IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 156

Suit No 1104 of 2017

Between

Singapore Recreation Club

… Plaintiff

And

(1) Abdul Rashid Mohamed Ali
(2) Goh Kok Guan

… Defendants

Between

Abdul Rashid Mohamed Ali

… Plaintiff in Counterclaim

And

Singapore Recreation Club

… Defendant in Counterclaim

JUDGMENT

[Unincorporated Associations and Trade Unions] — [Friendly societies] — [Disputes]
[Unincorporated Associations and Trade Unions] — [Friendly societies] — [Meetings] — [Minutes]
[Employment Law] — [Termination]
[Employment Law] — [Leave] — [Annual]
[Employment Law] — [Pay] — [Annual wage supplement]

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v
Abdul Rashid Mohamed Ali and another

[2020] SGHC 156

High Court — Suit No 1104 of 2017
Ang Cheng Hock J
3–6, 10–12, 17, 18 September, 12, 13, 15, 19–22, 26 November 2019, 6 April 2020

28 July 2020 Judgment reserved.

Ang Cheng Hock J:

1 The claims and counterclaim in Suit 1104 of 2017 (the "Suit") arise in the backdrop of a change in leadership at one of Singapore's oldest social clubs.[1] As is usual in cases involving clubs of this nature, there is an undercurrent of acrimony and frayed relationships between the members that comprise the past and present leadership of the club. I say this to explain that the various claims must be viewed and understood in this context, and because the motivations of the parties and the club members may be relevant in certain circumstances. However, ultimately, the disputes have to be decided strictly in accordance with the law, facts, and the evidence presented to the Court.

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[1] See for context https://www.src.org.sg.

Background

The parties

2 The plaintiff ("the Club") is one of the oldest members clubs in Singapore, having been established in 1883. It is managed by and acts through a management committee ("MC"), which is elected by the members of the club once every two years.[2] Article 31 of the Club's constitution provides that the "entire management" of the Club shall be deputed to the MC, and that the MC has the power to, *inter alia*, "examine the accounts and arrange the affairs of the Club" and "appoint such Sub-Committees as [may be] deem[ed] necessary or expedient".[3] The upshot of Article 31 of the Club's constitution is that the MC is, for all intents and purposes, the proverbial "mind and will" of the Club.

3 The first defendant was employed by the Club as its general manager and secretary from June 2002 until the end of August 2014.[4] On 1 September 2014, the first defendant was summarily dismissed in circumstances which will be detailed later in this judgment.

4 The second defendant is a member of the Club. He was elected as the Club's president in 1995 and held that position for almost 22 years.[5] Although the second defendant was the Club's president until April 2016, he had in fact been suspended by the Club at the end of 2015. This was pursuant to a complaint made in July 2015 by the Club's then vice-president, Dr Sarbjit Singh

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2 Affidavit of evidence-in-chief ("AEIC") of Sarbjit Singh ("SS") at Exhibit 2, in particular at [31(a)].

3 SS at Exhibit 2, in particular at [31(f)(i)].

4 AEIC of Abdul Rashid s/o Mohamed Ali ("AR") at [26] and [28].

5 AEIC of Goh Kok Guan ("GKG") at [4].

("Dr Singh"), who is presently the Club's president. The substance of that complaint is not directly relevant to the present proceedings.

The events leading to the Suit

5 In the MC elections of April 2014, nine of the 12 members elected were part of a team led by Dr Singh.[6] These nine had campaigned as part of Dr Singh's team.[7] The remaining three elected MC members were the second defendant and two members of the previous MC. Thus, while the second defendant still held his position as the Club's president, he no longer held sway over the MC.

6 After the new MC took office, there were discussions amongst the members who came in as part of Dr Singh's team that the time was ripe for a change of general manager/secretary for the Club.[8] At that time, to the knowledge of the MC members who were part of Dr Singh's team, it was not the case that the first defendant had done something wrong which warranted immediate dismissal. Even at trial, none of the Club's witnesses identified any single act by the first defendant which warranted immediate dismissal at this time. It was therefore agreed between the MC members who had been part of Dr Singh's team that the first defendant's performance would be raised as the reason for terminating his employment, but it was fairly apparent that Dr Singh's team simply wanted the first defendant replaced with someone else.

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6 SS from pp 234 to 235.

7 Transcript of 3 September 2019, Page 31, Lines 14 to 23. See also GKG at [34].

8 Transcript of 3 September 2019, Page 143, Lines 13 to 29.

7 On 11 August 2014, the MC resolved, by majority, that the first defendant's employment would be terminated.[9] This resolution, proposed by Dr Singh, was passed at the MC's monthly meeting, which is always held in the evening.[10] It is not in dispute that Dr Singh and two other MC members, Professor Sum Yee Leong ("Professor Sum") and Dr Christopher Chong, were tasked by the MC to communicate its decision to the first defendant and to handle the procedures for the first defendant's exit from the Club. Therefore, after the MC meeting, the news that the MC had resolved to terminate his employment was conveyed to the first defendant by Dr Singh and the two other MC members. The first defendant was given an option to either resign or be given two months' notice of the termination of his employment by the Club.[11] The first defendant opted for the former option, and he then signed a pre-prepared letter of resignation which was handed to him by Dr Singh. He was instructed that he would be placed on garden leave until his last day of employment.[12]

8 What then transpired that night of 11 August 2014 is one of the main disputes in this case. The Club claims that that first defendant was told by Dr Singh to return to the premises to collect his personal belongings the next morning, as arrangements had been made for three MC members to be present in order to supervise this process.[13] The Club further claims that, disregarding this instruction, the first defendant removed not only his personal belongings,

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9 SS at [16] and [17].

10 AR at [32].

11 SS at [18] and [19].

12 SS at [20].

13 SS at [20] and [22].

but also property of the Club, that very night. The second defendant, who had gone to offer some consolation to the first defendant, was present while the first defendant was packing, and helped him carry some bags to his car.[14]

9 This account is challenged by the first defendant, who claims that he was only told to do a "handover" the next morning, on 12 August 2014. He was *not* told that he could not remove his personal belongings straight away, and that was what he did that night.[15] He denies taking any property belonging to the Club. As for the second defendant, as already mentioned, he was present as the first defendant was packing and removing various items from the office.[16] While the second defendant helped the first defendant move some bags to his car, the second defendant did not pay attention to and/or was not told what had been packed into those bags. Although the Club initially disputed this characterisation of the second defendant's behaviour, it no longer did so by the time of the trial (see [19(a)] below).

10 In the morning of 12 August 2014, the first defendant returned to the Club's premises to do his handover and remove the rest of his things.[17] He returned an old Compaq laptop, which he had used from 2002 to about 2006, and that had been issued to him by the Club, to the Club's information technology department.[18] He claimed to have left in his office a separate laptop, which he had been issued by the Club and that he was using at the time of his termination, before leaving the premises. This is disputed by the Club, which

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14 SS at [50], and GKG at [63] and [64].

15 AR at [113] and [114].

16 GKG at [63] and [64].

17 AR at [138].

18 AR at [151].

claims that no laptop was left in the first defendant's office and that in fact, the laptop he was using at that time was never returned.[19] It is common ground that the first defendant was not asked to sign any "handover" list or checklist setting out the Club's property that he returned.[20]

11 In August 2014, one of the MC members, Derrick D'Souza ("Mr D' Souza"), made two police reports claiming that the first defendant had wrongfully taken the Club's documents and property, including the unreturned laptop.[21] The unreturned laptop was specifically described as having been "stolen" in the second police report.[22] The first defendant was not asked about the laptop prior to the making of the police report, nor did the Club even contact and inform him that the laptop was missing.

12 On 1 September 2014, whilst he was serving his garden leave, the first defendant was asked to attend a meeting at the Club.[23] The reason he was given for the meeting was to discuss the issue of his substantial unconsumed annual leave and whether it would be encashed. However, at the meeting, which the Club itself acknowledges is more aptly described as an "inquiry", Dr Singh, Professor Sum, and two other MC members, Leo Meng Tong and Fabian Chan, grilled the first defendant about the missing laptop.[24] The first defendant denied any wrongdoing. The first defendant was then informed that the Club was dismissing him for unprofessional conduct. This meeting, which took place at

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19 SS at [32] and [33].

20 Transcript of 6 September 2019, Page 141, Line 28 to Page 142, Line 12.

21 SS at [34], see also SS Exhibit 12.

22 Transcript of 6 September 2019, Page 83, Lines 4 to 26.

23 SS at [35].

24 SS Exhibit 13.

the Club's premises, was recorded by one of the MC members, without the knowledge of the first defendant. The transcript of the audio recording was adduced in evidence.[25]

13 About a year later, on 13 August 2015, the Club commenced proceedings against the first defendant in the State Courts (District Court Suit No 2440 of 2015) seeking, amongst other things, an order in relation to the delivery up of the allegedly missing laptop, which was described as a "Dell laptop", and also documents belonging to the Club, although these documents were not identified.[26] The first defendant counterclaimed for damages for (a) constructive dismissal arising from his having been forced by Dr Singh on 11 August 2014 to either resign or be terminated with two months' notice, and/or (b) his termination with immediate effect on 1 September 2014.[27]

14 In July 2017, after the first round of affidavits of evidence-in-chief ("AEICs") had been exchanged and the action set down for trial, the Club amended its case to add new claims in relation to "special" annual bonuses.[28] These bonuses had been paid to the first defendant for the FYs 2004 to 2013, though the Club's pleaded claim did not include the bonus paid for FY 2005. It is alleged that the claimed bonuses, totalling S$98,450.48, were never authorised by the MC. The Club claimed that it had learned about the payments of these bonuses only after the first defendant filed his affidavit of evidence-in-chief ("AEIC") in the State Court proceedings and referred to those bonuses.

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25 SS Exhibit 13.

26 Statement of Claim in DC Suit 2440/2015.

27 Defence & Counterclaim in DC Suit 2440/2015 at [14(i)].

28 Statement of Claim (Amendment No. 2) dated 4 July 2017 in DC Suit 2440/2015.

The second defendant was then added as a defendant to the action in the State Courts because it was alleged that he had procured the payments of these bonuses by the Club to the first defendant without the MC's approval.

15 Subsequently, in September 2017, the Club further amended its case to add new claims in relation to guest rooms that the Club had been operating from 2009 to 2017.[29] These guest rooms were collectively referred to as the Residence ("the Residence"). In 2008, the members of the Club had given approval for redevelopment of the third floor of the Club premises into 26 guest rooms.[30] Via a grant of written permission dated 31 July 2009, the Urban Redevelopment Authority gave its approval for the Club to operate the Residence, but on the condition that the guest rooms could not be used as independent hotel rooms (the "URA Condition").[31] The Club then informed its members that the Residence would be available for use only for members, members' guests, and visiting members. The latter is a category of membership at the Club where persons are accorded temporary membership status for a fixed period.[32]

16 The Club's claims in relation to the Residence against both the defendants are that they had allowed the Residence to be advertised and operated in a manner which was contrary to the URA Condition, in that, the Residence was being operated effectively as a hotel. This was because the Residence was available for booking on many online hotel booking portals, and

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29 Statement of Claim (Amendment No. 3) dated 14 September 2017 in DC Suit 2440/2015.

30 SS at [74].

31 SS at Exhibit 29. See also SS at [77].

32 Plaintiff's Constitution at clause 18.

any person who booked a room at the Residence would be registered as a visiting member without complying with the procedure set out in the Club's constitution. Not only that, it was alleged that the defendants had failed to comply with the Club's practice concerning visiting membership by not collecting a visiting membership fee of S$50 for each person registered as a visiting member ("Visiting Member fee").

17 Due to this last round of amendments, the quantum of the Club's claims against the defendants increased significantly. The Club then applied for and obtained an order for the transfer of the State Court action to the High Court, which is how the present Suit before me was constituted.[33]

The Club's case

18 As alluded to above, the Club's claims against the defendants were incrementally added to over time to include the claims pertaining to the "special" annual bonuses, the Visiting Member fees, and the potential liability for fines for breaching the URA Condition in relation to the Residence. Not only that, the claims pursued by the Club continued to evolve *significantly* over time from those in its amended statement of claim. I illustrate this first by outlining a few of the altogether unpleaded issues which arose only belatedly over the course of the trial and in the closing submissions:

(a) First, the apparent failure of, *inter alia*, the first and second defendants to record the MC's approval of the first defendant's special bonuses and to comply with regulation 4 of the Societies Regulations (Cap 311, Rg 1, 2008 Rev Ed) ("Societies Regulations") has not been

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33 HC/ORC 7489/2017 at [1].

pleaded by the Club.[34] This was raised only in cross-examination and does not feature in the Club's statement of claim.

(b) Second, the claims the Club levies against the first and second defendants jointly and severally in relation to the use of a cover page titled "Visiting Membership confirmation and approval for Residence guests" are also wholly unpleaded. This is despite the Club raising several specific allegations in this regard, namely that the defendants had to keep a proper record to show that the MC had approved the said cover page for use in accordance with Article 18(b) of the Club's constitution, and to further keep records to show that the MC intended to use the said cover page as the Visiting Member application form notwithstanding the existence of a pre-printed Visiting Member application form.[35]

(c) Third, the Club's claim that the first defendant had made unauthorised use of the club's resources, and in particular the laptop(s) he had been issued, for his own personal matters, is also unpleaded. This was admitted to by counsel for the Club during cross-examination.[36]

(d) Fourth, the Club's suggestion that the first defendant had an obligation stemming from a clause in an annex to his employment contract to ensure that his special bonus(es) were properly recorded as

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34 Plaintiff's Closing Submissions ("PCS") at [21]. See also Transcript of 12 November 2019, Page 107, Lines 19 to 32.

