Ng Joo Soon (alias Nga Ju Soon) *v* Dovechem Holdings Pte Ltd and another suit [2010] SGHC 242

Case Number : Suit No 59 of 2009 consolidated with Suit No 140 of 2009

Decision Date : 18 August 2010

Tribunal/Court : High Court

Coram : Philip Pillai JC (as he then was)

Counsel Name(s) : Adrian Tan, Blossom Hing Shan Shan and Sheryl Wei Kejia (Drew & Napier LLC) for the plaintiff; Chandra Mohan s/o K Nair (Tan Rajah & Cheah) for the defendants.

Parties : Ng Joo Soon (alias Nga Ju Soon) — Dovechem Holdings Pte Ltd

Companies

18 August 2010 Judgment reserved.

Philip Pillai J:

(I) Introduction

1 The plaintiff, Ng Joo Soon ("NJS"), brought two principal actions, which were consolidated on 3 June 2009. In Suit No 59 of 2009 ("Suit 59"), NJS seeks, *inter alia*, a declaration that he was wrongfully removed as a director of the defendant, Dovechem Holdings Pte Ltd ("the Company") and an order that he be allowed to inspect the accounting and other records of the Company pursuant to s 199 of the Companies Act (Cap 50, 2006 Rev Ed) (the "Companies Act"). In Suit No 140 of 2009 ("Suit 140"), NJS claims against the Company for breach of agreements pursuant to which the Company was to pay him: (a) a monthly payment of $25,000.00 (the "Monthly Interest Reimbursement"); (b) a monthly allowance of U$20,000.00 or $35,000.00 (at an agreed exchange rate of U$1 to $1.75) (the "Monthly Life Allowance"); (c) a monthly instalment of $13,750.00 for 24 months for amounts mistakenly deducted from an outstanding loan (the "Deduction Instalment Repayment"); and (d) a monthly instalment of $140,278.00 for 36 months (the "Loan Instalment Repayment"). He seeks an order for specific performance of the payment of those amounts. Further, he seeks relief against Andrew Ng Iet Pew ("Andrew"), Anta Ng ("Anta"), Ng Ju Aik ("Ju Aik") and Ng Joo Tian ("Joo Tian"), the second to fifth defendants respectively (collectively "the Family Defendants"), who are directors of the Company, for inducing the Company's breach of contract and for conspiring with each other to cause the relevant breach. NJS and the Family Defendants, who are NJS's younger brothers and his nephews, are all and the only directors and shareholders of the Company.

2 This case is at one level a corporate and contractual dispute, but during trial, considerable underlying family emotional tensions were evident. The tensions were the result of a complex mix of personalities and generations, with the Family Defendants displaying mixed feelings of respect coupled with resentment towards the plaintiff for what he did to them. Lawsuits such as these reflect an unfortunate but increasing incidence of fractious generational transitions within Singapore family businesses which are unable, for various reasons, to achieve the balance of an orderly succession characterised by mutual familial respect and filial dignity .The outcome of lawsuits are determined by the law and the evidence before the court and provide resolution only of the legal issues. The underlying family tensions, being beyond the purview of the court, remain to be resolved by the

parties themselves.

(II) Facts

(A) Starting out

3 NJS was born in 1938 in Malaysia as the fourth child of a couple who were rubber tappers. He received an education in Mandarin up to junior high school. In 1957, NJS came to Singapore to seek a better future. He started a paint and chemical solvent business in 1960 known as Thiam Joo Pte Ltd which eventually grew to become the Dovechem Group ("the Group") (hereinafter references to "the Group" mean all the companies described and referred to as "Dovechem Group" in the 26 December 2001 Meeting Notes in [6] below. For accuracy it should be noted that "the Group" here is used to refer to companies in which the family have interests and not holding and subsidiary companies within groups as defined in s 5 of the Companies Act. Around 1965, NJS invited his younger brother, Joo Tian, and later in 1972, another younger brother, Ju Aik, to join him in the business. They also contributed to the growth of the business and were later issued shares in the company for which they did not pay. Subsequently, other members of the Ng family also came to work in the business. Anta and Andrew, who are NJS's nephews, joined in the 1970s and 1980s respectively, after receiving overseas education scholarships from the Group. It is estimated that 16 members of the family work in the Group.

(B) Building a conglomerate

4 NJS was the Company's and the Group's managing director. He and the other family members developed the family business into a considerable conglomerate with businesses in chemicals, formaldehydes and resins, paints, bulk terminals, steel drums, transportation and property, with country holding companies and operating subsidiaries in Singapore, Malaysia, Indonesia and China. The Company is the holding company of all the Singapore subsidiaries and associated companies in Indonesia and China. NJS was the 52% majority shareholder of the Company. He was the leader and public face of the family business with the other family members each having less than 17% shareholding in the Company and contributing in various financial and operational capacities.

(C) Encountering the 1997 Financial Crisis

5 In 1997, the Company encountered financial difficulties during the Asian Financial Crisis. NJS provided personal loans totalling $6.1m to the Company between 1997 and 2001. He borrowed these funds from banks by mortgaging his house. Anta, Joo Tian and Ju Aik also lent the Company sums of $498,000, $750,000 and $850,000 respectively.

6 On 26 December 2001, there was a meeting chaired by Andrew which marked the handover of leadership from NJS to Andrew. NJS and the Family Defendants attended the meeting. The records of the meeting, which I shall refer to as the 26 December 2001 Meeting Notes, were described as "Dovechem Group, Minutes of the Members Meeting, Thiam Joo Office, Singapore 26 December 2001 Agenda: The Way Forward for the Dovechem Group". (I refer to the records as "Meeting Notes" rather than "Minutes", as they were originally titled, in order to distinguish them from formal board and shareholder minutes and resolutions which have to be duly maintained by the Company in accordance with s 188 of the Companies Act. The Meeting Notes were not part of or filed and maintained as minutes of directors' or shareholders' meetings in accordance with s 188, nor did they purport to be directors' or shareholders' resolutions of the Company.) The 26 December 2001 Meeting Notes state that accountants and lawyers were appointed to advise on the Group's current financial position and legal issues. Further, to show the Group's commitment to repay its loans, it was proposed that

Andrew be the new President/Chief Executive Officer of the Group to spearhead the negotiation with the bankers and creditors and to lead the Group into the new generation. Andrew proposed a new shareholding structure to ensure representation of the original directors in the next generation. It was also agreed that (a) cash injections by certain family members including NJS would be reimbursed with interest as soon as the Company deemed itself capable of doing so, and (b) in the event that NJS had no income, the company would grant him a cash payment of US$20,000 on a monthly basis. The 26 December 2001 Meeting Notes were signed by everyone attending as being "confirmed, accepted and acknowledged" by the signatories. It also contained a closing note: "Chinese translated copy of this minutes [*sic*] will be provided upon request."

7 At a subsequent meeting on 14 January 2002 attended by NJS and the Family Defendants, it was confirmed that out of the $6.1m, a sum of $5,050,001.55 ("the Loan") remained due and owing from the Company to NJS. The notes of that meeting also reflected that:

(a) starting from January 2002, all interest incurred by individual members listed on a loan list would be borne by the Company;

(b) NJS would be paid a monthly allowance of US$20,000 in the event that he left the Group or a company named Dovechem Stolthaven or was without salary; and

(c) if possible, a bilingual version of the minutes was to be made available, and in the event of dispute, the Chinese version would prevail over the English version.

The notes were also signed as "confirmed, accepted and acknowledged" by NJS and the Family Defendants. Andrew was recorded as the chair of the meeting.

