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

[2023] SGHC 243

Suit No 342 of 2021

Between

Axis Megalink Sdn Bhd

… Plaintiff

And

Far East Mining Pte Ltd

… Defendant

Counterclaim of Defendant

Between

Far East Mining Pte Ltd

… Plaintiff in Counterclaim

And

(1) Lee Kien Han
(2) Lim Eng Hoe
(3) Chong Wan Ling
(4) Axis Megalink Sdn Bhd

… Defendants in Counterclaim

JUDGMENT

[Agency — Third party and principal's relations — Contractual relations — Attribution of agent's knowledge of his own breach to principal]
[Contract — Misrepresentation — Fraudulent]
[Contract — Mistake — Unilateral mistake as to identity of contracting counterparty]
[Tort — Conspiracy]

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v
Far East Mining Pte Ltd

[2023] SGHC 243

General Division of the High Court — Suit No 342 of 2021
Goh Yihan JC
18–21, 25–28 October 2022, 16, 17, 21–24, 28 February, 2 May, 6 June 2023

31 August 2023 Judgment reserved.

Goh Yihan JC:

1 In this suit, the plaintiff, Axis Megalink Sdn Bhd ("Axis"), is a company incorporated in Malaysia. The defendant, Far East Mining Pte Ltd ("FEM"), is a company incorporated in Singapore, and carries on business as an asset management company. The dispute between Axis and FEM centres on an engagement letter dated 16 August 2016 ("the Engagement Letter"). By the terms of the Engagement Letter, FEM engaged Axis as FEM's introducer and arranger for a then-proposed reverse takeover of China Bearing (Singapore) Limited ("CBL") by FEM ("the Transaction"). CBL was renamed Silkroad Nickel Ltd ("SRN") after the completion of the Transaction. SRN was later delisted on 10 November 2022.

2 In essence, Axis's case is that it should be paid the arranger fee of US$2m due to it under the Engagement Letter ("the Arranger Fee") because it has performed all the services prescribed therein ("the Services"). In contrast,

FEM's case is that it should not be held to the Engagement Letter on several grounds. Primarily, the main plank of its case is that it entered into the Engagement Letter without knowing that Mr Lee Kien Han ("Mr Lee") was the beneficial owner of Axis. This was significant for FEM because Mr Lee was also involved in CBL, which placed him in a position of conflict in relation to the Transaction. FEM also advances several counterclaims against Axis and two other defendants in counterclaim on related grounds, all centred on FEM not knowing that Mr Lee was the beneficial owner of Axis.

3 Accordingly, the outcome of this suit turns very much on two factual questions, namely, (a) did FEM know that Mr Lee was the beneficial owner of Axis at the time it entered into the Engagement Letter, and (b) if FEM did not know of this, what was the reason for it not knowing? For the reasons that I will develop below, I find that FEM did *not* know that Mr Lee was the beneficial owner of Axis at the relevant time. Further, I find that FEM did not know about this fact because it was never revealed to FEM by Axis, despite it being proper for Axis to have done so. As such, while I do not find that there was a conspiracy to hide this fact from FEM, I find primarily for FEM both in Axis's claim against it, and in its counterclaims against Axis. The result is that I dismiss Axis's claim against FEM for the Arranger Fee, and award FEM S$10,210 in damages for fraudulent misrepresentation, being the costs that FEM incurred to investigate the true ownership of Axis.

The background and disputed material events

The background

4 I begin with the background to the parties' dispute. Sometime in or around 2015, FEM was contemplating its own listing on a recognised stock exchange. Mr Syed Abdel Nasser bin Syed Hassan Aljunied ("Mr Aljunied"),

one of the two directors of FEM alongside Mr Hong Kah Ing ("Mr Hong"), recruited Mr Lim Eng Hoe ("Mr Lim") to assist in this endeavour. FEM later appointed Mr Lim as the Chief Financial Officer ("CFO") on or around 10 March 2016, in order to facilitate this work. Sometime in February or March 2016, FEM also became interested in acquiring a controlling stake in a listed company, into which it also intended to inject assets. Mr Lim was tasked to seek out opportunities for a possible reverse takeover, which I have referred to above as the Transaction. At Mr Lim's recommendation, on or around 4 April 2016, FEM appointed Ms Chong Wan Ling ("Ms Chong") as its Group Financial Controller.

5 In late May or early June 2016, Mr Lim was informed by Mr Alex Tan ("Mr Alex Tan") of ZICO Capital Pte Ltd that CBL was a suitable candidate company for the Transaction.[1] Mr Lim was also told by Mr Alex Tan that it was necessary to reach out directly to Datuk Lim, who was the controlling shareholder of CBL at the material time, through Mr Lee.[2] While Mr Lee's exact role within CBL at the time is a point of dispute between the parties, it is clear that Mr Lee is a lawyer who, before the material events, had acted for Datuk Lim or represented his business interests in Malaysia.[3] As such, Mr Lim reached out to Datuk Lim through Mr Lee on the Transaction.

6 Mr Alex Tan further informed Mr Lim that Mr Alex Khor ("Mr Khor") of Strategic Advisory & Capital Pte Ltd ("SAC"), who had a close working relationship with CBL's board of independent directors and who was working to identify an asset which could be injected into CBL, would be able to assist in

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1 Lim Eng Hoe's AEIC at para 34; Plaintiff's Closing Submissions ("PCS") at para 71.

2 Lee Kien Han's AEIC at para 18; PCS at para 72.

3 Lee Kien Han's AEIC at paras 36–37; PCS at para 72.

reaching out to CBL's board and convincing them of the commercial viability of the Transaction.[4] In this respect, Mr Lim met Mr Khor twice in or around June 2016, introducing himself as the CFO of FEM and explaining the Transaction to Mr Khor.[5]

7 On 28 June 2016, Mr Lim then introduced CBL to FEM as one of the potential listed companies via an email.[6] In the aforesaid email, Mr Lim also attached a document spreadsheet, in which it was stated that one set of "Arranger's Fee" was to be 4% of the new shares issued, amounting to 100,405,925 shares,[7] which would be payable by CBL.[8] Subsequently, on 5 July 2016, Mr Lim informed Mr Hong and Mr Aljunied via WhatsApp that he would be having lunch with "China Bearing['s] lawyer" on 12 July 2016.[9]

8 Beyond these background facts, the parties dispute much of what subsequently happened. For ease of exposition, the parties' dispute centres on the following material events:

(a) the meeting on 12 July 2016;

(b) the dinner on 20 July 2016;

(c) the site visits on 25 and 26 July 2016;

(d) the board meeting on 8 August 2016;

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4 PCS at para 73.

5 PCS at para 74.

6 Defendant's Closing Submissions ("DCS") at para 2.

7 1 Agreed Bundle ("AB") 419.

8 Notes of Evidence ("NE") dated 18 October 2022 at p 94 lines 20–25; p 95 lines 1–17.

9 Defendant's Bundle of Documents ("DBOD") at p 172.

(e) the signing of the Engagement Letter on 16 August 2016; and

(f) the loan agreements of 17 November 2017 and 12 March 2018.

Generally, these disputed events inform the overarching questions of whether FEM knew that Mr Lee was the beneficial owner of Axis; and, if not, the reason for it not knowing. More specifically, these events are material in three aspects. First, they are material to how the parties perceived Mr Lee, that is, whether they regarded him as FEM's introducer and arranger or as Datuk Lim's legal advisor and representative. Second, they are relevant to the question of whether the parties agreed to an arrangement whereby Mr Lee would receive the Arranger Fee for the Transaction through a shell company. Third, they are relevant to whether the parties concealed the aforementioned arrangement from Mr Hong and Mr Aljunied of FEM. In relation to these disputed material events, I will make the relevant findings of fact at the appropriate junctures below.

The disputed material events

The meeting on 12 July 2016

9 The first disputed material event was the meeting between Mr Lee, Mr Lim, and Mr Khor on 12 July 2016 at Dome Café at UOB Plaza 1 ("the Meeting of 12 July 2016"). This meeting was ostensibly arranged to advance the Transaction. What transpired at this meeting is of some importance to the parties' cases.

10 Axis's account is that Mr Lee, Mr Lim, and Mr Khor discussed and came to an understanding and agreement on the following points:[10]

[10] PCS at para 87.

(a) Given Mr Lee's close working relationship with Datuk Lim, and the fact that he would be introducing FEM to Datuk Lim and had put forward the Transaction for Datuk Lim's consideration, Mr Lee would be the "introducer and arranger" for FEM with regard to the Transaction, and Mr Lee would be paid the Arranger Fee by FEM.

(b) Mr Lee had instructed his corporate secretarial firm to look out for a dormant company in Malaysia, of which Mr Lee would be the representative. This company would eventually be Axis.

(c) Given Mr Khor's close relationship with CBL's independent directors, Mr Khor would act, through SAC, as the arranger for CBL. Mr Khor's arranger fee would be paid by CBL.

(d) In total, an arranger fee of 4% on the proposed acquisition value of CBL of US$120m would be split equally between Mr Lee and Mr Khor, with each arranger's fee to be paid by FEM and CBL, respectively. The objective was for all parties to work towards convincing CBL, its board, and its controlling shareholder, Datuk Lim, to agree to proceed with the Transaction.

