

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

[2022] SGHC 317

Suit No 792 of 2020

Between

- (1) Ten-League Engineering &
Technology Pte Ltd
- (2) Ten-League Corporations Pte
Ltd

... Plaintiffs

And

- (1) Precise Development Pte Ltd
- (2) Choo Lye Weng

... Defendants

JUDGMENT

[Building and Construction Law — Subcontracts — Direct payments to
supplier]

[Contract — Formation — Oral agreement]

[Abuse of Process — *Henderson v Henderson* doctrine]

[Abuse of Process — Inconsistent positions]

TABLE OF CONTENTS

FACTS.....	2
BACKGROUND TO THE DIRECT PAYMENT DISCUSSIONS	3
<i>14 Jan Meeting</i>	4
<i>31 January 2020</i>	6
<i>3 & 4 February 2020</i>	8
<i>6 Feb Meeting</i>	12
<i>7 Feb Letter</i>	13
PC 13 AND PRECISE’S PAYMENT TO G-CON	14
TEN-LEAGUE’S LEGAL PROCEEDINGS.....	16
PRECISE’S FURTHER PCs	18
PROCEEDINGS INVOLVING PRECISE	19
PARTIES’ CASES	20
TEN-LEAGUE’S CASE.....	20
<i>Breach of contract</i>	20
<i>Unlawful means conspiracy</i>	23
<i>Quantum meruit</i>	23
PRECISE’S CASE.....	24
MR CHOO’S CASE.....	26
SUMMATION OF ISSUES ARISING.....	27
IS TLC A PROPER PARTY TO THE ACTION?	28
IS TEN-LEAGUE BARRED FROM BRINGING THE CLAIMS IN THIS SUIT?	29

APPROBATION AND REPROBATION	29
EXTENDED RES JUDICATA	33
WAS THERE A DIRECT PAYMENT AGREEMENT?	36
THE APPLICABLE LEGAL PRINCIPLES	36
THE CONTEMPORANEOUS DOCUMENTARY EVIDENCE	38
TEN-LEAGUE’S ORAL EVIDENCE	50
VERACITY OF TEN-LEAGUE’S NARRATIVE	53
THE DEFENDANTS’ ORAL EVIDENCE	55
THE EXTRINSIC EVIDENCE	56
CONCLUSION ON THE DIRECT PAYMENT AGREEMENT	58
WAS THERE A CONTRACT BETWEEN PRECISE AND G- CON THAT WAS ENFORCEABLE BY TEN-LEAGUE?	59
IS TEN-LEAGUE ENTITLED TO REASONABLE REMUNERATION FOR THE EQUIPMENT?	61
CONCLUSION.....	62

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

**Ten-League Engineering & Technology Pte Ltd and another
v
Precise Development Pte Ltd and another**

[2022] SGHC 317

General Division of the High Court — Suit No 792 of 2020
Valerie Thean J
22–26, 29–30 August, 3 November 2022

23 December 2022

Judgment reserved.

Valerie Thean J:

Introduction

1 In construction projects, contractors work with sub-contractors, who may, in turn, work with sub-sub-contractors of their own. Each relationship is generally governed by its own contract. The plaintiffs in this suit were involved in supplying construction equipment and machines to one of the sub-contractors on such a construction project. When concerns arose regarding the sub-contractor's ability to pay the plaintiffs, the plaintiffs met with the main contractor and the director of the sub-contractor regarding a direct payment arrangement between the main contractor and the plaintiffs. A letter was sent from the sub-contractor thereafter to the main contractor regarding their oral understanding.

2 As events unfolded, the main contractor did not pay the sums envisaged in the letter. The plaintiffs now contend the main contractor is liable to them for various sums initially owed to them by the sub-contractor whose sub-contract was duly performed. They bring this suit against the main contractor for breach of the alleged direct payment arrangement, or in the alternative, for *quantum meruit*. They also bring a claim against the main contractor and the director of the sub-contractor in unlawful means conspiracy.

3 For the reasons I explain below, I dismiss the plaintiffs' claim.

Facts

4 This case involves a construction project for the Housing & Development Board ("HDB") at Punggol North (the "Project"). The first defendant, Precise Development Pte Ltd ("Precise"), is in the business of general building services.¹ By a sub-contract agreement dated 18 April 2019 (the "G-Con Sub-contract"), Precise engaged G-Con Foundation Pte Ltd ("G-Con") as its piling sub-contractor for the Project. G-Con is in the business of foundational and piling construction work.² The G-Con Sub-contract was a measurement contract, which means that the sum payable from Precise to G-Con thereunder was subject to change based on a range of factors, including the quantity of work done and materials supplied. The completion date for the works was stipulated to be 6 January 2020.³ The second defendant, Mr Choo Lye Weng ("Mr Choo"), is the Chief Executive Officer, sole director and sole shareholder of G-Con.

¹ Poon Swi Shone's AEIC ("PSS") at para 3 (BAEIC 103).

² Choo Lye Weng's AEIC ("CLW") at paras 7–8 (BAEIC 199–200).

³ PSS at para 6 (BAEIC 104).

5 To carry out its piling works for the Project, G-Con rented machinery and equipment from the first plaintiff in this suit, Ten-League Engineering & Technology Pte Ltd (“TLET”), a fully-owned subsidiary of the second plaintiff, Ten-League Corporations Pte Ltd (“TLC”).⁴ I will refer to the plaintiffs collectively as “Ten-League”. Ten-League is in the business of providing equipment and machines for construction projects. The machines that Ten-League provide include drilling and boring rigs, crawler cranes and excavators. Typically, Ten-League leases these machines to contractors, and handles the transportation and installation of the machines.⁵ The equipment leased by TLET to G-Con included drilling and boring rigs, excavator cranes and excavators (the “Equipment”). The Equipment were rented by TLET to G-Con between August 2019 and February 2020. When TLET rented the Equipment to G-Con in this period, it issued invoices to G-Con on a monthly basis which set out the terms and conditions for the rental and the rental charges. All the invoices issued by TLET to G-Con in this period contained materially the same terms.⁶ I will refer to them as the “Rental Agreements”. TLET invoiced for the rental charges and TLC invoiced for services and maintenance that G-Con was obliged to pay.⁷

Background to the direct payment discussions

6 In January 2020, G-Con fell into arrears in respect of its payment obligations to Ten-League. According to Ten-League, as of 29 February 2020, G-Con was in arrears to TLET to the amount of \$1,910,702.70.⁸

⁴ CLW at para 19 (BAEIC 205).

⁵ Jison Lim’s AEIC (“JL”) at para 8 (BAEIC 4–5).

⁶ JL at paras 14–15 (BAEIC 7).

⁷ Plaintiff’s Closing Submissions dated 11 October 2022 (“PCS”) at para 46.

⁸ SOC (Amendment No. 1) at para 9.

14 Jan Meeting

7 On 14 January 2020, a meeting took place between representatives of Precise, representatives of Ten-League, and Mr Choo (the “14 Jan Meeting”). The purpose of this meeting was to discuss G-Con’s arrears and its continued rental of the Equipment for the Project. Ms Poon Swi Shone (“Ms Poon”) is Precise’s Contracts Manager. Her evidence was that she agreed to this meeting out of goodwill despite the fact that Precise had no obligation to Ten-League, because parties were all working the Project together. According to her, it is Precise’s practice that whenever issues between its sub-contractors and their own sub-sub-contractors or suppliers are brought to Precise’s attention, Precise would try to assist, where possible. This is to ensure that a smooth working relationship is maintained between all parties on the project.⁹

8 The 14 Jan Meeting was attended by Mr Jison Lim, Mr Lim Teck Meng and Ms Zhang Jingting (“Ms Zhang”) for Ten-League. Mr Jison Lim is Ten-League’s current Chief Executive Officer (“CEO”).¹⁰ Mr Lim Teck Meng was the Chief Financial Officer (“CFO”) of TLC from November 2014 to September 2020.¹¹ Ms Zhang is Mr Jison Lim’s personal assistant.¹² For Precise, Ms Poon, Ms Pang Chia Fen (“Ms Pang”), Mr Teo Chua Chye (“Mr Teo”) and Mr Seng Chee Keong (“Mr Seng”) attended. Ms Pang is Precise’s Deputy Contracts

⁹ PSS at para 9 (BAEIC 105).

¹⁰ JL at para 1 (BAEIC 2).

¹¹ Lim Teck Meng’s AEIC (“LTM”) at para 1 (BAEIC 38).

¹² Zhang Jiting’s AEIC (“ZJT”) at para 2 (BAEIC 70).

Manager¹³ and Mr Teo is Project Manager for Precise.¹⁴ Mr Choo attended on behalf of G-Con.¹⁵

9 Ten-League's position at the 14 Jan Meeting was that, since G-Con had defaulted on its payments under the Rental Agreements, Precise could pay all monies due to G-Con under the G-Con Sub-contract to Ten-League instead of G-Con. This would be up to the amount that G-Con owed to Ten-League. In consideration of this arrangement, Ten-League would refrain from shutting down its machines, so that G-Con could finish its works without delaying Precise's Project. Further, Ten-League would agree to cap the outstanding rental owed by G-Con to it at \$2m.¹⁶

10 According to Ms Poon, Precise's response was that:¹⁷

- (a) If Ten-League chose to stop providing machinery to G-Con, Precise would simply pursue a claim against G-Con for damages resulting from its breach of contract to Precise.
- (b) The outstanding amounts from G-Con to Ten-League related to rental for the period up to December 2019. Precise had already certified G-Con's work done up to December 2019 in payment certificates issued to G-Con.

¹³ PSS at para 1 (BAEIC 102); Pang Chia Fen's AEIC ("PCF") at para 1 (BAEIC 81).

¹⁴ Teo Chua Chye's AEIC ("TCC") at para 1 (BAEIC 166).

¹⁵ PSS at para 10 (BAEIC 105–106).

¹⁶ JL at para 25 (BAEIC 9–10).

¹⁷ PSS at para 12 (BAIEC 107–108).

- (c) Nonetheless, Precise would consider Ten-League's request for direct payment. However, this would be subject to G-Con's approval and Precise's usual terms and conditions for direct payment arrangements.
- (d) If any direct payment was to be made to Ten-League, there would be no contract between Precise and Ten-League and that direct payment would be made purely on a goodwill basis.

11 Mr Choo's evidence is that G-Con stressed that it would need to review Ten-League's claims for payment first. Further, G-Con would need to use the progress payments received from Precise to pay for its overheads and to pay its workers and sub-contractors. As such, Precise could not pay the entire progress payment to Ten-League. Finally, while G-Con was prepared to consider the direct payment arrangement, any sum to be paid directly from Precise to Ten-League would need to be after G-Con's deductions and subject to its confirmation of the actual amount payable.¹⁸

12 It is not disputed that no agreement was reached at the 14 Jan Meeting. Ten-League accepts that Precise was not willing to commit to an agreement on the direct payment arrangement, and that Ms Poon had expressed reservations about a contractual relationship arising between Ten-League and Precise.¹⁹

31 January 2020

13 On 31 January 2020, Ten-League sent a letter to Precise and G-Con (the "31 Jan Ten-League Letter"). The 31 Jan Ten-League Letter referred to the 14

¹⁸ CLW at para 55 (BAEIC 218–219).