(D) Responding to the 1997 Crisis

(i) Ceding management and shareholder control in exchange for personal guarantees

8 In the aftermath of the Asian Financial Crisis of 1997, there were recriminations by the Family Defendants against NJS that it was his investment decisions, and not the Asian Financial Crisis, which had led to the corporate financial crisis of the Group. Because of the need to conclude schemes of arrangement acceptable to the creditor banks who in turn required personal guarantees of each of the family directors and shareholders, and because the Family Defendants would not agree to provide personal guarantees otherwise, NJS was obliged and agreed to dilute his shareholdings and effect generational management succession.

9 It was agreed that NJS would cede his 52% majority shareholding control for a diluted stake of 24%, with Andrew acquiring 25% and Ju Aik, Ju Tian and Anta each holding 17%. Further, Andrew was to manage the Company and Group but NJS was to become non-executive chairman of the Company. All these were inscribed in a Restructuring Agreement of 8 July 2002 ("the Restructuring Agreement 2002") between NJS and the Family Defendants, to which the Company was not a party. Pursuant to the Restructuring Agreement 2002, NJS also retained the option to transfer his shares to his children or to exercise a put option to the Family Defendants after completion of the schemes of arrangement. Clause 4 of the Restructuring Agreement 2002 further provided:

4.1 Upon the restructuring of shareholdings in the Private Companies pursuant to Clause 3.2,

the Parties shall procure that each of the Private Companies shall have a board of directors consisting of five directors, each of whom shall be appointed by each Party. NJS shall be (i) the non-executive chairman of the board of directors of Dovechem Holdings Pte Ltd and (ii) the executive chairman of the boards of directors of Dovechem Stolthaven Limited until the completion of the Loan Restructuring Exercise. PT Antaprima Dutaperkasa shall have a board of commissioners comprising members to be appointed by the Parties

4.3 The right of each Party to appoint the directors under Clause 4.1 shall include the right to remove such directors at any time, and the right to determine from time to time the period which such persons shall hold office as director.

4.4 Any appointment or removal of the directors as aforesaid shall be made in writing and be signed by or on behalf of the relevant Party and shall be delivered to the registered office for the time being of the relevant Private Company. In order to give effect to the provisions of this Clause 4, the Parties shall exercise or shall procure that their nominees exercise their voting rights for the time being in the relevant Private Company to enable each Parties' directors to be appointed and to prevent the passing of any resolution giving effect to the removal from office as director any person so appointed.

10 Matters relating to the repayment of the Company's outstanding loans from NJS and other financial provision for NJS, in light of this generational management succession and his dilution of shareholdings, were provided for in a separate agreement between the very same parties, signed on the same day, *ie*, 8 July 2002 (the "Loan Repayment Agreement 2002"). Under the Loan Repayment Agreement 2002 the parties agreed, *inter alia*, as follows:

1. The parties agree that within 30 days of the date of this Agreement, they shall (or shall procure that other relevant third parties shall) negotiate, finalise and execute definitive agreements in respect of the following:

...

1.2 the repayment of [the Loan] of S$5,050,001.55 advanced by NJS to [the Company];

1.3 the payment of a monthly allowance of US$20,000.00 to NJS for the rest of his life in the event that NJS resigns or retires as the chairman of the board of directors of Dovechem Stolthaven;

1.4 the payment of a monthly allowance equivalent to the amount of interest of [the Loan] from DBS bank to NJS until the repayment in full of the loan as referred to in Clause 1.2 above; ...

…

3. The parties further agree that the repayment to NJS pursuant to Clause 1.2 above shall commence after the completion of the Loan Restructuring Exercise, ...

4. The parties acknowledge that the payment of the allowances to NJS … referred to in Clauses 1.4 … above are currently ongoing. Notwithstanding anything in this Agreement, the parties agree that the said payment shall continue.

Pursuant to the Loan Repayment Agreement 2002, NJS was to receive the Monthly Interest Reimbursement (*ie*, the monthly allowance equivalent to the amount of interest of the Loan which was

fixed at $25,000) and the Monthly Life Allowance of U$20,000 or $35,000 (based on an agreed rate of U$1 to $1.75) in the event that he resigned or retired as the chairman of the board of Dovechem Stolthaven. I have already alluded to these sums above in [7].

(ii) Implementing the Restructuring Agreement

(a) Management change

11 In December 2002, schemes of arrangement acceptable to the Group's creditors were approved by the Court. NJS was appointed non-executive chairman of the Company on 6 January 2003 and Andrew was appointed managing director and chief executive officer on 3 February 2003.

(b) Planning for the future role of family members: the Remuneration and Benefits Plan

12 Andrew chaired the next members' meeting on 11 March 2003, at which NJS and all the Family Defendants were present. At that meeting, Anta was commissioned to:

> … list down and match all working family members to the rewards and benefits. Members agreed and GN (Anta) is charged to coordinate and to come out with some suggestion for the Members to meet and decide again on April 14, 2003.

13 Pursuant to the above, a Remuneration and Benefits Plan ("the Remuneration Plan") was presented on 27 May 2003 at a meeting between NJS and the Family Defendants. The meeting notes show:

> 6. Any Other Matters
>
> Ng Family Remuneration & Benefits Plan
>
> AN (Anta) presented and explained the remuneration and benefits plan for the Ng family to the Members.
>
> As there was no objection, Members unanimously adopted and signed on the hard copy of the plan.
>
> All Members agreed to retrospect the effective date of the plant to 1st May 2003, and to hold meeting should there be any changes to the agreed plan in the future.

I have set out the text of the Remuneration Plan below at [57].

(iii) Abandonment of definitive loan repayment agreement

14 A definitive agreement relating to the loan repayments was contemplated and provided for in the Loan Repayment Agreement 2002 (see [10] above). However, as NJS and the Family Defendants each would not accept the other's draft definitive agreement no further agreement was entered into and accordingly the Loan Repayment Agreement 2002 remained definitive.

15 In 2004, NJS ceased to be employed by Dovechem Stolthaven. In accordance with the Loan Repayment Agreement 2002 (see [10] above), he began to receive the Monthly Life Allowance. The Company made regular monthly payments of the Monthly Life Allowance until July 2008.

(E) Emerging from crisis but with unresolved family tension

16 In 2007, a dispute emerged over NJS's contention that the Company had wrongly deducted a sum of $429,998.45 ("the Mistaken Deduction") from the principal amount of the loans that he had lent to the Company. This sum, he says, was in effect interest payments, and not loan repayments, made by the Company to him over the years.

17 A series of conversations and emails took place. In particular, Andrew alleges that in October 2007 when NJS met with him, he was informed that the Company was not able to make immediate payment of the Mistaken Deduction as it was still facing uncertainties and cash flow difficulties having just emerged on 14 May 2007 from the scheme of arrangement it had entered into. In spite of that, on 14 November 2007, the Company sent a letter to NJS (the "letter of 14 November 2007"), which stated:

> 14 November 2007
>
> Mr Ng Joo Soon
>
> Dear Mr Soon,
>
> **LOAN OWING TO YOU – S$5,050,001.55**
>
> We are please to inform that we shall be commencing to repay the above Loan to you as below:-
>
> Outstanding Loan
>
> By way of 36 (3 years) monthly instalments of S$140,278.00 per month.
>
> First Installment: December 2007
>
> Thank You.
>
> Yours truly,
>
> Dovechem Holdings Pte ltd
>
> [signature]
>
> Andrew Ng Iet Pew
>
> Group Managing Director
>
> cc: Board of Directors

18 On 26 November 2007, NJS sent an email to Andrew:

> Dear Andrew Ng,
>
> Reference to the Balance Outstanding Interest of S$329,998.45 pertaining to my Individual Loan, please arrange to pay the monthly instalment of S$13,750 together with my monthly interest remittance of S$25,000 starting from December 2007.

