S$1 million" ("the Policy"). I should begin by observing that there was no evidence as to how the Policy came to pass. It was unclear whether the Policy was passed by EHL's board of directors pursuant to a board resolution (of which there was no evidence). Nevertheless, I proceeded on the assumption that EHL's board of directors had approved if not acquiesced in the Policy.

41 The Plaintiffs' case was that Lim had the actual authority to enter into the EHL Loans as each loan did not exceed the threshold of S$1m set out in the Policy. By setting such a threshold, EHL's board of directors implicitly accepted and acquiesced in the prospect that Lim could enter into loans for sums less than S$1m without their approval. Lim therefore had the implied authority to enter into such transactions. Such acquiescence was the basis of the agents' authority in *Hely-Hutchinson* and *SPP* (see [37] above).

42 In my view, the Plaintiffs' submissions ignored the nature of the transactions under the EHL Agreements. The Policy stipulated that approval of EHL's board of directors would only be required where the loan amount in a single transaction exceeded S$1m. By implication, borrowings under that amount did not require board approval. The Policy assumed that Lim was undertaking legitimate borrowing on behalf of EHL. However, EHL was not borrowing any money under the EHL Agreements. Despite cl 3 of the EHL Agreements providing that the Plaintiffs would make fresh loans, they never

intended to or in fact did so (see [55] below). There were in fact no legitimate borrowings by EHL. Instead, EHL purported to assume Broadwell's debts to the Plaintiffs for the Broadwell Loans by rolling them over as the EHL Loans. It seemed self-evident that a transaction such this did not fall within the terms of the Policy. There is a further and related point of significance. By the EHL Agreements, Lim was attempting to have EHL assume liability for the debts owed by an entity, Broadwell, that he beneficially owned. He was its sole shareholder. Broadwell was not part of the EHL group of companies. Lim was seeking to directly benefit Broadwell and thereby indirectly himself as its sole shareholder at EHL's expense, and therefore was in patent conflict of interest. Again, it seemed self-evident that Lim did not have actual authority by reason of the Policy to enter into such a transaction on EHL's behalf.

43 For these reasons, I did not think that the Policy advanced the Plaintiffs' argument that Lim had actual authority to enter into the EHL Agreements on EHL's behalf.

Whether Lim had apparent authority

44 Given that I had found Lim had no actual authority, the remaining question was whether Lim had the apparent authority to enter into the EHL Agreements. This turned solely on whether there was conduct on the part of EHL that clothed Lim with authority which he did not in fact have. There was, however, no evidence of this. As noted earlier, the Plaintiffs advanced the argument of apparent authority on the same basis as actual (implied) authority *ie* by reason of Lim being the Executive Chairman and Acting CEO of EHL. Having found that such a position did not automatically vest Lim with implied authority to borrow money or to give security on EHL's behalf, it would follow that he would not have apparent authority on the same basis as well. In sum, I

found that Lim had no actual or apparent authority to enter into the EHL Agreements or the EHL Loans on behalf of EHL. Consequently, the Plaintiffs were not entitled to enforce the EHL Loans against EHL. This was sufficient to dispose of the applications.

The alternative argument

45 For completeness, I also considered the position if I was wrong in concluding that Lim did not have implied authority as Executive Chairman and Acting CEO of EHL to borrow money and give security on EHL's behalf. Assuming Lim had such implied authority, he would also have had apparent authority: see *Hely-Hutchinson* ([23] *supra*) at 583 (reproduced at [23] above). Two issues arose for consideration: whether the EHL Agreements fell within Lim's implied authority, and if they did not, whether the Plaintiffs could nevertheless rely on Lim's apparent authority. I address these issues in turn.

Actual authority

46 Even if Lim had implied authority to borrow money and give security on EHL's behalf, that was not what the EHL Agreements were about. As noted above, EHL was not borrowing money from the Plaintiffs. Instead, EHL was assuming the liability of another by rolling over the Broadwell Loans as EHL Loans. The point was made clear by the fact Lim was in patent conflict of interest in doing this (see [42] above). That in itself dealt with the implied authority argument. But there was more.