¹⁹ JL at para 26–27 (BAEIC 10)

Jan Meeting, and stated that despite Ten-League’s willingness to resolve the matter, there had been no progress in terms of either receiving payment or a commitment to pay the outstanding amount owed. As such, Ten-League would have to shut the Equipment down on 3 February 2020 (three days later). Ten-League described this shutdown as having been “activated” by G-Con’s non-payment.²⁰

14 Mr Jison Lim explains that Ten-League believed at the time that it could not rely on G-Con to pay its outstanding debt. While G-Con had issued two cheques to Ten-League of approximately \$300,000 in partial repayment of this debt, the cheques had bounced. Ten-League feared that this would be a recurring pattern in G-Con’s attempts to settle its outstanding payments.²¹

15 On the same day, Mr Choo sent a letter on behalf of G-Con to Precise which was copied to Mr Jison Lim (the “31 Jan G-Con Letter”). In this letter, Mr Choo referred to the 14 Jan Meeting and G-Con’s outstanding debt to Ten-League. He stated that he authorised and appointed Precise to pay on his behalf “whatever that is due from [Precise] for my work done from now until the end of my foundation work contract work with you to [Ten-League] up to a maximum of \$2m. The letter further stated, “If the amount payable to me is less than \$2m, please make whatever amount available to [Ten-League]. I will pay [Ten-League] for the shortfall.”²²

²⁰ 3AB 2310.

²¹ JL at paras 32–34 (BAEIC 12).

²² 3AB 2309.

16 Mr Lim Teck Meng and Mr Choo have different explanations for this letter. For now, it suffices to say that the 31 Jan G-Con Letter was in fact drafted by Mr Lim Teck Meng for Mr Choo.²³

17 At the same time, Mr Lim Teck Meng drafted a letter that was to be executed by Precise. This draft was meant to be an acknowledgement by Precise in response to the 31 Jan G-Con Letter (the “Draft Acknowledgement”).²⁴ However, when Ms Zhang sent the draft to Ms Poon via e-mail, Ms Poon responded that Precise would not be signing because “there [was] no privity of contract between [them]” and asked Ms Zhang to contact Mr Choo instead. When Ms Zhang attempted to clarify that the acknowledgment was meant to be from Precise to G-Con and not from Precise to Ten-League, Ms Poon responded that Precise would have its own arrangement with G-Con and therefore it was not necessary for Ten-League to initiate an acknowledgement letter.²⁵ Precise did not sign anything on 31 January 2020.

3 & 4 February 2020

18 On 3 February 2020, the day that Ten-League had said it would shut the Equipment down, Ms Poon met Mr Choo at Precise’s office and asked him to explain the 31 Jan G-Con Letter.²⁶ She asked Mr Choo why G-Con would authorise Precise to pay any outstanding fees due to G-Con to Ten-League instead, up to a maximum of \$2m, without the need for G-Con to assess and confirm the amount payable. She said that she was confused because this meant

²³ LTM at paras 37–39 (BAEIC 47–48).

²⁴ LTM at para 40 (BAEIC 48).

²⁵ 3AB 2305–2308.

²⁶ PSS at para 29 (BAEIC 115).

that G-Con would have to be prepared to pay the full \$2m to Ten-League. She added that she could not even be confident that the sums due from Precise to G-Con would come close to \$2m. Mr Choo explained that Mr Jison Lim had contacted him and told him that Ten-League’s auditors required G-Con to issue the 31 Jan G-Con Letter such that Ten-League’s initial public offering exercise (“IPO”) would not be affected. Thus, the 31 Jan G-Con Letter was simply for show. He explained that he signed the 31 Jan G-Con Letter despite disagreeing with its contents because he trusted Mr Jison Lim’s explanation that it was simply to satisfy Ten-League’s auditors.²⁷

19 After this discussion between Ms Poon and Mr Choo, Precise issued a letter addressed to G-Con dated 4 February 2020 (the “4 Feb Letter”) that was copied to Ten-League by e-mail. The following portions of the 4 Feb Letter are relevant:²⁸

- (a) It referred to the 14 Jan Meeting, the 31 Jan G-Con Letter and the 3 Feb Meeting.
- (b) It stated that Precise’s agreement to assist in making direct payments to Ten-League was “purely to assist [G-Con]’s cash flow and without any obligation to do so”.
- (c) It specified certain conditions that the direct payment arrangement would be subject to. The arrangement would not relieve G-Con of any of its obligations under the G-Con Sub-contract and would not create any sub-contract relationship between Ten-League and Precise. Any payment, after deducting

²⁷ PSS at paras 30–33 (BAEIC 115–117); CLW at para 67 (BAEIC 223–224).

²⁸ 3AB 2325–2326.

supply of construction materials on G-Con's behalf, would be made out to Ten-League subject to G-Con's assessment of the actual amount payable. The aggregate amount paid by Precise to Ten-League would be fully recovered from G-Con's sub-contract account with Precise and there would be a 3% administrative charge imposed on that aggregate amount. Finally, all other terms of the G-Con Sub-contract would remain unchanged.

20 Ten-League responded later that day by e-mail (the "4 Feb E-mail"), instructing Ms Poon to "do this after discussion with auditor". Ten-League stated that it had "checked with [its] auditor" and noticed that there was no timing provided for the payment date, and that Precise would pay to Ten-League whatever was left after deduction subject to G-Con's assessment and confirmation of the actual amount payable. What Ten-League said that it needed was:²⁹

- (a) to include all projects with G-Con;
- (b) to confirm that the amount payable to G-Con could be concluded and paid to Ten-League by end March 2020;
- (c) payment should be made to Ten-League after deducting supply of construction materials; and
- (d) all amount payable to G-Con must be paid until the "tap" of \$2m and "this should be up to 31st Dec 2021".

²⁹ 3AB 2327–2328.

Ten-League further stated that “[f]ailing which, the whole amount due to G-con will be classified as doubtful debts and [their] IPO can be cancelled.” Finally, it stated that the terms and conditions set out above had been indicated in “Ten-League’s letter” (presumably the Draft Acknowledgement) and that if Precise could come out with something of the same effect it “[would] be good”.³⁰

21 In relation to the references to an “auditor”, Mr Lim Teck Meng explained that around the end of 2019, Ten-League had contemplated a listing exercise and had preliminarily engaged in discussions with financial advisers to determine what steps it would need to take.³¹ Mr Jison Lim met with two or three auditing firms for this purpose.³² Neither Mr Jison Lim nor Mr Lim Teck Meng gave evidence of what was specifically discussed with the auditors. However, Mr Lim Teck Meng testified that, from his own professional knowledge, he believed that if Mr Jison Lim had discussed the outstanding debts with the auditors, the common-sense reply would be to collect back the outstanding amount so that there would not be doubtful debts that could result in a reduction in the profit and accordingly the valuation of Ten-League.³³ Mr Jison Lim testified that G-Con’s debt would have been raised by any interested investor or participant in the proposed listing exercise following due diligence because after all, the amount was fairly significant and it would be preferable that there would not be doubtful debts affecting the valuation of Ten-League.³⁴ He further testified that Ten-League would have attempted to seek recovery of

³⁰ 3AB 2327–2328.

³¹ LTM at para 49 (BAEIC 50).

³² JL at para 48 (BAEIC 16).

³³ LTM at para 51 (BAEIC 50–51).

³⁴ JL at para 49 (BAEIC 16).

the sums from G-Con in any event. Ultimately, in April 2020 it became clear that a listing exercise would not be appropriate at the time and therefore no auditors were ever appointed or formally engaged.³⁵

6 Feb Meeting

22 The parties met on 6 February 2020 at Precise’s office. The attendees were the same as those for the 4 Feb Meeting, except that Mr Teo and Mr Seng did not attend. What was discussed at the meeting is the subject of much dispute. It is at this meeting that Ten-League alleges a tripartite contract was formed between Ten-League, G-Con and Precise regarding a direct payment arrangement (the “Direct Payment Agreement”). Ten-League (in closing submissions), alleges that the following was agreed:³⁶

- (a) the principle that Precise would issue direct payment to Ten-League;
- (b) the benefits that both G-Con and Precise would receive would be that Ten-League would no longer shut down the machines on the Project, Ten-League would not pursue immediate payment of all outstanding fees and Ten-League would cap the total invoices for rental and services at \$2m; and
- (c) the timing and assessment of such direct payments by Precise to Ten-League.

³⁵ JL at paras 50–51 (BAEIC 16).

³⁶ PCS at para 76.

Both Precise and Mr Choo deny that any such agreement was reached at the 6 Feb Meeting.³⁷

7 Feb Letter

23 The next day, a letter was sent by G-Con to Precise (the “7 Feb Letter”). Mr Lim Teck Meng drafted this letter on Mr Choo’s behalf. His evidence is that the 7 Feb Letter “recorded” the terms of the Direct Payment Agreement which had been reached at the 6 Feb Meeting. He understood, based on the terms of the Direct Payment Agreement, that this letter was important to “formalise the payment arrangement and record that G-con expressly authorised Precise to settle its debt to Ten-League on G-Con’s behalf, to avoid any potential action by G-Con against Precise for interfering in its contractual arrangement with Ten-League.”³⁸

24 The 7 Feb Letter referred to the 4 Feb Letter. It stated that G-Con was acceptable to Precise’s terms and thereby authorised Precise to pay to TLC, and deduct from the amount payable to G-Con, the following sums (totalling \$2m): \$800,000 on or before 28 February 2020, \$700,000 on or before 31 March 2020 and \$500,000 on or before 30 April 2020. Finally, it stated, “[i]f the amount payable to [G-Con] is less than \$2m, please make whatever amount available to [Ten-League]. [G-Con] will pay [Ten-League] for the shortfall.”³⁹ Mr Choo signed the 7 Feb Letter and affixed G-Con’s company stamp to it. However, his evidence is that he did so simply because Mr Lim Teck Meng and Mr Jison Lim

³⁷ 1st Defendant’s Closing Submissions dated 11 October 2022 (“1DCS”) at para 29; 2nd Defendant’s Closing Submissions dated 11 October 2022 (“2DCS”) at paras 167–172.

³⁸ LTM at para 60–61 (BAEIC 53).

³⁹ 4AB 2333.

told him that they needed him to do so to satisfy their auditors. Like the 4 Feb Letter, his evidence is that he disagreed with the contents. He would not know how much money he would receive from Precise, and that G-Con would not be able to pay \$2m in three months.⁴⁰ When Ms Poon called him to clarify the 7 Feb Letter, he explained that it was simply a “comfort” letter and that any direct payment arrangement was still subject to the conditions he had raised at the 14 Jan Meeting (see [11] above).⁴¹

25 Precise did not respond to the 7 Feb Letter. Ms Poon’s evidence is Mr Choo told her that the 7 Feb Letter was just to satisfy Ten-League’s auditors, and that the 4 Feb Letter remained applicable. As such, she saw no need to respond.⁴²

PC 13 and Precise’s payment to G-Con

26 On 17 February 2020, Precise issued Payment Certificate No. 13 (“PC13”) to G-Con.⁴³ PC13 certified that \$1,718,200.23 was payable to G-Con for works done in January 2020. However, this was subject to contra charges and back charges amounting to \$952,083.20. After factoring GST, the amount due to G-Con from Precise was \$819,766.62.⁴⁴ On 24 February 2020, Precise issued a cheque for \$811,316.78. This was \$8,449.84 less than the amount stated in PC13 because that sum had been inadvertently overpaid to G-Con in a previous payment. Ms Poon explained that, while the cheque was issued on 24

⁴⁰ CLW at paras 81–84 (BAEIC 228–229).