35 PCS from [211] to [216].

36 Transcript of 17 September 2019, Page 130, Lines 20 to 29.

having been approved by the MC is another new allegation which is wholly absent from the Club's pleadings.[37]

(e) Fifth, the Club's allegation that members' guests had to be signed in under Rule 6.2 of the Club's by-laws is not pleaded, and in fact appears for the very first time in the Club's closing submissions.[38] The Club's pleadings in respect of members' guests having to be signed in were hitherto only limited to Article 20 of the Club's constitution, and no allegation had been made in the Club's pleadings that the defendants had breached Rule 6.2 of the by-laws.[39]

19 The above examples evidence the unsatisfactory state of the Club's pleaded case, but what troubles me is how the Club's case shifted significantly *even on the claims it had initially pleaded*:

(a) In its amended statement of claim dated 14 September 2017, the Club claims that it had "been deprived of the use and possession of the Dell laptop and the Plaintiff's property in the 1st Defendant's possession including the documents and items removed by the 1st Defendant *and the 2nd Defendant* from the Plaintiff's Admin Office" (emphasis added).[40] The Club went so far as to claim that the second defendant had "placed himself in a position where his duty to the Plaintiff conflicted with his own interest and/or the 1st Defendant's interest when he had assisted the 1st Defendant to remove the Plaintiff's property in the 1st

37 PCS at [119] and [127].

38 PCS at [142] to [143], and [203] to [210].

39 SOC at [36G], [36N], [36O.2], [36Q], and [36S].

40 SOC at [54].

Defendant's possession including the documents and items from the Plaintiff's Admin Office".[41] However, at the trial, this allegation against the second defendant that he had assisted the first defendant in taking away the Club's property was dropped *altogether*. Counsel for the Club informed me that he was no longer pursuing the case that the second defendant knew what the first defendant had removed from the first defendant's office.

(b) Further, the Club appears to have shifted its position on the ambit of regulation 4 of the Societies Regulation from what it had indicated at trial to what it eventually argued in its closing submissions. In the Club's pleadings, no allegation was made that the first defendant had breached regulation 4 simply by not collecting Visiting Member fees. At trial, counsel for the Club indicated that he was not taking regulation 4 so far as to mean that the first defendant was responsible for every single instance where a Visiting Member fee was not collected.[42] However, in the Club's closing submissions, it was *expressly argued* that, in contravention of regulation 4, the first defendant had "failed to ensure the collection of a Visiting Member fee from *each* non-Singapore resident guest of the Residence …" (emphasis added).[43] This inconsistency is puzzling, to say the least.

(c) In addition, the Club appears to have abandoned its pleaded case that the first and second defendants had committed fraud and/or

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41 SOC at [57.9].

42 Transcript of 12 November 2019, Page 110, Lines 10 to 31.

43 PCS at [188], [202], and [216]. See also Heading V(A)(v) of PCS.

fraudulent breach of trust.[44] These allegations were made by the Club against the defendants in the specific context of arguing that the Club's claims were not barred by any defence of limitation. The Club appears to have abandoned this position without expressly stating so.

(d) The allegations that the first and second defendants had committed fraud and/or fraudulent breach of trust were not the only allegations quietly abandoned. The Club had dedicated a considerable segment of its AEICs to illustrating how the first defendant had failed to enforce the policy concerning defaulters at the Club and thereby caused loss to it. This issue of the failure to enforce the defaulters' policy was even the subject of cross-examination by the Club's counsel.[45] It was therefore perplexing why it was dropped *altogether* from the Club's closing submissions, and did not feature in the final iteration of the Club's case.

(e) Finally, the substantial part of the Club's pleadings concerning whether or not the first defendant's contract of employment was governed by a collective agreement was altogether abandoned at trial. Dr Singh admitted as much while under cross-examination, and did not provide any explanation for this change of position.[46]

20 As is evident from the above, the Club's case shifted over the course of the proceedings. Nonetheless, from the pleadings, trial, and closing submissions, I distil the Club's main claims against the defendants as follows.

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44 R1DCC at [18AI.2] and R2D at [11B].

45 Transcript of 19 November 2019 from Page 45, Line 16 to Page 53, Line 31.

46 Transcript of 4 September 2019, Page 100, Lines 6 to 23.

The Club's claims against the first defendant are for breach of the express and/or implied terms of his employment contract, breach of his fiduciary duties, unjust enrichment, and breaches of his duty of care and skill not only as a fiduciary but at common law. The specific conduct complained of is in relation to:

(a) the failure to account for or return the Dell laptop and the failure to account for the Club's property that was allegedly removed on the night of 11 August 2014;

(b) having received unauthorised "special" bonuses annually for 2005 to 2014, except 2006 (Financial Years ("FYs") 2004 to 2013, except FY 2005), amounting to S$98,450.48;

(c) failing to ensure the collection of Visiting Member fees from guests who stayed at the Residence amounting to at least S$216,350;

(d) procuring the Club to make commission payments to booking agents for the reservation of rooms at the Residence from 2009 to 2014 for an unspecified quantum, but including the amount of S$845,192.02 paid to the operator of "Booking.com"; and

(e) exposing the Club to possible fines or penalties by causing the Residence to be operated as a hotel in breach of the URA Condition and/or under the Hotels Act (Cap 127, 1999 Rev Ed) ("Hotels Act").[47]

21 As a consequence of the above, the Club seeks three forms of relief against the first defendant. First, it seeks equitable compensation or an account of the Club's property that has not been returned to the Club, including the Dell

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47 PCS at [4].

laptop. Second, the Club seeks damages against the first defendant arising out of the receipt of unauthorised bonuses, non-collection of Visiting Member fees, and payment of unauthorised commissions to booking agents. Third, the Club seeks an order that the first defendant indemnify the Club against any fines or penalties that may be imposed on it arising from the operation of the Residence in a manner that was in breach of the URA Condition and/or the Hotels Act.

22 As for the second defendant, the Club alleges that he has breached his fiduciary duties and his duty of care and skill arising from his position as a fiduciary and/or at common law.[48] The instances of his conduct complained of are the same as those which concern the first defendant, save for the failure to return the Club's property. In particular, the Club complains that the second defendant, in his position as the Club president:

(a) procured the payment of "special" bonuses to the first defendant without the consent of the MC;

(b) failed to ensure the collection of the Visiting Member fees for the Residence's guests in the value of S$323,900;

(c) permitted the payment of commissions to booking agents, which were unnecessary and/or impermissible; and

(d) exposed the Club to possible fines or penalties by allowing the Residence to be operated like a hotel.

23 Against the second defendant, the Club seeks damages arising out of the matters described at [22(a)] to [22(c)]. Further, similar to the case against the

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48 PCS at [7].

first defendant, the Club seeks an order that the second defendant indemnify the Club for the matter referred to at [22(d)].

24 As for the first defendant's counterclaim for damages for wrongful dismissal, the Club's defence is that it was entitled to terminate his employment because of his various breaches of duties and terms of his employment contract.[49]

The defendants' case

25 The first defendant denies that he had taken or failed to return any of the Club's property.[50] As for the Dell laptop, his evidence is that he had left it in his office at the Club's premises, which he was last in on the morning of 12 August 2014 during the "handover". He also denies that, as the Club's general manager, he is a fiduciary or trustee of the Club.[51]

26 As for the "special" bonuses, the defendants' case is that the bonuses were all authorised by the MC for each of the years for which the Club is making a claim for the wrongful payment of a bonus.[52] Alternatively, the defendants contend that the Club's claim for payments made from 2007 to 2009 is time-barred.[53]

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49 PCS at [10] and [11].

50 Defendants' Closing Submissions ("DCS") at [57] and [63].

51 DCS at [28].

52 DCS from [76] to [83].

53 DCS at [89].

27 The defendants deny that they were the only two persons responsible for the management of the operations of the Residence.[54] They argue that, in any event, the MC was aware of the URA Condition.[55] The defendants contend that the URA Condition was not breached given the way the Residence was operated. As for the marketing of the Residence, the MC was aware of and had approved the use of booking agents to help secure occupancy for the Residence.

28 For the Visiting Member fees for the Residence's guests, the defendants claim that there was in fact no practice of collecting such fees.[56] Any such practice would have been in breach of the Club's constitution.[57]

29 As for the first defendant's counterclaim, he alleges that his employment had been wrongfully terminated on 1 September 2014 by the Club.[58] He denies committing any acts of misconduct that would justify summary termination of his employment. The first defendant also claims that the Club had acted in bad faith when it first terminated his employment on 11 August 2014 with notice. The Club then again acted in bad faith and without good cause when, on 1 September 2014, it summarily dismissed him. Consequently, the first defendant seeks damages comprising his unpaid salary, his unconsumed annual leave, and his annual wage supplement.

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54 DCS at p 38.

55 DCS at p 39.

56 DCS at [109].

57 Plaintiff's Constitution at clause 18(c) (1AB p 9).

58 DCS at [155].

The issues

30 I should state at the outset that the level of antagonism between the various protagonists in this case was intense. From the evidence, it was clear to me that the defendants and the two members of the present MC who testified, that is, Dr Singh and Mr D'Souza, have a long history of ill-will and rancour arising from their association with the Club. Many allegations were flung by each side against the other. Some of these accusations were serious, but many were inconsequential and trifling. At times, the parties appeared to think that the Court was the forum to resolve every niggling dispute that they had. That is not the function of the Court in these proceedings. The outcome of this litigation will not resolve the longstanding grievances between these various persons.

31 With this in mind, I outline the essential issues I have to decide in order to resolve the claims and counterclaim as follows:

(a) whether the first defendant is liable to the Club for removing its property, including the Dell laptop, on the night of 11 August 2014, and thereafter not returning such property to the Club;

(b) whether the defendants are liable to the Club in relation to the payments of "special" bonuses by the Club to the first defendant;

(c) whether the defendants are liable to the Club for failing to ensure that Visiting Membership fees were collected by the Club for the guests who stayed at the Residence from 2009 to 2014;

(d) whether the defendants are liable to the Club for the payments that the Club had made to various booking agents, which had been

contracted by the Club for the purposes of securing occupancy of the Residence;

(e) whether the defendants should be ordered to indemnify the Club against any potential fines or penalties it might face for having operated the Residence in breach of the URA Condition and/or the Hotels Act; and

(f) whether the Club is liable to the first defendant for the damages sought by the first defendant (see [114] below) for wrongfully terminating his contract of employment.

32 These issues will be considered in turn below.

33 I have also taken note that there are various sub-issues arising from these main issues set out above. For example, the parties have also locked horns over whether the defendants stand as fiduciaries *vis-à-vis* the Club, and whether the first defendant's employment contract incorporated the employee handbook of the Club.[59] These sub-issues will be dealt with in the course of my judgment, if and when the need to do so arises.

The Club's property and the Dell laptop

34 The Club claims that the first defendant removed documents and other property of the Club on the night of 11 August 2014 and/or after midnight.[60] This happened after he was told that his employment would be terminated with two months' notice and he was given the option to resign, which he chose. The

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59 See for example, DCS from [27] to [44].

60 SOC from [8] to [10].

first defendant's account is that he was simply packing up and removing his personal belongings from his office.[61]

35 The Club did not adduce any evidence as to what might have been removed by the first defendant and/or not returned by him to the Club. The only item that is specifically named is the Dell laptop, and even then it is not clear to me whether the Club is alleging that the first defendant removed the Dell laptop on the night of 11 August 2014 or simply that he had never returned it to the Club on 12 August 2014 or at any time thereafter. The Club relies on the fact that (a) the first defendant had been told on 11 August to come back to the office only on the morning of 12 August to clear out his personal belongings, but had defied this instruction, and (b) that there was closed circuit television ("CCTV") footage which showed the first defendant appearing to take a different lift from his office to his car that night when he carried his bags to his car, purportedly to avoid meeting members of the MC who might still be in the Club.

36 The first defendant's evidence is that he was in state of shock after he was abruptly told in the evening of 11 August 2014 that his employment as general manager-cum-secretary, a position that he had held since 2002, was going to be terminated.[62] In a daze, he went back to his office and started to pack his personal belongings into bags to take home. He had been told that he would be put on garden leave until his last day of employment, which was to be 11 October 2014. The second defendant came to his office to offer his commiserations. He was present when the first defendant was packing, and he then helped the first defendant carry some bags to the first defendant's car.

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61 AR from [124] to [136].

62 AR at [115].

37 The issue of whether the first defendant should be liable to the Club for removal of Club property turns on my assessment of the evidence that has been adduced by the parties. The difficulty with the Club's case on this point is that it has been unable to identify what property or documents of the Club, if any, were supposedly removed from the first defendant's office that night and not returned. Leaving aside the specific issue of the Dell laptop for the moment, I find that the Club has failed to show that the first defendant removed any of its property or documents, or failed to return them. Both Dr Singh and Mr D'Souza conceded, during cross-examination, that up to the time of the trial, more than five years since the incident on 11 August 2014, the Club has not been able to identify *any* particular missing documents or property which might have been taken away by the first defendant.[63] There is also no missing information which has impaired the functioning of the Club.[64]

38 I accept the first defendant's evidence that, after working for more than 12 years at the club, and because he spent long hours at work, he had over the years brought many of his personal belongings to the office.[65] For example, there was evidence that the first defendant was studying part-time for a number of qualifications, and that he had kept his course materials at the office. In particular, it was the first defendant's unchallenged evidence that during the course of his employment as general manager, he studied part-time and obtained a Doctorate Degree in Education from Edith Cowan University in Western

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63 Transcript of 10 September 2019, Page 78, Line 24 to Page 79, Line 2. See also Transcript of 4 September 2019, Page 91, Lines 8 to 19.

64 Transcript of 4 September 2019, Page 91, Lines 8 to 19. See also Transcript of 4 September 2019, from Page 6, Line 4 to Page 11, Line 8.

65 AR from [49] to [58].

Australia, as well as an International Diploma for Harbour Masters.[66] He explained that material relating to these courses was a significant part of the personal items he packed away in bags on that night of 11 August 2014. The first defendant also explained that his study material and certificates were kept in his office as he had limited time to study for these part-time courses due to his long and irregular working hours.

39 I found the Club's reliance on the instruction given by the Dr Singh to the first defendant to return on the morning of 12 August 2014 to collect his personal belongings to be rather misplaced. The fact that the first defendant might have defied the MC's instructions as communicated by Dr Singh on the night of 11 August 2014 does not prove that the first defendant had taken away the Club's property and documents that night. For the same reason, I find the Club's reliance on the CCTV footage to be neither here nor there. All the footage shows is that the first defendant had carried some bags to his car, and made three trips from his office to his car in total. The evidence does not show that the first defendant had removed the Club's documents or property from the premises.