Andrew forwarded the email to his assistant and instructed him to "please prepare accordingly". The

Company, by making this Deduction Instalment Repayment (see [1] above) to NJS, contractually undertook a direct payment obligation to NJS. NJS also claims that, based on the above, there was an agreement under which the Company would repay the Loan in 36 monthly instalments of $140,278.00 over 3 years. This is the Loan Instalment Repayment referred to above in [1]. In return, he says that he accepted repayment of the Mistaken Deduction in the following manner:

(a) a sum of $100,000.00 on 1 November 2007; and

(b) the remaining $329,998.45 in 24 monthly instalments of $13,750.00, *ie*, the Loan Instalment Repayment alluded to in [1], which would commence from December 2007 onwards.

19 Subsequently, the Company paid NJS:

(a) $100,000 on 1 November 2007;

(b) 6 payments of $13,750 between January 2008 and May 2008; and

(c) 5 payments of $140,278 from January 2008 to May 2008.

20 Whilst the Company's Deduction Instalment Repayment is not disputed, Andrew, however, denies the tenor of the letter of 14 November 2007 (at [17] above) to NJS. He maintains that NJS approached him to obtain the letter from the Company for the purposes of supporting a loan application. Andrews denies that the letter was to vary the Restructuring Agreement 2002 that the loan repayments were due only after the scheme of arrangement was completed (see [10] above). Andrew admitted that the Mistaken Deduction was due and was to be reinstated as principal owing to NJS. However, the upshot of his evidence was that there was no intention or obligation on the part of the Company to accelerate the repayment plan to 3 years as per the letter of 14 November 2007, and this was known to NJS.

21 The Company's letter of 14 November 2007 was signed by Andrew as Group Managing Director and copied to the Board of Directors. Payment of the exact instalments duly followed. In the absence of any contradictory evidence, I find that the Company had by this letter (and its making due payment thereon), contractually undertaken to repay NJS the Loan Instalment Repayments in accordance with the terms of this letter.

(F) Fighting an internal war

(i) NJS attains age of 70 and continues attending meetings

22 NJS turned 70 on 3 March 2008. As before, he attended the Dovechem Group meeting on 7 April 2008 and the meeting notes disclose no questions having been raised as to his attendance or retirement from the Company's board. However they do disclose that there was a heated discussion over NJS's request for a thirteenth month payment which led to his walking out of the meeting.

(ii) NJS demands inspection of accounting records of Malaysian companies

23 The tension and acrimony between the parties escalated such that on 11 June 2008 NJS sent a letter to Thiam Joo (M) Sdn Bhd ("TJ Malaysia"), stating that he wished to exercise his right as a director of the company to appoint a public accountant to inspect the accounting and other records of TJ Malaysia. He explained that, in May 2008, he discovered that the funds of TJ Malaysia had been misused. He says that Andrew purported to purchase shares in another company using those funds, while disguising the payment as being made to a supplier. On the same day, NJS also sent a letter to the Company making a request to inspect its records. NJS also filed police reports against Andrew in Malaysia and against Andrew and Anta in Indonesia.

(iii) NJS is removed from Malaysian directorships

24 In response, NJS received a letter from the Malaysian holding company of the Group on 19 June 2008, signed by the Family Defendants, notifying him of his removal as a director of TJ Malaysia and another Malaysian company, Dovechem Terminals Sdn Bhd. The letter stated that, as he had been removed as a director of TJ Malaysia, it would not be responding to the letter he had sent requesting inspection of its records.

25 NJS was subsequently removed from yet another Malaysian company, Imperial Steel Drum Manufacturers Sdn Bhd, on 20 June 2008. NJS wrote to the Malaysian companies' bankers demanding release from his personal guarantees, an act which allegedly caused several bankers to reduce their credit lines to the Malaysian companies.

(iv) Commencement of legal proceedings in 2009 disputing NJS's retirement as director

26 In Singapore, on 24 June 2008, NJS instituted Suit 59, seeking a declaration that he was wrongfully removed as a director of the Company and an order that he be allowed to inspect the records of the Company. He also later brought Suit 140, claiming the Company breached agreements by which it was obliged to make payment of the Monthly Interest Reimbursement, Monthly Life Allowance, Deduction Instalment Repayment and Loan Instalment Repayment (see [1] above). In Malaysia, in addition to the police reports he had filed (see [23] above), NJS also launched oppression proceedings.

(G) Wrongful dismissal as director and director's right to inspect accounting and other records of Company

27 Here it should be noted that s 173(6)(*a*) of the Companies Act requires a company to lodge a notice of cessation of directorship with the Accounting and Regulatory Authority of Singapore ("ACRA") within one month of such cessation. Section 173(6)(*a*) of the Companies Act enables a director who resigns from office to himself lodge such notice if he has reasonable cause to believe that the company will not lodge it with ACRA. It therefore significant that NJS reached 70 on 3 March 2008 but no action was taken by the Company until 15 July 2008, *ie*, more than three months later, to notify ACRA of NJS's purported cessation of directorship. On 14 July 2008 the remaining board of directors of the Company excluding NJS, *ie*, the Family Defendants, passed a board resolution in writing:

> Filing with Accounting and Corporate Regulatory Authority ("ACRA")
>
> That since Mr. Ng Joo Soon @ Nga Ju Son, who is over the age of 70 years, has automatically retired from the Company on March 05, 2008 in accordance with the Ng Family Remuneration Plan dated May 27, 2003, Mr Anta Ng be and is hereby authorized to file the appropriate returns with

ACRA.

28 On 15 July 2008, the Company notified ACRA that NJS had ceased to be a director of the Company with effect from 5 March 2008. NJS wrote to ACRA to dispute the Company's notification on 4 August 2008. ACRA wrote to the Company on 20 August 2008 requesting the following information/documents:

> (a) Were any meetings held and/or resolutions passed to effect the removal of Ng Joo Soon@Nga Ju Soon as a director of the company? If so, please forward us a copy of said minutes of the meeting and resolutions.
>
> (b) Did Ng Joo Soon@Nga Ju Soon give any consent to be removed as a director of the company? If yes, please forward documentary proof showing that Ng Joo Soon@Nga Ju Soon had consented to be removed as a director of the company.

29 On the same day, NJS's lawyers wrote to the defendants' lawyers without prejudice to his position that he remained a director, proposing the appointment of a new director in his place on the boards of the private companies, including the Company, pursuant to cl 4.1 of the Restructuring Agreement 2002. NJS proposed to immediately resign and deliver a letter to appoint a director of his choice. Thereafter the other shareholders would "exercise their voting rights for the time being in the relevant Private Company to enable each Parties' [*sic*] directors to be appointed and to prevent the passing of any resolution giving effect to the removal from office as director any person so appointed." The letter also included a request for confirmation that a new director could exercise his rights of inspection of the financial records of the Company. This was rejected by the remaining directors of the Company on the grounds that NJS's intention was "just so that the new director can then inspect the Records of the Defendant."

30 As for ACRA's questions, the defendants' lawyers responded to ACRA on 26 August 2008 as follows:

> In reply to paragraph 3(a) of your said letter, please be informed that Ng Joo Soon @ Nga Ju Soon ("Ju Soon") was not removed as a director of the Company. Based on the Ng Family Remuneration Plan dated 27/5/03 signed by Joo Soon as well as all the other directors of the Company Joo Soon automatically retired as a director of the Company with effect from 5/3/2008 after attaining the age of 70 on 4/3/2008. Enclosed herewith is a photocopy each of the Ng Family Remuneration Plan and the directors' resolution of the company 14/7/2008 for your easy reference. As Joo Soon automatically retired as a director of the Company with effect from 5/3/2008 pursuant to the Ng Family Remuneration, Plan, there was no necessity in law to hold any meeting or pass any resolution to effect the automatic retirement of Joo Soon as a director of the Company.
>
> In reply to paragraph 3 (b) of your said letter, we reiterate paragraph 3 hereof and state that by signing the Ng Family Remuneration Plan, Joo Soon has already agreed and consented to automatically retire as a director of the Company with effect from 5/3/2008 after attaining the age of 70 on 4/3/2008.