⁴¹ CLW at para 85 (BAEIC 229).

⁴² PSS at paras 68–69 (BAEIC 131–132).

⁴³ 7AB 4856–4859.

⁴⁴ PSS at para 74 (BAEIC 133–134).

February 2020, Precise left the addressee field blank because she was waiting to clarify with Mr Choo the amount payable to Ten-League.⁴⁵

27 On 27 February 2020, Mr Jison Lim instructed one of his staff to shut the Equipment down. He explains that he did so because he suspected that Ten-League would not be receiving the first payment from Precise stipulated in the 7 Feb Letter.⁴⁶ Later that day, he received a message from a staff member of G-Con, Mr Baktha, asking him to “consider again” and to “let [him] finish this project”.⁴⁷ Mr Jison Lim agreed and asked him to chase Precise for payment.⁴⁸

28 On 2 March 2020, Ms Poon called Mr Choo to confirm the amount payable to Ten-League, as the 4 Feb Letter stated she should (see [19(c)] above). Mr Choo told her to instead issue the cheque to G-Con, and that G-Con would make its own payment to Ten-League. Ms Poon asked for this to be confirmed in writing, and Mr Choo did so.⁴⁹ This written confirmation referred to PC13 and informed Precise not to make payment to Ten-League, and instead to make full payment to G-Con. Precise acknowledged this in writing as well.⁵⁰ In light of G-Con’s instructions, Ms Poon instructed her staff to address the PC13 cheque to G-Con and sign it. Mr Choo collected the cheque that day.⁵¹

⁴⁵ PSS at paras 75–77 (BAEIC 134–135).

⁴⁶ JL at para 71 (BAEIC 22).

⁴⁷ 5AB 3367; CLW at para 98 (BAEIC 233).

⁴⁸ JL at paras 72–73 (BAEIC 22–23).

⁴⁹ PSS at para 78 (BAEIC 135); CLW at paras 100–101 (BAEIC 233).

⁵⁰ 4AB 2454–2455.

⁵¹ PSS at para 79 (BAEIC 135–136).

29 G-Con then issued a cheque dated 4 March 2020 to Ten-League for the sum of \$100,000.⁵² Mr Choo prepared a report to show Ten-League how he had allocated the sum received from Precise to G-Con’s sub-contractors, suppliers and workers. This report indicated a balance of \$162,911.77, and of this balance Mr Choo paid \$100,000 to Ten-League and retained the rest for cash flow.⁵³

30 Ten-League was not satisfied that it had not received the \$800,000 directly from Precise in accordance with the Direct Payment Agreement and that instead, Precise had paid G-Con who had then used the sum to pay settle other debts.⁵⁴ Thus, Ten-League proceeded to shut the Equipment down immediately and started demobilising the Equipment from 6 March 2020.⁵⁵

Ten-League’s legal proceedings

31 On 11 March 2020, TLET commenced proceedings against G-Con (“Suit 226”) for the sum of \$1,810,702.70, being G-Con’s arrears pursuant to the Rental Agreements as at that date.⁵⁶ The claim was one for breach of the Rental Agreements.⁵⁷ Mr Lim sent the writ of summons in Suit 226 to Ms Poon and Mr Choo via e-mail the same day.⁵⁸ He followed this with a further e-mail on 13 March 2020 referring to the 6 Feb Meeting (the “13 Mar E-mail”). In this e-mail, he stated:⁵⁹

⁵² 7AB 4980.

⁵³ 2DCS at para 247.

⁵⁴ JL at para 76 (BAEIC 58).

⁵⁵ TCC at para 30 (BAEIC 176); LTM at para 82 (BAEIC 59).

⁵⁶ LTM at paras 14–15 (BAEIC 41).

⁵⁷ 8AB 5249.

⁵⁸ 4AB 2479.

⁵⁹ 4AB 2478–2749.

Dear Anna,

Without prejudice,

WE refer to our meeting on or about 6th February 2020,

Where we had discussed and agreed that G-con could give you the attached letter to authorise direct payment to Ten-League.

We had then obtained the said letter, as attached.

It is based on this trust that Ten-League continued to let G-con use out machines.

But when it comes to payment date,

Precise passed the payment to G-con.

Based on 3 parties agreement [Precise, Ten League and G-con]

Ten-League had fulfilled our agreement to let G-Con continue the use of our equipment to complete the punggol site work.

WE hereby request you to honor your promise by:

- 1) Not making any payment to G-Gon until [sic] the full payment of \$2m to us; and
- 2) Collect back the \$811k you paid to G-con and pass \$800,000 to Ten-League within 7 working days.

32 Ms Poon responded on 17 March 2020, stating that Precise had at all times made clear that it had no objection to issue direct payment to Ten-League subject always to G-Con's assessment and confirmation of the actual amount payable. She stated that Precise's records showed that on 2 March 2020, Mr Choo did not assess any amount to be paid to Ten-League. She reiterated that there was no "privity of contract" between Precise and Ten-League and that Ten-League's agreement to let G-Con continue to use the Equipment was purely of its own accord. She suggested that Ten-League pursue the matter with G-Con.⁶⁰

⁶⁰ 4AB 2477–2748.

33 On 21 March 2020, TLET obtained judgment in default of appearance in Suit 226.

Precise’s further PCs

34 Thereafter, four further payment certificates were issued by Precise to G-Con. These are as follows:

Payment Certificate	Date	Amount certified	Back Charges	Net payable to G-Con
14 (“PC14”) ⁶¹	27 Mar 2020	\$422,918.98	\$1,172,338.19	-\$749,419.21
15 (“PC15”) ⁶²	21 Apr 2020	\$553,200.18	\$1,745,127.66	-\$1,191,927.48
16 (“PC16”) ⁶³	15 May 2020	-\$410,491.22	\$1,241,476.41	-\$1,651,967.63
17 (“PC17”) ⁶⁴	4 Nov 2020	\$2,115,228.60	\$5,381,893.56	-\$3,266,664.96

35 As can be seen, in all the payment certificates following PC13, G-Con was not due any money and in fact *owed* money to Precise. This arose from

⁶¹ 7AB 4987.

⁶² 7AB 5051.

⁶³ 7AB 5102.

⁶⁴ 7AB 5135.

significant sums stated to be owing to Precise from G-Con, termed by parties as “back charges”, which far exceeded the certified sums for work completed by G-Con. The propriety of these back charges for PC14 and PC15 is disputed by Ten-League and forms the content of an unlawful conspiracy claim (see [44] below).⁶⁵

Proceedings involving Precise

36 After obtaining judgment in default, TLET commenced an application against Precise to garnish any sums due or accruing from Precise to G-Con (“Summons 1449”). On 27 March 2020, the date PC 14 was issued, it obtained a provisional garnishee order (“PGO”) against Precise. Precise was notified about the PGO on 30 March 2020.⁶⁶ In the course of Summons 1449, Ms Poon filed an affidavit stating that, as at that date, there were no monies due and owing from Precise to G-Con, and that in fact, Precise was *owed* money by G-Con (as per the table at [34] above).⁶⁷ At the hearing on 9 July 2020, the assistant registrar dismissed TLET’s application to make the PGO absolute and discharged the PGO, accepting that there were no monies owed by Precise to G-Con as at the date the PGO was granted.⁶⁸ On 22 July 2020, TLET filed a notice of appeal against the AR’s decision. This was subsequently withdrawn on 17 August 2020.⁶⁹

⁶⁵ PCS at paras 130–155.

⁶⁶ PSS at para 115 (BAEIC 149).

⁶⁷ 8AB 5294.

⁶⁸ PSS at para 121 (BAEIC 151); 8AB 5700.

⁶⁹ 8AB 5704–5706.

37 On 26 August 2020, Ten-League commenced this suit against Precise and Mr Choo.

Parties' cases

Ten-League's case

38 Ten-League claims against Precise in breach of contract and in *quantum meruit*. It further claims that Precise and Mr Choo engaged in an unlawful means conspiracy to injure Ten-League. I should note that Ten-League was also initially pursuing claims in assignment and misrepresentation which were withdrawn on the third day of trial.⁷⁰

Breach of contract

39 Ten League's primary case is that the Direct Payment Agreement was formed on 6 February 2020, or, in any event, on 7 February 2020. The Direct Payment Agreement was the culmination of negotiations that had begun as early as 14 January 2020 when it became clear that G-Con would be unable to pay its debt to Ten-League. Accordingly, Ten-League proposed that Precise make direct payment of monies due to G-Con to it instead, and in exchange, Ten-League would agree to allow G-Con to continue to use the Equipment on the Project. Mr Choo agreed on behalf of G-Con because he wanted to complete the works and get paid, such that he could pay G-Con's creditors.⁷¹

40 Ten-League fits the facts into the contractual analysis of offer, counteroffer and acceptance in the following manner. Ten-League first offered

⁷⁰ 25 August 2022 Transcript, p 26 line 15 to p 28 line 4.

⁷¹ PCS at paras 99–100.

to enter a direct payment agreement at the 14 Jan Meeting, and this was rejected by Precise. Following this, a second offer was made when Ten-League asked Precise to sign the Draft Acknowledgement in response to the 31 Jan G-Con Letter. Again, this was not accepted by Precise. On 3 February 2020, Ten-League made a third, identical, offer, when it sent the 31 Jan Ten-League Letter to Precise over WhatsApp. This time, however, the offer was accompanied by a threat to shut the Equipment down unless Precise agreed by that day. When Ms Poon responded the next day that Precise would “do the necessary”, Ten-League thought that this offer had been accepted. However, Precise instead responded with a counteroffer in the form of the 4 Feb Letter. This counteroffer was not acceptable to Ten-League for the reasons set out in the 4 Feb E-mail. The 6 Feb Meeting was called to resolve the deadlock. Ten-League provides two options to explain what happened at the 6 Feb Meeting. The first is that a firm agreement arose as to the following:

- (a) Ten-League would cap any outstanding fees to be incurred at \$2m and permit the continued use of machines for the Project;
- (b) Precise would agree to make direct payment to Ten-League subject to G-Con’s assessment and confirmation on the amount payable and confirm the other conditions set out in the 4 Feb Letter; and
- (c) G-Con was to confirm and provide such an assessment and confirmation on the amount payable, as a condition subsequent for any direct payment.

The second option is that the 6 Feb Meeting culminated in a counteroffer by Precise to confirm the amounts payable and other terms of the 4 Feb Letter. This

counter offer was accepted by G-Con in the 7 Feb Letter and impliedly accepted by Ten-League.⁷²

41 Thus, the Direct Payment Agreement was entered into no later than 7 February 2020.⁷³

42 The Direct Payment Agreement was breached by Precise in two ways. First, when it paid the sum of \$811,316.78 to G-Con rather than Ten-League on 2 March 2020. Second, when it refused to make further payment to Ten-League despite G-Con's assessment of the sums payable in the 7 Feb Letter.⁷⁴ It is relatively straightforward to see why the first alleged breach would have been a breach of the Direct Payment Arrangement. The second alleged breach is not so clear. To establish the second alleged breach, Ten-League argues that Precise's back charges in PC14 and PC15 were illegitimate and not in accordance with the terms of the 4 Feb Letter that formed part of the Direct Payment Agreement.⁷⁵ The only legitimate deductions were the sums of \$67,605.24 for PC14 and \$93,929.76 for PC15. Thus, Precise was in fact obliged to pay G-Con \$355,313.74 under PC14 and \$459,270.42 under PC15. Both sums were below the caps stated in the 7 Feb Letter. Thus, these sums should have been paid to Ten-League pursuant to the Direct Payment Agreement.⁷⁶

43 As a result of the first alleged breach, Ten-League suffered damage in the amount of \$711,316.78 (\$811,316.78 less the \$100,000 that G-Con paid to

⁷² PCS at para 105.