(e) A dinner meeting in Kuala Lumpur, Malaysia would be arranged for the introduction of FEM's representatives to Datuk Lim and for a discussion on the preliminary term sheet.

(f) Arrangements would be made for FEM and its representatives to present the Transaction to the CBL board members during the CBL board meeting that was scheduled to be held on 8 August 2016.

(g) CBL would appoint Mr Leong Chuo Ming ("Mr Leong") of Withers KhattarWong LLP as its legal advisor if CBL was prepared to proceed with the Transaction.

11 According to Axis, Mr Lim then provided Mr Hong and Mr Aljunied with an update on the Meeting of 12 July 2016 after it had concluded. Having updated both Mr Hong and Mr Aljunied, Mr Lim then sent an email dated 14 July 2016 to both of them.[11] In this email, Mr Lim stated:

> The *revised draft Term Sheet* with arranger fee payable by ListCo [*ie*, CBL] for your review. Please take note that there will also be arranger fee of 2% payable by the Vendor [*ie*, FEM] to another party. These 2 arrangers are separate and independent of each other.
>
> [emphasis added]

In addition, cl 3 of the aforementioned "revised draft Term Sheet" states:

> The Proposed Acquisition is introduced and arranged by xxxx (the "Arranger") [*sic*] to the [CBL] and the Arranger shall be entitled to a fee of two per cent (2%) of the Consideration (the "Fee"). The Fee shall be paid by [CBL] on completion of the Proposed Acquisition and shall be satisfied by the issuance of such number of consolidated shares at the Issue Price.

Axis contends that the statement in the aforesaid email was meant to highlight to Mr Hong and Mr Aljunied that the arranger fee of 4% of the proposed acquisition value of US$120m was to be split equally between Mr Lee and Mr Khor.[12]

12 On the other hand, while FEM does not dispute that the Meeting of 12 July 2016 took place, it challenges Axis's account of what transpired at the

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11 PCS at para 88; 1 AB 602.

12 PCS at para 90.

meeting. According to FEM,[13] concerns were raised as to whether the Transaction would be derailed if the arranger fee of 4% of US$120m (amounting to US$4.8m) expected by Mr Lee and Mr Khor were to be borne solely by CBL. Thus, in order to ensure that the no one knew of the actual arranger fee, it was agreed between Mr Lim, Mr Lee, and Mr Khor that the 4% arranger fee would be split equally between Mr Lee and Mr Khor, where FEM would pay Mr Lee's fees to a company beneficially owned by him, and Mr Khor's fees would be paid by CBL through SAC.

13 According to FEM, in order to conceal this alleged scheme ("the alleged Scheme"), Mr Lim, Mr Lee, and Mr Khor agreed to:[14]

(a) procure FEM to execute the Engagement Letter with a company with nominee shareholders and directors but beneficially owned by Mr Lee;

(b) intentionally conceal from FEM the fact that Mr Lee was the beneficial owner of this company; and

(c) intentionally conceal from FEM that Mr Lee would be personally benefitting from the Transaction as the recipient of the 2% Arranger Fee from FEM.

14 FEM further says[15] this arrangement for Mr Lee to be paid the 2% Arranger Fee was kept secret from Mr Hong and Mr Aljunied because, had they been aware of it, they would have immediately objected to Mr Lee's

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13 DCS at para 6.

14 DCS at para 8.

15 DCS at para 8.

appointment as its introducer and arranger. In this regard, Mr Lim had previously informed Mr Hong and Mr Aljunied that Mr Lee was Datuk Lim's legal advisor and representative, and that Mr Lee intended to, and did in fact, assist Datuk Lim with the Transaction. According to FEM, Mr Lee was obviously in a position of conflict of interest, and FEM (*ie*, Mr Hong and Mr Aljunied) would not have agreed to directly engage Mr Lee to act for FEM.

15 Moreover, following the Meeting of 12 July 2016, FEM contends that Mr Lim did not update Mr Hong or Mr Aljunied on his discussions with Mr Lee and Mr Khor in relation to the payable arranger fee. It is also FEM's position that, pursuant to the alleged Scheme outlined at [13] above, Mr Lee, Mr Lim, and Mr Khor took various steps to prevent FEM from discovering Mr Lee's beneficial ownership of Axis, and the fact that he would therefore be personally benefitting from the Transaction. These steps allegedly included:[16]

(a) deliberately excluding Mr Hong and Mr Aljunied from key correspondence and communications which would have revealed the alleged Scheme;

(b) continuing to misrepresent to Mr Hong and Mr Aljunied that Mr Lee was assisting in the Transaction solely in his capacity as Datuk Lim's legal advisor and representative;

(c) using nominee shareholders and directors for Axis, so as to conceal the fact that Mr Lee was the beneficial owner of Axis throughout the Transaction;

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[16] DCS at para 11.

(d) refraining from correcting documents which revealed that Mr Lee was the beneficial owner and representative of Axis; and

(e) excluding references to the fact that Mr Lee would be receiving arranger fees through Axis from FEM from key contractual documents.

16 Lastly, as to the question of what transpired at the meeting, it is undisputed that Mr Lee liaised separately with his corporate secretarial firm on the morning of 20 July 2016 in order to take over a dormant company which he intended to use to collect the Arranger Fee. To this end, he instructed Ms Ee Fong Nee ("Ms Ee") and Mr Goh Horng Tyng ("Mr Goh") to take over Axis on 22 July 2016.[17]

The dinner on 20 July 2016

17 After the Meeting of 12 July 2016, the second disputed material event relates to the dinner which was held in Kuala Lumpur, Malaysia, on 20 July 2016 ("the Dinner of 20 July 2016"). The parties do not dispute that this dinner happened, and it is common ground that this dinner was attended by Datuk Lim, Mr Lee, Mr Hong, Mr Aljunied, and Mr Lim. It is also undisputed that, during the dinner, FEM was introduced to CBL. However, parties dispute what transpired during the dinner – which is significant to (a) how FEM, in particular, Mr Hong and Mr Aljunied, perceived Mr Lee's role, and (b) whether Mr Lee carried out the services listed in the Engagement Letter.

18 According to Axis, the way that Mr Lee conducted himself was in line with him being the introducer and arranger for FEM, as Mr Lee was:[18]

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17 DCS at para 44.

18 PCS at para 102.

(a) assisting FEM with translating the matters discussed at the meeting because Datuk Lim did not understand English; and

(b) making proposals to Datuk Lim as to how the Transaction ought to be structured.

19 Additionally, Axis asserts that, on the night of 20 July 2016, Mr Lim informed Mr Hong and Mr Aljunied that it would be through Axis that Mr Lee would carry out the services as introducer and arranger, after which Mr Lee would receive the Arranger Fee.[19]

20 However, according to FEM, Mr Lee and Mr Lim continued to misrepresent to Mr Hong and Mr Aljunied during the dinner that Mr Lee was assisting in the Transaction solely as Datuk Lim's legal advisor and representative, and conceal the fact that Mr Lee was to receive the Arranger Fee from FEM through a company beneficially owned by Mr Lee.[20] In this regard, FEM asserts the following:[21]

(a) Mr Lim introduced Mr Lee to Mr Hong and Mr Aljunied as Datuk Lim's legal advisor, representative, and translator.

(b) There was no discussion whatsoever on the Arranger Fee purportedly payable by FEM to Mr Lee/Axis, or that an arrangement had allegedly been reached for Mr Lee/Axis to act as FEM's introducer and arranger. There was also no mention of the fact that Mr Lee would be using Axis for the purposes of carrying out the services under the

19 PCS at para 105.

20 DCS at pp 61–62.

21 DCS at p 62.

Engagement Letter. As against Axis's assertion that the Arranger Fee was discussed on 20 July 2016, FEM contends that this is a bare assertion that is unbelievable.

The site visits on 25 and 26 July 2016

21 Following the dinner on 20 July 2016, the third disputed material event relates to the site visits on 25 and 26 July 2016 to a nickel mine in Central Sulawesi, Indonesia, of which FEM was an indirect owner.[22] These site visits were arranged to allow CBL to conduct due diligence on the nickel mine.[23] While the parties agree that the site visits occurred, they disagree as to what was discussed during those visits. First, the parties dispute whether the relevant persons at the site visits – which included Mr Lim, Mr Leong, Mr Hong, and Mr Lee – discussed the arrangement to engage Mr Lee through Axis as FEM's arranger and for the Arranger Fee to be payable to Mr Lee. Second, the parties dispute whether Mr Lim and Mr Lee concealed from Mr Hong the fact that Mr Lee was the beneficial owner and representative of Axis.

22 According to Axis, Mr Hong was well aware of this arrangement.[24] In this regard,[25] Mr Lee allegedly made a request to Mr Lim and Mr Hong to have his arranger fee be paid in cash. However, Mr Hong and Mr Lim insisted that Mr Lee's arranger fee be paid in shares, in line with market practice. Mr Lee then said he would finalise the draft Memorandum of Understanding, Letter of Undertaking, and Engagement Letter for FEM to review. Mr Lee further told

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22 Lim Eng Hoe's AEIC at para 22.