31 I have narrated the background in some detail as it reveals the multifaceted challenges faced by the family: to inject emergency personal loans into the Group and to produce a restructuring plan which would be acceptable to the banks and other creditors; the apparent loss of confidence in NJS as a result of the corporate financial crisis; finding a family member to immediately manage the Group; providing personal guarantees to the banks; cash flow management and asset disposal. Concurrently,

the family had to face governance and succession planning problems. Each of these problems would be demanding at the best of times. To have to confront external corporate financial battles whilst concurrently addressing internal generational succession and governance without internal unity is to have to fight a war on all external fronts and a war within.

(III) Issues

32 The main legal issues arising in the actions before me are as follows:

(a) Whether NJS retired as a director of the Company upon reaching the age of 70? If so, he would not thereafter have had a statutory right to inspect the financial records of the Company.

(b) What was the contractual agreement, if any, between NJS and the Company in relation to payments of the Monthly Interest Reimbursement, the Monthly Life Allowance, the Deduction Instalment Repayment and the Loan Instalment Repayment?

(IV) Request for inspection and automatic retirement

(A) Scope and limitations of statutory right of serving directors to inspect the financial records of the company

33 Only a serving director has the right to request inspection of the Company's financial records. Had NJS retired as a director of the Company at the time of his inspection request, he would have had no statutory right to do so (see *Haw Par Bros (Pte) Ltd v Dato Aw Kow* [1971-1973] SLR(R) 813).

34 A director has the absolute right to inspect the accounting books and other records of a company under s 199 of the Companies Act, so long as the right is being exercised to enable him to discharge his duties as a director (*Wuu Khek Chiang George v ECRC Land Pte Ltd* [1999] 2 SLR(R) 352 ("*Wuu Khek Chiang*") at [25] and [33]). He does not need to furnish any particular reason for his request for inspection (see *Wuu Khek Chiang* at [27] and [34] and *Welch and another v Britannia Industries Pte Ltd* [1992] 3 SLR(R) 64 ("*Welch*") at [29]). In *Wuu Lhek Chiang*, the Court of Appeal held:

> 25 At common law, a director has the right of inspection of any documents such as the accounting and other records of the company and such a right is concomitant of the fiduciary duties of good faith, care, skill and diligence which the director owes to the company. As such, this right like other rights and powers of a director must be exercised for the benefit of the company. This right is recognised in s 199 of the Companies Act ... The language of this provision clearly shows the obligation of the company to allow inspection by its director as mandatory.
>
> …
>
> 33 The right of a director to inspect the books and records of the company flows from his office as a director and enables him to perform his duties as a director, including the duty to ensure that the company complies with the requirements as to accounts set out in the Companies Act: see s 204(1) of the Act. Such right is an important one, as the books and records of a company are a primary, and sometimes the only, source of information as to the state of affairs of a company. It follows that unless a director has access to these sources of

information, he would be severely inhibited in the proper performance of his duties. So long, therefore, as such right is exercised for that purpose and not with a view to causing any detriment to the company, the right to inspect is "absolute". In this sense and to that extent, the right may be termed "absolute". The corollary of this is that the right will be lost where it is exercised not to advance the interests of the company but for some ulterior purpose or to injure the company".

35 When there are grounds for suspicion and lack of co-operation, a director is all the more entitled and even obliged to act in the interests of the company and ask for inspection. In *Welch*, the High Court held at [36]:

> … some boardroom and interfactional discord can be expected. Distrust and even hostility may develop. When there is suspicion and lack of co-operation, a director is all the more entitled, perhaps even obliged, to inspect company accounts to protect the interests of the company and its shareholders. The right is not only to be exercised or the duty imposed when there is harmony within the company.

While a company could be justified in denying a director's request to inspect the company's records where such request is *mala fides*, in *Wuu Khek Chiang* at [34], it was held that the onus of establishing that the right to inspection is being, or will be, exercised for an improper or ulterior purpose against a company lies on the person asserting this:

> The onus of establishing that the right is being, or will be, exercised for an improper purpose lies on the person who asserts it: per Isaacs J in *Australian Metropolitan Life Assurance Co Ltd v Ure* (1923) 33 CLR 199, 219. There is no burden on a director to show any particular reason for his request for inspection – this will ordinarily be assumed: see *Molomby v Whitehead* ([27] supra) at 293. It is for those who oppose the director's right to inspect to show "clear proof" and to satisfy the court "affirmatively" that the grant of the right of inspection would be for the purpose which would be detrimental to the interests of the company. There must be a real ground that the right would be abused and that substantial harm would be caused to the company thereby.

36 The defendants aver that the Company was justified in not permitting NJS to inspect his financial records as he had "persistently failed, refused and/or neglected to divulge his real reason or for that matter any reason at all for wanting to have access to the financial records" [note: 1] of the Company; and that this request to inspect the Company's records was part of his "self-serving scheme" to "have his present 24% shareholding increased to 34% and then splitting the Dovechem Group of Companies accordingly so that he can then eventually end up with 34% of the split entity". [note: 2]

37 These objections are misconceived. If NJS was still a director at the time he requested for the Company's records, he would not be obliged to provide a reason for his request. Instead, the onus would lie on the defendants to prove the *mala fides* they are alleging. However, save for making bare assertions that NJS's inspection request was *mala fides*, the defendants have failed to adduce any evidence to show why NJS's request for inspection of the records was, or will be, detrimental to the interests of the Company. The only remaining issue is whether at the time of the request NJS was still a director of the Company.

(B) Retirement of Directors of the Company

38 I will next examine the law relating to the retirement of directors and the legal basis of such retirement under the Companies Act, the memorandum and articles of association of the Company,

contract and other legal grounds.

(i) Companies Act

39 Section 153 of the Companies Act provides for the automatic retirement of directors at the age of 70. However, it applies only to public companies. It does not apply to the Company which is a private company.

(ii) Memorandum and articles of association

40 The Company's articles of association provide:

> 71 The company may by ordinary resolution remove any director before the expiration of his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.
>
> …
>
> 74 The office of director shall become vacant if the director:
>
> (a) ceases to be a director by virtue of the Act;
>
> …
>
> resigns his office by notice in writing to the company
>
> ...
>
> 92 A resolution in writing signed by a majority of the Directors of the Company shall be as valid and effectual as if it had been passed at a Meeting of the Directors duly called and constituted.

41 It is common ground that NJS has not resigned his office by notice in writing to the company whether before, on or since reaching the age of 70, as contemplated by article 74 of the Company's articles of association. It is further not averred that NJS has been removed from office by ordinary resolution of the shareholders pursuant to article 71 of the articles of association. There has been no filing of such cessation by retirement or removal by the Company with ACRA within one month of such date as prescribed by s 173 of the Companies Act. Furthermore, the formal directors' and general meetings' resolutions and minutes of the Company maintained as required under s 188 of the Companies Act and produced in evidence related only to approvals of the annual directors' report and audited statement of accounts, re-election of directors and appointment of auditors. No formal resolutions or minutes of directors' or shareholders' resolutions were produced from this register which revealed any unanimous decision that NJS had or was to retire at 70. Neither were there any directors' or shareholders' resolutions or minutes from this register produced which showed the articles of association had been amended such that NJS and all directors were in future to be automatically retired upon reaching the age of 70.

(iii) Contract

42 As for contract, neither the Restructuring Agreement 2002 nor the Loan Repayment Agreement 2002 between the parties to this action provided that NJS was obliged to retire upon reaching 70. The Restructuring Agreement 2002 merely provided that he was to serve as non-executive chairman

and had the right to appoint a director in his place.