⁷³ PCS at para 112.

⁷⁴ PCS at para 118.

⁷⁵ PCS at paras 131–134.

⁷⁶ PCS at 155.

Ten-League on 4 March 2020). As a result of the second alleged breach, Ten-League suffered damage in the amount of \$814,584.16 (\$355,313.74 plus \$459,270.42).⁷⁷

Unlawful means conspiracy

44 Ten-League’s unlawful conspiracy claim is premised on the breach of the Direct Payment Agreement. It alleges that Precise and Mr Choo engineered a situation whereby Precise would impose unjustified charges on G-Con under the G-Con Sub-contract that G-Con would simply accept. This was so that the net amount owing from Precise to G-Con would be zero, such that Ten-League would receive no payment despite having allowed the continued use of the Equipment in the belief that payment would be forthcoming from Precise.⁷⁸

45 Ten-League accepts that this claim is predicated on *both* the findings that the Direct Payment Arrangement was entered into and that the alleged illegitimate back charges on PC14 and PC15 were indeed illegitimate.⁷⁹

46 Ten-League alleges that the unlawful means conspiracy caused it loss in the same amount as referred to at [43] above.⁸⁰

Quantum meruit

47 Ten-League advances a *quantum meruit* claim against Precise on the basis that Precise was unjustly enriched by the provision of the Equipment after

⁷⁷ PCS at paras 156–161.

⁷⁸ PCS at para 176.

⁷⁹ PCS at para 179.

⁸⁰ PCS at para 215.

29 February 2020 until March 2020. It argues unjust enrichment is established because Precise requested a benefit from Ten-League and accepted it when it was offered despite knowing that it was not intended to be given freely. It was also unjust in that Precise declined to pay for the benefit having received it.⁸¹

48 Thus, Ten-League seeks reasonable remuneration for the provision of Equipment for this period.⁸²

Precise's case

49 Precise denies that any oral agreement was reached on 6 February 2020.⁸³ Precise accepts that it *consented* to a direct payment *arrangement* by the terms of the 4 Feb Letter. However, it is clear from the 4 Feb Letter that such a direct payment arrangement was not intended to create any contractual relationship between Precise and Ten-League, any sums payable to Ten-League would be after deductions by Precise, and that any sums payable would be subject to G-Con's assessment and confirmation. No offer by Ten-League was accepted by Precise.⁸⁴

50 Even if Precise did accept Ten-League's offer at the 6 Feb Meeting, there was no consideration provided by Ten-League so as to give rise to a contract. Ten-League's pleaded case is that the consideration for Precise entering into the Direct Payment Agreement was that Ten-League would continue allowing the Equipment to be used for the Project and cap the

⁸¹ PCS at para 217.

⁸² PCS at para 221.

⁸³ 1DCS at para 57.

⁸⁴ 1DCS at para 62.

remaining rent at \$2m. Neither of these was requested by Precise, and accordingly could not amount to consideration.⁸⁵ Further, it is clear from the evidence that Precise had no intention to create legal relations.⁸⁶

51 Precise also submits that it acted in accordance with the direct payment arrangement set out in the 4 Feb Letter. It argues that Ten-League’s allegation of illegitimate deductions is unpleaded and unsupported by evidence.⁸⁷ Further, Ten-League is estopped from challenging these deductions following the decision in Summons 1449.⁸⁸

52 The unlawful conspiracy claim should fail because there is no evidence of an agreement or combination between Precise and Mr Choo with the intention to injure Ten-League.⁸⁹

53 In respect of the *quantum meruit* claim, Ten-League’s claim should fail because Precise never requested the provision of the Equipment.⁹⁰

54 Finally, Precise submits that the commencement of this suit by Ten-League is an abuse of process, and that the extended doctrine of *res judicata* bars its claims against Precise.⁹¹ Ten-League only raised the Direct Payment Arrangement after failing to enforce the judgment in Suit 226 and failing to

⁸⁵ 1DCS at paras 96–98.

⁸⁶ 1DCS at para 116.

⁸⁷ 1DCS at paras 163–164.

⁸⁸ 1DCS at para 227.

⁸⁹ 1DCS at para 202.

⁹⁰ 1DCS at para 245.

⁹¹ 1DCS at para 251.

obtain monies from the garnishee proceedings. Ten-League's inconsistent positions in Suit 226, Summons 1449 and the present suit amount to an abuse of process. Ten-League could have brought its claims against Precise in Suit 226, and there are no *bona fide* reasons for not doing so.⁹² Further, this suit is an abuse of process as evidenced by Ten-League's repeated changes of position, not least that it only raised the existence of an oral agreement reached at the 6 Feb Meeting after it failed to enforce the judgment in Suit 226.⁹³

Mr Choo's case

55 Broadly, Mr Choo's case is aligned with Precise's. However, he raises certain issues that were not raised by Precise.

56 First, he alleges that TLC is not a proper party to these proceedings. The rental arrears were from G-Con to TLET only, and the direct payment discussions related only to the rental arrears. TLC therefore has no standing to sue on any alleged direct payment agreement.⁹⁴

57 Second, he relies on two further doctrines to establish an abuse of process by Ten-League, namely the doctrines of approbation and reprobation and waiver by election. Mr Choo argues that Ten-League has obtained a benefit in the form of judgment in Suit 226, and is now taking positions inconsistent with those taken in Suit 226. This is precluded by the doctrine of approbation and reprobation.⁹⁵ As for waiver by election, Mr Choo argues that Ten-League

⁹² 1DCS at paras 257–258.

⁹³ 1DCS at paras 252–254.

⁹⁴ 2DCS at para 119.

⁹⁵ 2DCS at paras 368–369.

is bound by its election to sue G-Con as principal in Suit 226, and now cannot elect to sue him as agent.⁹⁶

58 Third, he argues that he can be under no personal liability to Ten-League for unlawful means conspiracy in reliance on the rule from *Said v Butt* [1920] 2 KB 497 (“*Said v Butt*”). As held by the Court of Appeal in *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 1 SLR 818 (“*PT Sandipala*”), directors will ordinarily be immune from personal liability for authorising, procuring or participating in the contractual breaches of their company, including through an unlawful means conspiracy, unless their acts are in breach of any fiduciary or other legal duties owed as directors to the company.⁹⁷ While Ten-League relies on the exception to the rule from *Said v Butt* as set out in *PT Sandipala*, which involves a director acting in breach of duty, and has raised allegations of breach of director’s duties in closing submissions, these allegations should be dismissed because they were not pleaded.⁹⁸

Summation of issues arising

59 The following issues arise from the claims and various defences in this suit:

- (a) Is TLC a proper party to the action?
- (b) Is Ten-League barred from bringing the claims in this suit?
- (c) Was an oral contract formed for a Direct Payment Agreement?

⁹⁶ 2DCS at para 385.

⁹⁷ 2DCS at para 100.

⁹⁸ 2DCS at para 112.

- (d) If so, was that agreement breached?
- (e) Is Mr Choo a proper defendant?
- (f) If so, did that breach occur pursuant to a conspiracy between Mr Choo and Precise to injure Ten-League?
- (g) Was there an agreement between Precise and G-Con that was enforceable by Ten-League?
- (h) If no contract was formed for the Direct Payment Agreement, are there grounds for a claim in *quantum meruit*?
- (i) If any cause of action is made out, what damages are due to Ten-League?

60 I answer question (a) in the positive and (b) in the negative. Ten-League's claim is dismissed because I also answer (c), (g) and (h) in the negative. Arising from this, the other queries, which are premised on the Direct Payment Agreement or a successful claim in *quantum meruit*, do not require consideration.

Is TLC a proper party to the action?

61 Mr Choo's real complaint with TLC being a party to the action is that the alleged Direct Payment Agreement was made to cover rental arrears, and rental arrears were due to TLET only.⁹⁹ There were invoices from TLC to G-Con, but these invoices were for services that were not the subject matter of the claim.¹⁰⁰

⁹⁹ 2DCS at para 119.

¹⁰⁰ 3 November 2022 Transcript, p 16 lines 18–20.

62 This position is misconceived. Ten-League clarified that its claim against Precise and Mr Choo is not premised on the invoices, but on the subsequent Direct Payment Agreement. On Ten-League’s pleaded case, TLC is a party to the Direct Payment Agreement. Counsel for Ten-League highlighted that TLC was listed as a beneficiary of the direct payment in correspondence leading up to the 6 Feb Meeting, such as the 31 Jan Letter.¹⁰¹ The Direct Payment Agreement, on Ten-League’s case at least, was for the collective benefit of TLET and TLC.¹⁰² TLC is therefore a proper party to the action.

Is Ten-League barred from bringing the claims in this suit?

Approbation and reprobation

63 The doctrine of approbation and reprobation dictates that a party may not reprobate a matter from which he has previously accepted a benefit. In *BWG v BWF* [2020] 1 SLR 1296 (“*BWG*”), the Court of Appeal discussed the doctrine of approbation and reprobation in detail. The following propositions which are relevant to this case were set out:

- (a) The doctrine can apply to cases involving different proceedings against different parties: at [118].
- (b) The doctrine is engaged as long as the party has received an actual benefit as a result of its earlier inconsistent position: at [118].
- (c) For the purposes of the doctrine, a judgment is considered a benefit, even where the judgment is ultimately not satisfied. The

¹⁰¹ 3 November 2022 Transcript, p 16 line 23 to p 17 line 3; PCS at para 115.

¹⁰² PCS at para 116.

benefit is the entitlement to payment that the party receives when it obtains the judgment: at [119].

64 Thus, because Ten-League obtained a benefit in the form of judgment against G-Con in Suit 226, they may not reprobate from any matter which they relied on to obtain that benefit. This applies to the present suit even though the parties are not identical to those in Suit 226.

65 Mr Choo points to three categories of inconsistency between Ten-League's position in these proceedings and its position in Suit 226: inconsistency of parties; inconsistency of factual positions taken on record; and inconsistency of course of action taken.¹⁰³ In my view, none of these inconsistencies enliven the doctrine of approbation and reprobation.

66 In *BWG*, the Court of Appeal (at [102]) endorsed the description of the doctrine set out in *Treasure Valley Group v Saputa Teddy and another (Ultramarine Holdings, Ltd, Intervener)* [2006] 1 SLR(R) 358 at [31] by Belinda Ang J (as she then was):

The doctrine of approbation and reprobation precludes a person who has *exercised a right from exercising another right which is alternative to and inconsistent with the right he has exercised*. It entails, for instance, that a person 'having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit': see *Evans v Bartlam* [1937] AC 473 at 483...

[emphasis added in *BWG*]

Thus, in order for the doctrine to be engaged, Ten-League must be seeking to exercise a *right* which is inconsistent with the *right* it exercised in Suit 226.

¹⁰³ 2DCS at para 379.