23 DCS at p 67.

24 PCS at para 111.

25 PCS at para 111.

Mr Hong that he would use a company of which he (Mr Lee) was the representative to carry out his services as introducer and arranger for FEM.

23 However, according to FEM, as the site visits were arranged for the purpose of allowing CBL to conduct its due diligence on the nickel mine, the discussions that took place were focused on the operations of the nickel mine, and Mr Hong addressed the queries posed by Mr Lee and Mr Leong on this issue. FEM alleges that throughout the site visits:[26]

(a) Mr Lee continued to represent to Mr Hong that he was the legal advisor and representative of Datuk Lim, which was made clear to Mr Hong from the queries posed by Mr Lee.

(b) There was no discussion whatsoever regarding the arranger fee that was allegedly to be paid by FEM to Axis or Mr Lee. Mr Hong was also not informed, whether by Mr Lim or Mr Lee, that Mr Lee would be using a company of which he would be the representative to assist FEM with the Transaction.

The board meeting on 8 August 2016

24 Next, the fourth disputed material event relates to the board meeting which was held on 8 August 2016. The parties do not dispute that this meeting happened and that it was attended by Mr Khor, Mr Lee, Mr Lim, Mr Aljunied, Mr Leyng Thai Weng ("Mr Leyng"), the former Financial Controller of CBL, and CBL's board (comprising Datuk Lim, Mr Wong Chee Meng Lawrence, Mr Lee Kean Cheong, and Mr Tan Kah Ghee).[27] However, the parties disagree

[26] DCS at p 67.

[27] PCS at para 128.

over how Mr Lee's role in the Transaction was understood during the board meeting.

25 According to Axis, Mr Lee attended the board meeting as the introducer and arranger of FEM to help "sell" the Transaction and assist in its translation so that the majority shareholder of CBL, Datuk Lim, could receive information on the Transaction.[28] Mr Lee also allegedly posed queries, as he was the "deal maker" and would ask questions to satisfy himself that there would not be "any potential hiccough [*sic*] to the deal".[29] Mr Lee then allegedly provided input or information to "help the board of CBL … make the decision on whether to proceed with the Proposed Transaction".[30]

26 On the other hand, FEM contends that throughout the meeting, Mr Lee was acting solely as Datuk Lim's legal advisor and representative, posing queries on behalf of Datuk Lim, and translating the matters that were being discussed for the benefit of Datuk Lim.[31] Moreover, after the meeting ended, Mr Aljunied and Mr Lim left the meeting to allow CBL's board to commence its board meeting. In this regard, FEM says that the fact that Mr Lee did not leave the ensuing board meeting only cemented Mr Aljunied's understanding that Mr Lee was Datuk Lim's legal advisor and representative, and that he was permitted to stay on for the board meeting in that capacity.[32] As such, in light of the above, FEM's position is that Mr Lee's assertion that he was simply

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28 PCS at para 131.

29 PCS at para 132.

30 PCS at para 133.

31 DCS at p 70.

32 DCS at p 71.

Datuk Lim's translator (and not Datuk Lim's legal advisor and representative) is clearly false.[33]

The signing of the Engagement Letter on 16 August 2016

27 The fifth disputed material event relates to the signing of the Engagement Letter on 16 August 2016, and specifically, whether Mr Lee and Mr Lim concealed the fact that Mr Lee was the beneficial owner and representative of Axis in order to induce FEM to sign the Engagement Letter.

28 In this regard, Axis says that it was *Ms Chong* who had printed out the Engagement Letter, wrote down Mr Aljunied's particulars, and passed it to Mr Aljunied for him to sign.[34] Axis further alleges that Mr Aljunied signed the Engagement Letter without asking any questions because the terms contained therein were based on his previous amendments.[35] As such, Axis contends that Mr Aljunied was well aware of the contents of the entire Engagement Letter, including the circumstances that resulted in the then-prevailing terms of the Engagement Letter. If there had been any issues, he would not have signed it and would have asked Mr Lim to contact Mr Lee again to make further amendments.[36]

29 Against this, FEM contends that the Engagement Letter was *first* placed before Mr Aljunied on 16 August 2016 by *Mr Lim* and that, in signing the Engagement Letter, Mr Aljunied relied on Mr Lim's assurance that Axis would

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33 DCS at p 71.

34 PCS at para 139.

35 PCS at para 139.

36 PCS at para 139.

be able to assist FEM in the Transaction.[37] FEM further argues that, as part of their scheme, Mr Lee and Mr Lim continued to conceal the fact that Mr Lee was the beneficial owner and representative of Axis in order to induce FEM to sign the Engagement Letter. In particular, FEM alleges that:

(a) When Mr Aljunied asked Mr Lim who Axis's representatives were and who had signed the Engagement Letter on behalf of Axis, Mr Lim's response was simply that Mr Aljunied would have the opportunity to meet Axis's representatives in due course when Axis commenced work on the Transaction.

(b) Mr Lee also took additional steps to arrange for the Engagement Letter to be signed by Mr Goh (who was never once involved or played any part in the Transaction) instead of signing it himself and indicating on the Engagement Letter that he was the beneficial owner and representative of Axis. This extra effort was taken despite the fact that not only had the Engagement Letter been prepared by Mr Lee's own associates in Han & Partners (a Malaysian law firm of which Mr Lee was the managing partner),[38] he had been the person who would approve the drafts before they were sent to Mr Lim.

30 FEM also alleges that, after the Engagement Letter was signed, Mr Lee was not satisfied with it because it was signed solely by Mr Aljunied. This was because Mr Lee wanted to ensure that he would be able to enforce the Engagement Letter against FEM and eventually receive the Arranger Fee.

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37 DCS at p 74.

38 PCS at para 4.

Accordingly, Mr Lee allegedly orally instructed Mr Lim, over a telephone call, to procure Mr Hong's signature on the Engagement Letter as well.[39]

The consent letters of 17 November 2017 and 12 March 2018

31 The sixth disputed material event relates to the signing of FEM's consent letters on 17 November 2017 and 12 March 2018 in respect of certain loan agreements which were entered into between Axis and CBL for the principal amounts of S$1,000,000 and S$270,000 respectively, with CBL as the borrower and Axis as the lender. These consent letters were necessary as FEM had to consent to CBL's entry into the loan agreements with Axis, since the loan would eventually have to be repaid out of the escrow account which CBL would inherit after the completion of the Transaction,[40] which would ostensibly affect FEM as well given the proposed merger between FEM and CBL.

32 In relation to the circumstances surrounding the signing of the consent letters, FEM contends that Ms Chong took active steps to assist Mr Lim and Mr Lee with the implementation and concealment of the alleged Scheme by refraining from informing Mr Aljunied who Axis's representatives were, even when Mr Aljunied directly queried her on this.[41] In this regard, Mr Aljunied claimed that "Ms Chong sought to pressure [him] into signing the First Consent Letter on the basis that the completion of the Proposed Transaction would be held up if [he] failed to sign it".[42] Additionally, FEM points out that both loan agreements specifically provided that any notices required to be given under the loan agreements should be addressed to Mr Goh, a director and shareholder of

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39 DCS at p 75.

40 PCS at para 388; Syed Abdel Nasser bin Syed Hassan Aljunied's AEIC at para 83.

41 DCS at p 80.

42 Syed Abdel Nasser bin Syed Hassan Aljunied's AEIC at para 85.

Axis at that time, despite the fact that Mr Goh did not play any role in the Transaction. FEM says that this was a deliberate step taken by Mr Lee to conceal his identity as the beneficial owner of Axis.[43]

33 Axis denies FEM's contentions and says that it is incredulous that Mr Aljunied, being an experienced director, would be so gullible as to sign such an important document when an employee (*ie*, Ms Chong) pressured him to do so.[44] Axis also points out that Mr Aljunied did not go past Ms Chong and satisfy himself as to who the representative of Axis was. According to Axis, this could only mean that Mr Aljunied already knew that Mr Lee was the representative of Axis, and that Mr Aljunied's denial of this is clearly an afterthought.[45]

34 In summary, these factual disputes are material to the legal issues of whether: (a) the Engagement Letter should be declared void for unilateral mistake at common law, misrepresentation, and/or illegality as Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis at the relevant time; (b) whether the defendants in counterclaim misrepresented by their conduct or silence as to the beneficial ownership of Axis; (c) whether the services undertaken by Axis in the Engagement Letter were performed; and (d) whether the defendants in counterclaim engaged in an unlawful means conspiracy to cause injury to FEM. With this in mind, I turn to consider the parties' respective claims.

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43 DCS at p 81.