40 The Club has a rather elaborate argument as to why I should infer from the CCTV footage that the first defendant was removing the Club's property.[67] Let me explain. The first defendant made three trips from his office to his car. For the first two trips, the first defendant, who was carrying his bags, took the service lift, which was the closest lift to his office, down to basement level two ("B2"), then took a flight of stairs down to basement level three ("B3"), where

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66 AR at [27].

67 DCS from pp 25 to 29.

his car was parked. The service lift does not go down to B3, unlike the passenger lift. The second defendant was seen on the footage accompanying the first defendant on the first trip and then coming up again. For the third trip to the car, when he was not carrying any bags, the two defendants walked from the first defendant's office to the passenger lift, which is much further away from the office than the service lift, and took the passenger lift directly to B3. According to the Club, this convoluted arrangement involving taking different lifts was done because the first defendant wanted to avoid running into the MC members who might be leaving the Club after the MC meeting that night, as they might have caught him in the act of taking away the Club's property. Otherwise, given that the second defendant is an elderly man, the Club argues that the two defendants would have tried to avoid taking the stairs from B2 to B3 and up again for that first trip.

41 I did not accept the Club's contention in this regard. This is because the defendants gave a logical and coherent explanation as to what transpired, which was largely unshaken under cross-examination.[68] The first defendant explained that he always parks his car at the part of B3 that is right next to the staircase. He will then take a flight of stairs up to B2, and take the service lift up to the floor where his office is located. The service lift is near his office and this is the quickest way to get there. On the night of 11 August, for the first trip to his car, the first defendant took this route down to his car while accompanied by the second defendant, who helped him by carrying a bag. This was his usual route and there was nothing suspicious about it. The second defendant testified that his knee hurt from walking up and down the stairs in between B2 and B3, and that was why he did not accompany the first defendant on his second trip down

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68 AR from [120] to [123].

to the car.[69] For that same reason, for the third and final trip, the two of them took the longer route of walking to the passenger lift so that the second defendant did not have to use the stairs to get from B2 to B3. The defendants' evidence in this regard was not seriously challenged. As such, I was not prepared to infer from the CCTV footage that the first defendant was behaving in a surreptitious manner and taking away the Club's property. Even if I were to accept that the first defendant had been behaving surreptitiously, I am not satisfied that such a finding would *necessarily* lead to the conclusion that he had misappropriated property. The evidence adduced by the Club in this regard was simply inadequate.

42 I come now to the issue of the Dell laptop that was allegedly not returned by the first defendant to the Club. The sum total of the Club's evidence that a Dell laptop was in fact issued to the first defendant in the first place is a screenshot of an assets master maintenance list, a purchase requisition dated 12 June 2008, and a payment advice dated 18 July 2008.[70] For the assets master maintenance list, it states that two Dell laptops were issued to the general manager's office.[71] However, the cross-examination of Mr Melvyn Tan ("Mr Tan") of the Club's information technology department showed that one cannot rely on the assets master maintenance list as an indication of who the laptops eventually ended up with. Though Mr Tan was the individual who produced the screenshot of the assets master maintenance list relied on by the Club, he candidly admitted that he did not know whether what was stated in the list meant

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69 GKG at [66].

70 DCS from pp 17 to 20.

71 SS at Exhibit 10.

that the Dell laptops were in fact being used by the first defendant.[72] He did not have any knowledge about what laptop was issued to the first defendant. He also did not know who maintained the assets master maintenance list and whether the information in that list could have been changed after the laptops had been purchased and issued.[73] None of the Club's other witnesses were able to shed light on this issue either. Quite simply, there was nothing to indicate that the assets master maintenance list was accurate and could be relied on. If anything, Mr Tan's own evidence showed that the list could *not* be relied on.

43 There is further confusion on this issue stemming from the Club's evidence. Quite apart from the fact that the purchase requisition and payment advice shows at best that two Dell laptops were purchased by the Club, what is indicated on these documents is that one of the two Dell laptops that were supposed to have been issued to the general manager's office, according to the assets master maintenance list, was actually intended to be given to one "Arthur" of the Club's food and beverage department.[74] The assets master maintenance list also indicates that one of the two laptops purchased in June 2008 was "retired" in October 2008.[75] There was no explanation as to what this meant and whether this "retired" laptop could have been the one issued to the first defendant. In short, I found the objective evidence on this issue of whether the first defendant had actually been issued a Dell laptop to be completely unreliable.

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72 Transcript of 12 September 2019, Page 6, Lines 22 to 32. See also Transcript of 12 September 2019, Page 19, Lines 2 to 5.

73 Transcript of 12 September 2019, Page 2, Lines 10 to 18.

74 Transcript of 12 September 2019, Page 41, Lines 11 to 19.

75 Transcript of 12 September 2019, Page 18, Lines 19 to 31.

44 The first defendant's evidence was that he was issued with a second laptop sometime in 2006, but that it was either a Compaq or IBM laptop, and not a Dell.[76] This was issued to replace his first laptop, which was a Compaq, after it started to give him problems. It is not in dispute that this first laptop was physically returned by the first defendant to a staff member of the Club's information technology department on the morning of 12 August 2014. As for the second laptop, which the first defendant was using up to time he was asked to resign, his evidence was that it was left on the table in his office in the morning of 12 August 2014 when he left the Club's premises.[77]

45 The first defendant's evidence that he left the second laptop on his table in his office was challenged by Mr D'Souza.[78] Mr D'Souza was one of the members of the MC who had been assigned the task of supervising the removal of the first defendant's belongings on the morning of 12 August 2014.[79] There were three other persons who had been asked to be present at the first defendant's office, but the only one who gave evidence was Mr D'Souza. His evidence was that he was standing in the office and saw the first defendant packing his things. After that was done and while some boxes were being moved to the first defendant's car, Mr D'Souza's evidence was that he took a cursory look around the office to see if there was anything that the first defendant had left behind. Mr D'Souza further indicated that he was sure that there was no laptop left on the desk. However, when he was pressed in cross-examination, he admitted that he did not have the laptop in mind when he took

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76 AR from [82] to [87].

77 AR at [151].

78 AEIC of D'Souza Derrick Charles ("DDC") at [11].

79 DDC at [1] and [6].

his cursory look around the office, and agreed that the laptop could have been left somewhere in the office.[80] He also agreed, contrary to what was stated in his AEIC, that he did not know whether the first defendant's office was locked after everyone left.[81] Mr D'Souza acknowledged that it was possible, given that the first defendant had a poor relationship with some members of the Club, that someone could have gone to the first defendant's office and removed the laptop that was there to get him into trouble.[82]

46 In my judgment, this issue of the missing laptop turned on the burden of proof. It is a serious allegation to accuse someone of misappropriating property. In this case, whether the allegation is made out depends on the contrasting evidence of the first defendant and Mr D'Souza on whether the laptop was left on the table in the office. I do find it odd that the first defendant would have specially returned his first laptop to the Club's information technology department, but then left the laptop he was using in his office, which he knew could not be properly locked. This led me to question the credibility of the first defendant's evidence on this issue, though I acknowledge that this point was not raised by the Club's counsel and the first defendant was never given an opportunity to explain his behaviour in this regard. Further, the first defendant might have left the second laptop in his office rather than with the IT department in the belief that his successor would be using it. This is plausible given the first defendant's unchallenged evidence that the first laptop was on his desk the first day he started work as the general manager.[83] Either way, it appears to me

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80 Transcript of 6 September 2019, Page 145, Line 12, to Page 147, Line 6.

81 DDC at [10] *cf* Transcript of 6 September 2019, Page 148, Lines 9 to 27.

82 Transcript of 6 September 2019, Page 173, Lines 19 to 22.

83 AR at [82].

that there is a range of potential reasons why the first defendant might have behaved in the manner he did, and the burden is on the Club to show that the first defendant had in fact misappropriated the second laptop.

47 Turning to Mr D'Souza's evidence on this issue, I did not find him to be a credible witness. He had shown himself to be quick to rush to judgment about the first defendant's dishonesty by making two police reports in August 2014 about missing property of the Club and naming the first defendant as the culprit.[84] He went so far as to describe the laptop as having been "stolen" by the first defendant in the second police report.[85] This was all before the Club had even confronted the first defendant on this accusation and given him an opportunity to explain. Mr D'Souza subsequently admitted that he had made the police reports without any approval by the MC at a MC meeting.[86] More remarkably, Mr D'Souza had also written a letter to the Attorney-General to urge him to take action against the first defendant after the police declined to take any action against the first defendant. This letter to the Attorney-General was, on Dr Singh's evidence, also sent without the MC's knowledge or approval.[87] To this, Mr D'Souza insisted that he had discussed the letter to the Attorney-General with other members of the MC, albeit outside an MC meeting.[88] Whatever might be the case, it is clear to me that Mr D'Souza had an axe to grind with the first defendant.

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84 AR at Exhibit 19.

85 Transcript of 10 September 2019, Page 64, Lines 13 to 25.

86 Transcript of 6 September 2019, Page 81, Lines 7 to 24.

87 Transcript of 4 September 2019, Page 50, Lines 15 to 19.

88 Transcript of 6 September 2019, Page 88, Lines 8 to 26.

48 To my surprise, however, while under cross-examination, Mr D'Souza often tried to distance himself from any accusation of theft or misappropriation against the first defendant. Instead, he repeatedly described the laptop as "missing" rather than having been taken by the first defendant and not returned.[89] He eschewed use of the term "stolen" to describe the laptop, and sought to distance himself from the letter he sent to the Attorney-General where he asserted that the first defendant had acted with "criminal intent".[90] In fact, Mr D'Souza went so far as to try and explain away the words of the letter by arguing that, even though the letter stated that "[s]everal members of the MC are of the opinion that there is criminal intent", he was *not* one of those members and did *not* believe that the first defendant had acted with criminal intent.[91] I found this entire episode somewhat perplexing, and had difficulty accepting Mr D'Souza's explanation given his use of the term "we" in the letter to the Attorney-General. Mr D'Souza's use of that word suggests that he was part of the collective seeking to persuade the Attorney-General to commence criminal proceedings against the first defendant, which was contrary to his position at trial.[92] Once again, although this point is not in itself decisive, it does underscore the unreliability of Mr D'Souza's evidence.

49 After weighing the competing oral evidence, and leaving aside the question of whether the missing laptop that had been used by the first defendant was a Dell or of some other brand, I find that the Club has not discharged its

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89 Transcript of 10 September 2019, Page 6, Lines 8 to 14. See also Transcript of 6 September 2019, Page 111, Lines 1 to 12.

90 6AB at p 3037. See also Transcript of 6 September 2019, Page 96, Line 4 to Page 97 Line 2.

91 Transcript of 6 September 2019, Page 97, Lines 1 to 22.

92 Transcript of 6 September 2019, Page 98, Lines 1 to 8.

burden of proof on the issue. The Club has not satisfied me that it is more likely than not, on the evidence, that the first defendant had taken the Club-issued laptop and not returned it. As such, I find that the claims by the Club against the first defendant in relation to the missing laptop and other Club's property fail.

50 In this regard, it is irrelevant whether the first defendant was a fiduciary of the Club by virtue of his position as a general manager, or simply an employee who owed the Club duties as per his employment contract. The point here really is that the factual bases of the accusations regarding the Dell laptop and the Club's documents and/or property have simply not been established.

Payments of the "special" bonuses

51 In its pleadings, the Club seeks to recover from the two defendants the "special" bonuses that were paid by the Club annually to the first defendant for the years 2005 to 2014 (for FYs 2004 to 2013), except for the "special" bonus paid in 2006 for the FY 2005.[93] The basis of the Club's claims is that there were no MC approvals for such bonus payments, as is allegedly shown by the fact that the relevant MC meeting minutes did not record any such approvals.[94] The only exception is found in the MC minutes of January 2006, which record the approval of the bonus to be paid to the first defendant for FY 2005. Belatedly, at the trial, the Club also dropped its claim for the payment of the "special" bonus in the year 2005, for FY 2004, because it had apparently missed the fact that the MC meeting minutes from December 2004 had in fact recorded the

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93 SOC from [22] to [35].

94 SS at Exhibit 24.

approval of such a bonus.[95] The Club's final position after these exceptions is that it is seeking to recover the "special" bonuses paid from 2007 to 2014 (FYs 2006 to 2013).[96]

52 According to the Club, its claims against the defendants for recovery of the bonuses are based on breaches of their fiduciary duties and breaches of trust. The second defendant is accused of procuring the Club to make payments of the bonuses when he knew that they were not authorised by the MC. The first defendant is alleged to have been aware that no such approval was obtained, but to have gladly taken the bonuses anyway.[97] The Club also argues that the first defendant has been unjustly enriched by his receipt of these bonuses that were wrongly paid to him without proper approval.[98] Further, it is also said that the first defendant had breached his employment contract by allowing such payments to be made by the Club to him.

53 In response, the defendants' case is simply that the bonuses were properly approved by the MC, and that in any event, any claims for the bonus payments made from 2007 to 2009 are time-barred.

54 This matter may be resolved in a fairly straightforward manner. The crux of the Club's claims is that the "special" bonuses from 2007 to 2014 (FYs 2006 to 2013) were never approved by the MCs. The *only* evidence in support of this contention is (a) the evidence given by Dr Singh, who was a member of the MC from April 2006 to March 2010, and (b) the fact that the MC meeting

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95 1AB at p 252.

96 PCS at [85].

97 SOC at [36].

98 PCS from [125] to [128].

minutes do not record approval for these "special" bonuses. I address both these items of evidence in turn.