(iv) Other legal grounds: informal unanimous assent or agreement

(a) The *Duomatic* principle

43 The defendants averred that NJS had automatically retired from his directorship of the Company upon attaining the age of 70 by reason the Remuneration Plan of 2003, approved by all five years earlier. This Remuneration Plan, the defendants argue, by virtue of his and their signatures on the document and certain Meeting Notes, expressed and recorded the informal agreement of all shareholders. The legal foundation of this averment may be on one of two bases: (a) that the Remuneration Plan evinces the informal (in the absence of a formal board or shareholder resolution) unanimous agreement of all directors and shareholders that NJS would retire when he reached 70 and is binding on all directors, shareholders and the Company, or (b) the Remuneration Plan is a contractual document binding on NJS, all directors and the Company. The second basis was not argued before me.

44 The particular question of law raised in this case is whether the informal unanimous assent or agreement of directors or shareholders that all directors would retire in the future upon reaching the age of 70 is binding on the Company and all directors and shareholders, such as to be automatically activated without further action either by the directors or shareholders of the Company as prescribed in the articles of association.

45 Under the *Duomatic* principle, expounded in *Re Duomatic Ltd* [1969] 2 Ch 365, the courts have regarded informal unanimous director or shareholder assents to be binding on the company provided it was *intra vires*. In *Re Duomatic*, the court upheld the payment of salaries to directors challenged by the liquidator as not having been approved in general meeting in the light of the fact that all the shareholders having the right to attend and vote at a general meeting had assented to this payment which a general meeting could approve. This assent, given by all the directors, who were also the shareholders of the company, was held to be binding as a resolution in general meeting. The *Duomatic* principle has been applied in Singapore in *Jimat bin Awang & Ors v Lai Wee Ngen* [1995] 3 SLR(R) 496 and *SAL Industrial Leasing Ltd v Lin Hwee Guan* [1998] 3 SLR(R) 31.

46 The *Duomatic* principle has over time been refined and clarified (see D French, S Mayson and C Ryan, *Mayson, French & Ryan on Company Law* (London: Oxford University Press, 26th ed, 2009) at paras 14.13.1 to 14.13.5). It is inherent in the *Duomatic* principle that everyone entitled to vote on the question must have applied his mind to it and decided in favour of the step taken (see *Re D'Jan of London Ltd* [1994] 1 BCLC 561).

47 The manner of characterisation of the consent does not matter. In *EIC Services Ltd and another v Phipps and others* [2003] BCC 931 (reversed by the Court of Appeal on other grounds (see *EIC Services Ltd and another v Phipps and others* [2005] 1 WLR 1377)), Neuberger J stated at [122] that:

> The essence of the *Duomatic* principle ... is that, where the articles of a company require a course to be approved by a group of shareholders at a general meeting, that requirement can be avoided if all members of the group, being aware of the relevant facts, either give their approval to that course, or so conduct themselves as to make in inequitable for them to deny that they have given their approval. Whether the approval is given in advance or after the event, whether it is characterised as agreement, ratification, waiver, or estoppels, and whether the members of the group give their consent in different ways at different times, does not matter.

48 With respect to statutory prescriptions, in *Monecor (London) Limited v Euro Brokers Holdings Limited* [2003] 1 BCLC 506, Mummery LJ at [62] held that the *Duomatic* principle allows members of a company:

> To reach an agreement without the need for strict compliance with formal procedures, where they exist only for the benefit of those who have agreed not [to] comply with them. It does not matter whether the formal procedures in question are stipulated for in the articles of association, in the Companies Act or in a separate contract between the members of the company concerned. What matters is that all the members have reached an agreement. If they have, they cannot be heard to say that they are not bound by it because the formal procedure was not followed.

49 In the case at hand, however, the question is whether the prior informal unanimous assent of all directors and shareholders of the Company to a *future* action is to be given automatic legal effect upon its occurrence, in the face of the Company's articles of association which require an activating step which could have (but had not) been undertaken, and in light of the relevant facts at the time of such future occurrence.

50 I have two principal difficulties with the defendants' averment at [42] above. Even if the Remuneration Plan evinces the assent of all directors and shareholders of the Company at that time that NJS was to retire in future upon reaching 70, a further step would necessarily be required to activate such assent as far as the Company and all external persons are concerned. By all accounts, no activation had occurred. In order to activate his retirement when he reached 70, NJS would at such time, under the existing article 74 of the Company's articles of association, have been required to tender a notice of resignation. No such letter of resignation was tendered. Neither was there any formal board resolution recording NJS retirement or resignation. This does not appear on the evidence to have been an oversight of a formality. On the contrary, NJS continued to attend Group meetings as before with neither he nor any of the other shareholders raising any question as to his continued attendance or the capacity in which he was in attendance. Alternatively, activation could have been made by the parties proceeding to amend the articles of association of the Company to insert a new provision that a director would automatically be retired on reaching 70 or that his directorship would automatically become vacant upon reaching this age. No such amendment of articles has been made. When NJS attained the age of 70, neither he nor the Family Defendants (who comprised all the directors and shareholders of the Company) took any step to effect the averred unanimously agreed Remuneration Plan until several months later, when acrimony and disputes emerged between the parties.

51 In the light of these difficulties, I am doubtful whether the *Duomatic* principle came into play here. There was no action taken either by NJS and/or the Family Directors when NJS reached the age of 70 confirming the previous assent, and on the contrary the conduct of all parties at this time was inconsistent with such assent. In the absence of confirming actions by NJS and/or all the other directors and shareholders whose unanimous agreement is relied upon, and in the absence of any amendment of the articles of association to provide for the automatic retirement of all directors including NJS, I would be hesitant, without more, to extend the *Duomatic* principle to this case. To do so would be to leave unanswered the troubling question (were NJS to be regarded by this court to have retired and vacated his office as director) whether and how this would be binding on the new generation of directors who had previously agreed with NJS that they too would retire at 70, but thereafter amongst themselves decided otherwise.

(b) Remuneration Plan

52 Even assuming that an informal unanimous assent as to a future event of retirement as director

upon reaching 70 is effective and operates automatically in the future to bind all directors, shareholders and the Company, this does not conclude the matter before me. I would next have to construe the Remuneration Plan, the relevant Meeting Notes and the evidence to determine whether or not these evince the assent of all directors or shareholders that all directors including NJS would automatically retire at 70.

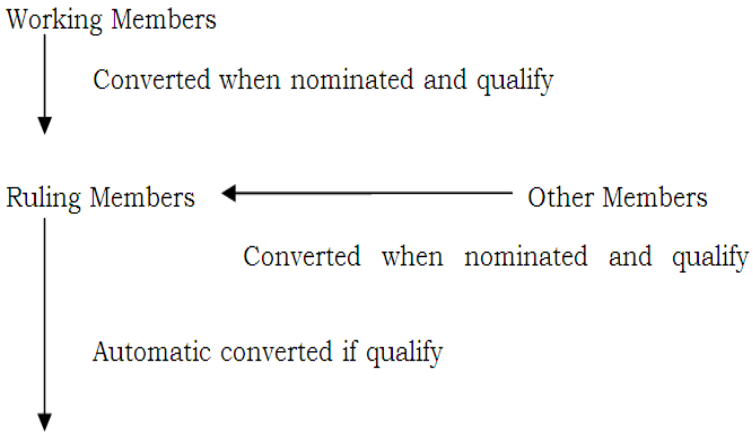
53 The Remuneration Plan was submitted in evidence as annexed to the Meeting Notes dated 27 May 2003. The copies produced of the Meeting Notes made over time reveal that, for the meetings held on 26 December 2001, 14 January 2002, 11 March 2003, and 27 May 2003, all pages were initialled by 2 directors/members and all directors/members signed the last page as "Confirmed, Accepted & Acknowledged" by them. The first Meeting Notes of 26 December 2001 additionally concluded with a note: "Chinese translated copy of this minutes [*sic*] will be provided upon request." The nature of the Meeting Notes appear to be notes of family business updates, proposals and consensus decisions which would be subsequently implemented by management.