67 To illustrate, the Court of Appeal in *BWG* considered (at [103]–[105]) the example of *Express Newspapers Plc v News (UK) Ltd and others* [1990] 1 WLR 1320 (“*Express Newspapers*”). In *Express Newspapers*, the plaintiff newspaper had brought an action for breach of copyright against the defendant. The plaintiff had published an article, based on an exclusive interview, and the defendant had published a report of the same story. Some time later, the reverse happened in that the plaintiff republished an exclusive story which the defendant published first. The plaintiff obtained summary judgment, and the defendant sought to enter summary judgment on its counterclaim. The plaintiff objected, but the court considered that the facts of the claim and counterclaim were “legally indistinguishable” and therefore any defence put forward to the counterclaim would be equally applicable to the claim on which the plaintiff had obtained judgment. The plaintiff was not entitled to put forward two inconsistent cases, and summary judgment was granted on the defendant’s counterclaim.

68 In *Lipkin International Ltd v Swiber Holdings Ltd and another* [2015] 5 SLR 962 (“*Lipkin*”), the plaintiff sought to rely on a document to advance a contract, but it had in earlier arbitration proceedings used that same document to advance a different contract with a different party. The doctrine of approbation and reprobation did not apply, but only because the prior arbitration had ultimately settled (and therefore the plaintiff did not “exercise” any right in them). However, the court still frowned upon the plaintiff’s approach and noted that its adoption of inconsistent attitudes should be viewed with circumspection and scepticism due to the “wider dimension” of the doctrine of approbation and reprobation: at [61]–[62].

69 In my view, there is no similar inconsistency here. The Direct Payment Agreement on which Ten-League's case is premised was allegedly reached orally at a meeting on 6 February 2020. It is a contract that co-existed with the Rental Agreements between G-Con and TLET. In fact, the Direct Payment Agreement was pleaded (albeit not exactly in the same terms) in TLET's statement of claim in Suit 226. I reproduce the relevant paragraphs of TLET's statement of claim in Suit 226:¹⁰⁴

6. On or about 7 February 2020 following the subsequent meeting on 6 February 2020 which again was attended by the various representatives from [TLET], [G-Con] and [Precise], [TLET] agreed and wrote to [Precise] authorizing [Precise] to deduct and pay to [TLET] project moneys owing by [Precise] to [G-Con], so as to discharge [G-Con's] debts to [TLET] in full if not at least in part.

7. Believing that [TLET] would be paid by [Precise] instead for the matters set out above, [TLET] allowed [G-Con] to continue using the rental equipment on site.

8. In breach of their promise/agreement to pay [TLET] direct, [Precise] subsequently paid the progress claim of S\$811,316.78 to [G-Con] instead on or about 24 February 2020, out of which sum [G-Con] had only paid S\$100,000.00 to [TLET], leaving the sum of S\$1,810,702.70 which remains payable and unpaid.

70 The right asserted by Ten-League in Suit 226 was its contractual entitlement to be paid by G-Con under the Rental Agreements. Here, Ten-League asserts a related, but not inconsistent, right that arises from a purported agreement between different parties. The Rental Agreements have been pleaded in this suit and their validity is consistent with Ten-League's case. Ten-League has stressed that it is not taking the position that the Direct Payment Agreement settles, supersedes or extinguishes G-Con's debt under the Rental

¹⁰⁴ 8AB 5250.

Agreements.¹⁰⁵ As such, I agree that successfully establishing the Direct Payment Agreement would not in any way undermine the judgment in Suit 226. It is also important to note that Ten-League accepts that the principle of double recovery applies, and therefore any risk in that regard can be dealt with when damages are considered.¹⁰⁶

71 Thus, I reject Mr Choo’s argument that the doctrine of approbation and reprobation bars Ten-League’s claims.

Extended res judicata

72 The extended doctrine of *res judicata* comes from the following passage from the English decision of *Henderson v Henderson* (1843) 3 Hare 100 (“*Henderson*”) at 115:

... [W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which [the] parties, exercising reasonable diligence, might have brought forward at the time. ...

73 The doctrine is well-established in Singapore law (see, for example, *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others*

¹⁰⁵ PCS at para 228.

¹⁰⁶ PCS at para 229.

v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal [2015] 5 SLR 1104). In *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453, Sundaresh Menon JC (as he then was), explained that the court should not adopt an inflexible or unyielding attitude but should remain guided by the balance to be found in the tension between the demands of ensuring that a litigant who has a genuine claim is allowed to press his case in court and recognising that there is a point beyond which repeated litigation would be unduly oppressive to the defendant. The inquiry should not be directed at whether the issue raised in the later proceedings *could* have been raised in the earlier proceedings, but directed at whether it ought reasonably to have been: at [53].

74 In the present case, I am not satisfied that the defendants have shown that the present claims against them *should* have been brought in Suit 226 instead. It bears reiterating that Suit 226 was between TLET and G-Con, and was premised on the Rental Agreements. This suit, on the other hand, is between Ten-League and Precise and Mr Choo, premised on a distinct alleged contract. Precise's submissions focus on the fact that Ten-League *could* have been brought in Suit 226.¹⁰⁷ As explained by Menon JC in *Goh Nellie*, this is insufficient to give rise to an abuse of process.

75 Mr Choo focuses on the fact that Ten-League is relying on fundamentally the same set of facts in these proceedings as they did in Suit 226.¹⁰⁸ However, the facts giving rise to liability for breach of any Direct Payment Agreement are *distinct* from those which gave rise to G-Con's liability

¹⁰⁷ 1DCS at paras 257–258.

¹⁰⁸ 2DCS at paras 412, 414.

under the Rental Agreements. This is unlike *Manas Kumar Ghosh v MSI Ship Management Pte Ltd and others* [2021] 4 SLR 935 (“*Manas Kumar Ghosh*”) which Mr Choo cites. In *Manas Kumar Ghosh*, the plaintiff suffered injuries while working on board a vessel. He first commenced a suit against the owner of the vessel in negligence, which was ultimately settled. Six months later, he brought another suit, also in negligence, in respect of the same injury, against two ship managers of the vessel. There, the court rightly noted that the plaintiff was “covering the same ground already traversed” in the previous suit. In this case, however, it cannot be said that the existence of the Direct Payment Agreement was traversed in Suit 226. As I have covered at [69] above, I do not see the present claim to be inconsistent with that in Suit 226.

76 Mr Choo also argues that this is a collateral attack on the decision in Summons 1449 as it is a “backdoor means of enforcing the [judgment in Suit 226]”.¹⁰⁹ I do not agree that this is the case. Ten-League is simply pursuing *separate* claims against separate parties, albeit in respect of the same loss. Leaving aside the rule against double recovery, there is nothing barring Ten-League from doing so.

77 I therefore do not agree that Ten-League is barred from bringing the present proceedings against Precise and Mr Choo.

¹⁰⁹ 2DCS at para 419.

Was there a Direct Payment Agreement?

The applicable legal principles

78 The Direct Payment Agreement is an oral agreement purportedly reached at the 6 Feb Meeting. The principles for determining whether an oral agreement was reached were set out by the court in *ARS v ART and another* [2015] SGHC 78 (“*ARS*”) at [53]:

- (a) the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
- (b) where possible, the court should first look at the relevant documentary evidence;
- (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists;
- (d) oral testimony may be less reliable as it is based on the witness’ recollection and it may be affected by subsequent events (such as the dispute between parties);
- (e) credible oral testimony may clarify the existing documentary evidence;
- (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and
- (g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there was an oral agreement concluded between the parties.

79 In order to establish that the Direct Payment Agreement was reached, Ten-League must show that there was offer and acceptance, that the bargain was supported by consideration, and that parties intended to create legal relations: *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 (“*Gay Choon Ing*”) at [47], [63], [64] and [71]. An offer “must consist of a definite promise to be bound, provided that certain specified terms are accepted”: *Gay Choon Ing* at [47], citing M P Furmston, *Cheshire, Fifoot and Furmston’s Law of Contract* (Oxford University Press, 15th Ed, 2007) at p 40. An acceptance is “a final and unqualified expression of assent to the terms of an offer”: citing Edwin Peel, *Treitel: The Law of Contract* (Sweet & Maxwell, 12th Ed, 2007) at para 2-015.

80 Unlike the typical contract, the Direct Payment Agreement involves more than two parties. Ten-League refers to it as a “tripartite” contract but, as Mr Choo rightly points out, on Ten-League’s case there are in fact four parties to the Direct Payment Agreement (TLET, TLC, Precise and G-Con). Counsel for Ten-League explained that the term “tripartite” was appropriate because TLET and TLC were acting collectively as a group.¹¹⁰ In any event, the number of alleged parties to the contract does not materially affect the contractual analysis. In *Coöperatieve Centrale Raiffeisen-Boerenleenbank BA v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 (“*CCRB*”), there was alleged to have been an agreement entered into between three parties (at [9]). In setting out the relevant principles, the Court of Appeal did not consider any rule that set tripartite agreements apart from bilateral agreements (at [46]–[50]).

¹¹⁰ 3 November 2022 Transcript, p 25 lines 16–25.

81 As recognised in *KLW Holdings Ltd v Straitsworld Advisory Ltd and another* [2017] 5 SLR 184 (“*KLW Holdings*”) at [54] (citing *Malayan Banking Bhd v Lauw Wisanggeni* [2003] 4 SLR(R) 287 at [12]), there is no requirement in tripartite agreements that consideration must benefit each and every other party. This flows from the trite principle that, while consideration must move from the promisor, it need not necessarily move to the promisee. Thus, in respect of the requirement of consideration, Ten-League simply must show that consideration was provided by each of the alleged parties to the Direct Payment Agreement.

82 The evidence adduced at trial, however, shows that the Direct Payment Agreement was not reached.

The contemporaneous documentary evidence

83 On Ten-League’s case, negotiations leading up to the Direct Payment Agreement began on 14 January 2020.¹¹¹

84 The first relevant documents are the letters between parties on 31 January 2020. The 31 January G-Con Letter was a letter from G-Con to Precise. Formally, it did not involve Ten-League, but it was in fact drafted by Mr Lim Teck Meng. The 31 Jan G-Con Letter was a *request* by *G-Con* that Precise make direct payment to Ten-League (see [15] above). The Draft Acknowledgement was meant to be Precise’s acceptance of this request. The Draft Acknowledgement was also drafted by Ten-League. It is useful to set out the text of the Draft Acknowledgement in full:¹¹²

¹¹¹ PCS at para 100.

¹¹² 3AB 2302.

In consideration of TLC agreeing to continue leasing their equipment to you so that our job can be completed in time and your request to pay TLC whatever that is due to you up to a maximum of SGD 2 million,

We hereby warrants that whatever is due to you will be made payable to TLC until the maximum of SGD 2 million is paid or up till 31st December 2021, whichever is earlier.

We will also make full payment to TLC on or before 31st March 2020 for whatever that is payable to you for all the work done. Should there be any further payments to you, whether for this project or for additional rewards/rebate/bonus or whatsoever, we will make payment to TLC until the full SGD2 million is fully paid.

As per your request, no payment will be made to you until the SGD 2million is fully paid.

[emphasis added]

85 This was not a simple acknowledgement of a request from G-Con to make direct payment to a supplier. It was a carefully worded document which provided that Precise *promised* to make that direct payment, and did so in exchange for TLC continuing to lease the Equipment to G-Con. This is especially so given Precise’s use of words such as “consideration” and “warrants”, as well as the manner in which Precise’s obligations under the Direct Payment Agreement are framed. This language appears to at least raise the possibility that the Draft Acknowledgement would constitute a binding agreement between G-Con and Precise that was enforceable by Ten-League. On Ten-League’s case, the Draft Acknowledgement was a letter which recognised a direct payment agreement between Precise, G-Con and Ten-League.¹¹³ Because Ten-League was responsible for drafting the Draft Acknowledgment, this sheds important light on Ten-League’s intentions and wishes at the time. Ten-League wanted an enforceable agreement as against Precise.