Dr Singh's evidence that the "special" bonuses were never approved by the MC

55 Dr Singh is the only person who gave evidence claiming that "special" bonuses for the first defendant were *never* discussed and approved by the MC.[99] Including the second defendant, a total of ten members of the MCs from the years 2005 to 2014 gave evidence that the bonus for the first defendant was discussed and approved at an MC meeting each year. These meetings were usually held early in the calendar year to discuss the bonuses and increments of the Club's staff for the previous year. Not *one* of the MC members from the relevant timeframe who gave evidence corroborated Dr Singh's account. These former MC members, who instead gave evidence consistent with the second defendant's position, were N Pandian, Steven Goh, John Tan, Terence Shepherdson, Tan Lick Tong, Tan Suan Keng, Lee Mun Hoe, Lawrence Lee and Bernard Ho.[100]

56 The coherent and unequivocal evidence of these MC members is that the discussions about the first defendant's bonus would take place at the end of the MC meetings referred to above.[101] The first defendant and his executive secretary would first be asked to leave the meeting room. The audio recording would then be switched off so as to allow the MC members to have a frank and uninhibited discussion about the first defendant's performance. The quantum

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99 Transcript of 4 September 2019, Page 108, Lines 1 to 15.

100 DCS at [77].

101 See for instance, AEIC of N Pandian ("NP") from [20] to [21]. See in particular DCS at [77(c)].

for the first defendant's "special" bonus, typically, an additional month's salary or occasionally, a month and a half, would be proposed by the MC member in charge of human resources, and the rest of the MC members would then give their opinions about the first defendant's performance that year. After a discussion, a decision would then be made on the quantum of the first defendant's bonus. In the usual case, the first defendant would be told about the quantum of his bonus only sometime later by the second defendant when he handed the bonus letter to the first defendant. Some MC members recalled that there might have been once or twice when the first defendant was told of the MC's decision on the quantum of his bonus immediately after the MC meeting, and that the first defendant was then congratulated on his bonus.[102]

57 I accept the evidence of these MC members as being truthful. The evidence by the MC members was consistent and unshaken under cross-examination, and also made logical sense. Some MC members were candid in their oral evidence in admitting that it was perhaps a lapse on their part in not ensuring that the decision of the MC about the first defendant's bonus was specifically noted in the MC meeting minutes.[103] That would have been good practice. But, the explanation given, which I accept, is that the minutes of the MC meetings are prepared by the executive secretary based on the audio recordings of the meetings.[104] Unless a specific instruction is given to her to include the decision on the bonus of the first defendant in the minutes of the MC meeting, she might not have done so given that this was a discussion that was

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102 Transcript of 13 November 2019, Page 47, Lines 18 to 27. See also, for example, Transcript of 19 November 2019, Page 70, Lines 21 to 24.

103 Transcript of 19 November 2019, Page 76, Lines 1 to 13.

104 DCS at [80].

not captured by the audio recording of the meeting. The executive secretary might have been given specific instructions to include details concerning the bonuses for the FY 2005 and earlier, which explains why the decision of the MC on the first defendant's bonus was recorded in the minutes for FYs 2005 and 2006. I noted that, from FY 2007 onwards, when the MC meeting minutes did not record the approval of the first defendant's bonus, there was a new executive secretary who had been employed by the Club.[105] So, the change in executive secretary and an omission by the MC to give her a specific instruction to include the decision on the bonus of the first defendant in the minutes were probably the reasons for the omissions for FY 2006 onwards.

58 Weighed against the evidence given by the MC members outlined at [55] above, I had difficulty accepting Dr Singh's account that there was *no discussion whatsoever* of the first defendant's "special" bonuses. First, Dr Singh's position shifted from claiming that "no other employee" had received a "special" bonus regularly for many years in his AEIC, to a new position that there were at least "one or two others…who got it" while under cross-examination.[106] No explanation was given for this change of position.

59 Second, Dr Singh's claim that the "special" bonuses were unauthorised and had been paid out "secretly behind [the] MC's back" and were "not copied to the other committee members" is not supported by the objective evidence.[107] Contrary to Dr Singh's allegation, a letter dated 10 January 2007 signed by the second defendant and setting out the first defendant's "special" bonus was

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105 1 AB p 232 *cf* 1 AB p 303 and 5 AB p 2510.

106 Transcript of 4 September 2019, Page 96, Lines 17 to 25.

107 Transcript of 4 September 2019, Page 107, Lines 18 to 20.

copied to Mr Ronald Wee, the then-Human Resources Chairman and an MC member.[108] Similarly, a letter from March 2008 setting out the first defendant's "special" bonus was also copied to the Human Resource/Admin Manager's file. If the second defendant had in fact been seeking to conceal the "special" bonuses and pay them out secretly behind the MC's back, I see no reason why these individuals would have been copied.

60 Third, Dr Singh claims in his AEIC that "from 2005 to 2014 it was the [second] [d]efendant as the President and the [first] [d]efendant as General Manager/Secretary who signed the [authorisation letters]" for the "special" bonus pay-outs.[109] Dr Singh agreed that this allegation was in line with his accusation that the first and second defendants were engaging in fraud, and that it also comported with his claim that the first and second defendants were behaving "secretly[,] without letting anybody know".[110] He went on to assert that the first and second defendants "controlled the pay package" of the Club.[111] Dr Singh's claims in relation to the purported control by the first and second defendants over the Club's pay package are inaccurate and at odds with the objective evidence. Specifically, Mr Bernard Ho, the then-finance member of the MC, signed several of the GIRO payment forms authorising the payment of salaries and bonuses, which included the first defendant's "special" bonus.[112] It was therefore simply not true that *only* the first and second defendants signed and had oversight over the GIRO payment forms, since the finance member of

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108 Plaintiff's Bundle of AEICs, Tab 23, Page 441.

109 SS at [62].

110 Transcript of 4 September 2019, Page 134, Lines 10 to 13.

111 Transcript of 4 September 2019, Page 134, Lines 14 to 15.

112 Defendants' Bundle of AEICs Volume 3, Pages 423 to 428.

the MC signed them as well. In addition, it cannot be said that the bonuses were a "secret" since the MC members who gave evidence, apart from Dr Singh, all testified that they had approved the payments of such bonuses to the first defendant. Considering all the evidence in totality, I was simply unable to accept Dr Singh's evidence in relation to the "special" bonuses.

The MC meeting minutes

61 The Club went on to contend that the absence of any MC meeting minutes addressing the "special" bonuses showed that such bonuses were never discussed and approved. I have a number of difficulties with this argument.

62 First, I do not accept the Club's complaints that, without the decision of the quantum of the first defendant's bonus being recorded in the MC minutes, there was no record of the decision anywhere in the Club's documents. That is not correct because, as referred to at [56] above, the second defendant would give instructions for a letter to be prepared *each* year setting out the amount of the first defendant's bonus and the reasons for the MC's decision as to the quantum. That letter was presented to the first defendant each year, and a copy was kept by the Club. It is therefore not correct to say that the Club had no record of the decision to pay the first defendant a "special" bonus for each of the years in question.[113]

63 The Club next argues that, in the absence of the MC meeting minutes recording the discussions and decisions approving the first defendant's "special" bonuses, it is as if *no* such decisions had been made by the MC at all. This is because, under Article 31(d) of the Club's constitution, "[m]inutes shall

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113 AR at Exhibit 10.

be taken of all proceedings of the [MC] Meetings".[114] The Club also relies on regulation 4(1) of the Societies Regulations which provides, *inter alia*, that the office bearers of the Club "shall ensure that … proper accounts and records of the transactions and affairs of [the Club] are kept to show and explain all [the Club's] transactions…"

64 I am unable to accept this submission. I have found, on the evidence, that the MC members did discuss and approve the payment of the first defendant's bonuses. The fact that the discussion and decision was not minuted has been explained by the defendants' witnesses. This omission may well be an issue of a lack of best practices, but it does not follow that the MC is deemed in law to have made no decision at all. Put another way, an alleged breach of a procedural requirement under the Club's constitution and the Societies Regulation does not, *ipso facto*, render the MC's decisions null and void. In my view, the Club's position unjustifiably elevates form over substance by placing unwarranted weight on compliance with the minuting requirement over the fact of the MC's actual approval.

The principle in Re Hampshire Land

65 The Club has relied on the principle in case of *In re Hampshire Land Company* [1896] 2 Ch 743 (the "*Re Hampshire Land* principle"). That principle was applied by the Court of Appeal in *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Freddie Koh No. 2*"). At [116] of *Freddie Koh No. 2*, the Court of Appeal outlined the nature of the *Re Hampshire Land* principle:

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114 AEIC of Singh at p 69.

> In essence, the [*Re Hampshire Land* principle] applies in certain circumstances to prevent the attribution of an agent's knowledge of his breach of duty or acts to the principal even though in other contexts or circumstances, the agent's state of mind and acts would be attributable to the principal. This exception, which is motivated by reasons of public policy, only applies as against the agent who is in breach of his duty to the principal, or a third party who is complicit in the breach. It has no application as against an innocent third party.
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> [References omitted].

66 Relying on the above passage, the Club argues as follows in its written submissions:[115]

> [93] The Club will rely on the breach of duty exception referred to as the "*Re Hampshire Land principle*" such that the purported verbal approval by the MC members, that [*sic*] appeared as the Defendants' witnesses, would not be sufficient to taint the state of mind of the Club that the MC had approved [the first defendant's] special bonuses …

67 Thus, the argument by the Club appears to be that the approval by the previous MCs for the first defendant's "special" bonuses should not "taint the state of mind of the Club" insofar as those MC members were in breach of their fiduciary obligations, Article 31(d) of the Club's constitution, and reg 4(1) of the Societies Regulation. Put another way, the Club appears to be relying on the aforementioned breaches to vitiate the MC members' approval of the "special" bonuses.

68 In my judgment, the approach by the Club is misconceived. It appears to misunderstand the *Re Hampshire Land* principle altogether. First, I am not satisfied that the MC members who approved the "special" bonuses were in breach of their fiduciary obligations simply because the decision to pay the

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115 PCS at [93].

"special" bonuses was not recorded in the minutes. In this regard, in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*"), the Court of Appeal has clearly explained when a fiduciary relationship can be said to arise. At [135] of *Ng Eng Ghee*, the Court of Appeal observed that:

> Millett J has provided an authoritative statement on the duty of loyalty or fidelity in *Bristol and West Building Society v Mothew* [1998] Ch 1 as follows (at 18):
>
> > The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal … *[A fiduciary] is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.*
> >
> > …
> >
> > [Emphasis added]

69 Contrary to that position, the Club appears to be labouring under a misapprehension of when a fiduciary obligation arises, as evidenced by the following statements extracted from its closing submissions:

> [21] The Defendants have breached Regulation 4 [of the Societies Regulations] and ***consequently*** their fiduciary duty…
>
> […]
>
> [24] [The first defendant] ***as an "officer" of the Club*** was the equivalent of the other MC members due to his constitutional role as Secretary and ***owed equivalent fiduciary duties*** as the MC.
>
> […]
>
> [27] Both Defendants ***owed a fiduciary duty*** to ensure that there were "*proper accounts and records of the transactions and affairs of the society … to show and explain all the society's transactions and to disclose, with reasonable accuracy, the*

> *financial position of the society at any time*." This is ***taken from Regulation 4 Societies Regulations*** …
>
> [Original emphasis in italics, emphasis added in bold italics]

In my view, the Club is fundamentally mistaken as to what a fiduciary relationship entails and when it will arise. For instance, an obligation under the Societies Regulations does not *ipso facto* give rise to fiduciary duties, contrary to what the Club appears to suggest. Similarly, simply being an *officer* of the Club within the meaning of the Societies Act (Cap 311, 2014 Rev Ed) ("Societies Act") does not *without more* imbue one with fiduciary obligations. Given the weight which the law accords to fiduciary relationships, and the unique character of such relationships where loyalty is the "distinguishing obligation", more is required than duties under statutory regulations. Quite simply, the Club appears to be stretching the ambit of fiduciary obligations out of all recognition, and all without providing *any* authority for such propositions.

70 Further, the Court of Appeal in *Ng Eng Ghee* went on (at [135]) to reference *Bristol and West Building Society v Mothew* [1998] Ch 1 (at 18) for the following proposition:

> … Breach of fiduciary obligation, therefore, connotes disloyalty or infidelity. Mere incompetence is not enough. A servant who loyally does his incompetent best for his master is not unfaithful and is not guilty of a breach of fiduciary duty.

Thus, even if fiduciary obligations could be said to arise simply because of their position as MC members, those obligations cannot be said to have been *breached* because breaches of such duties connote disloyalty or infidelity. By any stretch of argument, I do not think that the Club's case about the failure to ensure a proper record of the bonus decisions in the MC minutes can amount to the MC members showing disloyalty or infidelity towards the Club.

71 Accordingly, I am not persuaded that the MC members have acted in breach of any fiduciary obligations they might owe to the Club. Even if they may be in procedural non-compliance with the obligation to keep proper records as outlined in the Club's constitution or the Societies Regulations, I am of the view that neither of these obligations created fiduciary duties on the MC members. As the Court of Appeal cautioned at [43] of *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655:

> While there are settled categories of fiduciary relationships – such as the relationship of a trustee-beneficiary, director-company, solicitor-client, between partners – it does not mean that all such relationships *are* invariably fiduciary relationships. In these relationships, there is a strong, but rebuttable, presumption that fiduciary duties are owed. Equally, the categories of fiduciary relationships are not closed or limited only to the settled categories … [However], whether the parties are in a fiduciary relationship depends, ultimately, on the nature of their relationship and ***is not simply a question of whether their relationship can be shoe-horned into one of the settled categories (eg, a partnership) or into a non-settled category*** (*eg,* a joint venture or quasi-partnership).
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> [Original emphasis in italics, emphasis added in bold italics]

As the Court of Appeal has made clear, whether the parties are in a fiduciary relationship depends on the *nature* of their relationship and not on whether or not the relationship can be shoe-horned into the circumstances the Club asserted at [69] above. The Club's analysis of this question is simply misplaced.