54 It was repeatedly pointed out by all witnesses that this was a Chinese family business with participants who had varying degrees of command of English, Mandarin and Hokkien dialect. In short, these appear to be the notes of the discussions amongst all parties of the business and financial matters of the Company and the other family businesses in Singapore, Malaysia, Indonesia, Hong Kong and China for the period 2001 and 2003 right through the corporate and financial crisis. They contain financial and business reports, discussion points, power point presentations, suggestions, comments, plans, proposals and exhortations. The occurrence of every member's initials on all pages and signatures at the end of each of the Meeting Notes during this period indicates an uneasy transfer of management from NJS to Andrew during the creditor restructuring. It is significant however that the Meeting Notes of 2008 are initialled and signed only by Andrew. This suggests that the documents needed to be initialled and signed only as long as NJS was in attendance and that this was dispensed with after the lawsuits commenced. This suggests at one level that the initialling and signatures on these Meeting Notes were for the purposes of identifying and authenticating the documents and did not necessarily indicate agreement to the content thereof.

55 A different case can be made for the signatures of the Remuneration Plan, however. NJS and the Family Defendants all signed the Remuneration Plan, which bore words indicating it had been "confirmed, accepted and acknowledged". Furthermore, the plan was stipulated as being retrospectively effective from 1 May 2003. These factors are consistent with there being assent or agreement between NJS and all other directors and shareholders of the Company, *ie*, the Family Defendants, to the Remuneration Plan.

56 I next look at the terms of the Remuneration Plan itself which is cast in a four-page tabulation. Page one is as follows:

Definitions



Note: All members are limited to immediate family of the first generation of the Ng Family only [*sic*] Immediate family is defined as brother, sister, son, daughter and the registered wife. This Plan is also applicable for the member who is currently servicing the Dovechem Group.

Page 2 is as follows:

Definitions

	Level	**Min Age**	**Joint [*sic*] Dovechem (min)**	**Board Experience (min)**	**Retired**	**Others**
Working Members	VP or Board/ Subsidiaries	45 y/o	20 yrs	10 yrs	60	Service can be extended subject to majority approval from Ruling Members
Ruling Members	Board/ Group	33 y/o	10 yrs	Not necessary	70	Must be 5 members at all time Service cannot be extended To be appointed director of DHPL (subject to requirements of Companies Act)
Founding Members	Non-Executive	70 y/o	30 yrs or Before 1980	Not applicable		

Notes:

– Any changes and modification of the above require full board approval of the Ruling Members.

Page 3 is as follows:

Remuneration Plan

	Monthly Salary	**Monthly Allowance**	**Medical Insurance**	**& 13th Month Salary**	**Other**
Working Members	$6,000 or Payroll	As per HR Policy			Not Available
Ruling Members	$11,000	$1,000	Yes	Yes plus Incentive Bonus (if any)	Not applicable t o Mr Soon (current Chairman) Future Chairman with additional $5,000 mthly CEO as per Agreement
Founding Members	Life time monthly remuneration of $2,000				Not applicable t o Mr Soon ($35,000 mthly for life)

Notes: Monthly Allowance includes mobile phones, car, travelling, *etc*.

Any changes and modification of the above require full board approval of the Ruling Members.

And page 4 is as follows:

Members Listing (as at April 2003)

Working Members	**Ruling Members**	**Founding Members**
Ng Gek Pah	Ng Joo Soon	Ng Ju Chin
Ng Aik Leng	Ng Joo Tian	Wong Wei Wai
Ng Ek Cheong	Ng Ju Aik	Ng Yik Lai
	Andrew Ng	
	Anta Ng	

57 The tabulated Remuneration Plan reveals several critical features. Page 1 provides that Ruling

Members are "automatically converted" if they qualify to be Founding Members. The members classified here as Ruling Members describe the new controllers and includes NJS (see Page 4). Critically, the Remuneration Plan expressly states that for Founding Members, the Retirement age is "Not Applicable" (see Page 2). What this means, *ex facie*, is that NJS was to remain a Ruling Member and member of the Board and Group until he reached the age of 70, following which, in accordance with Page 1 [see 56 above], he would be automatically converted to a Founding Member and would take on a non-executive role for which there was no retirement age. NJS would have automatically qualified by virtue of his having joined the Group for 30 years or before 1980. Whilst NJS is not here classified as a Founding Member but rather as a Ruling Member, the retirement age of Ruling Members is set out as 70 whereupon he is automatically converted to a Founding Member and retains his personal life entitlements. All other Ruling Members are to retire at 70 and do not become Founding Members unless they qualify as having worked with the Group for 30 years or before 1980.

58 Notwithstanding the express language of the Remuneration Plan to the contrary, Ng Ju Tian explained his view that "Non-Executive" in the Remuneration Plan means that they are no longer involved in any capacity (be it as director, employee or otherwise). He is of this view because he notes that none of the members described as Founding Members in the Remuneration Plan were currently directors of the Company. In essence he is of the view that "Non-Executive" means no position, whether executive or non-executive corporate position. However, his view is at variance with what the Remuneration Plan sets out expressly. "Non-Executive" as used in the Remuneration Plan has no meaning save in relation to employment and remuneration arising out of executive or non-executive corporate positions.

59 There was further evidence of an email from Anta, the author of the Remuneration Plan, to Andrew and Edward Wong, prior to his tabling of it on 27 April 2003, in which he states his draft proposals for consideration in the following way:

> As per last board meeting dated 11/3/03, the following is a draft benefits, limits and guidelines proposal for member to consider:
>
> A) Ruling members, maximum no 5 persons. Qualification minimum 10 years of working experience, minimum 33 years old. All members above 70 years old must retire. Benefits, chairman (present Mr Soon Sin$35,000.00 a month for life). Future chairman Sin$5,000/month more than other non executive members and end when retire non executive members Sin$11.000/month plus no more than Sin$1,000/month for allowance on personal phone, car and others. Minimum one month bonus. This will end when retire. Executive member (ceo) pay, profit sharing and others as per board decision. All members will have full medical and insurance cover during the term of office. Any change in benefits above mentioned will need full board approval if the change is more than 3%. Otherwise a simple majority will be sufficient.
>
> B) Working member. Qualification. More than 45 years old, work within the group for more than 20 years, have served as board member for subsidiaries for more than 10 years and hold position of vice president and above. Benefits, Sin$6,000/month plus Sin$5,000/month for working full time. The member will need to retire at 60 years old unless majority of ruling member agree to further extension. When retire the benefits will be Sin$6,000/month plus medical and insurance covers. Any change in above mentioned benefits will need full board approval.
>
> C) Founding member Qualification Hv joined the group in before 1980 and above 70 years old or work in the group for more than 30 years. They will be paid Sin$2,000/month for life. Pls add your points. We need an upper limits, as we do not want to make the same mistakes as Ming and Qing Dynasties, the benefits for royal members bankrupted the countries as the number of offspring

grows. Allison, pls print for Mr Soon, Aik and Tian to comments.

60 The primary intention of Anta in this email appears to be to avoid growing numbers of family members "bankrupting the countries [*sic* company] as the number of offspring grows" and so the key concepts focus on capping benefits and remuneration for all except for NJS, who was expressly intended to receive payments personal to him. However, Anta's email does indicate that he thought that all Ruling Members would retire as Ruling Members upon reaching 70 years. There is nothing, however, in his email to suggest that NJS would not only cease to be a Ruling Member but would also have to retire as a non-executive board member upon reaching 70 and, contrary to the Remuneration Plan, not become a Founding Member. Anta's email did not comprise an integral part of the Remuneration Plan. Whilst Anta had requested that the email be printed for NJS for comment, no evidence was produced that this had in fact been done or that NJS had agreed or signified his agreement by any signature to this email background to Anta's thinking. For this reason, I am unable to conclude that Anta's email proposal was an integral part of the Remuneration Plan, and even if it were to be so regarded, by its terms it does not purport to contradict the express terms of the Remuneration Plan.