¹¹³ PCS at para 105(b).

86 However, Precise did not agree to sign the Draft Acknowledgment. Ms Poon’s response *via* e-mail on behalf of Precise was ultimately that:¹¹⁴

We have our own arrangement with G-Con, if required, hence it is not necessary for your side to initiate an acknowledgement letter.

87 Precise’s “own arrangement with G-Con” then came, in the form of the 4 Feb Letter. The following extract from the 4 Feb Letter is relevant:¹¹⁵

2. *Purely to assist in your Company’s cash flow and without any obligation to do so*, our agreement to assist in making direct payment to your direct sub-contractor from the assessed monthly progress payments was on the basis of the following conditions mutually agreed. Such arrangement:

...

(b) *shall not purport to create any Sub-Contract relationship between us and your direct sub-contractor*;

(c) payment (after deducting supply of construction materials on your Company’s behalf, etc.) shall be made out to your direct sub-contractor subject to your assessment and confirmation on the actual amount payable;

...

[emphasis added]

88 The difference between the 4 Feb Letter and the Draft Acknowledgement is stark. Under the terms of the 4 Feb Letter, Precise acceded to G-Con’s request in the 31 Jan G-Con Letter purely to assist G-Con, and without any obligation to do so. Thus, Precise was clear in this letter that it was not making a promise, whether to G-Con or Ten-League, to make direct payment to Ten-League. It was simply accepting G-Con’s request. This is unlike

¹¹⁴ 3AB 2306.

¹¹⁵ 3AB 2325–2326.

the Draft Acknowledgement, where Precise *promised* to perform G-Con's request. This difference between the two documents represents the difference between Ten-League and Precise at the time: Ten-League wanted an enforceable agreement as against Precise, whereas Precise was only prepared to make direct payment on a goodwill basis.

89 Ten-League's witnesses confirmed that they understood the 4 Feb Letter as indicating Precise's desire not to enter into a binding contractual relationship with Ten-League. Mr Jison Lim stated the following in cross-examination:¹¹⁶

Q. ... I'm just going to put it to you, Mr Lim, that you were aware of the terms and conditions in Precise's letter of 4 February 2020. You can either agree or disagree.

...

A. I'm aware.

...

Q. And because you are aware of the terms and conditions, you also know that Precise's proposal for direct payment was on the basis that there would be no contractual relationship between Ten-League and Precise?

A. By "agreement", it would mean that there's a contractual relationship?

Q. That's not my question. My question is: you were aware that Precise's proposal for direct payment was on the basis that there would be no contractual relationship between Ten-League and Precise; right?

A. Yes.

Similarly, Mr Lim Teck Meng said:¹¹⁷

Q. ... Now, you received a copy of this letter on 4 February 2020; right?

¹¹⁶ 23 August 2022 Transcript, p 51 line 8 to p 52 line 13.

¹¹⁷ 22 August 2022 Transcript, p 78 lines 2–22.

A. Yes.

Q. And you read the letter?

A. Yes.

Q. And because you read the letter, you would have realised, at paragraph 2(b), that Precise still did not want to create any subcontract relationship with Ten-League, even though they were agreeable to making direct payment?

A. Yes.

Q. In fact, if you look at paragraph 2, right at the top, would you agree with me that Precise was expressing their intention that this direct payment was purely to assist G-Con's cashflow and as a matter of goodwill?

A. Yes.

Q. Would you agree with me that if you look at the letter of 4 February as a whole, it was very clear that Precise was trying to avoid entering into any binding obligation with Ten-League?

A. Yes.

90 Also, notably, in the 4 Feb Letter, Precise did not make any request that G-Con or Ten-League do anything in return. Specifically, there was no reference to "TLC agreeing to continue leasing their equipment to [G-Con] so that [the Project] can be completed in time", as there was in the Draft Acknowledgement. On Ten-League's case, the 4 Feb Letter was a counteroffer by Precise (see [40] above). It is curious that Precise's counteroffer does not even refer to Ten-League's alleged end of the contractual bargain. In any case, Ten-League's characterisation of the 4 Feb Letter as a counteroffer is unconvincing. An offer "must consist of a definite promise to be bound, provided that certain specified terms are accepted": *Gay Choon Ing* at [47]. The 4 Feb Letter contained no such promise to be bound, much less a promise to be bound to *Ten-League*. While the 4 Feb Letter was sent by e-mail to Ten-League, it was not even addressed to them. There was nothing in the 4 Feb Letter that

could possibly objectively show that Precise intended to be bound upon acceptance of its conditions stated in the letter. Ten-League was aware of this (see [89] above). Thus, the 4 Feb Letter could not have been accepted to form a binding agreement (see *Overseas Union Insurance Ltd v Turegum Insurance Co* [2001] 2 SLR(R) 285 at [28]), and therefore cannot be considered a counteroffer.

91 I pause to note that parties appear to take a different interpretation of para 2(b) of the 4 Feb Letter. Ten-League takes this para to provide only that “there would be no sub-contract relationship (as opposed to a contractual relationship arising from the terms of any direct payment arrangement itself) between Precise and [Ten-League] such that [Ten-League] would be considered a sub-contractor of Precise”.¹¹⁸ Ten-League appears to be drawing a distinction between a *sub-contractual* relationship and a *contractual* relationship. In essence, Ten-League submits that para 2(b) does not amount to an expression of Precise’s intention that there should be no contract between Precise and Ten-League. I wholly reject this suggestion as it is contrived and unsupported by evidence. As stated at [78(f)] above, it is important that the court should not place undue weight on specific words used by witnesses who are not legally trained. Ms Poon explained that, as per Precise’s usual practice with direct payment arrangements, “all obligations under Precise’s sub-contracts would remain unchanged and *no new contractual relationship between Precise and the suppliers would be created*” [emphasis added].¹¹⁹ Ms Poon was asked about this in cross-examination:¹²⁰

¹¹⁸ PCS at para 105(f)(iv).

¹¹⁹ PSS at para 59 (BAEIC 127).

¹²⁰ 26 August 2022 Transcript, p 120 lines 13–22.

- Q. Does it actually say here that there is no contractual relationship that will arise out of this arrangement for direct payment?
- A. That is stated in item 2(b).
- Q. [2(b)] uses the word “Sub-Contract”. I am asking you does it say there is no contractual relationship?
- A. Between?
- Q. Ten-League and Precise.
- A. Yes.

92 I find that para 2(b), in the context of the 4 Feb Letter as a whole, made clear that Precise “did not want to enter into a contractual relationship with Ten-League.”¹²¹ In fact, Ten-League’s *own witness’s evidence* (at [89] above) supports this interpretation. In oral closing submissions, Ten-League’s counsel appeared to have dropped this contention when he accepted that until 4 February 2020, it was clear to Ten-League that Precise did not want to enter into a contract with it, but that this understanding ceased by the time of the 6 Feb Meeting.¹²²

93 As mentioned earlier at [20], the 4 Feb Letter was unsatisfactory to Ten-League and their objections were recorded in the 4 Feb E-mail. However, I should note that the 4 Feb E-mail does not raise concerns about the fact that the 4 Feb Letter clearly does not contemplate Precise undertaking an obligation to make direct payment. According to Ten-League, “anything short of an enforceable agreement would have been commercially meaningless”.¹²³ If this was true, Ten-League would certainly have responded that the unequivocal 4

¹²¹ 1DCS at para 121.

¹²² 3 November 2022 Transcript, p 37 lines 1–14.

¹²³ PCS at para 104.

Feb Letter was not acceptable because it did not contemplate an enforceable agreement.

94 Instead, Ten-League only raised two problems with the 4 Feb Letter:¹²⁴

- (a) there was no timing given for the payment date; and
- (b) it provided that Precise would pay to Ten-League whatever was left after deduction and subject to G-Con's assessment and confirmation on the actual amount payment.

Neither Mr Jison Lim nor Mr Lim Teck Meng explained why no concern was raised with Precise's refusal to undertake an obligation to make direct payment or enter a contractual relationship with Ten-League. In fact, their evidence confirms that the two issues raised in the 4 Feb E-mail were the only two issues with the 4 Feb Letter. Mr Jison Lim's evidence is that the 4 Feb Letter was "too vague and lacked important details such as payment schedule or even quantum."¹²⁵ Mr Lim Teck Meng's evidence is that the letter was "lacking in substance" and complained of its "vagueness". Essentially, the 4 Feb Letter was unsatisfactory to him because "Precise proposed only to pay Ten-League any amount that G-Con had agreed for them to pay on their behalf, without mentioning that G-Con had agreed to do so."¹²⁶ Thus, the conclusion to be drawn from the 4 Feb E-mail and Ten-League's evidence is that Ten-League did not take issue with Precise's stipulation that they would not be under any obligation to make direct payment.

¹²⁴ 1DCS at para 105(h).

¹²⁵ JL at para 45 (BAEIC 15).

¹²⁶ LTM at para 45 (BAEIC 49).

95 There are no contemporaneous minutes of the 6 Feb Meeting. The next relevant document is therefore the 7 Feb Letter from G-Con to Precise which was sent the day after. It is important to note that the 7 Feb Letter was drafted by Mr Lim Teck Meng (see [23] above). The 7 Feb Letter stated:¹²⁷

I refer to [the 4 Feb Letter] on the request to pay directly to our sub-contractor, TLG.

We are acceptable to your terms and hereby authorise you to pay to TLG, and deduct from the amount payable to us, the following amount:

On or before	Amount
28-Feb-20	\$800,000
31-Mar-20	\$700,000
30-Apr-20	\$500,000
Total Amount	\$2,000,000

If the amount payable to me is less than \$2m, please make whatever amount available to TLG.

I will pay TLG for the shortfall.

[emphasis added]

96 It is Ten-League’s pleaded case that the 7 Feb Letter was issued “pursuant to the [Direct Payment Agreement].”¹²⁸ In closing submissions, it confirms that the 7 Feb Letter was either: an assessment and confirmation pursuant to the Direct Payment Agreement; or an acceptance of an offer made by Precise at the 6 Feb Meeting (see [40] above). Thus, in all the forms of Ten-League’s case, the 7 Feb Letter is consistent with the Direct Payment Arrangement.

¹²⁷ 4AB 2333.

¹²⁸ SOC (Amendment No. 1) at para 20 (SDB 87).

97 A few conclusions can be drawn from the 7 Feb Letter. First, as suggested by the phrase “if the amount payable to me is less than \$2m”, the precise amount payable by Precise to G-Con pursuant to the G-Con Sub-contract had not been determined. Second, even following the 6 Feb Meeting, the terms stated in the 4 Feb Letter were “acceptable”. Finally, and most importantly, the 7 Feb Letter directly addresses Ten-League’s two concerns stated in the 4 Feb E-mail. There was now a stipulated timeline of three instalments of direct payments. There was also a confirmation from G-Con of the amounts that Precise was authorised to directly pay to Ten-League. This directly addressed Ten-League’s concern that the 4 Feb Letter provided that direct payments were subject to G-Con’s confirmation and assessment. Now, Precise was authorised to pay Ten-League specified amounts. It is a fair inference that these two points were ironed out in the meeting the day before.