44 PCS at para 388.

45 PCS at para 389.

Axis's claim against FEM

The parties' general cases

35 I turn first to Axis's claim against FEM. In short, Axis's case is founded on FEM's breach of the Engagement Letter. By Axis's case, FEM had breached the Engagement Letter by refusing to pay Axis the Arranger Fee through the transfer of certain consideration shares ("the Consideration Shares").[46] FEM was obliged to do after the completion of the Transaction. Axis therefore seeks the specific performance of the Engagement Letter for FEM to cause the Consideration Shares to be issued to Axis.[47] Alternatively, Axis prays for damages to be awarded in lieu of specific performance, or damages for breach of the Engagement Letter to be assessed.[48]

36 As against Axis's general case, FEM's general case is that while Axis's claim appears simple, it is actually a façade covering a suite of wrongful acts committed by Axis, Mr Lee, Mr Lim, and/or Ms Chong. FEM's main case is that, unknown to FEM at the material time, Axis, Mr Lee, Mr Lim, and Ms Chong conspired and combined together to (a) conceal the fact that Mr Lee was the beneficial owner and representative of Axis, and (b) misrepresent to FEM that Mr Lee was at all material times acting solely in his capacity as the legal advisor and representative of Datuk Lim and CBL in respect of the Transaction.[49] FEM says that these wrongful acts were committed by Axis, Mr Lee, Mr Lim, and Ms Chong so as to:[50] (a) procure FEM to execute the

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46 PCS at para 31.

47 PCS at para 32(a).

48 PCS at para 32(b).

49 DCS at para 106.

50 DCS at paras 7–9.

Engagement Letter, (b) assist Axis/Mr Lee to obtain the Arranger Fee for work that Mr Lee was doing in his capacity as the legal advisor and representative of Datuk Lim and CBL, and (c) conceal this from Mr Hong and Mr Aljunied of FEM.

37 Accordingly, FEM submits that it should not be held to the terms of the Engagement Letter as a result of Axis's, Mr Lee's, Mr Lim's, and Ms Chong's wrongful acts. To this end, it relies on the grounds of unilateral mistake,[51] misrepresentation,[52] and/or illegality.[53] Also, FEM says that Axis's claim fails for the simple reason that Axis had not even provided the services promised to FEM.[54] As part of its counterclaim, FEM says that it is entitled to damages arising from the conspiracy and/or misrepresentations made by Axis, Mr Lee, and Ms Chong.[55] FEM also claims damages specifically from Ms Chong arising from her breaches of contractual and fiduciary duties to FEM, and for dishonestly assisting Mr Lim to breach his duties to FEM.[56]

The relevant issues

38 From the parties' general cases in relation to Axis's claim against FEM, it is clear that Axis's claim is premised on there being a valid contract between the parties that was duly performed. As such, if any one of FEM's defences succeeds in casting doubt on this fundamental basis, Axis's claim will fail. It is therefore not necessary for me to consider all of FEM's defences once I find

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51 DCS at paras 68–77.

52 DCS at paras 78–104.

53 DCS at paras 105–106.

54 DCS at paras 37–56.

55 DCS at paras 104 and 116.

56 DCS at paras 104, 123, and 131.

that one of them disposes of the fundamental basis behind Axis's claim. For the reasons that I will explain below, I find that one of FEM's defences achieves this outcome. As such, I will only deal with the following of the agreed issues (as modified) between the parties:

(a) Did FEM know that Mr Lee was the beneficial owner of Axis when it entered into the Engagement Letter?

(b) What is the legal effect of FEM not knowing that Mr Lee was the beneficial owner of Axis?

(c) In any event, were the Services within the Engagement Letter performed?

My decision: Axis's claim is dismissed

39 In my judgment, FEM did not know that Mr Lee was the beneficial owner of Axis at the time it entered into the Engagement Letter. The legal effect of this finding is that the Engagement Letter is void for unilateral mistake at common law, and FEM is entitled to avoid the Engagement Letter on this basis. In any event, I find that Axis did not perform its obligation under the Engagement Letter to introduce FEM to CBL and is therefore not entitled to claim for the Arranger Fee even if the Engagement Letter were not declared void. I now elaborate on these findings.

FEM did not know that Mr Lee was the beneficial owner of Axis when it entered into the Engagement Letter

(1) Mr Lim's and Ms Chong's knowledge that Mr Lee was the beneficial owner of Axis cannot be attributed to FEM

40 To start with, I find that FEM did not know that Mr Lee was the beneficial owner of Axis at the time it entered into the Engagement Letter. Before I explain the reasons for this finding, I first need to deal with the question of whether Mr Lim's and Ms Chong's knowledge that Mr Lee was the beneficial owner of Axis can be attributed to FEM such that there would be no unilateral mistake as to the identity of the beneficial ownership of Axis when FEM entered into the Engagement Letter.

41 While it is not disputed[57] that Mr Lim and Ms Chong knew that Mr Lee was the beneficial owner of Axis even before FEM entered into the Engagement Letter, this question arises because FEM contends that Mr Lim and Ms Chong breached their duties to FEM by concealing this fact from Mr Hong and Mr Aljunied. FEM contends that the consequence of this is that Mr Lim's and Ms Chong's knowledge of Mr Lee's beneficial ownership should not be attributed to FEM.[58] As I understand FEM's case, if there is no other avenue of attributing this knowledge to FEM, FEM should be deemed not to know of Mr Lee's beneficial ownership of Axis when it entered into the Engagement Letter.

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57 PCS at paras 104 and 107; DCS at para 106.

58 DCS at para 64.

(A) MR LIM

42 I will separately address the respective attributability of Mr Lim's and/or Ms Chong's knowledge. As regards Mr Lim, I find that his knowledge of Mr Lee's beneficial ownership of Axis cannot be attributed to FEM because of the breach of duty exception laid down by the Court of Appeal in *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Singapore Swimming Club*"). The court explained this exception in the following terms at [116]:

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

43 The Court of Appeal in *Singapore Swimming Club* reached this conclusion after considering, among other authorities, the UK Supreme Court decision of *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] 2 WLR 1168 ("*Bilta*"), which has since been subsequently affirmed by the UK Supreme Court in *Singularis Holdings Ltd (in liquidation) v Daiwa Capital Markets Europe Ltd* [2019] 3 WLR 997. In *Bilta*, Lord Mance opined that the key to any question of attribution is always to be found in considerations of context and purpose for which the attribution is relevant (at [41]). From this broad premise, Lord Mance made two specific observations which are relevant to this present case.

44 The first observation relates to the issue of whether a principal should be attributed with the state of mind of the agent who had defrauded him, with the result being that the agent (or a third party who had knowingly assisted in

the fraud) would be relieved of liability in respect of the fraud. In this regard, Lord Mance endorsed (at [44] of *Bilta*) the observations of Professor Peter Watts and Francis Reynolds QC, the editors of *Bowstead & Reynolds on Agency* (Sweet & Maxwell, 20th Ed, 2014) ("*Bowstead & Reynolds*") at para 8-213:

> The simple point is that, were the principal deemed to possess the agent's knowledge of his own breaches of duty, and thereby to have condoned them, the principal could never successfully vindicate his rights … there is no need for an exception as such. The putative defence that the exception is used to rebut is premised on the fallacy that a principal is prima facie deemed to know at all times and for all purposes that which his agents know. As observed already, imputation has never operated in such a way. *Before imputation occurs, there needs to be some purpose for deeming the principal to know what the agent knows. There is none in this type of case.*
>
> [emphasis added]

Put simply, the learned authors of *Bowstead & Reynolds* make the point that there is no starting point that an agent's knowledge should be deemed to be attributable to his or her principal. Instead, the question to be asked in every case is whether there is a justifiable reason for attribution. In the specific case where an agent who has defrauded or acted in breach of duty to his or her principal, the answer to this question may be that there is no justifiable reason to attribute the agent's knowledge of the breach to the principal so as to relieve the agent, or a third party who has assisted him in the breach, of their respective liability to the principal.

45 Lord Mance's second observation in *Bilta* relates to the question of how an agent's knowledge of the breach affects the legal relations between the principal company and a third party. In a situation where the third party also has knowledge of the breach, Lord Mance observed in *Bilta* (at [45]) that there is case authority for the principle that the knowledge of agent-directors of the fact,

that the principal company's rights have been infringed, cannot be attributed to the company to estop the company from denying that it had consented to a particular arrangement with a third party. To illustrate this point, Lord Mance cited the House of Lords decision of *JC Houghton and Company v Nothard, Lowe and Wills, Limited* [1928] AC 1 ("*JC Houghton*"), where Viscount Dunedin opined that although "[i]t may be assumed that the knowledge of directors is in ordinary circumstances the knowledge of the company", the knowledge of directors acting in infringement of a company's rights cannot be attributed to the company if it is "only brought home to the man who himself was the artificer of such infringement" (at 14–15). While, like Lord Mance, I do not think that it is appropriate to presume as a starting point that the agent's knowledge is attributable to the principal, I would respectfully agree with the rest of the principle articulated in *JC Houghton*. I also respectfully agree with the formulation of Aedit Abdullah JC (as he then was) in the High Court decision of *United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd and others* [2016] 2 SLR 597 at [55], where he stated that the "key issue to be determined is whether the third party is an innocent party or a party complicit in the fraud or who had abetted the agent's breach of duty".

46 Lord Mance's two observations in *Bilta* are relevant in the present case in respect of Mr Lim's knowledge. This is because FEM's case for arguing that it should not be held to the terms of the Engagement Letter on the basis of unilateral mistake, misrepresentation, and/or illegality may potentially be defeated if FEM is deemed to have knowledge of Mr Lee's beneficial ownership of Axis at the time when the Engagement Letter was entered into. Additionally, FEM's claims against the defendants in counterclaim for conspiracy and misrepresentation, as well as against Ms Chong for breach of duty and dishonest assistance, may be defeated on the same basis. Therefore, the arguments in the

present case engage the two issues of: (a) whether a principal should be attributed with the state of mind of his agent who had defrauded him, so as to relieve either the agent, or a third party who had knowingly assisted in the fraud, or liability in respect of the fraud; and (b) whether the agent's knowledge should affect the contractual relations between the principal company and a third party, where the agent has breached his duties to the principal company and the third party who knew of the breach.