61 NJS's construction of the Remuneration Plan was that, whatever it provided, he, as the founder of the Group, was to be an exception and accordingly had not assented to retiring as a director at 70. In his own words:

> A. Well, let me recall. At that time what was said was that our directors would not retire -- or, sorry, our shareholders -- sorry, our shareholders would not retire, but then for those employed directors, there would be retirement. Well, what was discussed was that for the remuneration plan for employed directors they would retire at 70, but then for me, as a founding member, it was not possible for me to retire. Why is it so? It is because I have lent a big sum of money to the company. Furthermore, the company had to pay me each month a sum of US$20,000, which is equivalent to Singapore currency S$35,000 per month. That's for the conversion rates of 1.75. And also they had to pay me interest because I had mortgaged my house for $6 to $7 million for the company. And that was why it was not possible for me to retire. What was going to happen if I retire? [note: 3]

62 In the light of the provisions of Restructuring Agreement 2002, in which he had a right to be a director or to nominate a replacement, the terms of the Remuneration Plan would be consistent with his agreeing to step down from an executive role into a non-executive chairman role. In the circumstances, I find that nothing in the Remuneration Plan, as authenticated and assented to by all parties, by its express content provided that NJS was to retire as a non-executive director of the Company upon reaching 70. Accordingly NJS remains a director of the Company and he had a statutory right to request to inspect the accounts of the Company as a director under s 199 of the Companies Act.

(V) The Company's Obligations in respect of the Repayment Claims

63 I now turn to the payment claims by NJS from the Company. Those claims (collectively "the Repayment Claims") are as follows:

(a) the Monthly Interest Reimbursement of $25,000.00;

(b) the Monthly Life Allowance of US$20,000.00 or $35,000.00 (at an agreed exchange rate of

US$1 to $1.75);

(c) the Deduction Instalment Repayment of $13,750.00; and

(d) the Loan Instalment Repayment of $140,278.00.

64 It was the Family Defendants' evidence in court that the Company had been paying the Repayment Claims, but they decided and procured the Company to cease paying the Monthly Interest Reimbursement and the Monthly Life Allowance to NJS after June 2008 because NJS had commenced these legal actions against the Company and them. The Family Defendants denied that the Company had to pay the Deduction Instalment Repayment and the Loan Instalment Repayment.

65 Under the Loan Repayment Agreement 2002 between NJS and the Family Defendants, to which the Company was not a party, the parties had confirmed the following payables to NJS and agreed to conclude a definitive agreement for the same, *viz* (i) the repayment of NJS's Loan of $5,050,001.55, (ii) the Monthly Life Allowance in the event NJS resigned or retired as chairman of the board of Dovechem Stolthaven Limited and (iii) the payment of interest on the Loan which took the form of the Monthly Interest Reimbursement. The parties had also agreed that the repayment of the Loan would commence after the completion of the schemes of arrangement, *ie*, May 2007 and payments of interest on the Loan were ongoing and would continue.

66 As mentioned above, no definitive agreements were concluded between the parties as contemplated by the Loan Repayment Agreement 2002. In *Von Hatzfeldt-Wildenburg v Alexander* [1912] 1 Ch 284 at 288-289, Parker J observed:

> ... if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction ... will in fact go through.

Although the Loan Repayment Agreement 2002 contemplated a further agreement, in my view, it was not in itself conditional upon any further agreement. It is capable of standing on its own, and it did so, when no further definitive agreement materialised.

67 I would also add at this point that, as these are the very same Meeting Notes that NJS relies on for the purposes of establishing his Repayment Claims, they bear the same limitations and caveats insofar as reliance is placed on them by either party for the purposes of establishing a contract and its terms between the Company and NJS. The plaintiff's Repayment Claims in Suit 140 are premised on a contract with the Company. It would be necessary to determine by what means there came to be a contract between the Company and NJS, quite apart from the Meeting Notes which do not have the legal effect that directors' and shareholders' resolutions or minutes or corporate agreements might have.

(A) The Monthly Life Allowance and the Monthly Interest Reimbursement

68 It is undisputed that until July 2008 the Company had been paying:

(a) the Monthly Interest Reimbursement for some 10 years since February 1998; and

(b) the Monthly Life Allowance for some 4 years since February 2004 to the NJS. [note: 4]

The Family Defendants themselves have admitted during cross-examination that the Company agreed and paid the Monthly Life Allowance and the Monthly Interest Reimbursement to NJS. The following excerpts from Joo Tian's cross-examination are instructive:

Q: If you turn back to page 149, back to the minutes of this meeting , at the sixth paragraph, it says: "AN [which is Dato Andrew Ng] suggests and Members agreed that commencing January 2002, all interest incurred in the finalised loan list by individual Members shall be borne by the [1st defendant]."

A: Yes.

Q: So the situation in January 2002 was that the 1st defendant had agreed to bear interest on the loans advanced by the plaintiff; correct?

A: Yes.

Q: The Company then made payments on those loans and on the interest; correct?

A: Yes.

…

Q: After a while, for convenience, the 1st defendant agreed to pay the plaintiff $25,000 per month as a fixed sum to cover the fluctuating interest rates.

A: Yes.

…

MR TAN: 1AB150.

A: Yes.

Q: You will see that there's a section called "Point 3 of First Meeting".

A: Yes.

Q: It says here:

"[The plaintiff] will be paid an allowance of USD20,000 per month without fail on the first day of every month in the event that he leave Dovechem Stolthaven Ltd or the Dovechem Group or is without salary."

So the effect of this is that if Mr Ng leaves the public company, Dovechem Stolthaven Limited, he is guaranteed an allowance of U$20,000 per month; correct?

A: Yes.

Q: He will have this for life.

A: Yes.

Q: The plaintiff left Dovechem Stolthaven in 2004; correct?

A: It should be.

Q: Since then, the company has been paying the plaintiff this U$20,000 per month, from February 2004 to July 2008.

A: Yes.

….

Q: Yes, you did discuss it. It says here: "DAN [Dato Andrew Ng] explained that based on the agreement, NJS is entitled with special agreement to get U$20,000 life time payment without 13th month salary."

A: Yes.

Q: Do you agree with what Dato Andrew Ng said?

A: I agree.

Q: To sum it up, the plaintiff is entitled to receive U$20,000 a month from the 1st defendant for the lifetime of the plaintiff; correct?

A: Yes

69 According to Joo Tian, the reason the Company stopped paying NJS the Monthly Life Allowance and the Monthly Interest Reimbursement was because he had applied to Court to inspect the Company's financial records [note: 5] :

Q: So why did you stop paying him?

A: Because this case is going on.

Q: No, no. Let me understand this. You have seen documents saying that Mr Ng is entitled to receive $35,000 a month for life, and you have stopped that payment simply because you claim that this lawsuit was started? You're not entitled to stop the payments.

A: Yes, because of this lawsuit. That's why we stopped paying him.

…

Q: You must be referring to the earlier suit, which is now called suit 59, that was filed in June 2008.

A: Yes, yes, I'm referring to suit number 59 of 2009.

Q: Yes, of course, because it would not be logical for you to have been referring to the latest suit, because that latest suit was a suit against you for not paying.

A: Yes.

Q: You are saying that the company stopped paying the $35,000 a month because the plaintiff wanted to inspect the company's documents.

A: Yes.

Q: You must agree that the company has no basis for stopping the payments. These are guaranteed payments for life.

A: What I meant was he -- since he has sued us in court so we stopped the payment to him.

Q: Do you mean that you can breach your own agreements simply because the founder of the company wants to look at the financial documents of his own company

…

Q: So stopping the payment is a direct response to his request for documents; correct?