47 The EHL Agreements contained several unusual features which are discussed in detail later in these grounds at [54] to [56]. In particular, as noted earlier at [9], despite cl 3 of the EHL Agreements stating clearly that the Plaintiffs would make fresh loans to EHL, that never happened. As I observed

at [39] above, the terms of the EHL Agreements did not match the transaction that it purported to govern.

48 Given these circumstances, it is questionable whether Lim's implied authority to borrow money by reason of his position as EHL's Executive Chairman and Acting CEO, even if it did exist, extended to transactions of the nature and effect of the EHL Agreements. I was of the view that it did not. The net result is that Lim did not have the implied authority to enter into the EHL Agreements and cause EHL to assume liability for the EHL Loans.

Apparent authority

49 The remaining issue was whether Lim had apparent authority even if his implied authority by reason of his position did not extend to entering into the EHL Agreements and assuming liability for the EHL Loans. For this, the Plaintiffs placed significant weight on *Banque Bruxelles Lambert and others v Puvaria Packaging Industries (Pte) Ltd (in liquidation)* [1994] 1 SLR(R) 736 ("*Banque Bruxelles*"). The Plaintiffs' case was that the EHL Agreements and the EHL Loans were "ordinary business deals" and that it was therefore reasonable for them to have relied on Lim's apparent authority. In this connection, the principal issue was whether there was anything to put the Plaintiffs on notice that Lim in fact had acted *without* authority. If that was the case, the Plaintiffs could not rely on Lim's apparent authority at all: *Royal British Bank v Turquand* (1856) 6 E & B 327; *Abdul Jalil bin Ahmad bin Talib and others v A Formation Construction Pte Ltd* [2007] 3 SLR(R) 592 at [39].

50 In *Banque Bruxelles*, the first appellant, BBL, entered into a loan agreement with the respondent, PPI, under which BBL furnished PPI with a US$2m credit facility. Part of this facility was to be used for a related-company transaction which was alleged to be a sham. The principal issues were: (a)

whether the board of directors of PPI had the authority to enter into the loan agreement (as their powers of borrowing were limited by PPI's constitution to borrowings for the purposes of the company) and (b) whether a debenture issued pursuant to the loan agreement was void as against PPI as BBL had prior notice of such limits on the power of PPI's board of directors. The Court of Appeal held that the related-company transaction "resembled an ordinary business deal between related companies in the region" and that it was not "abundantly obvious to [BBL]" that the related-company transaction was a sham: at [26]. Thus, the directors of PPI had the apparent authority to bind PPI to the loan. In my view, however, the same conclusions could not be reached here. I say so for a few reasons.

51 First, Lim stood in a different position from the board of directors of PPI in *Banque Bruxelles*. The issue of authority in *Banque Bruxelles* centred on whether the board of directors acted with authority. It was not a case of a single director purporting to act for the company, as was the situation here. It is axiomatic that general powers of management are vested in the board of directors of a company, but the same cannot be said of individual directors or executives. It follows that the former has the apparent authority to contract on the company's behalf, but this is not necessarily true of the latter. The power of the directors to enter into the loan agreement in question was also specifically provided for in the Articles of Association of PPI although it contained a proviso stipulating that the powers be exercised for the purposes of the company. The issue was whether the first appellant was aware that they directors were not so acting.

52 In this connection, in *Banque Bruxelles*, it was relevant that PPI was a non-exempt *private* company controlled by one Papan, who was the chairman, managing director and majority shareholder of PPI as well as of the relevant

related companies: at [1]. Papan and his wife gave personal guarantees in respect of the US$2m credit facility granted by BBL which in turn was part of the related-company transaction in question: at [4]. Furthermore, other than Papan, there was the involvement of third-parties *ie* the related company's financial consultant and group financial adviser in the transaction: at [27]. This, in my view, lent legitimacy to the transaction in *Banque Bruxelles*. Added to the fact that the US$2m facility (the disputed transaction) had been approved by a circular resolution of PPI's board of directors, there was therefore little reason for BBL to have had notice that the related-party transaction was unauthorised on the basis that it was not for the purposes of PPI. Here, however, EHL was a listed company, subject to stringent corporate governance structures relating in particular to oversight of risk by the board of directors (see [34] above). Unusually, despite this, Lim had to all appearances acted unilaterally. Unlike Papan, who was the moving spirit behind PPI and its related companies, Lim was only EHL's Executive Chairman and Acting CEO. There was no evidence of the involvement of any other director of EHL or its other officers (*eg*, EHL's chief financial officer or finance director) in the transactions involving the Plaintiffs from the outset with the Broadwell Agreements right through to the EHL Agreements. The Plaintiffs' only point of reference was Lim. Indeed, the Plaintiffs themselves met Lim in November 2018 for the first time and, in their affidavits, did not mention any other meeting physical or otherwise they had with Lim. These factors distinguish the present case from *Banque Bruxelles* where there were sufficient touchpoints for BBL to believe that the directors of PPI were acting with authority.