72 Second, I am not certain that the Club's case concerning the *Re Hampshire Land* principle would be aided even if the MC members are found to have acted in breach of their fiduciary obligations. In *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2016] 2 SLR 597 ("*UOB*") at [56], Aedit Abdullah JC (as he then was) observed that:

> … If the plaintiff succeeds in proving that it is a victim of fraud or conspiracy to commit fraud *which the Defendants are complicit in*, the principle would operate to preclude the Defendants from relying on the rules of attribution, which would otherwise apply, to attribute the knowledge and acts of [an employee of the plaintiff] on the plaintiff in order to defeat the plaintiff's claims against them.
>
> [Emphasis added]

There is no suggestion that the MC members who approved the relevant "special" bonus payments were complicit in any fraud or breach of fiduciary duty *relating to the alleged wrong by the first and second defendant*. The *Re Hampshire Land* principle applies to prevent a defaulting individual from being able to attribute his knowledge and acts to the plaintiff in order to defeat the plaintiff's claim against *himself*. There is no suggestion that the MC members who approved the relevant "special" bonus payments (and whose knowledge the Club is seeking to disclaim) are seeking to defeat any claim by the Club against *themselves* in relation to the purportedly unauthorised "special" bonuses. Put another way, there is no *causative connection* between any alleged breach of fiduciary duty by the MC members to ensure a record of their decision in the MC minutes, and the allegedly fraudulent or improper payment of the "special" bonuses to the first defendant.

73 Third, any allegations that the MC members who had approved the "special" bonuses had breached their fiduciary duties are completely absent from the Club's pleadings. Neither was it pleaded that the MC members had in any way colluded or conspired with the second defendant for the Club to make unauthorised "special" bonus payments to the first defendant, and hence are now giving false testimony to cover their tracks. These claims appear to have only developed subsequently over the course of proceedings.

74 Ultimately, on the Club's approach to the *Re Hampshire Land* principle, I find this Court's observations at [52] of *UOB* instructive:

> The recent cases of *Bilta* and *Moulin* have, fortunately, clarified the rationale and scope of the [*Re Hampshire Land*] principle. Contrary to some suggestions by cases in the past such as *Stone & Rolls*, the *Re Hampshire Land* principle is not founded on agency principles, but is a reflection of the public policy that the law will not permit a company's right to seek redress from a defaulting officer to be defeated by attributing the defaulting officer's culpability to itself. Lord Walker, who recanted on his position in *Stone & Rolls* (at [145]), explained at [106] of *Moulin*:
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> > … The underlying rationale of the fraud exception [synonymous with what we have been referring to as the *Re Hampshire Land* principle] is to avoid the injustice and absurdity of directors or employees relying on their own awareness of their own wrongdoing as a defence to a claim against them by their corporate employer.
>
> […]

This extract clearly indicates that the *Re Hampshire Land* principle operates as a rule of public policy in preventing a wrongdoer from relying on *his own* awareness of the wrongdoing as a defence. The MC members who testified for the defendants are not facing any claims by the Club. There is simply nothing that they need to raise a defence to in the first place. I am accordingly not satisfied that the Club has properly applied the *Re Hampshire Land* principle, and find that it does not apply on the instant facts.

75 Viewing the facts holistically, at the highest the Club's case can be pitched, there may have been a lapse on the part of the MC as a whole, or the second defendant as Club president, in failing to direct the executive secretary to include the MC's decision on the first defendant's bonus in the minutes. The second defendant, in his position as the president of the Club, *might* have breached his obligations under Article 31(d) of the Club's constitution and regulation 4(1) of the Societies Regulations in approving the minutes of the MC

meeting without checking that the decision on the bonus had been minuted. However, this is a far cry from the case in *Freddie Koh No. 2* ([65] *supra*), where it was held that the management committee members could not approve a certain course of action by the Club because such approval would *in and of itself* constitute a breach of the committee members' fiduciary duties to the Singapore Swimming Club. As the Court of Appeal observed at [117] of *Freddie Koh No. 2*:

> … A member of the 2008 MC – if any at all, apart from the Respondent – who had knowledge about the true nature of the Respondent's acts *would most certainly be in breach of his fiduciary duty to the Club* in allowing the Club to make payments in respect of Suit 33 despite knowing that the Respondent's acts fell outside the scope of the Indemnity Resolution …
>
> [Emphasis added]

Unlike in *Freddie Koh No. 2*, the decision by the MC members on the instant facts to approve the bonus payments is *not* in and of itself a breach of their fiduciary duties. The Club is, after all, only alleging a breach of procedural rules in ensuring that the MC meeting minutes were complete, which I have already found would not constitute a breach of fiduciary obligations. *Freddie Koh No. 2* is therefore readily distinguishable from the present case.

76 For completeness, I also note from the evidence that there were many important decisions of the MC, even after the MC elections of April 2014, that were *not* recorded in the MC meeting minutes even though the Club maintains that they were properly discussed and decided at MC meetings. For example, the decision by the MC to add the second defendant as a party to these legal proceedings is absent from *any* MC minutes. Mr D'Souza testified that the decision to add the second defendant was a "serious matter" that had to be

discussed and decided by the MC members.[116] Yet, this decision, which would obviously entail a significant commitment as to fees paid to lawyers and potential liability for legal costs, was not minuted in any MC meeting minutes. Further, the MC's discussion on the reasons for the termination of the first defendant's employment on 11 August 2014 is not recorded in any MC Minutes, despite Dr Singh agreeing that terminating the general manager of the Club was an important and significant step.[117] In my view, these examples demonstrate that there will be occasional lapses in the preparation of the minutes for MC meetings, but the mere fact that an item has not been recorded as having been discussed or decided is does not in and of itself constitute a breach of fiduciary obligations, nor does it *ipso facto* render the decision of the MC void.

The unanimous consent of the MC members

77 The Club also argues, in the alternative, that it is incumbent on the defendants to show that *all* members of the MCs in 2006 to 2013 agreed to the payments of the first defendant's bonuses if there is reliance on the "informal assent" of the MC members instead of a properly minuted decision of the MC.[118] It was pointed out that three of those MC members, that is, Francis Koh, Richard Yong and Ronald Wee, did not give evidence.[119] The Club relies on the "well-entrenched common law principle that the unanimous and informed consent by *all the members of a company* in some other manner is as effective as a resolution passed at a general meeting…" (emphasis added): *Si-Hoe Kok Chun and another v Ramesh Ramchandani* [2006] 2 SLR(R) 59 ("*Si-Hoe Kok Chun*")

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116 Transcript of 10 September 2019, Page 63, at Lines 10 to 17.

117 Transcript of 3 September 2019, Page 72, Line 30 to Page 73, Line 2.

118 PCS at [96] and [97].

119 PCS at [98].

at [22].[120] This principle of company law is founded on the idea that the body of the shareholders acting unanimously is a manifestation of the will and mind of the company. Hence, if all the shareholders informally assent, even at different times, to the conduct of a director which would otherwise be a breach of duty on his part, the director's conduct would not be actionable by the company.

78 This well-known principle of company law, however, has no application to the facts of our case. Leaving aside the question of whether a principle of company law can be applied in the context of a club registered under the Societies Act, the evidence clearly establishes that the issue of the first defendant's bonuses was raised, discussed and approved at MC meetings before the bonuses were then paid to the first defendant. The omission to minute the decision in the MC meeting minutes is a failure of procedure, but it does not mean that a decision had not been made. There is thus no breach of duty on the part of the second defendant giving instructions for the payment of the bonuses.

79 Given the evidence of ten MC members that there were decisions at MC meetings that gave prior approval for the payment of the bonuses, there is no need to consider whether the three MC members who did not give evidence *would have approved* the bonuses. The evidence before me is that the MC *did approve* the bonuses. Thus, the argument that *all* the MC members must now give evidence to show that they agree to the bonuses has no legal basis, and it proceeds on the erroneous premise that the MC *never* approved the payments of the bonuses in the first place. As such, the Club's reliance on the principle referred to in *Si-Hoe Kok Chun* is entirely misconceived on the facts of this case.

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120 PWS at [96].

80 For the above reasons, I find that there is no merit to the Club's claim against the second defendant for breach of any duties he might owe, fiduciary or otherwise, in relation to the bonuses paid to the first defendant. The second defendant did not act on his own to procure the payment of bonuses from the Club to the first defendant. The bonuses were approved as a collective decision of the relevant MCs.

81 As for the first defendant, I struggle to understand the nature of the claim against him in relation to these bonuses. He is not the person in charge of preparing the minutes of the MC meetings, nor does he approve the minutes. That is the job of the executive secretary and the president respectively.[121] I am not sure how the first defendant can be said to have breached any fiduciary or contractual duties he might owe by merely receiving payment of these bonuses. The Club argues that the first defendant knew that the bonuses for him were not authorised.[122] However, I am puzzled as to the factual basis for this submission, given that he was not involved in the discussions regarding his bonus and thus would not know whether they were approved or not. The first defendant was only told *after* the MC meeting or sometime later that the MC had approved the payment of a bonus to him, usually when he was handed his bonus letters.[123]

82 There is also no basis for the claim in unjust enrichment against the first defendant in relation to these bonuses. The payments were authorised by the MC, and the Club did not make the payments of these bonuses to the first

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121 Transcript of 11 September 2019, Page 16, Lines 5 to 7.

122 DCS at [127] and [128].

123 AR at Exhibit 10.

defendant under any mistake of fact. I therefore find that the claims against the two defendants in relation to the issue of the bonuses fail completely.

83 I add for completeness that given the above analysis and my finding that the "special" bonuses had in fact been approved by the relevant MCs, there is no need for me to consider the defence of limitation pleaded by the defendants.

Visiting Membership fees

84 The Club's claim against the two defendants in relation to the Visiting Membership fees is for failing in their alleged duties to ensure that a Visiting Membership fee of S$50 was collected from each guest who stayed at the Residence.[124] For the first defendant, it is argued that he should be liable for the failure to collect Visiting Membership fees for 4,327 guests, giving rise to a total of S$216,350 from the time the Residence started its operations in 2009 until 1 September 2014, when his employment as the Club's general manager was terminated. For the second defendant, it is argued that he should be liable to the Club for S$323,900, being the uncollected Visiting Membership fees for 6,478 guests from the same start date in 2009 up to the time he ceased being the Club's president, that is, April 2016.

85 I will just note here the rather odd position taken by the Club in relation to the second defendant. The second defendant was already suspended by the Club at the end of December 2015, but is still alleged to be liable for the lapses in the management of the Residence up to the end of his tenure as president in April 2016. How the second defendant can remain liable for the management of the Residence during this time of suspension has not been explained by the

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124 PCS from [211] to [216].

Club. The other rather puzzling fact is that the Club does not appear to be taking issue with how the new general manager, Shareef Bin Abdul Jaffar ("Mr Shareef"), who took over from the first defendant in September 2014, managed the Residence until it ceased operation on 30 June 2017. Specifically, Mr Shareef *also* did not ensure that any Visiting Membership fees were collected from the guests who stayed at the Residence, even though his evidence is that he was aware of the purported need for applicants for Visiting Membership to each pay a S$50 fee.[125] Yet, the Club takes no issue with this.

86 The basis of the Club's claim against the first and second defendants in relation to the Visiting Membership fees is a pre-printed Visiting Membership application form that was found in the Club's records.[126] The application form stipulated a S$50 application fee. Since the Club had decided that each guest of the Residence would have to be registered as a Visiting Member to meet the URA Condition that the Residence could only be used by the Club's members, it is argued that the defendants should have ensured that all the procedures of the Club in relation to the admission of Visiting Members were met. This would include the S$50 fee, as referred to in the application form. The first defendant is said to be liable because he had overall charge of the Residence as the general manager of the Club. The second defendant, on the other hand, is liable because the Residence was his "pet project", which he conceived, developed, and took a special interest in.[127] Also, the Club alleges that the second defendant personally oversaw the first defendant's management of the Residence.[128]

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125 Transcript of 11 September 2019, Page 93, Lines 21 to 26. See also Transcript of 11 September 2019, Page 89, Line 9 to Page 90, Line 7.

126 SS at Exhibits 41 and 42.

127 See, *inter alia*, Transcript of 3 September 2019, Page 121, at Lines 26 to 29.

128 Transcript of 13 November 2019, Page 115, Line 22 to Page 116, Line 23.

87 The difficulty with the Club's case in this regard is that almost all the MC members, past and present, who gave evidence in this case, whether for the Club or for the defendants, did not appear to be aware of the existence of the requirement to collect Visiting Membership fees. As I explained earlier, the entire basis of this claim against the defendants is the application form and some completed old forms from many years ago. These completed forms, dating from 2002, suggested that a S$50 fee was collected from applicants when they applied for a one-month period of visiting membership.[129] There was no evidence before me that the MC had ever authorised the collection of the Visiting Membership fees for the guests at the Residence. Mr Shareef, who was the only witness who claimed to be aware of the need to collect Visiting Members fees because he was also the general manager at the Club *before* the first defendant, was not able to shed any light on the issue.[130] There was also no evidence as to whether the Club still had a practice of collecting Visiting Membership fees at the time when the Residence was in operation from 2009 to 2014. As the Club's two main witnesses, Dr Singh and Mr D'Souza, testified, they were not even aware of such fees until these application forms were dug up by the Club from its records in the course of these legal proceedings sometime in 2017.[131] The two defendants also testified that they were completely ignorant of any such requirement to collect Visiting Membership fees. The evidence of the other MC members was to the same effect. That being the case, I am not satisfied on the evidence before me that the Club did

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129 SS at Exhibit 40.

130 NB for avoidance of doubt, it should be noted that Mr Shareef was general manager of the Club both before *and* after the first defendant's tenure.

131 Transcript of 5 September 2019, Page 62, Lines 5 to 32. See also Transcript of 5 September 2019, Page 85, Lines 22 to 32. See, in relation to Mr D'Souza, Transcript of 10 September 2019, Page 33 Line 26 to Page 34, Line 20.

indeed have a practice or requirement from 2009 to 2014 of collecting Visiting Membership fees.