98 The importance of the 7 Feb Letter was not lost on Mr Lim Teck Meng, who drafted the letter himself.¹²⁹

Q. According to your evidence, you drafted this letter; right?

A. Yes.

Q. And if you look at paragraph 61 of your affidavit, it says that this letter was to formalise the payment arrangement agreed on 6 February; right?

A. Yes.

Q. So this was a very important letter?

A. Yes.

Q. And you knew it was a very important letter --

A. Yes.

¹²⁹ 22 August 2022 Transcript, p 84 (line 14) to p 86 (lines 16).

Q. -- because if anything went wrong, Ten-League would rely on this letter to enforce payment directly against Precise; correct?

A. Yes.

Q. You would, therefore, have taken a lot of care to draft this letter?

A. Yes.

...

Q. *You also agree that there's no reference to an oral agreement reached on 6 February in this letter; correct?*

A. Yes.

Q. *Now, in fact, wouldn't you agree with me that this letter refers to the terms contained in Precise's letter dated 4 February and accepts the terms there unconditionally?*

A. Yes.

Q. Now, you also agree this letter does not refer or contain any assurance or conditions that the equipment is to be used -- sorry, let me rephrase that. You also confirm that this letter does not contain any condition in which Ten-League has to keep the equipment on site until the completion of the works?

A. Yes.

99 Mr Lim Teck Meng relied on a "3 parties" agreement reached at the 6 Feb Meeting in his 13 March E-mail. However, what the 13 March E-mail says exactly is:¹³⁰

WE refer to our meeting on or about 6th February 2020, Where we had discussed and agreed that G-con could give you the attached letter to authorise direct payment to Ten-League. We had then obtained the said letter, as attached.

It is based on this trust that Ten-League continued to let G-con use out machines.

...

¹³⁰ 4AB 2466.

Based on 3 parties agreement [Precise, Ten League and G-con]
Ten-League had fulfilled our agreement to let G-Con continue
the use of our equipment to complete the punggol site work.

...

100 The 13 March Email was not contemporaneous, but issued many days after receipt of G-Con's \$100,000 cheque, and even after Ten-League had commenced action against G-Con on 11 March. Ms Poon replied on 17 March with a robust rejection of its content. It is not reliable evidence of any agreement reached by parties on 6 February.

101 In my view, the picture that emerges from the documentary evidence is clear. Ten-League wished to obtain direct payment from Precise. It threatened to shut the Equipment down in order to convince Precise to do so. Ten-League's first aim was to obtain an agreement from Precise that it could enforce, and it sought to do so in the Draft Acknowledgement. Precise did not agree. However, Precise was not opposed to providing Ten-League with direct payment, as long as it was not obliged to do so and any arrangement remained solely between it and G-Con. Precise set this out in the 4 Feb Letter. While this was not *exactly* what Ten-League wanted (because it was not an enforceable agreement), it was still acceptable and commercially meaningful to Ten-League because it still meant that Precise was likely to make direct payment to it (see [119] below). After all, Precise had the means to pay, was a reputable company, and entered direct payment arrangements (on a gratuitous promise basis) with other parties. Also, there was no incentive for Precise not to carry out the direct payment because it owed that money to G-Con anyway. However, the problem for Ten-League was that it did not want the amount that G-Con was prepared to allow to be paid directly to Ten-League to be up in the air with no timeline. Thus, the two concerns in the 4 Feb E-mail were raised. This problem was presumably

addressed by parties at the 6 Feb Meeting, because the 7 Feb Letter came the day after, drafted by Ten-League, accepting the terms of the 4 Feb Letter but confirming the specific amounts that G-Con was prepared to pay Ten-League and the appropriate timeline.

102 The documentary evidence therefore reflects that no tripartite oral agreement was reached between parties at the 6 Feb Meeting. Parties went into the 6 Feb Meeting with Precise having clearly expressed its position that it would not be entering into a contract with Ten-League. Even so, the arrangement carried commercial benefit to Ten-League, who accepted that the arrangement would be on the terms of the 4 February letter. This was expressed in the 7 Feb Letter which Ten-League drafted.

Ten-League’s oral evidence

103 Three Ten-League witnesses were present at the 6 Feb Meeting: Mr Lim Teck Meng, Mr Jison Lim and Ms Zhang. All three gave the same account of the meeting. The main agenda of the meeting was to “discuss Ten-League’s shutting down of the Equipment”.¹³¹ Ms Poon and Precise knew that “the Equipment had been stopped... and... would not be restarted, and G-Con would not be allowed to use Ten-League’s machines, unless there was some assurance that Precise would make payment to Ten-League of amounts that it was due to pay G-Con.”¹³² Hence, the discussion “revolved around how much Precise would be paying to G-Con, and how much of this sum Precise would be able to pay Ten-League.”¹³³ Accordingly, “Ten-League proposed that any sums due to

¹³¹ JL at para 54 (BAEIC 17).

¹³² JL at para 55 (BAEIC 17).

¹³³ JL at para 56 (BAEIC 18).

be paid to G-Con from Precise be authorised to be paid to Ten-League instead.” It was agreed that “the monies would be paid to Ten-League in the following manner: a) S\$800,000 by February 2020; b) S\$600,000 by March 2020; and c) S\$600,000 by April 2020.”¹³⁴ In return, Ten-League would “allow the Equipment to continue to be used on the Project” and “cap the remaining rental under the Rental Agreements at S\$2 million.”¹³⁵

104 The first point to note is that none of Ten-League’s witnesses gave evidence that the 4 Feb Letter was discussed at the meeting. Nor did they give evidence that the issue of whether Precise was going to undertake an obligation, either to Ten-League or G-Con, to make direct payment was discussed. In cross-examination, Mr Lim Teck Meng accepted that the purpose of the 6 Feb Meeting was to discuss the 4 Feb Letter:¹³⁶

Q. So I’m going to ask you again: so the main purpose of that meeting was to discuss the terms in Precise’s letter of 4 February. Do you agree or disagree?

A. Yes.

Given that this was the case, the absence of any evidence on discussions about Precise’s firm position that it would only agree to direct payment on a goodwill basis and without an obligation to do so is telling. It suggests that no agreement to the contrary was reached at the 6 Feb Meeting.

105 Second, Ten-League’s witnesses have been inconsistent on the nature of the Direct Payment Agreement. As is clear from [103] above, the position of Ten-League’s witnesses in their affidavits of evidence-in-chief (“AEIC”) was

¹³⁴ JL at para 58 (BAEIC 18); JL at para 61 (BAEIC 19).

¹³⁵ JL at para 59 (BAEIC 19).

¹³⁶ 22 August 2022 Transcript, p 80 (line 24) to p 81 (line 2).

that an agreement was reached at the 6 Feb Meeting whereby Ten-League would be paid the sum of \$2m in three fixed instalments.¹³⁷ This aligns with Ten-League’s position in its pleadings and in its opening statement (see [108] below). In contrast, Ten-League’s position in closing submissions is that these instalments were *not* fixed but were subject to legitimate deductions. This reflects what Mr Lim Teck Meng accepted in cross-examination:¹³⁸

MR L TAN: So, Mr Lim, just to catch your answer, I said the figure of 800, 600 and 600 was suggested by you. You say it’s actually by Mr Jison Lim?

A. Yes.

Q. But you know that that 800 was not a fixed figure?

A. Yes.

Q. You know that it is subject to deductions; correct?

A. Yes.

In my view, this is a clear change of case that undermines Ten-League’s submission that an agreement was reached at the 6 Feb Meeting. Ten-League’s witnesses have been inconsistent on a key aspect of any Direct Payment Agreement: whether the sums paid were determined and fixed, or whether they were subject to future assessment.

106 Finally, Ten-League’s witnesses did not even give clear evidence that they had *told* Precise’s representatives at the 6 Feb Meeting that they would shut the Equipment down *unless* Precise promised to make direct payment. Mr Jison Lim and Mr Lim Teck Meng state that Precise “knew” this.¹³⁹ Ms Zhang was more specific, and testified that “it was clear to [her] that based on the previous

¹³⁷ JL at para 64 (BAEIC 20).

¹³⁸ 22 August 2022 Transcript, p 149 (lines 11–18).

¹³⁹ JL at para 55 (BAEIC 17); LTM at para 53 (BAEIC 51).

correspondence in the WhatsApp Group Chat that Ms Poon (and Precise) knew” that this was the case.¹⁴⁰ There was therefore no clear evidence that the threat of shutting the Equipment down was even repeated at the 6 Feb Meeting, such that Precise could have agreed, in exchange, to commit to a Direct Payment Agreement. While it is true that Precise was at all times aware of Ten-League’s threat to shut the Equipment down, Precise’s response to this was to offer only a non-binding gratuitous promise to G-Con in the 4 Feb Letter. When Ten-League did not raise issue with this in the 4 Feb E-mail, Precise had no reason to believe that it needed to offer anything more. It would have been reasonable for Precise to think that the problem could be resolved *without* them entering into an enforceable agreement with Ten-League.

Veracity of Ten-League’s narrative

107 The lack of clarity and credibility in the Ten-League narrative is further reflected in the inconsistency between its closing statement and its pleadings.

108 Ten-League’s pleaded case is that the Direct Payment Agreement was an agreement between parties that “G-Con would make direct payments of amounts due from Precise to Ten-League at set amounts and timelines. In exchange, Ten-League would not terminate the Rental Agreements and continue permitting its machines to be used on the Project. Ten-League would cap the remaining rent at \$2 million”.¹⁴¹ The terms of the Direct Payment Agreement were:¹⁴²

¹⁴⁰ ZJT at para 20 (BAEIC 75).

¹⁴¹ SOC (Amendment No. 1) at para 17 (SDB 86).

¹⁴² SOC (Amendment No. 1) at para 18 (SDB 86).

- (a) Precise would make direct payment to Ten-League of the sums of \$800,000 by February 2020, \$600,000 by March 2020 and \$600,000 by April 2020 from the amount due to G-Con;
- (b) Ten-League would allow its machines to continue to be used on the Project; and
- (c) Ten-League would cap the remaining rental at \$2m.

The 7 Feb Letter was then issued “pursuant to” the Direct Payment Agreement. While the 31 March 2020 and 30 April 2020 payments stated in the 7 Feb Letter were not identical to those agreed in the Direct Payment Agreement, neither Precise nor Ten-League objected to this “[v]ariation” of the Direct Payment Agreement. This contention of fixed sums being paid by Precise to Ten-League at fixed dates was also reflected in Ten-League’s Opening Statement.

109 In contrast, in closing submissions, Ten-League now takes the position that the Direct Payment Agreement contemplated Precise making legitimate deductions from the sum that it owed G-Con. The concept of legitimate deductions being a term of the Direct Payment Agreement was not pleaded in the Statement of Claim. In fact, it runs contrary to what was pleaded in the Reply, which was that the Direct Payment Agreement was for set amounts to be paid according to a timeline.¹⁴³ The change reflects, instead, concessions made by its witnesses and the weakness of its claim.

110 Therefore, even putting aside the difficulty presented by the pleadings, I do not accept Ten-League’s evidence that a Direct Payment Agreement was reached at the 6 Feb Meeting.

¹⁴³ Reply to the first defendant’s defence (Amendment No. 1) at para 12 (SDB 169).