47 While Lord Mance had seemingly regarded the issues raised in the two observations above as being distinct (see *Bilta* at [44]–[45]), I am of the view that the common principle running through both observations is this: an agent in breach of his duties to his principal, or a person who knows of the agent's breach, cannot rely on the agent's knowledge of his breach to successfully argue that he (the agent or a person who knows of the agent's breach) should not be liable to the principal.

48 Applying this principle to the present case, I conclude that Mr Lim's knowledge of Axis's beneficial ownership cannot be attributed to FEM as he has breached his fiduciary duty of loyalty to FEM. To begin with, I find that Mr Lim owes fiduciary duties to FEM. The test for finding a fiduciary relationship is whether the putative fiduciary "voluntarily place[d] himself in a position where the law can objectively impute an intention on his … part to undertake [fiduciary duties]" [emphasis in original omitted] (see the Court of Appeal decision of *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [194], recently reaffirmed by the same court in *Tan Teck Kee v Ratan Kumar Rai* [2022] 2 SLR 1250 ("*Tan Teck Kee*") at [77]). In ascertaining whether this test is met, the court must broadly examine and evaluate the specific nature of the role played by the putative fiduciary, including by considering "the extent to which the putative fiduciary may

exercise discretion which affects the position of the supposed principal and the degree of vulnerability to which the supposed principal is subject" (see *Tan Teck Kee* at [69]).

49 On the facts, Mr Lim, as Chief Financial Controller of FEM, was given broad powers by FEM, including the authority to negotiate or discuss terms of engagement on behalf of FEM with external parties, such as financial advisers, corporate advisors, and sponsors.[59] This wide discretion meant that Mr Lim could affect the legal position of FEM to a great extent. Indeed, on Axis's case, Mr Lim had authority to appoint an introducer and arranger for FEM[60] even when FEM's financials were weak[61] and the fee for such introducer and arranger would cost FEM US$2m.[62] In my judgment, this underscores the vulnerability of FEM to Mr Lim's exercise of his broad powers. Taking these circumstances into account, I am of the view that Mr Lim should be imputed with the intention to undertake fiduciary obligations to FEM (see *Tan Teck Kee* at [78]).

50 With this conclusion in mind, I further find that Mr Lim breached his fiduciary duty of loyalty to FEM by concealing from, and misrepresenting to Mr Hong and Mr Aljunied, as to the beneficial ownership of Axis. I shall have the occasion to expand on my reasons for this finding subsequently in this decision (at [126]–[131]). But for now, it suffices to say that the result of my finding is that Mr Lim's knowledge of Axis's beneficial ownership cannot be attributed to FEM.

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59 NE dated 17 February 2023 at p 14 lines 13–21.

60 PCS at para 20.

61 PCS at para 18(c).

62 PCS at p 9.

(B) MS CHONG

51 Turning to Ms Chong, I find that her knowledge of Axis's beneficial ownership should not be attributed to FEM as there is no connection between the nature of the acts which she was empowered to do for FEM and the nature of the information that she received. While case law has not settled on a single test for attribution, I observe that an academic commentator has suggested that "[w]hat is important is whether the knowledge is material to the powers allocated or delegated to the knowledge-holder. The wider the scope of such powers, the more likely that knowledge will be attributable" (see Rachel Leow, "Attributing Knowledge" in *Corporate Attribution in Private Law* (Hart Publishing, 2022) ch 6 at p 162). This suggests that there must be *some* connection between the scope of the knowledge-holder's powers to act for the principal, and the content of the knowledge that is sought to be attributed to the principal.

52 While this begs the question as to the *degree* of the connection required, I do not think that it is necessary to express a conclusive view on this question in this case. This is because, in so far as the Engagement Letter is concerned, there is no evidence that Ms Chong was given any powers by FEM. Indeed, Ms Chong's unchallenged evidence was that her role was merely to "assist [Mr Lim] with documentation, records and paperwork required for the proposed listing exercise of FEM and/or its mining subsidiary and perform day to day operations for FEM and other ad hoc assignments as required".[63] Since Ms Chong's responsibilities were limited to those of an administrative nature and did not include a power to contract on behalf of FEM, there is no reason

63 Chong Wan Ling's AEIC at para 13.

why her knowledge should be attributed to FEM for the purpose of ascertaining FEM's state of mind when it entered into the Engagement Letter.

53 The result of the findings above is that much will turn on whether Mr Hong and Mr Aljunied knew that Mr Lee is the beneficial owner of Axis. I will now address this issue.

(2) Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis when FEM entered into the Engagement Letter

54 It is clear that FEM bears the legal burden of proof in establishing that it did not know that Mr Lee was the beneficial owner of Axis at the time the Engagement Letter was entered into. Relatedly, it should be observed that FEM is trying to establish a *negative*, in that it did *not* know of this fact. As such, while it bears the legal burden of doing so, it is not surprising that FEM will need to refute the evidence adduced by Axis to prove the positive, that is, that Axis had informed FEM of this fact. Once FEM raises some evidence in support of this fact, the tactical burden shifts to Axis to adduce evidence in rebuttal. This tactical burden can shift multiple times between the parties (see the Court of Appeal decision of *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [60]). Depending on whether Axis has successfully adduced evidence in rebuttal, it may well be concluded that FEM has discharged its legal burden of proof in establishing that it did not know that Mr Lee was the beneficial owner of Axis at the relevant time.

55 Parenthetically, I would regard that it may be more appropriate to say that it is the "tactical burden", rather than the "evidential burden", which shifts. Properly understood, the term "evidential burden" is the duty "to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue" (see Roderick Munday, *Cross & Tapper on*

Evidence (Oxford University Press, 11th Ed, 2010) ("*Cross & Tapper*") at p 124). In contrast, a tactical burden is "one that is borne by the opponent of an issue after the proponent has discharged his evidential burden" (see *Cross & Tapper* at p 126). Applied to the present case, FEM had (in addition to the *legal* burden of proof) the evidential burden to raise the issue that FEM did *not* know of Mr Lee's beneficial ownership of Axis. It is obvious that this evidential burden was always on FEM and did not shift in the course of the trial. Rather, it was the *tactical* burden which shifted, the result of which being that Axis could adduce evidence to disprove FEM's assertion that it (FEM) did not know of Mr Lee's beneficial ownership of Axis when the Engagement Letter was entered into.

56 As a starting point, FEM rightly points out that there is simply no written record of Mr Lee being the beneficial owner of Axis throughout the course of the Transaction (*ie*, from June 2016 to 5 July 2018).[64] In my judgment, this is sufficient to place the tactical burden on Axis to show that Mr Hong and Mr Aljunied were informed of this fact. While Axis has raised some evidence in support of its case, I ultimately find, for the reasons that follow, that Axis has failed to adduce sufficient evidence to shift the tactical burden back onto FEM, the result of being that FEM has discharged its legal burden of showing that Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis at the relevant time. The structure of my discussion will largely have reference to the material events in dispute, which I have set out at [9]–[34] above.

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64 DCS at para 61.

(A) NO EVIDENCE OF MR LEE BEING THE BENEFICIAL OWNER OF AXIS BEFORE 12 JULY 2016

57 First, I find that Mr Hong and Mr Aljunied did not know before 12 July 2016 that Mr Lee would be the introducer and arranger of FEM, and that he would be paid an arranger fee. In this regard, Axis's evidence is that there were discussions within FEM on the critical role that Mr Lee was to play in the Transaction. More specifically, Axis relies on discussions that allegedly happened after the following events:

(a) Mr Lim allegedly updated Mr Hong and Mr Aljunied, after his (Mr Lim's) meeting with Mr Lee in or around the first half of June 2016, that Mr Lee would be the key person to introduce, arrange, and reach out to Datuk Lim.[65]

(b) Mr Lim allegedly informed Mr Hong and Mr Aljunied, after his (Mr Lim's) meeting with Mr Lee at Hotel Jen (at Orchard Road) in or around mid-June 2016, about the arranger and transaction fees payable to Mr Lee and Mr Khor, and Datuk Lim, respectively. Axis further states that, after this latter meeting, Mr Lim sent an email on 28 June 2016 to Mr Hong and Mr Aljunied that would have revealed that Mr Lee was the beneficial owner of Axis.[66]

58 I find that, when viewed objectively on the basis of the relevant documents, the events as set out above upon which Axis relies on do not lead to the inference that FEM (*ie*, Mr Hong and Mr Aljunied) knew that Mr Lee was the beneficial owner of Axis. In this regard, Axis relies heavily on the email

65 PCS at paras 76–77(a).

66 PCS at para 80.

dated 28 June 2016 that Mr Lim sent to Mr Hong and Mr Aljunied. For convenience, I set out the contents of this email as follows:[67]