88 More significantly, as pointed out by the defendants, the Club's constitution expressly deals with this issue of Visiting Membership fees. The Club's constitution sets out the various categories of membership that the Club has. It also sets out the fees that are to be collected for each category of membership. Article 18 of the Club's constitution does not prescribe any fee to be paid by Visiting Members.[132] Quite to the contrary, it states that *no entrance fee* shall be collected for such Visiting Members. Given this, I accept the defendants' submission that it would have been a breach of the Club's constitution for Visiting Membership fees to be collected from the guests of the Residence. The MC is constrained as to what fees it can collect from the members of the Club by the terms of the Club's constitution. As such, I find that there is actually no legal basis for the claims against the defendants with regard to the Visiting Membership fees.

89 For this reason, I find that the defendants have not breached any duties they might have, whether fiduciary or otherwise, in relation to the Club's alleged failure to collect Visiting Membership fees from the guests of the Residence. There is no need for me to deal with any issue of whether the defendants are fiduciaries of the Club in relation to the collection of such Visiting Membership fees given that my findings do not turn on this point.

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132 SS at Exhibit 1, rule 18.

Commissions paid by the Club to booking agents

90 The Club also claims that the first defendant failed to obtain the approval of the MC before he procured the Club to make payments to various online booking agents.[133] These booking agents had been engaged to secure guests for the Residence. In particular, the first defendant allegedly did not bring the attention of the MC to the fact that the use of booking agents by the Club was prohibited by the URA Condition that the guest rooms at the Residence were not to be used as independent hotel rooms. The Club also argues that there is actually no need for the use of such booking agents since the marketing of the Residence to the general public was prohibited. By failing to bring the attention of the MC to the URA Condition even though the use of booking agents might potentially breach this restriction, the first defendant is said to have breached his duties to the Club. Also, because the second defendant was fully aware of the URA Condition and that the use of booking agents would breach that restriction, he has also been accused of breaching his duties by permitting the Club to engage booking agents. In this regard, the Club seeks to make the two defendants jointly and severally liable for the amount of booking fees paid by the Club over the years, that is, *at least* the amount of S$845,192.02 that was paid to one booking agent, "Booking.com".[134]

91 In my judgment, the MCs for the period from 2008 to 2014 were fully aware of the URA Condition that the guest rooms at the Residence not be operated as independent hotel rooms. This was the clear and consistent

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133 PCS from [217] to [242].

134 PCS at [251] and [252].

evidence of the MC members who testified on behalf of the defendants.[135] It was also the evidence of the two defendants. Even Dr Singh, who was in the MC from 2006 to 2010 and then again from April 2014, admitted, after some prevarication when he was cross-examined, that he was aware of the URA Condition which imposed the restriction on the use of the Residence guest rooms.[136] There was no running away from this fact because the minutes of the MC meeting of 15 December 2009 showed that an email from the URA to the Club dated 2 December 2009 was tabled and discussed.[137] That email from the URA was a query as to why the Club had been marketing the Residence guest rooms to members of the public. It specifically referred the URA Condition set in the written permission that had been granted in July 2009.

92 Given that the evidence unequivocally showed that the MC was aware of the URA Condition, at the very latest, by December 2009, I fail to understand the Club's repeated references in cross-examination, and in its submissions, to the fact that the MC meeting minutes did not record that *earlier* communications from the Singapore Tourism Board ("STB") and from the URA concerning the same restriction were discussed at MC level. In my view, this is simply immaterial. Written permission to operate the Residence was granted by the URA in July 2009, and the MC was aware of the URA Condition, at the very latest, by December 2009.[138] The Club appears to be inviting me to conclude

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135 See for example, NP at [36], AEIC of Tan Lick Tong ("TLT") at [67], AEIC of Tan Suan Keng ("TSK") at [26]. See generally DCS at [101].

136 Transcript of 4 September 2019, Page 142, Line 27 to Page 143, Line 8, and Page 143 Line 29 to Page 144, Line 23. See also Transcript of 5 September 2019, Page 17, Lines 3 to 20, and Page 29, Lines 3 to 18.

137 SS at Exhibit 38.

138 SS at Exhibits 34 and 35.

that from July to December, the absence of any minutes detailing the URA Condition illustrates that the MC had no knowledge of it when it approved the use of booking agents.[139] This once again places undue weight on the minutes, which, as highlighted above at [76], had significant omissions even *after* Dr Singh took over *de facto* leadership of the MC. Rather, the central question I needed to address was what the MC members at the relevant times were aware of and had approved, and I turn to the direct evidence on that question below.

93 The MC members from 2007 to 2013 who gave evidence for the defendants testified that they were fully aware of and approved the use of booking agents in order to secure occupancy of the Residence guest rooms.[140] Like the case of the first defendant's bonuses, Dr Singh was the *only* MC member from that period who was prepared to testify that he was ignorant that the Club was using booking agents.[141] After reviewing the totality of the evidence, documentary and oral, I came to the conclusion that Dr Singh was simply not being truthful in this regard.

94 As explained by several of the MC members when they gave evidence, the MC was acutely aware that they would not be able to generate sufficient revenue from the Residence unless the guest rooms were also marketed to tourists and travellers visiting from overseas. For example, N Pandian, who was part of the sub-committee that was involved in the building of the Residence, admitted frankly that the MC had decided, after a few months of operating the Residence, that it had to open up the Residence to tourists in order to generate

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139 *Cf* however 2AB at p 888 and p 877.

140 NP at [42], TLT at [73], TSK at [42]. See generally DCS at [116].

141 Though *NB* Dr Singh's own admission at Transcript of 5 September 2019, Page 95, Lines 20 to 27.

sufficient revenue.[142] He believes that the Club was still in compliance with the URA Condition because the tourists who booked rooms at the Residence were registered as Visiting Members and hence, in that sense, the Residence was not being operated as a hotel.[143] Many of the other MC members gave similar evidence.[144] In this regard, it is clear that the MC authorised the first defendant to engage online booking agents, like Agoda, Expedia, and Booking.com, to market the Residence guest rooms and raise the occupancy rate.

95 For completeness, I am of the view that any discrepancies in the evidence given by the MC members which were highlighted by the Club are fairly minor and do not detract from the central fact that the MC had approved the advertising and payment of commissions in relation to the Residence. The Club spent a substantial part of its submissions on this issue discussing the existence and activities of a Residence sub-committee, but this is neither here nor there given the minutes of the 15 December 2009 MC meeting, which clearly show that the URA's email was in fact placed before the MC by that date.[145]

96 The MC was also fully aware of how much in the way of commissions was being paid to the booking agents that the Club had engaged. Financial reports provided to the MC set out the amount of commissions paid.[146] Not only that, even the annual report of the Club, which was sent to *all* members,

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142 Transcript of 19 November 2019, Page 93, Lines 6 to 25. See also Transcript of 19 November 2019, Page 110, Lines 6 to 18.

143 NP at [42].

144 See for example, AEIC of Terence Christopher Shepherdson ("TCS") at [42].

145 PCS from [257] to [273].

146 See for example Transcript of 5 September 2019, Page 26, Lines 10 to 25.

specifically stated that that there were commissions paid to booking agents. One example is the Club's annual report of 2011 which mentioned in the financial report for the Residence that "[t]he bulk of the operating expenses of $158,450 went to advertising to raise awareness and payment of commissions to both brick and mortar and *electronic travel agents*" (emphasis added). Given this specific reference to such commissions in the annual report, I was quite surprised that Dr Singh continued to maintain that he was not aware of the Club having paid any booking commissions.[147]

97 Further, Mr D'Souza, who was elected to the MC in April 2014 and took over the role as the MC member in charge of finance, continued to sign cheques on behalf of the Club for commissions that were payable to such online booking agents.[148] He agreed, under cross-examination, that the members of the MC (elected for two years from April 2014) were aware of the Club's payment of such commissions and no MC member raised any issue.[149] This is pertinent because Dr Singh was elected to the MC in April 2014, and was the vice-president of the Club.

98 In this regard, I found Dr Singh's claim that he was unaware of the use of booking agents until his alleged discovery of the URA letter sometime in 2017 particularly galling because he had attended a Residence sub-committee meeting on 14 August 2014, where the issue of the commissions paid to online

147 3AB at p 1301

148 DCS at [120].

149 Transcript of 10 September 2019, Page 41, Lines 21 to 25, and Page 42, Lines 11 to 18.

booking agents was specifically discussed.[150] It is patently clear from the minutes of that sub-committee meeting that:[151]

> The Sub-committee has noted that the amount being paid to online agents for commission and has come to the decision to explore an option of putting a separate website for The Residence to attract direct bookings and save on commission. To discuss this possibility and get details from IT manager.

This extract is telling because it illustrates that the issue of commissions paid to booking agents for the Residence was openly discussed. Clearly, if Dr Singh were in fact, as he claimed, wholly unaware of such commissions, he would have expressed shock or surprise that they were being paid. Yet, Dr Singh expressed no such reaction at all at the existing practice of paying commissions to booking agents.[152] These minutes indicated to me that, Dr Singh's protestations to the contrary notwithstanding, he must have been aware of the Club's practice of paying commissions to booking agents for the Residence all along.

99 For the above reasons, I did not accept as at all credible Dr Singh's evidence that he was not aware that the Club was paying commissions to booking agents. I also could not accept Dr Singh's claim that the payment of commissions was not approved by the MC.

100 On this issue of the commissions, I do not need to decide whether the use of booking agents by the Club to market and create awareness of the Residence to the public would breach the URA Condition. The fact remains

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150 Transcript of 5 September 2019, Page 37, Lines 14 to 26. See also 6AB at p 3076.

151 6AB at p 3076.

152 Transcript of 5 September 2019, Page 46, Lines 1 and 2.

that the MC had authorised and approved the use of the booking agents, even after the restriction that had been imposed by the URA Condition had been brought to their attention. That being the case, the first defendant was simply carrying out the instructions of the MC when he engaged the use of booking agents.

101 I also found the Club's submission that the terms of the agreements with the booking agents had not been surfaced to the MC and specifically discussed at MC meetings to be a non-starter of an argument.[153] The MC had authorised the first defendant to engage booking agents. It was within the scope of his authority to decide on which booking agent to use and what terms to accept. There is no allegation that the first defendant had acted negligently in making a poor selection of the booking agents to use, that he had exceeded his authority, or that the payments of commissions were not in accordance with the terms of the agreements.

102 As for the second defendant, from the evidence before me, it is clear that he did not act alone in making decisions about the use of booking agents for the Club. It was a collective decision of the MC, and the second defendant was simply a part of the MC in making that decision.[154] In fact, even if the second defendant had disagreed with the approach taken, he would have been the sole voice, perhaps together with Dr Singh, in the MC dissenting, since the majority has given evidence that they were aware and in favour of the use of booking agents to secure occupancy of the Residence guest rooms. That being the case,

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153 See, *inter alia*, Transcript of 5 September 2019, Page 45, Line 11 to Page 46, Line 9. See also Page 97, Lines 1 to 10, and Page 110, Line 30 to Page 111, Line 6.

154 See above at [92].

I do not see what basis the Club has in attempting to hold the second defendant liable to account for the commissions paid to the booking agents.

103 For the above reasons, I find that the claims against the defendants in relation to the recovery of the commissions paid to the booking agents engaged by the Club are without merit. Again, the question as to whether the defendants were the Club's fiduciaries in respect of such payments to these booking agents is academic given my findings.

Indemnity for potential fines or penalties

104 The Club's case is that the Residence had been operated from the time of the start of its operations in 2009 until its cessation of operations on 30 June 2017 in a manner that was in breach of the URA Condition that the guest rooms were not to be used as independent guest rooms.[155] This potentially exposes the Club to fines or penalties that might be imposed *if* the authorities were to decide to take action. As such, the Club seeks an order that the defendants, who the Club alleges are responsible for the management of the Residence, indemnify the Club for any fines or penalties that "*may be levied against the Club*".[156]

105 The Club refers me to the various communications sent by the STB and URA regarding the restriction on the use of the Residence guest rooms. It also refers to a letter from the Hotel Licensing Board ("HLB") dated 27 March 2013.[157] In that letter, the HLB pointedly states that the Residence was being operated as a hotel, but without the proper license from the HLB. It also stated

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155 PCS from [274] to [279].

156 PWS at [6].

157 5AB at p 2272

that it would "not hesitate to take any action and/or exercise such powers as it deems fit". The Club submits that the evidence before me also shows that the Residence was operated on a 24-hour basis like a hotel.[158] It also points to the fact that, as explained earlier, the Club had engaged online booking agents, such as Expedia, to market the Residence to tourists and other travellers who may be visiting Singapore. The Club argues that this is exactly what a hotel would do.

106 The Club further refers me, in its submissions, to various provisions set out in the Hotels Act, and in particular, the definition of what would constitute a hotel, to show that the clear evidence establishes that the Residence was in fact being operated like a hotel.[159] It points out that the reply that was sent by the Club to HLB's letter of 27 March 2013 was misleading and untrue in stating that the Residence was not being operated on a 24-hour basis and that only Visiting Members are allowed to stay in the guest rooms.[160]

107 After having carefully considered the matter, I find that there is no need for the Court to decide in these legal proceedings whether the Club operated the Residence in a manner that was in breach of the Hotels Act or the URA Condition. Even if the Club can surmount the difficulty of explaining why it should only be the first and second defendants who should indemnify it for what I have already found to be decisions of the relevant MCs *collectively*, I am not satisfied that the indemnity sought should be granted. My reasons are as set out below.

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158 See for example Transcript of 11 September 2019, Page 42, Lines 1 to 22.

159 PCS from [146] to [149].

160 SS at Exhibit 35.

108 First, and most obviously, there are no regulatory actions or prosecutions which have been brought by the URA, HLB, or STB thus far. There is therefore no particular factual matrix on which I can assess whether the Club had acted in breach of any legislation and should be indemnified by the defendants, in light of the facts which the regulatory body is relying upon. In fact, the Club has *itself* not specified in its written submissions precisely *which* provisions it claims to have breached, and instead only asserts in broad-brush language that the defendants' acts have "exposed the Club to penalties from various government agencies including the URA and the STB". This lack of specificity undermines any attempt to consider the Club's alleged wrongs, and is exacerbated by the fact that it is not possible to say with *any* degree of certainty whether the loss stemming from potential regulatory action would flow from any wrongs committed by the first and/or second defendants. It would all depend on the facts upon which the regulatory action is taken. Put shortly, the Club is asking that the Court decide the issue of an indemnity in abstract even though the factual matrix on which the regulatory action is based will have a *direct* impact on whether an indemnity should be ordered.