53 Second, the related-company transaction in *Banque Bruxelles* ([49] *supra*), in the Court of Appeal's opinion, appeared to BBL to be a proper one. Here, however, there were circumstances, of which the Plaintiffs were aware, that cast doubt as to whether the EHL Agreements and the EHL Loans were

proper. This had a cascading effect on whether the Plaintiffs knew or ought to have known that Lim was acting without authority. I address these circumstances next.

54 Crucially, the terms of the EHL Agreements did not represent the transaction contemplated by the parties at the material time. If Lim was authorised to roll over the Broadwell Loans to EHL as the EHL Loans, one would have expected the EHL Agreements to state exactly that. At the same time, one would also have expected transactional documents that dealt with release of Broadwell's liabilities to the Plaintiffs under the Broadwell Agreements such as, for example, by a novation agreement. Neither the EHL Agreements nor any other agreement addressed this. As an illustration, in *Banque Bruxelles*, although the related-company transaction involved PPI assuming liability for a debt owed by PAU, an Indonesian related company, to BBL, it contained mechanisms for *discharging* PAU's liability to BBL. In addition, the related-company transaction also allowed PAU to discharge their liability to PPI (which they had incurred by reason of PPI's aforementioned assumption of PAU's liabilities to BBL) by way of a "fairly normal business transaction" for the purchase of paper from another Indonesian related company, KBT, through PAU: at [26].

55 On the other hand, here, the contents of the EHL Agreements were merely copied and pasted from the Broadwell Agreements save for replacing the references to Broadwell with EHL. For this reason, cl 3 of the EHL Agreements provided that fresh loans would be made to EHL by the Plaintiffs when in fact none was made or intended. This called for a cogent explanation from the Plaintiffs as to why they would execute agreements which spoke to a different transaction from that which was in fact intended and put in place. However, the Plaintiffs were conspicuously silent on this point. Further, the

Plaintiffs ought to have explained why, having executed the EHL Agreements, they failed to perform cl 3 by making fresh loans to EHL. After all, that was the obligation they contracted to perform under the EHL Agreements. It was unsatisfactory for the Plaintiffs to seek to enforce a debt under agreements which they had not themselves performed.

56 The Plaintiffs also failed to explain why they thought it important or relevant to transfer Broadwell's liabilities to EHL, especially so under agreements which on their face spoke to a different transaction. Collectively, these raised serious doubts as to the integrity of the transaction in question which should have triggered an inquiry in the Plaintiffs' mind as to Lim's authority. Their conduct was quite unsatisfactory. In contrast, the related-company transaction in *Banque Bruxelles* did not appear to suffer from any of these features, in particular defective documentation. As observed above at [50], the Court of Appeal in that case did not think that it was an "abundantly obvious" sham: at [26].

57 For these reasons, I was of the view that *Banque Bruxelles* ([49] *supra*) was clearly distinguishable from the present case and did not assist the Plaintiffs. The Plaintiffs had notice of the unusual circumstances outlined above which called Lim's authority to enter into the EHL Agreements and assume liability for the EHL Loans on EHL's behalf into question. This meant that the Plaintiffs could not rely on Lim's apparent authority to enforce the EHL Loans. The Defendants were therefore entitled to reject the Proofs of Debt on the Third Ground of Rejection. This was sufficient to dispose of the Plaintiffs' claims in their entirety.