A: He has sued us in court. It's not about sighting documents.

70 The Company, which had received the loans from NJS, paid the Monthly Interest Reimbursement aggregated at $25,000 per month as reimbursement of the interest paid by NJS right up to the filing of these actions. As the Company had contractually undertaken to repay the Loan and the Monthly Interest Reimbursement, from the time the Company ceased to pay these sums it was in breach of its contractual obligations. Similarly, I find that the Company had contracted to pay the Monthly Life Allowance, and therefore, from the time it ceased to pay this sum, it was in breach of contract.

(B) The Deduction Instalment Repayment and the Loan Instalment Repayment

71 The basis of NJS's claim for the Deduction Instalment Repayment and the Loan Instalment Repayment has been discussed above in [16]–[17]. It was not disputed that the Mistaken Deduction was made by mistake and agreed by all parties to be repayable. The Company had paid NJS $100,000 on 1 November 2007 followed by five monthly sums of $13,750 commencing in December 2007. I note also that on 7 November 2007, the plaintiff sent an email to Andrew confirming the terms of agreement:

To: [the Company]

Attn: All Directors via Andrew Ng

Reference to my individual Loan of S$5,050,001.l55 extended to [the Company] since 1997, please arrange to pay me within 3 years period by monthly instalments of S$140,278 per month.

Reference to the Balance Outstanding Interest of S$329,998.45 pertaining to this said Individual Loan, please arrange to pay me within 2 years period by monthly instalments of S$13,750 per month.

> Please arrange to make the first payments of these two monthly instalments of S$140,278 & S$13,750 respectively effective December 2007 to me.

There was no response from Andrew or any of the other directors on behalf of the Company denying this agreement, or stating that any conditions had to be fulfilled before the Loan Instalment Repayment would be paid.

72 This email is contemporaneous with the Loan Instalment Repayment described in [17], and the monthly payment of $13,750 described in it is consistent with repaying the remaining $329,998.45 in 24 equal monthly instalments commencing in December 2007. The Company had paid NJS $100,000.00 on 1 November 2007 and five Deduction Instalment Repayments. [note: 6] I do not accept the defendants' version that these payments were made purely out of goodwill and conditional on NJS providing documentary evidence in support, and that the Loan Instalment Repayments were conditional upon the agreement of the other parties and the Company having available funds. In these circumstances I find that the Company had contracted to make these payments and remains contractually bound to pay the balance monthly instalments.

73 With respect to the Loan, the Loan Repayment Agreement 2002 does not contain any provisions as to the repayment of the outstanding loan save that clause 3 of the Loan Repayment Agreement 2002 provides that the repayment of the Loan shall commence after completion of the "Loan Restructuring Exercise" which is defined to be the scheme of arrangement. This scheme of arrangement was completed by the time of the email of 7 November 2007 by NJS to Andrew. Consistent with the earlier email, the Company issued the letter of 14 November 2007 from Andrew as the Group Managing Director and copied to the Board of Directors, to the effect that the Company contracted to repay the Loan by 36 monthly instalments of $140,278. Upon cross examination in Court, both Andrew and Anta confirmed that the letter on the Company's letterhead signed by Andrew the Group Managing Director was binding on the Company. Evidence was also adduced of a draft of this letter which was headed "without prejudice" and contained a line stating that "The company will endeavour to pay subject to available funds", but both of these were omitted on the final letter sent to NJS. It is trite law that the letter of the Company signed by its managing director and copied to all directors is binding on the Company (see *Koh Kia Hiong v Guo Enterprises Pte Ltd* [1999] 2 SLR(R) 673). It is undisputed that the Company paid NJS and six Loan Instalments [note: 7] from January 2008 to May 2008. Accordingly I find the Company to have contracted to repay the Loan in 36 equal instalments and that it remains liable to pay the balance instalments.

(C) Moneylending

74 For completeness I should dispose of the *pro forma* defence of moneylending raised by the defendants to resist the plaintiff's claims of repayment of the loans and interest. I can do no better than to refer to *City Hardware Pte Ltd v Kenrich Electronics Pte Ltd* [2005] 1 SLR(R) 733 ("*City Hardware*"), where VK Rajah J noted at [47]:

> The defence of moneylending is often invoked in Singapore by unmeritorious defendants who are desperate to stave off their financial woes. Such defendants should not regard the [Moneylenders Act] as a legal panacea. It should be viewed as a scheme of social legislation designed to regulate rapacious and predatory conduct by unscrupulous unlicensed moneylenders. It s pro-consumer protection ethos was never intended to impede legitimate commercial intercourse or to sterilise the flow of money. It is not meant to curtail the legitimate financial activity of commercial entities that are capable of making considered business decisions. The court has always taken and will continue to take a pragmatic approach in assessing situations

when this defence is raised. The [Moneylenders Act] is not invariably contravened in transactions where the object of the transaction is to raise money. In the final analysis, the economic objective of an arrangement to provide credit should not be confused with its legal nature.

(D) Conspiracy and inducing breach of contract

75 The plaintiff finally seeks damages against the Family Defendants for inducing the Company to breach its contract with him and for conspiracy. In the present case, the main issue relevant to the tort of conspiracy and the main issue relevant to the tort of inducing breach of contract are one and the same – can directors of a company be liable for these torts when that company breaches a contract with a third party?

76 *Said v Butt* [1920] 3 KB 497 is the longstanding authority for the proposition that a director is immune from liability for inducing the company's breach of contract because the director is the company's *alter ego* and his acts are in law those of the company. McCardie J laid down the following rule at 506:

> ... if a servant acting *bona fide* within the scope of his authority procures or causes the breach of a contract between his employer and a third person, he does not thereby become liable to an action of tort at the suit of the person whose contract has thereby been broken.

The same position was adopted by Woo Bih Li J in *Chong Hon Kuan Ivan v Levy Maurice and others* [2004] 4 SLR(R) 801 ("*Chong Hon Kuan*") in relation to both the tort of inducing breach of contract and the tort of conspiracy. In that case, Woo J considered and rejected the wider position suggested by the Newfoundland Court of Appeal in *Imperial Oil Ltd v C&G* (1989) 62 DLR (4th) 261 that a director is liable for a company's contractual breach if his predominant intention was to injure the plaintiff.

77 I would adopt the same position taken by Woo J in *Chong Hon Kuan*. NJS's claims in Suit 140 for repayment are all claims against the Company. Even if the Company is in breach of its contractual obligations, the fact that the Family Defendants are directors of the Company would not on its own give rise to a separate personal cause of action of inducing breach of contract as they were acting within the scope of their authority. It was within their authority as directors to act on behalf of the Company in this regard. In the circumstances of this case, whilst they may have been mistaken, I am not persuaded on the evidence that the Family Defendants were acting without *bona fides*.

(VI) Conclusion

78 For the reasons above, I give judgment for NJS against the Company for Suit 59 and Suit 140 but do not allow the further reliefs sought against the Family Defendants. NJS is entitled to his costs, to be agreed or taxed.

[note: 1] Defence and Counterclaim in Suit 59, Bundle of Pleadings ("BP"), p 10 and [31] of the Defendant's Amended Opening Statement, p 7.

[note: 2] Defence and Counterclaim in Suit 59, BP, p 11.

[note: 3] Transcripts of 8 March 2010, page 29 lines 6-22.

[note: 4] Para 16 of the Defence and Counterclaim in Suit 140, BP, p 61.

[note: 5] Transcript of 11 March 2010, p 46, lines 16 – 25; p 47, lines 1 – 25; p 48, lines 1 – 15.

[note: 6] Agreed Bundle, Vol 3 ("3AB"), pp 766, 769, 771, 773, 843 and 848.

[note: 7] 3AB pp 767, 768, 770, 772 and 844-847.