109 Second, and more critically, there is precedent which suggests that the Club is acting prematurely in seeking an indemnity at this juncture. In *Freight Connect (S) Pte Ltd v Paragon Shipping Pte Ltd* [2015] 5 SLR 178 ("*Freight Connect*"), the Court of Appeal held that, where a plaintiff was facing a possible claim by a third party which had not at the time made a claim, it would not be appropriate to order the defendant to indemnify the plaintiff in respect of any loss it *may* suffer *vis-à-vis* the third party. Instead, the issue of an indemnity could be reserved with a liberty to apply for directions when the real issue can be determined and damages quantified, but only if there was a need to do so. For example, if a claim had already been made by the third party against the

plaintiff, the issue of whether an indemnity should be ordered can then be reserved until after damages owed to the third party are quantified at the appropriate time, as opposed to merely being decided in a vacuum.

110 At [52] of *Freight Connect*, the Court of Appeal observed that:

> … In *Trans Trust SPRL v Danubian Trading Co Ltd* [1952] 2 QB 297 … [the] Court of Appeal further observed that even if the head of damage was recoverable (*ie*, in the event that it was not too remote), it would *not* be correct to make a declaration of indemnity. Somervell LJ stated the law as follows at 303:
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> > … The problem can be shortly stated. B sues C for breach of contract. The court holds that B is entitled as against C to recover damages in respect of B's liability to A arising out of C's breach of contract. At the time of the hearing B is not in a position to call evidence to quantify this damage. There may be some cases in which the court can state a principle which makes the subsequent quantification of this damage simple. On the other hand, difficult questions may arise, depending, for example, ***(1) on any variation of the terms of the contract between B and C as between B and A, (2) on the question whether A took the steps which should have been taken to mitigate damage***. No declarations ought to prejudice or preclude a proper determination of these issues, on which the defendants should be entitled to be heard. It might, as it seems to me, be more satisfactory if there were ***liberty to apply for directions as to the determination of these issues, if any, and quantification of damages under this head as between plaintiffs and defendants, should disputes arise.*** Some order in this form, at any rate, in some cases, might be ***more satisfactory than a declaration in the form ordered***. [Emphasis added in bold italics]
>
> Denning LJ also held that in the event where the liability of the seller to a third party was within the contemplation of the parties, but had not yet been assessed, the proper order was to reserve that head of damages. It was further observed that judgment could be entered for the damages already ascertained, leaving the rest to be ascertained later by the same or another judge (at 307). On this basis, Denning LJ arrived at the conclusion that "it would not be correct to make a declaration of indemnity". In the subsequent English decision of *Deeny v Gooda Walker Ltd (in liquidation*) [1995] 1 WLR 1206,

> Philips J followed *Trans Trust* and deferred dealing with the claimants' future losses until it had been determined (at 1214).
>
> [Emphasis original]

On the basis of the reasoning as outlined above, the Court of Appeal declined to order an indemnity on the facts of *Freight Connect*. While *Freight Connect* dealt with the possibility of a plaintiff facing a civil claim by a third party, I do not see any distinction in principle between that situation and one where there is a possibility of the Club being prosecuted for statutory offences and facing potential monetary penalties in the future.

111 Third, the uncertainty as to whether the authorities will take action or what action they might actually take makes this an inappropriate case for an indemnity against the first and second defendants to be ordered. As stated above at [108], the Club has not outlined the specific legislative provisions or regulations it alleges that it has breached. However, looking at the regulatory frameworks in both the Planning Act (Cap 232, 1998 Rev Ed) and the Hotels Act, not all the potential penalties are necessarily monetary, and not all of them necessarily apply only to the Club. For example, the regulatory authorities have a broad discretion in determining whether to only prosecute the Club, or to also prosecute specific individuals (for instance, as hotel-keepers under the Hotels Act). Further, the regulatory authorities also have the discretion to issue warnings instead of proceeding against the Club or its members. Given the multiple permutations of actions which the regulatory authorities may elect to take, and the fact that the Club has not even outlined precisely *which* regulatory provisions it may have fallen foul of, I am not satisfied that I should speculate as to the manner in which the discretion may possibly be exercised by the regulatory authorities, which I would be doing by ordering an indemnity at this point.

112 In this case, on the evidence before me, the last time the authorities raised any issue with the Club about the manner in which the Residence was operated was in the letter from the HLB of 27 March 2013.[161] The Club's reply, signed by the first defendant, denied that the Residence was being operated like a hotel. In the evidence before me, there has been no complaint raised by the URA, STB or HLB since then. It is entirely unclear whether any action will be taken by the authorities against the Club now that several years have passed since that letter from HLB and the Residence has ceased operation. As such, following the approach taken in *Freight Connect*, and for the reasons outlined above, it is not necessary for me to consider whether the Club is entitled to an indemnity from the two defendants. It is a hypothetical question. That issue can be decided *if and when* the Club ever faces prosecution for operating the Residence like a hotel and/or for breaching the URA Condition, *and* the Club then brings proceedings against the defendants for an indemnity.

113 As for the question of whether the issue of an indemnity should be reserved, the Club has not satisfied me that there is a need to reserve the issue of an indemnity (see [109] above). As in *Freight Connect*, no claim (or prosecution) has been brought by any third parties. I am not satisfied, given the long lapse of time since the HLB letter of 27 March 2013, that there is a need for the issue of an indemnity to be reserved. Such a reservation might result in these proceedings being extended indefinitely if no prosecutions are eventually brought. The Club can seek an indemnity at the appropriate time.

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161 5AB at p 2272.

The first defendant's counterclaim for wrongful dismissal

114 The first defendant's counterclaim is on the basis that he was constructively dismissed on 11 August 2014, and/or wrongfully terminated from his employment on 1 September 2014 by the Club. He claims to be entitled to the amount of S$57,348.67 comprising, *inter alia*, his unpaid salary in lieu of notice, annual wage supplement, and an encashment of his unconsumed annual leave. The breakdown of this amount is set out as follows:[162]

a	Loss of salary for the period of 2 months (S$13,104.00 per month x 2 months)	S$26,208.00
b	Loss of employer's CPF contributions for the period of 2 months (S$525.00 per month x 2 months)	S$1,050.00
c	Salary in lieu of accrued annual leave of 56.5 days = [(S$13,104 per month x 12 months) / (5 days per week x 52 weeks)] x 56.5 days =S$604.80 x 56.5 days	S$34,171.20
d	Annual Wage Supplement equivalent to 1-month's salary	S$13,104.00
e	Employer's CPF contributions in respect of the salary in lieu of accrued annual leave and Annual Wage Supplement	S$1,066.97
f	Handphone allowance from 1-8-14 to 11-10-14 (both dates inclusive) = [(S$100 per month x 12 months) / 365 days] x 72 days = S$3.29 x 72 days	S$236.88

162 AR at [347].

g	Less: Amount paid by the [Club] for the period from 12-8-14 to 31-8-14 (both dates inclusive) = [(S$13,104 per month x 12 months) / (5 days per week x 52 weeks)] x 14 working days = S$604.80 x 14 working days	(S$8,467.20)
h	Less: Amount paid by the [Club] in September 2014 (S$546.00 + S$8,522.18 + S$953.00)[163] (Based on [first defendant's] payslip dated 25-9-14)	(S$10,021.18)
	Total:	S$57,348.67

As can be gleaned from this breakdown, the first defendant was paid his salary until 31 August 2014. His claims relate to three main components. First, he was not paid his salary from 2 September 2014 until 11 October 2014, which would have been his last day of employment if he had been permitted to serve out his two months' notice after he gave notice of his resignation on 11 August 2014. Second, he claims to be entitled to an annual wage supplement for the year 2014, as well as a handphone allowance from 1 August to 11 October 2014. Third, the first defendant claims a sum representing his "accrued" annual leave of 56.5 days.

163 For avoidance of doubt, the S$546.00 appears to be the first defendant's basic pay (pro-rated on a daily basis for his working on 1 September 2014), the S$8,522.18 appears to be the payment for the 15 days of leave the first defendant had left from 2014, and the S$953.00 appears to refer to the contribution by the Club to the first defendant's CPF: First defendant's payslip of 25 September 2014.

115 I note for completeness that while the counterclaim entails *both* a claim for constructive dismissal on 11 August 2014, *and/or* a claim for summary dismissal on 1 September 2014, the damages claimed flow from the summary dismissal on 1 September 2014 and the fact that the first defendant was denied his salary and benefits from 2 September 2014 until 11 October 2014. In that sense, whether or not the first defendant was constructively dismissed or elected to resign on his own accord on 11 August 2014 is not directly relevant to the damages he is seeking. The crux of the loss stems from being denied what he would have received whether he resigned with notice *or* was constructively dismissed. Accordingly, there is no real need for me to determine whether or not the first defendant had been constructively dismissed, and the focus of my analysis on the counterclaim will be on the first defendant's argument that his dismissal on 1 September 2014 was wrongful and without basis.

116 The Club's response in this regard is that it was entitled to terminate the first defendant's employment with immediate effect on 1 September 2014. In its pleadings, the Club claims that the conduct of the first defendant in relation to the unauthorised bonuses, the operation of the Residence, and the failure to account for the Club's property and the Dell laptop form the bases for its right to summarily dismiss the first defendant.

117 I have dealt with these allegations and why they are unfounded above. There does not appear, from the evidence and arguments canvassed thus far, to be sound basis for the Club to have summarily dismissed the first defendant on 1 September 2014. But, in addition to the grounds already I have already considered, the Club also argues that the first defendant's conduct on the night of 11 August 2014, and in particular, his defiance of the instructions he was given, provides a basis for summary dismissal.

118 There is no dispute that the MC had authorised Dr Singh, Professor Sum, and Dr Chong to communicate its decision on the termination of the first defendant's employment to him and to handle his exit procedures. The Club has pleaded that the first defendant was given an express instruction by Dr Singh on the night of 11 August 2014 to return to the office the next morning to clear out his personal belongings from his office, and that the first defendant disobeyed this express instruction. The first defendant's case is that he did not deliberately defy any instructions given by Dr Singh, and he thought it was fine to take some of his belongings home that night. In assessing this issue, it is pertinent to remember that the burden is ultimately on the Club to show on balance that there is a proper basis for summary dismissal. The Club has to show, in accordance with the well-known approach in *RDC Concrete Pte Ltd v Sato Kyogo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*") from [90] to [101], that the first defendant's alleged acts in defiance of the instruction given by Dr Singh were sufficiently serious to constitute repudiatory breach of his contract of employment, and to therefore justify summary dismissal: *Phosagro Asia Pte Ltd v Piattchanine, Iouri* [2016] 5 SLR 1052 at [50] to [54].

119 For the reasons outlined below, I am of the view that the Club has failed to discharge the burden of showing that there is a proper basis for summary dismissal of the first defendant.

120 First, I find that the instruction given by Dr Singh, which the first defendant is alleged to have defied, was not as clear as it should have been. Dr Singh's account of the instruction he gave to the first defendant on the night of 11 August 2014 is that he "instructed the 1st Defendant to return the next day at 10.00 am to his office at the Plaintiff's premises to collect his personal belongings, during which time he would be supervised by some of the MC

members".[164] The first defendant's account of Dr Singh's instructions to him is somewhat similar. The first defendant claimed that he was told "to return to the club premises the next day at around 10 a.m. to do the handover and [Dr Christopher Chong] would be present".[165] But, if the intention was for the first defendant to leave the Club's premises *straight away*, and that he could not take *any* of his personal belongings at all that night, then the instructions given to him could have been more explicit. Complying literally with what Dr Singh said would not preclude the first defendant from returning to his office after the meeting with Dr Singh. The express instructions did not stipulate that the first defendant was to leave the Club's premises *immediately* and without returning to his office first.

121 Further, the instructions Dr Singh gave the first defendant did not preclude the first defendant from removing *some* of his personal belongings that night. That might have been the implied subtext of what Dr Singh said, but even on Dr Singh's own account of his instructions to the first defendant, there was no express prohibition on the first defendant removing *any* of his personal belongings from his office on the night of 11 August 2014. This absence of clarity in Dr Singh's instructions goes towards whether any alleged disobedience by the first defendant was so flagrant and serious as to constitute repudiatory breach of his contract of employment with the Club.

122 Second, even if Dr Singh's account of his instructions to the first defendant is regarded as having been clear and unambiguous, it is obvious that demanding literal compliance with those instructions would give rise to an

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164 SS at [20].

165 AR at [113].

absurd result. If Dr Singh's expectation was actually that the first defendant would not collect *any* of his personal belongings until he was supervised the next morning, that would mean that the first defendant would be precluded from taking even essential items like his car keys, briefcase, and other personal accessories from his own office, which he would normally take home every day. That would have been wholly unreasonable, and it is clear that this cannot have been what Dr Singh meant. Rather, a margin of interpretation must have been afforded to the first defendant to act reasonably in compliance with Dr Singh's instructions. Viewed through that lens, the first defendant's act in removing some of his personal belongings on the evening of 11 August 2014 is not necessarily an act of defiance against his employer, but could have been simple misunderstanding of the instructions he was given. Accordingly, I am not convinced that the alleged wrong on the part of the first defendant was of such gravity as to strike at the root of his contract of employment, such that it would destroy the confidence underlying such a contract.