The defendants' oral evidence

111 Ms Poon and Ms Pang were present for Precise at the 6 Feb Meeting. Ms Poon testified that she told Ten-League that Precise could not propose any fixed dates or quantum of direct payment, and that any amount that Precise would owe to G-Con could not yet be ascertained. Precise could only advise on the amount payable to G-Con when it issued its subsequent payment certificates. Further, she told them that any direct payment agreement would be subject to the terms and conditions set out in the 4 Feb Letter, including that such arrangement is solely between Precise and G-Con.¹⁴⁴

112 I accept this evidence. It is only reasonable that Precise would reiterate at the 6 Feb Meeting that any agreement would be subject to the terms of the 4 Feb Letter. After all, it had been their consistent position through negotiations that any direct payment agreement would be subject to their terms. Ten-League accepts that this was Precise's position at the prior 14 Jan Meeting.¹⁴⁵

113 The fact that Precise did not know how much it would owe to G-Con under the G-Con Sub-contract was not challenged by Ten-League. This was in any case likely to be true, because the G-Con Sub-contract was a measurement contract (see [4] above). The fact that Precise did not object to the 7 Feb Letter despite the fact that it contained specific sums payable at specific dates can be explained by the qualifier that immediately followed: "If the amount payable to me is less than \$2m, please make whatever amount available to TLG." Thus, these specific sums adding up to \$2m were simply the *maximum* that Precise

¹⁴⁴ PSS at paras 46–48 (BAIEC 123–124).

¹⁴⁵ JL at para 26–27 (BAEIC 10).

was *authorised* to pay to Ten-League, rather than sums that they were *obliged* to pay.

114 Thus, I accept the evidence of Precise’s witnesses regarding the 6 Feb Meeting. Their evidence is consistent with the documentary evidence.

The extrinsic evidence

115 Finally, I will consider some of the extrinsic evidence which supports my finding that no Direct Payment Agreement was reached at the 6 Feb Meeting.

116 First, Ten-League stresses how important it was to Precise that the Equipment remained at G-Con’s disposal for works on the Project, such that the project would not be delayed. Ten-League describes this as its “leverage” over Precise. Ten-League relies on the following facts to show that the Equipment was important to Precise: piling was not complete; piling was already late to complete; Precise had not actually deployed additional piling contractors, suppliers or resources; and Precise scrambled to issue the 4 Feb Letter when Ten-League threatened to shut down the machines.¹⁴⁶ However, Ms Poon’s evidence is that as at 6 February 2020, close to 92% of the bored piles had been completed. As part of Precise’s contingency plan, she had already sourced for quotations for boring rigs from another supplier, JP Nelson, at the end of January 2020.¹⁴⁷ There is e-mail correspondence in evidence which shows Ms Poon asking for said quotation.¹⁴⁸ Her evidence on the stand was that “piling

¹⁴⁶ PCS at para 114(c).

¹⁴⁷ PSS at para 55 (BAEIC 126).

¹⁴⁸ 3AB 2279.

machines are easily available in the market” and that it would only take two or three days to remobilise other machines.¹⁴⁹ Even Mr Jison Lim’s evidence was that “Ten-League’s equipment was no longer required” by the time Precise paid G-Con on 4 March 2020.¹⁵⁰

117 In the WhatsApp correspondence leading up to the issuance of the 4 Feb Letter, Ms Zhang said (at 2.49pm) that the Equipment would be shut down at 3.00pm and asked Ten-League to “quickly issue” the 4 Feb Letter. In response, Ms Poon told Ms Zhang to “stop issuing... threats and to show sincerity if [she was] indeed looking upon [Precise] to assist in [Ten-League’s] debt.”¹⁵¹ This shows that Precise did not issue the 4 Feb Letter in response to a threat. In fact, the opposite was true. Precise issued the 4 Feb Letter because it was amenable to assisting Ten-League by entering an arrangement with G-Con, *despite* Ten-League’s threats.

118 In light of this evidence, it is clear that Ten-League has overstated the importance of the Equipment to Precise in order to show that Precise had an incentive to enter an agreement on 6 February 2020.

119 Second, Ten-League makes the point in closing submissions that “anything short of an enforceable agreement [for Precise to make direct payment] would have been commercially meaningless” to Ten-League.¹⁵² However, in my view, this is not borne out by the evidence. The reality is that in January 2020, Ten-League was in a difficult situation whereby it knew that it

¹⁴⁹ 26 August 2022 Transcript, p 46 (lines 9–12).

¹⁵⁰ JL at para 79 (BAEIC 24).

¹⁵¹ 5AB 3358.

¹⁵² PCS at para 104.

would have trouble recovering its debt from G-Con.¹⁵³ Mr Jison Lim testified that he knew of Precise by reputation and that they have good standing as an established and award-winning local firm.¹⁵⁴ There is no evidence that Ten-League had any other opportunities to redeploy the Equipment and terminate the Rental Agreements, nor were such opportunities pleaded.¹⁵⁵ In this context, *any* sort of agreement from Precise, enforceable or unenforceable, would have *some* commercial use to Ten-League. There is therefore no reason for me to infer that, because Ten-League allowed G-Con to continue using the Equipment between 6 February 2020 and 6 March 2020, the parties must have reached a binding agreement for direct payment.

Conclusion on the Direct Payment Agreement

120 In conclusion, I find that no Direct Payment Agreement was reached at the 6 Feb Meeting. The documentary evidence makes clear Precise’s position not to enter a contract with Ten-League. Precise was adamant that any arrangement would be between itself and G-Con only, and recorded this in the 4 Feb Letter. This aspect of the 4 Feb Letter was not rejected or clarified by Ten-League in any of the written correspondence, nor in the 7 Feb Letter which Mr Lim Teck Meng drafted *after* the 6 Feb Meeting. Parties went into the 6 Feb Meeting with Precise’s clear position in mind, and any “agreement” could only have been in the context of the 4 Feb Letter and therefore non-binding. Precise’s account of the 6 Feb Meeting was internally consistent, consistent with the documentary evidence and also the extrinsic evidence. On the other hand, Ten-League’s account was not.

¹⁵³ PCS at para 100.

¹⁵⁴ JL at para 6 (BAEIC 4).

¹⁵⁵ 1DCS at 93–94.

121 Two consequences follow from this conclusion. First, because there was no Direct Payment Agreement, there can be no breach to speak of. As such, I do not consider whether there was a breach nor any damages applicable. Second, Ten-League accepts that its unlawful conspiracy claim is *entirely* premised on the finding that the Direct Payment Agreement existed.¹⁵⁶ Thus, I do not proceed to consider whether there was an unlawful means conspiracy to injure Ten-League. The suit against Mr Choo is dismissed on this basis.

Was there a contract between Precise and G-Con that was enforceable by Ten-League?

122 Ten-League makes an alternative argument that if the Direct Payment Agreement was concluded only between Precise and G-Con on the terms as set out exclusively in the 4 Feb Letter and as accepted by the 7 Feb Letter, Ten-League may still sue to enforce the terms of that agreement which confer on them a benefit. Ten-League relies on s 2 of the Contracts (Rights of Third Parties) Act (Cap 53B, 2002 Rev Ed).

123 There is no factual basis for this argument. For there to be a contract enforceable by Ten-League, there must be a contract between Precise and G-Con. However, there is no evidence of such a contract between Precise and G-Con. First, as discussed at [88] above, the 4 Feb Letter is clear that it does not create any obligation on Precise to make direct payment to Ten-League. This is made clear from Precise’s statement that it was agreeing to assist in making direct payments to Ten-League “purely to assist [G-Con]’s cash flow and *without any obligation to do so*” [emphasis added]. To my mind, this makes clear that Precise did not make a “definite promise to be bound” and there was

¹⁵⁶ PCS at paras 178–179.

therefore no offer capable of giving rise to a contract between it and G-Con (see [90] above). Further, this makes clear that Precise did not intend, by this arrangement (if it were ever to materialise), to create any legal relations with G-Con. And as I have found at [112] above, the terms of the 4 Feb Letter persisted throughout parties' discussions. Second, even on Ten-League's case, the main motivation for Precise entering any Direct Payment Agreement was to secure Ten-League's continued leasing of the Equipment to G-Con such that the Project would not be delayed. A contract only between Precise and G-Con would not result in Ten-League being obliged to do so. There is therefore no reason why Precise would enter such an agreement. Precise has been clear that in the 4 Feb Letter it simply consented to an arrangement that had been proposed by G-Con. This explanation is consistent with the contents of the 4 Feb Letter.

124 Ten-League points to a statement by Ms Poon in her affidavit filed in Summons 1449 and argues that she "confirmed on affidavit ... that the Direct Payment Agreement was entered into, and the only dispute is the parties – whether it included [Ten-League]." ¹⁵⁷ The relevant portion of Ms Poon's affidavit reads: ¹⁵⁸

At all times, the agreement was between Precise and [G-Con].
There was never any agreement between Precise and [Ten-League] for Precise to make direct payments to [Ten-League].

125 However, this must be read in context. Just a few paragraphs earlier, Ms Poon stated that Precise had made clear in the 4 Feb Letter that "any agreement on its part to make direct payments to [Ten-League] was purely to assist [G-Con's] cash flow situation and was without any obligation to do so." She then

¹⁵⁷ PCS at para 113(b).

¹⁵⁸ 8AB 5291.

stated that in the 7 Feb Letter, G-Con indicated that it was “agreeable” to the terms in the 4 Feb Letter. This is the “agreement” referred to by Ms Poon in the paragraph reproduced above. When read in context, it is clear that she was simply referring to G-Con’s concurrence with Precise’s clear statement that any direct payment arrangement was purely out of goodwill.

Is Ten-League entitled to reasonable remuneration for the Equipment?

126 Ten-League argues that its *quantum meruit* claim is premised on the doctrine of unjust enrichment arising from Precise’s request that Ten-League not demobilise its equipment.¹⁵⁹ I do not accept Ten-League’s claim in this regard.

127 At the outset, there is no factual basis to Ten-League’s assertion that Precise requested that Ten-League continue leasing the Equipment.

128 In any event, whether Precise had requested for Ten-League to not demobilise the machine is irrelevant to the analysis of whether a claim for unjust enrichment is made out. In this regard, the elements that a plaintiff must establish in an unjust enrichment claim are (*Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 (“*Singapore Swimming Club*”) at [90]):

- (a) a benefit has been conferred on, or an enrichment has accrued to the defendant;
- (b) the benefit was conferred at the expense of the plaintiff; and
- (c) the enrichment was unjust.

¹⁵⁹ PCS at para 217.

It is immediately clear that there was no enrichment that was unjust. Precise and G-Con had a contract, pursuant to which any work done by G-Con was paid for by Precise. In *Singapore Swimming Club* at [92]–[93], the Court of Appeal emphasised that unjust enrichment is not based on a general or broad notion of unconscionability or unjustness. Thus, in order to establish the third element above, a plaintiff must identify *specific* grounds of restitution, which are legally recognised factors that make the defendant’s enrichment unjust and are thus often referred to as “unjust factors”. Ten-League has not pleaded any such unjust factor underlying its claim in *quantum meruit*.

Conclusion

129 For these reasons, I dismiss the suit against both defendants. Parties are to write in within 14 days regarding their submissions on costs.

Valerie Thean
Judge of the High Court

Daniel Chia Hsiung Wen, Tang Yuan Jonathan and Charlene Wee
Swee Ting (Morgan Lewis Stamford LLC) for the plaintiffs;
Tan Kon Yeng Eugene, Tan Pei Qian Rachel and Lee Wen Yi (Clasis
LLC) for the first defendant;
Tan Shien Loon Lawrence and Tan Pei May (Eldan Law LLP) for the
second defendant.