> **From:** E H Lim [email address redacted]
> **Sent:** Tuesday, 28 June, 2016 19:51
> **To:** Nasser Aljunied; Joseph Hong
> **Subject:** Proposal
>
> Gentlemen
>
> Enclosed, please find the proposal that being discussed with Singapore Listco, China Bearing Limited. The major owner of the Listco is Dato Lim, a Malaysian, who bought 29.9% from the original Chinese owner. Currently, the ListCo is suspended as there are no business activities or assets except sitting on RMB60 million cash. And the ListCo has about 6 months to look for new assets to resume trading, otherwise will be delisted. The existing owners paid S$15m for the blocks totalling about 45%, accordingly, the Facilitator shares being earmarked.
>
> Our proposal is to inject PT TAS with PT Pernick's mining agreement for US$120 million. But we must have at least over 25-30 million MT of at least 1.5% Ni to justify our current valuation, as attached, hopefully Colliers can do the ValMin for us.
>
> Should PT Gag Nickel come on stream. We shall run parallel for direct IPO in HK as it will be a totally different game plan, [*sic*] In summary, China Bearing, subject to its board's and major owner's clearance, is our current approach without PT Gag Nickel.
>
> Thanks and regards,
> Eng Hoe

59 I find that this email does not assist Axis, for the following reasons. First, the contents of the email do not refer to Mr Lee at all, let alone in his capacity as the arranger or the beneficial owner of Axis. Second, as the email makes no reference to any earlier conversation between the parties, this suggests that this is the first time that Mr Lim had brought up CBL as a potential listed company to Mr Hong and Mr Aljunied, thereby refuting Axis's case that there had been

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67 1 AB 418.

prior discussions between Mr Lim, Mr Hong, and Mr Aljunied regarding CBL and Mr Lee's role as an arranger in the Transaction and the agreement for him to be paid an arranger fee. This is because, in the email of 28 June 2016, Mr Lim had introduced Datuk Lim and his role within CBL, as well as the financial position of the company. If there had been prior discussions between the parties as Mr Lim alleged, there would not have been any need to set out the context in this email. Third, in so far as Axis relies on this email to say that Mr Lim "had indeed shared Mr Lee's Arranger Fees Proposal and Transaction Fee Proposal" with Mr Hong and Mr Aljunied,[68] I disagree. This is because while the attachment to the email does contain an item entitled "Arranger's Fee", this item is otherwise silent as to *who* the arranger is, and certainly does nothing to connect it with Mr Lee or Axis.

60 In summary, none of the events occurring before 12 July 2016 are of any assistance to Axis in discharging its tactical burden to adduce evidence showing that Mr Hong and Mr Aljunied of FEM knew of Mr Lee's role as an arranger in the Transaction and agreed to him being paid an arranger fee.

(B) THE MEETING OF 12 JULY 2016 AND THE FOLLOW-UP EMAIL DATED 14 JULY 2016

61 Further, FEM rightly points out that the Meeting of 12 July 2016 did not give any indication to Mr Hong and Mr Aljunied of Mr Lee being the beneficial owner of Axis before FEM entered into the Engagement Letter. I agree that FEM's account of this meeting shows that there was an attempt to conceal the fact of Mr Lee's beneficial ownership of Axis from FEM.

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[68] PCS at para 168.

62 In this regard, Axis's case is that after Mr Lim met with Mr Lee and Mr Khor during the Meeting of 12 July 2016 (referred to at [9] above), Mr Lim allegedly provided Mr Hong and Mr Aljunied with an update as to what went on during the meeting.[69] Crucially, Mr Lee allegedly said at this meeting that he had already instructed his corporate secretariat firm to search for a dormant company in Malaysia, of which Mr Lee would be the representative, for the purpose of providing the services as introducer and arranger for FEM.[70] Axis further states that Mr Lim also sent an email dated 14 July 2016 to both Mr Hong and Mr Aljunied setting out the arranger fee to be paid by FEM.[71] Axis relies on this email, which states that there will be "arranger fee of 2% payable by the Vendor to another party" and that "[t]hese 2 arrangers are separate and independent of each other".[72] Thus, Axis claims that this statement from the email was to highlight to Mr Hong and Mr Aljunied that "the arranger fee of 4% on the proposed acquisition value of the Asset of US$120 million is to be split equally between Mr Lee and Mr Khor".[73]

63 I disagree with Axis's characterisation of the Meeting of 12 July 2016. Instead, I prefer FEM's account of what transpired at that meeting, which amongst other things included the parties agreeing that Mr Lee's share of the arranger fee would be received through a company beneficially owned by him, and that this fact would be kept secret from FEM.[74] This is for the following reasons.

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69 PCS at para 88.

70 PCS at para 87(b).

71 PCS at paras 88 and 90.

72 PCS at para 89.

73 PCS at para 90.

74 DCS at para 8.

64 First, Mr Lim's account of the Meeting of 12 July 2016 is not convincing. In so far as Mr Lim's account of the Meeting of 12 July 2016 in his Affidavit of Evidence-in-Chief ("AEIC") is concerned, it is framed in almost identical terms as the accounts provided for in Mr Lee's and Mr Khor's AEICs, even though Mr Lim claimed to have drafted the AEIC without any discussion with Mr Lee and/or his lawyer.[75] When pressed about the similarity, he was unable to provide an explanation.[76] Therefore, I give little weight to Mr Lim's evidence as I have doubts about his credibility in this regard. Moreover, I also find it curious that Mr Lim's update to Mr Hong and Mr Aljunied by WhatsApp after the Meeting of 12 July 2016 was limited to simply asking them if they were available "to meet the CB's rep next Thursday" and to explain that the plan was "to agree on term sheet next week, then site visit end July. Signing term sheet early August after its Board has approved the deal, followed by conditional SPA [*sic*]".[77] If indeed the parties to the Meeting of 12 July 2016 had discussed more detailed terms, such as Mr Lee's use of a company to receive the Arranger Fee, then it is odd that Mr Lim did not mention this in his update. In my view, it is more plausible that Mr Lim did not do so was because he wanted to conceal this arrangement from Mr Hong and Mr Aljunied.

65 Second, Mr Lim's update to Mr Hong and Mr Aljunied via WhatsApp on 12 July 2016 was also inaccurate. When Mr Hong remarked that the Transaction "depends on the terms betwee[n] [*sic*] parties", Mr Lim responded that the "[t]erms similar to what I explained previously".[78] However, this is not true even on Mr Lim's own account. This is because before the Meeting of

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75 NE dated 18 October 2022 at p 39 lines 10–12.

76 NE dated 18 October 2022 at p 40 lines 1–4.

77 Lim Eng Hoe's AEIC at p 1075.

78 Lim Eng Hoe's AEIC at p 1075.

12 July 2016, there was only one arranger whose fees CBL would be paying.[79] However, this changed after the Meeting of 12 July 2016 because, by Mr Lim's own account, it was then intended by Mr Lee, Mr Lim, and Mr Khor that there would now be two arrangers. Thus, the indication in the spreadsheet attached to the email of 28 June 2016 that there was *one* arranger fee no longer reflected the prevailing arrangement after 12 July 2016 (see [7] above). Mr Lim's response to Mr Hong that the terms remained similar, unless one interprets "similar" broadly, was thus inaccurate. Moreover, if Mr Hong and Mr Aljunied did not know that Mr Lee was to be paid an arranger fee before 12 July 2016, Mr Lim's update on 12 July 2016 would not have disabused them of that understanding.

66 Third, Mr Lim's follow-up email on 14 July 2016 was also inaccurate and would not have corrected the aforementioned understanding of Mr Hong and Mr Aljunied. In this regard, Axis's reliance on the statement in the email that "arranger fee of 2% payable by the Vendor to another party" and that "[t]hese 2 arrangers are separate and independent of each other" is misplaced. While Mr Hong and Mr Aljunied might at that point have been apprised of the fact that there were to be two arrangers instead of simply one as they might have previously believed, there is clearly no mention of Mr Lee or Mr Khor in this email. Indeed, as Mr Lim admitted during cross-examination, there was simply no mention of the other party to whom FEM was to pay the Arranger Fee.[80] If, as Axis's case is, Mr Hong and Mr Aljunied had *by this time* (*ie*, 14 July 2016) already known that Mr Lee was one of the individuals to be paid an arranger fee, then it did not make sense for Mr Lim to state that the arranger fee was to be paid to "another party" instead of mentioning Mr Lee by name. When

79 NE dated 18 October 2022 at p 94 lines 20–25; p 95 lines 1–17.

80 NE dated 18 October 2022 at p 157 lines 18–23.

confronted with this problem during cross-examination, Mr Lim explained that "normally we do not state in the email or in the documents the party receiving".[81] I do not accept this explanation, which makes no sense whatsoever. Indeed, while Mr Lim claimed that it was normal practice not to reveal the name of the arranger, the fact here is that, by Axis's own case, FEM *already* knew who the arranger was (*ie*, Mr Lee). Therefore, it is unbelievable that Mr Lim would not simply state that the Arranger Fee is to be paid to Mr Lee, instead of stating that it is to be paid to "another party".