Whether EHL was liable in the sum stated in the Proofs of Debt

58 For completeness, I also considered the scenario of whether the Defendants, as the Judicial Managers of EHL, were entitled to reject the Proofs of Debt *even if* Lim had the authority to enter into the EHL Agreements. The Defendants relied on three cases, *Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458 ("*Fustar*"), *In re Van Laun, ex parte Chatterton* [1907] 2 KB 23 ("*In re Van Laun*") and *Tanning Research Laboratories Inc v O'Brien* [1990] 169 CLR 332, in support of the position that they were at liberty to reject the Proofs of Debt as the EHL Loans were not EHL's true liabilities. This was on the basis that EHL did not receive the proceeds of the EHL Loans.

59 In *Fustar*, the Court of Appeal said, in relation to the duty of liquidators to examine proofs of debt (which I accepted applied equally to Judicial Managers), at [13]–[14] that:

> 13 The established principles of law are not disputed in the present case. … The liquidator must assess every proof of debt lodged and may call for further evidence in support of the claim. In considering a proof, the liquidator is not bound by the audited accounts or audit confirmations entered into by the company, and is entitled to go behind them to determine the veracity of the debt claimed (*In re Van Laun; ex parte Patullo* [1907] 1 KB 155 at 162; *Re Ice-Mack Pte Ltd; AA Valibhoy & Sons (1907) Pte Ltd v Official Receiver* [1989] 2 SLR(R) 283 …
>
> 14 These principles apply to the winding up of both solvent and insolvent companies … Only the *true* liabilities of a company should be met. This principle had been earlier clarified by the High Court of Australia in *Tanning Research Laboratories Inc v O'Brien* (1990) 169 CLR 332 at [184]:
>
> > As the parties whose interests are affected by admission of a proof of debt are the general body of creditors and contributories rather than the company in liquidation, there are some liabilities which would be enforceable against the company but which a liquidator is not bound to admit to proof of debt lest the interests of creditors and the contributories may be unjustly

> affected. A liquidator may openly reject a proof of debt if the liability, though enforceable against the company, is not a true liability of the company but is found merely on some act or omission on the part of the company which unjustly prejudices the interests of the creditors or contributories in the assets available for distribution.

[emphasis in original]

60 In *In re Van Laun*, the debtor, Van Laun, employed Chatterton, a solicitor, to act for him in numerous matters, in respect of which Chatterton presented draft bills of costs. At Van Laun's request, the bills were not set out in detail. Van Laun agreed to the amounts stated therein. Van Laun executed a mortgage in favour of Chatterton in respect of his indebtedness under the bills. Subsequently, an order of receivership was made against Van Laun, and a trustee over his estate was appointed. Chatterton filed a proof of debt against Van Laun's estate for the sums owed to him under the bills. The trustee required Chatterton to supply further particulars of his proof, including vouchers for all payments stated in the bills. Chatterton refused to supply these particulars on the ground that the stated account could not be reopened. The trustee rejected the whole of Chatterton's proof of debt. The English Court of Appeal held that the trustee was right to reject Chatterton's proof of debt. Cozens-Hardy MR set out the applicable principles as follows at 30:

> … The trustee's right and duty when examining a proof for the purpose of admitting it or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgment recovered against the bankrupt, no covenant given by or account stated with him, can deprive the trustee of this right. *He is entitled to go behind such forms to get at the truth, and the estoppel to which the bankrupt may have subjected himself will not prevail against him.* In the present case the trustee desires to satisfy himself that the claims for costs represent a real indebtedness. He can only do this by seeing and examining the bills. When he sees them it may be that he will think them fair and reasonable and, if so, he will probably admit the proof. But until Mr Chatterton furnishes him with the means of forming an opinion I think the trustee cannot do otherwise than reject the proof.

[emphasis added]

61 From the above, it was clear that mere reliance on a confirmation or "account stated", even if approved by the debtor, would not be sufficient for the Judicial Managers to accept a proof of debt. Evidence of genuine indebtedness would need to be shown. On this point, the Plaintiffs principally relied on the EHL Confirmations as evidence that the proceeds of the EHL Loans had in fact been received by EHL.