123 Third, and significantly, the second defendant was present with the first defendant in the first defendant's office as the first defendant was packing his personal belongings and bringing them to his car. He was there to offer some consolation to the first defendant about his termination. The significance of the second defendant's presence should not be understated. The second defendant was, at that time, still the President of the MC. He had attended the MC meeting that evening, and it would have been entirely reasonable for the first defendant to assume that the second defendant was aware of the proper exit procedures to be followed. Specifically, I find that it was reasonable for the first defendant to have believed that the second defendant, as an MC member, was aware of Dr Singh's instructions concerning his exit procedures, since one would have expected Dr Singh to have discussed the termination and exit procedures at the

MC meeting. The first defendant therefore assumed, justifiably in my opinion, that the second defendant knew what the MC had decided about what the first defendant could or could not do. That the second defendant, his direct supervisor, did not raise any issue with him packing up some of his personal belongings therefore gave rise to the impression that his acts were permitted and unobjectionable. I accordingly find it difficult to accept the Club's portrayal of the first defendant as having acted in repudiatory breach of his contract of employment by wilfully defying his employer's instructions.

124 The Club's main argument in support of why the first defendant's acts on the night of 11 August 2014 should be seen as defiance of a direct instruction giving rise to repudiatory breach of his employment contract is that the first defendant had failed to make any kind of explanation for his actions at the "inquiry" held on 1 September 2014 (see [12] above). The Club therefore argues that the first defendant impliedly accepted that he had knowingly acted in defiance of Dr Singh's instructions, and that any of the first defendant's current reasons are mere afterthoughts.[166] The first defendant's response when confronted with this argument under cross-examination was that he was "worried and frightened" and had therefore not made arguments in his defence at the "inquiry" on 1 September 2014.[167] I initially had some doubts about the veracity of the first defendant's explanation, particularly given that it appeared a somewhat convenient way to explain away his not having spoken in his own defence. However, having reviewed the transcript of the "inquiry", I am satisfied from all the circumstances that the first defendant may well have been

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166 Transcript of 18 September 2019, Page 43, Lines 4 to 14. See also PWS from p 25 to 29.

167 Transcript of 18 September 2019, Page 43, Lines 27 to 29.

"worried and frightened" and therefore neglected to outline his defence. My reasons are as outlined below.

125 First, the first defendant was, for all intents and purposes, ambushed at the "inquiry" on 1 September 2014. It is not disputed that the first defendant had been asked by the Club's Head of Department for Human Resources, Ms Veronica Kok, to attend what had been described as a meeting on 1 September 2014 to discuss the issue of his accumulated leave, which was quite substantial. No indication *whatsoever* was provided to the first defendant that he was in fact attending an inquiry about the allegedly missing laptop or his conduct on the night of 11 August 2014.[168] This was obviously a deliberate ploy by the MC, so as to try to catch the first defendant off-guard. Given the absence of notice given to him, I accept that the first defendant was taken by surprise at the "inquiry" – both in terms of the content of the meeting, and the tone the meeting took.

126 Second, I find that the "inquiry" itself was carried out in an oppressive and aggressive manner. This is most clear from the transcript of the "inquiry", which was recorded secretly without the first defendant's knowledge. I highlight the most telling extracts below:[169]

> Dr. Rashid: See when the three of you I think yourself, Dr Sarbjit[,] Dr. Chong and Lim I think the words used was that we will do the handover at ten o'clock right…
>
> Prof Sum: And Derrick and Fabian will be there to supervise.
>
> Dr. Rashid: No No he came He said Dr. Chong [c]annot make it…

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168 Transcript of 4 September 2019, Page 59, Lines 1 to 3.

169 SS at p 334. Errors and formatting original.

> Prof Sum: Very clearly, I remember, we told you to come and clear your personal belongings. To clear your personal belongings.
>
> Fabian: Very clear
>
> Prof Sum: Yes very clear
>
> Fabian: Crystal clear
>
> Prof Sum: Yes, absolutely
>
> Fabian: Absolutely

This was not the only instance of the Club members at the "inquiry" interrupting the first defendant and repeatedly talking him down in the transcript. The Club members also made serious claims against the first defendant and warned him that the police was already involved:

> Dr Rashid: Like I said the documents that took that night were my personal documents.
>
> Prof Sum: That's what you claim. If it is indeed your personal belongings, you need to have done it. It's so late in the night and you will be so upset with the whole thing that you would want to go home, think and come back the next day. Next day, broad daylight rather than carting away documents late in the middle of the night, so as I said before the behaviour is completely unprofessional and I never would have expected them from our GM. Completely unprofessional.
>
> Dr. Rashid: Johnny was there. He came to the office.
>
> Prof Sum: Yes, so if Johnny was there then we will ask Johnny. We will also ask Johnny. And for the record, we have made a police report on this. We are treating this as a very serious action taken by you and if Johnny is there also by Johnny. (Pause) So I think we have no further…
>
> Fabian: Ya no further
>
> Prof Sum: And on top of all that we had an emergency MC Meeting on Friday and we say that this kind of action cannot be accepted and cannot be condoned and you are now dismissed with cause. (Pause) Can you pass Mr. Rashid that letter.
>
> Fabian: The letter will be typed and return to you.
>
> Dr Sarbjit: Human Resources will prepare the letter.

> Prof Sum: So you are dismissed with cause effective…
>
> Fabian: Today 1st September

What is clear from the transcript is that the first defendant was subjected to a barrage of accusations from the MC members present. Often when he tried to answer or give an explanation, he was interrupted and cut off by the MC members, who mutually reinforced each other's statements. While I accept that inquiries into acts of wrongdoing can be carried out in a robust and direct manner, I am of the view that the way in which "inquiry" on 1 September 2014 was carried out had the intended effect of throwing the first defendant off balance in his thought process. This hindered him from giving all his reasons for his actions on the night of 11 August 2014.

127 As such, I do not accept that the first defendant's actions on the night of 11 August 2014 constitute repudiatory breach of his contract of employment. I do not find such actions to be so serious as to strike at the root of his contract of employment of the Club, nor am I of the view that the Club has established any of the grounds for repudiatory breach outlined in *RDC Concrete* ([118]*supra*). I therefore find that the Club had no proper basis to summarily dismiss the first defendant, and the first defendant is accordingly entitled to his salary-in-lieu-of-notice for his two-month notice period, subject to the sums already paid to him by the Club (as reflected in the table at [114] above).

128 For completeness, I should add that the fact that the first defendant had used his Club email address for personal purposes does not change my conclusion on repudiatory breach. While such use of Club email addresses is, strictly speaking, a breach of the "Undertaking on Code of Ethics for Use of Internet, Email and Confidentiality" the first defendant signed on 29 June 2002,

I am not satisfied that such a breach is sufficient to be deemed repudiatory.[170] In any event, the Club did not seriously press this point before me.

129 Next, I turn to the first defendant's claims for his annual wage supplement and handphone allowance. The annual wage supplement is commonly referred to by employers as the "thirteenth month bonus". On the instant facts, the annual wage supplement the first defendant is claiming is for S$13,104.00, or one month's salary. The first defendant's entitlement to remuneration and other benefits are set out in his employment contract with the Club, supplemented with other terms which might be incorporated, such as from the Club's employee handbook. I accept the Club's submission that the terms of the first defendant's employment clearly incorporate the employee handbook terms, as amended from time to time. This is made indisputable by clause 15 of annex 1 to the first defendant's employment contract, which states that "[r]eference should be made to the Club's current [e]mployee handbook which may be amended from time to time".[171] I have not been referred to any term in the first defendant's contract of employment or the employee handbook which would provide a basis for his claim to be entitled to an annual wage supplement for 2014. Further, it is not pleaded nor is any argument raised that the payment of an annual wage supplement has been incorporated, whether by practice or otherwise, into the contract of employment.

130 Instead, what the first defendant relies on is that Dr Singh had told him on the night of 11 August 2014 that the MC had, at its meeting earlier that night, resolved to pay the first defendant an annual wage supplement equivalent to one

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170 SS at Exhibit 26A.

171 SS at Exhibit 1.

month's salary.[172] The second defendant's evidence supports that this took place at the MC meeting.[173] Three other MC members, Tan Lick Tong, Steven Goh, and John Tan, who were present at the MC meeting on the night of 11 August 2014, also gave evidence to this effect.[174] That the MC had decided to pay the first defendant an annual wage supplement was also confirmed by Dr Singh while under cross-examination.[175]

131 However, even if one is to proceed on the basis that the MC had discussed and decided that they would give the first defendant an annual wage supplement on the termination of his employment with two months' notice, that would have been an *ex gratia* payment. This is because, as already explained, there is nothing in the terms of his employment that contractually commits the Club to make such a payment on the resignation of the first defendant. Critically, the first defendant has also not pleaded that he agreed to resign only on condition that he be paid such an annual wage supplement or "thirteenth month bonus". That being the case, I find that the first defendant has not discharged his burden of proving his claim that the Club is obliged to pay him an annual wage supplement. Being an *ex gratia* payment, the Club is fully within its rights to stand firm and refuse to make this payment to the first defendant now that he has been summarily dismissed: see *Loh Siok Wah v American International Assurance Co Ltd* [1998] 2 SLR(R) 245 from [41] to [44].

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172 AR at [113].

173 GKG at [52].

174 DCS at [227(b)].

175 See in particular 6 AB p 3075.

132 The claim by the first defendant to be entitled to a reimbursement of his handphone bills for the month of August 2014 suffers from the same difficulties. While his contract of employment stipulates that he would be provided with a handphone, the first defendant in fact used his own handphone for Club business, and would seek reimbursement from the Club for his phone bills.[176] The Club's position is that it had previously reimbursed some of the first defendant's phone bills out of goodwill and not because of any contractual obligation to do so. The first defendant's evidence in this regard is that he had a conversation in 2003 with one Bryan Phan, then the MC member in charge of human resources, who told him that his phone bills would be subsidised by the Club since he was using his own handphone. However, surprisingly, this evidence only emerged when he was cross-examined, and did not appear in his AEIC.[177] As such, I have some doubts as to the credibility of the first defendant on this count.

133 However, even if it did take place, this conversation with a sole MC member in 2003 is insufficient to establish that the Club had contractually committed itself to paying or subsidising his handphone bills. A single member of the MC, unless properly authorised, would not be able to bind the Club to any contractual commitment. The first defendant did not point me to any evidence of such authority, nor did he refer me to any documents or communications that would evidence that the Club had committed itself contractually to making such payments in relation to the handphone bills. As such, I find that the first defendant's claim to be entitled to reimbursement of such handphone bills has not been established.

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176 SS at Exhibit 1.

177 Transcript of 17 September 2019, Page 78, Lines 14 to 19.

134 Finally, I come to the issue of the first defendant's accumulated leave of 56.5 days, for which he claims to be entitled to be paid the sum of S$34,171.20. The Club's response is quite straightforward. The employee handbook states that only seven days of annual leave can be carried over per year.[178] The second defendant, as Club president, might have agreed with the first defendant that the latter could carry his unconsumed annual leave over to the next year. However, the second defendant did not have the authority to bind the Club to a decision which effectively varied the terms of the first defendant's employment with the Club. Only the MC could have authorised such a variation of the employment contract with the first defendant, and none was obtained in this case. As such, the Club's position is that the first defendant could carry over seven days of leave from 2013, and had earned 15.33 days of leave in 2014 (as of 31 August). Subtracting the seven days of leave the first defendant had taken in 2014 prior to the termination of his employment, the first defendant had 15 days of leave remaining which required compensation. The Club has paid the first defendant S$8,522.18 for these 15 days.

135 I accept the Club's submission that the second defendant could not bind the Club contractually on the issue of the first defendant's leave entitlement without the authority of the MC. In fact, the second defendant acknowledged his own failing in not obtaining the MC's prior approval when this issue of the first defendant's sizable unconsumed annual leave was raised at the MC meeting on 8 September 2014.[179] Graciously, he apologised to the MC for having acted on his own accord when he purported to allow the first defendant to carry over his annual leave.

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178 SS at Exhibits 3 and 4.

179 SS at Exhibit 38.

136 I have sympathy for the first defendant's position on this issue. The evidence was quite clear that he was a dedicated general manager who spent long hours at work. When there were events at the Club held in the evenings or over the weekend, the first defendant would always try to be present to ensure that everything ran smoothly.[180] The second defendant expected this of him. In fact, the second defendant often rejected the first defendant's applications for leave because he wanted him to be around for Club events. I also accept the first defendant's evidence that he sacrificed holidays and time with his family by not using up his leave entitlement every year. However, the terms of his employment are a matter of contract. The issue before me falls to be decided on the basis of whether the second defendant had the requisite authority to approve the carrying over of leave. While three MC members, namely N Pandian, Steven Goh, and John Tan, gave evidence that the second defendant had on occasion mentioned in passing at MC meetings that he had allowed the first defendant to carry over his unconsumed annual leave, this is clearly insufficient to show that the MC had *discussed and decided* the question of the first defendant's unconsumed annual leave. Unless this was done, the second defendant would not have been authorised by the MC to agree to the carrying over of the first defendant's leave beyond the contractually-stipulated seven days. In this regard, the second defendant's admission of having make an error of judgment at the MC meeting of 8 September 2014 is entirely consistent with the fact that no prior MC approval had been sought.

137 I also could not accept the first defendant's submission that, *if* the issue had been brought up and discussed, it was almost certain that the MC would have allowed the first defendant's leave to be carried over. That might well be

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180 AR at [57].

the case, and it may even be fair to say that the first defendant is the unfortunate victim of politics within the Club. However, this is quite irrelevant to the question of whether the Club is bound in law by the acts of the Club president, who acted on his own without first seeking the MC's express approval. In my judgment, I find that there is no merit to the first defendant's claim that he be paid for the full 56.5 days of unconsumed annual leave.

Conclusion

138 For all the reasons set out in this judgment, I find there is no merit to the Club's claims against the two defendants. The Club's claims are dismissed in full. The first defendant's counterclaim against the Club succeeds in relation to the unpaid salary for his two-month notice period ending on 11 October 2014, but is unsuccessful in relation to the handphone allowance, annual wage supplement, and salary-in-lieu of accrued leave.

139 I will deal with the question of costs separately.

Ang Cheng Hock
Judge

Ponnampalam Sivakumar, Anand George and Tan Ming Quan (BR Law Corporation) for the plaintiff;
Pateloo Eruthiyanathan Ashokan and Soon Meiyi Geraldine (Withers KhattarWong LLP) for the defendants.