67 Fourth, Mr Khor also admitted during cross-examination that Mr Lee was trying to conceal the fact that he was the beneficial owner of Axis and would therefore be the recipient of the 2% arranger fee from FEM.[82] I place weight on this particular admission because, even though FEM is not proceeding with any claims against Mr Khor as he is now a bankrupt, such an admission would not serve his own self-interest. Therefore, the fact that Mr Khor made this admission against his self-interest is strongly probative of the truth of its contents.

68 Accordingly, for all these reasons, I prefer FEM's account of what happened at the Meeting of 12 July 2016 over that of Axis and find that Mr Hong and Mr Aljunied did not know of Axis's beneficial ownership during this period.

(C) THE DINNER OF 20 JULY 2016 AND THE PRECEDING CORRESPONDENCE

69 I now turn to the events that occurred in the lead-up to the dinner meeting with Datuk Lim on 20 July 2016 (*ie*, "the Dinner of 20 July 2016" referred to at

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81 NE dated 18 October 2022 at p 158 lines 13–19.

82 NE dated 27 October 2022 at p 55 lines 10–15.

[17] above). In this regard, FEM rightly points out that the correspondence preceding and relating to the Dinner of 20 July 2016 all point against Mr Hong and Mr Aljunied knowing that Mr Lee was the beneficial owner of Axis at the relevant time.

70 First, when Mr Lim updated Mr Hong and Mr Aljunied via WhatsApp on 15 July 2016 of the said Dinner, he had said the following:[83]

To my mind, if Axis is correct that Mr Hong and Mr Aljunied had already known that Mr Lee was to be FEM's arranger by this time, then it is odd that Mr Lim identified Mr Lee as Datuk Lim's "lawyer and … lieutenant". He could simply have referred to Mr Lee by his name. Further, it is clear from the content of this message that Mr Lee was acting for Datuk Lim in the Transaction because this "lawyer and … lieutenant" would "go through the details" of the

[83] DBOD at p 193.

Transaction. If Mr Lee were acting only as FEM's introducer and arranger, that would potentially leave CBL unrepresented at the meeting to "go through the details" as there was a chance that Datuk Lim would not join the meeting.

71 The message trail does not end there. On 19 July 2016, Mr Lim also suggested to Mr Aljunied to "bring over 2 bottles of wine as both Dato and *his lawyer* are wine drinker [*sic*]".[84] Again, if Axis is correct that Mr Hong and Mr Aljunied had known that Mr Lee was FEM's introducer and arranger by this stage, it plainly does not make sense for Mr Lim to refer to Mr Lee as Datuk Lim's "lawyer" as though he is a stranger. Mr Lim ought to have simply referred to Mr Lee by his name or along the lines of FEM's introducer and arranger.

72 Second, while Axis claims that Mr Lee acted in a manner that was consistent with him being FEM's introducer and arranger during the dinner,[85] this account is not borne out by the contemporaneous evidence after the dinner. Mr Lim messaged Mr Hong and Mr Aljunied on WhatsApp after the Dinner on 21 July 2016 to request that they "focus with [Datuk Lim] and *his lawyer* [*sic*]" [emphasis added].[86] Again, if Axis is correct that Mr Hong and Mr Aljunied both knew that Mr Lee was acting as FEM's introducer and arranger throughout the dinner (and indeed, prior to that), then Mr Lim would not have referred to Mr Lee as Datuk Lim's lawyer. He should simply have referred to Mr Lee by his name or, at the very least, as something along the lines of FEM's introducer and arranger. Thus, the more convincing account is that Mr Lim referred to Mr Lee as such to deliberately reinforce the false impression upon Mr Hong and

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84 DBOD at p 250.

85 PCS at para 102.

86 DBOD at p 251.

Mr Aljunied, and that Mr Lee was only acting as Datuk Lim's legal advisor and representative.

73 Third, all of the above puts paid to Mr Lim's account in his AEIC that he had informed Mr Hong and Mr Aljunied on 20 July 2016, after the dinner, that Mr Lee was going to take over Axis, so that Axis would be the party to enter into the Engagement Letter with FEM.[87] This account is flatly contradicted by Mr Lim's own WhatsApp message sent to Mr Hong and Mr Aljunied on 21 July 2016. If indeed Mr Lim had informed Mr Hong and Mr Aljunied as such, it did not make sense for Mr Lim to still refer Mr Lee as being Datuk Lim's lawyer, as though Mr Lee was a third party to the Transaction from FEM's point of view.

74 More broadly, this context raises the question of why, if Axis's case is right, FEM did not object to Mr Lee (as the beneficial owner behind Axis) being *both* the arranger for FEM, and the lawyer for Datuk Lim and CBL, despite knowing that this would put Mr Lee in a clear position of conflict. According to Axis, FEM simply "did not have any concerns about such relationship" and that FEM was also "eager to engage Mr Lee as its arranger and to leverage on the relationship between Mr Lee and Datuk Lim".[88] While I can accept that an arranger would need to have a close relationship with the owner of the target company, it is clear that Mr Lee was *also* acting in Datuk Lim's or CBL's interest as its lawyer. Therefore, despite Axis's and Ms Chong's submissions, it should be clear to any lawyer familiar with professional rules and practice that Mr Lee was in an obvious position of conflict. Mr Lee, in his capacity as FEM's arranger, would have been obliged to strike the best arrangement for FEM so as

87 Lim Eng Hoe's AEIC at para 64.

88 PCS at para 187.

to maximise FEM's gains. On the other hand, as Datuk Lim's or CBL's lawyer, Mr Lee would have been obliged to maximise CBL's gains, potentially at the expense of FEM. Thus, I cannot see why FEM would allow for this situation. Indeed, the only plausible explanation in the circumstances is that FEM simply did not know that Mr Lee was the beneficial owner of Axis and proceeded on that basis.

(D) THE SITE VISIT EXCHANGE ON OR AROUND 25 AND 26 JULY 2016 AND SUBSEQUENT DOCUMENTARY EVIDENCE

75 Axis claims that, on or around 25 and 26 July 2016, when Mr Lee visited the site in Indonesia with Mr Lim, Mr Hong, and Mr Leong, Mr Lee discussed the structure of the Transaction with them.[89] Axis's position is that Mr Lee directly informed Mr Hong that he would use a company to carry out his services as introducer and arranger for FEM. Indeed, Axis claims that it "cannot be the case that there was no discussion on Mr Lee's arranger fees during the Site Visits".[90] However, on an objective assessment of the evidence, I am of the view that the exchange during the site visit does not assist Axis.

76 To begin with, if the topic of Mr Lee's arranger fee was truly so important at the time of the site visit, then it is curious why there is simply no written record of him having told Mr Hong about this before, during, or after the alleged conversation. Second, Mr Lim's own evidence on the site visit is as unreliable as his evidence on other material events. Whereas Mr Lim had said in his AEIC that Mr Leong was present during Mr Lee's discussion with him and Mr Hong on the Arranger Fee,[91] Mr Lim changed this testimony during

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89 PCS at para 110.

90 PCS at para 204.

91 Lim Eng Hoe's AEIC at paras 66–67.

cross-examination by saying that he does not remember if Mr Leong was present at all. Indeed, Mr Lim maintained his position that he could not remember despite being confronted with the clear words in his AEIC that Mr Leong was present at the said meeting.[92] Third, while Axis has said that FEM ought to have called Mr Leong as a witness as he witnessed the entire conversation between Mr Lee,[93] Mr Lim, and Mr Hong, the importance of Mr Leong's evidence can be doubted in light of Mr Lim's own shifting evidence as to whether Mr Leong was present or not. Indeed, if I were to accept Mr Lim's account on the stand, which he maintained with some insistence despite it being inconsistent with his AEIC,[94] then Mr Leong's evidence would likely not be relevant in establishing whether Mr Lee told Mr Hong directly that he was behind Axis.

77 More importantly, I find that the documents exchanged in the period shortly following the 25 and 26 July 2016 site visit, upon which Axis relies, do not show that FEM knew that Mr Lee was the beneficial owner of Axis, and instead indicate otherwise. Specifically, Axis relies on a spreadsheet prepared by Mr Lim on or around 5 August 2016 which was allegedly shown to Mr Hong and Mr Aljunied, and a draft Memorandum of Understanding ("MOU") that was sent via email from Mr Gerard Darryl Chong ("Mr Gerard Chong") of Han & Partners to Mr Lim on 15 August 2016 following the site visit.[95] However, these documents do not take Axis very far – for reasons which I now explain.

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92 NE dated 19 October 2022 at p 106 lines 13–25; p 107 lines 1–12.

93 PCS at para 206.

94 NE dated 19 October 2022 at p 106 line 25; p 107 lines 1–2.

95 2 AB 1291–1320.