62 The EHL Confirmations stated, for example:

> *We refer to your earlier agreement ("Earlier Agreement") in respect of an investment loan in EPICENTRE HOLDINGS LIMITED.*, a company incorporated in Singapore with its issued ordinary shares listed and quoted on the Singapore Exchange Securities Trading Limited.
>
> We hereby confirm that your investment funds … from the Earlier Agreement has matured on 15 March 2019 and will be renewed for twelve (12) months with interest given at six (6) percent (%) per annum, payable monthly in equal payments. First interest is payable on 15 March 2019 and last interest payable on 15 February 2020, with maturity of said loan investment on 15 February 2020.
>
> Yours faithfully
>
> [signed]
>
> Kenneth Lim Tiong Hian
>
> Epicentre Holdings Limited
>
> [emphasis added]

63 In response, the Defendants submitted that the EHL Confirmations could not operate as confirmations of funds received by EHL because there were no "earlier agreements" where the Plaintiffs made investment loans in EHL. The only "earlier agreements" under which investment loans were made by the Plaintiffs were the Broadwell Agreements.

64 Notwithstanding representations in the EHL Confirmations that EHL had received the proceeds of an earlier investment loan, the Defendants were nonetheless entitled to reject the Proofs of Debt for two reasons. First, the representations were of questionable integrity given that they were issued by Lim. The issues that were pertinent to his lack of authority applied equally here. Second, there was no evidence that the representations in the EHL Confirmations were in fact true. The Defendants were not bound by EHL's representations but were entitled to go behind them and ascertain whether they were in fact true. This was patently clear from *In re Van Laun*. In this regard, there was no evidence showing that EHL had in fact received the proceeds of the Broadwell Loans. The available evidence pointed to disbursements of funds by the Plaintiffs to Broadwell only as the Broadwell Loans. There was no evidence for any disbursement of funds by Broadwell to EHL.

65 The Plaintiffs relied on the finding in the D&T Report that Broadwell served as a "conduit" for funds intended for EHL. However, this hardly advanced their argument. The D&T Report did not address the Broadwell Loans at all. The D&T Report only mentioned specific, unrelated instances in which Broadwell had been used as a "conduit". It was pertinent in this regard that EHL's financial statements and internal accounting records did not recognise any disbursement of the Broadwell Loans by Broadwell to EHL. It would therefore seem that the finding in the D&T Report did not relate to the Broadwell Loans.

66 Accordingly, I took the view that there was insufficient proof that the debts asserted in the Proofs of Debt were truly the liabilities of EHL, and thus found that the Defendants were also entitled to reject the Proofs of Debt on the First Ground of Rejection.

Whether EHL was vicariously liable to the Plaintiffs

67 The Plaintiffs' submissions on vicarious liability were premised on the following points:

(a) As the Executive Chairman and Acting CEO of EHL at the time the EHL Loans were entered into, the relationship between Lim and EHL was sufficiently close as to make it fair, just and reasonable to impose liability on EHL for the tortious acts of Lim (which the Plaintiffs did not specify); and

(b) The circumstances of the present case showed a sufficient connection between Lim's relationship with EHL, and the commission of Lim's "tort" (which the Plaintiffs did not specify). That relationship and EHL's failure to manage and regulate the risks of unauthorised conduct by Lim created or significantly enhanced the risk of the unspecified tort being committed by Lim, as against the Plaintiffs as "vulnerable lay investors" who were not represented by solicitors.

68 In my view, the Plaintiffs' submissions on vicarious liability ignored the obvious issue of *what tortious acts Lim was alleged to have committed* against the Plaintiffs for which EHL was allegedly vicariously liable. Without this crucial link, it was unclear what the Plaintiffs' case on this point was, and the Plaintiffs did not advance any further arguments on it at the hearing. There were therefore insufficient arguments before me for a determination on vicarious liability to be made, and I accordingly did not deal with this issue further.

Conclusion

69 In conclusion, I found that the Defendants were entitled to reject the Proofs of Debt on the basis of the Third Ground of Rejection and alternatively, the First Ground of Rejection.

70 I therefore dismissed both applications and, after hearing the parties on costs, awarded costs to the Defendants, fixed at $5,500 per application inclusive of disbursements.

Kannan Ramesh
Judge

Calvin Liang (Calvin Liang LLC) (instructed) and Eugene Jedidiah Low Yeow Chin (Ark Law Corporation) for the plaintiffs;
Hing Shan Shan Blossom and Foo Guo Zheng Benjamin (Drew & Napier LLC) for the defendants.