78 First, in relation to the spreadsheet entitled "Project CBM Nickel Calculations 05082016" prepared by Mr Lim on or around 5 August 2016, Axis relies on the following portion to argue that FEM must have been aware that there were two sets of arranger fees, one of which was payable to Axis:[96]

4 ListCo Arranger				
Arranger's Fee				
- Cash	1.0%	$672,500		
- New shares issued	3.0%	$2,000,000	2,786,121	
5 Compliance Placement				
Target Vendor		93,683,306		
Less: Vendor Arranger	4.0%	(3,747,332)		
		89,935,974		
6 Post-RTO - Shareholders Position				
Target Vendor		69,040,069	55.65%	72.49%
Target Vendor - Facilitator		20,895,905	16.84%	
Target Vendor Arranger's Fee		3,747,332	3.02%	
ListCo Arranger's Fee		2,786,121	2.25%	
Listco Controlling Shareholders		12,641,200	10.19%	27.03%
Listco Public Shareholders		14,958,800	12.06%	
		124,069,427	100.00%	

79 However, this spreadsheet does not show that Mr Lee was the beneficial owner of Axis. This is because there is plainly nothing on its face which suggests that the "Vendor Arranger" fee of 4% was to be paid to Mr Lee or to Axis, let alone indicating that Mr Lee was to receive the Arranger Fee through Axis as its beneficial owner. Indeed, if Axis is correct that Mr Hong and Mr Aljunied had known about Mr Lee's involvement as FEM's arranger at this point of the Transaction, there ought to be some documentary record of this.

[96] 2 AB 1098; PCB Tab 35.

80 In relation to the draft MOU, Axis argues that[97] while Mr Aljunied was not copied in the aforementioned email on 15 August 2016, he would still have seen this draft MOU that mentions, at para 7, "Axis Megalink Sdn. Bhd." as the "arranger".[98] Axis submits in this regard that, given that the recipient of the email from Mr Gerard Chong was Mr Lim, Mr Lim would have shared the draft MOU with Mr Aljunied and would have discussed it with him.[99] Axis further says that this is evidenced by the WhatsApp exchanges between Mr Lim and Mr Aljunied, in which Mr Lim and Mr Aljunied mentioned, among others, amendments to be made to the draft MOU.[100] However, in my judgment, these do not show that FEM knew that Mr Lee was the beneficial owner of Axis. Even assuming that Mr Aljunied had seen the draft MOU, the draft merely mentioned Axis as the arranger to the Transaction. It says nothing about Mr Lee being behind Axis. Indeed, this is consistent with FEM's account that Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis, but simply that Mr Lee was CBL's or Datuk Lim's lawyer. It is beyond belief that, even at this stage of the Transaction, there is no documentary record of Mr Hong or Mr Aljunied being told directly that Mr Lee was the beneficial owner of Axis. At the highest, by 15 August 2016, Mr Hong and Mr Aljunied only knew that Axis was to be paid an arranger fee. In my view, this shows that Mr Hong and Mr Aljunied (and therefore FEM) did not know that Mr Lee was the beneficial owner of Axis before FEM entered into the Engagement Letter on 16 August 2016.

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97 PCS at para 384.

98 2 AB 1311.

99 PCS at para 384.

100 PCS at para 384; 8 AB 6804.

(E) MR LEE CONTINUED TO ACT AS DATUK LIM'S REPRESENTATIVE IN THE BOARD MEETING ON 8 AUGUST 2016

81 My conclusion thus far that Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis before causing FEM to enter into the Engagement Letter on 16 August 2016 is further supported by the events which transpired in connection with Mr Aljunied's meeting with CBL's Board on 8 August 2016.

82 Axis's case is that Mr Lee was at both meetings "as the introducer and arranger of FEM" to help to "sell the deal".[101] According to Axis, Mr Lee was present to also assist Datuk Lim in translation as it was to the benefit of FEM that the majority shareholder of CBL could receive information on the Transaction.[102] However, in my judgment, Axis's account is inconsistent with the objective evidence.

83 First, in so far as Axis relies on Mr Leyng's (the former Financial Controller of CBL) evidence in his AEIC that "Mr Lee was attending the [CBL board] meeting as FEM's representative"[103] and that "Mr Lee through Axis had acted as a representative for FEM in the Proposed Transaction",[104] I find Mr Leyng's evidence to be without proper basis. During his cross-examination, Mr Leyng clearly admitted that the "first time [he] saw the Axis name was during the loan discussions in 2017 and [he] never knew that Axis and Mr Lee Kien Han were one and the same".[105] Given that the meetings took place on

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101 PCS at para 368.

102 PCS at para 369.

103 Leyng Thai Weng's AEIC at para 17; PCS at para 213.

104 Leyng Thai Weng's AEIC at para 35.

105 NE dated 28 October 2022 at p 67 lines 15–23.

8 August 2016, Mr Leyng's admission on the stand clearly means that he could not have concluded that Mr Lee was acting as FEM's representative for the meeting on 8 August 2016.

84 Second, if Mr Lee was really acting solely as FEM's arranger, and this fact was communicated to all the parties at the meeting, then CBL's board would not have allowed Mr Lee to remain while Mr Aljunied was excused when it came to the time to formally commence CBL's board meeting (see [26] above).[106] This is because Mr Lee would be seen as a representative of FEM, the counterparty to the very transaction that CBL was considering whether to enter into. It would not have made sense for CBL's board to have allowed Mr Lee to sit through this segment of the meeting. Moreover, the minutes taken at the meeting show that Mr Lee was present throughout, even when issues not relating to the Transaction and instead relating to CBL's financial results and other administrative issues were being discussed.[107] If Mr Lee was truly at the meeting as FEM's arranger, then he would not have been allowed to sit through these matters that were unrelated to the Transaction. Moreover, after the board meeting on 8 August 2016, Mr Lee continued to be copied in internal discussions relating to the Transaction exchanged between the directors of CBL.[108] In my judgment, this shows that, far from being FEM's introducer and arranger, Mr Lee was in fact seen to be on the side of CBL, the counterparty to the Transaction.

85 In summary, by 16 August 2016, it is not at all clear that Mr Hong and Mr Aljunied were "well aware" that Mr Lee was the beneficial owner of Axis.

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106 DBOD at p 375.

107 DBOD at pp 370–376.

108 DBOD at pp 766–779.

Instead, I find that Mr Aljunied simply knew that he was causing FEM to enter into the Engagement Letter with Axis, and when Mr Aljunied asked Mr Lim who Axis's representatives were, Mr Lim's response was likely to the effect that Mr Aljunied would have the chance to meet them in due course (see [29(a)] above). Further, I find it plausible that, while Mr Aljunied was concerned about the identity of Axis's representatives, he believed Mr Lim and went ahead to sign the Engagement Letter. At the time when he did so, Mr Aljunied, and by extension, FEM, did not know that Mr Lee was the beneficial owner of Axis.

(F) EVENTS SUBSEQUENT TO THE SIGNING OF THE ENGAGEMENT LETTER SHOW THAT MR LEE DID NOT CONDUCT HIMSELF AS FEM'S INTRODUCER AND ARRANGER

86 The above events prior to the signing of the Engagement Letter on 16 August 2016 are sufficient for me to find that Mr Hong and Mr Aljunied did not know that Mr Lee was the beneficial owner of Axis. Nonetheless, for completeness, I find that this conclusion is further fortified by events subsequent to the entering of the Engagement Letter, all of which show that Mr Lee conducted himself not as FEM's introducer and arranger, but as CBL's or Datuk Lim's legal advisor and representative.

87 First, Axis points out that Mr Lee extended loans of S$1m and S$270,000 through Axis to CBL on 17 November 2017 and 12 March 2018, respectively.[109] Axis further says that prior to Axis and CBL entering into the loan agreement for the S$1m on 17 November 2017, FEM had to consent to CBL's entry into the said loan agreement with Axis. Axis therefore argues that because Mr Aljunied must have seen the name "Axis" on the consent letter but did not bother to find out who was behind Axis beyond asking Ms Chong to

109 PCS at para 275.

check, it must mean that he already knew that Mr Lee was the beneficial owner of Axis. Axis also submits that because Mr Lee provided the loans to CBL through Axis, there was no concealment of his identity.[110]

88 I disagree with Axis's reliance on Mr Aljunied's execution of the relevant consent letters as showing support for its case. Indeed, given my finding above that Mr Aljunied had no reason to suspect that Mr Lee was behind Axis at this point, there was no reason for him to ask. He had rightly trusted Mr Lim's handling of the whole matter.

89 Second, Axis relies on Ms Chong's WhatsApp message to Mr Aljunied on 14 December 2017 as evidence showing that Mr Aljunied knew that Mr Lee was the beneficial owner of Axis.[111] This is because, so Axis argues, Mr Aljunied was going to meet with Mr Lee at South Beach on the day itself, and this message was sent in that context. As such, Axis says that Mr Aljunied's queries on the fees would clearly be about the arranger fee payable to Axis as Mr Aljunied was about to meet Mr Lee, who was the beneficial owner of Axis.

90 I was unpersuaded by Axis's reliance on this WhatsApp message as support for its case. All that Ms Chong's message says is that "Arranger fees to axis megalink usd2 mil paid by shares".[112] Thus, all that Mr Aljunied would have gathered from this message is that an arranger fee was due to Axis, which is entirely consistent with the Engagement Letter dated 16 August 2016. The pertinent question is whether Mr Aljunied knew that Mr Lee was behind Axis. There is nothing in the message that suggests this to be the case. As for

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110 PCS at paras 388–389.

111 PCS at paras 391–392.

112 7 AB 6076.

Mr Aljunied's meeting with Mr Lee shortly after this message, I do not think that assists Axis. Indeed, on FEM's case, Mr Aljunied believed Mr Lee to be CBL's or Datuk Lim's legal advisor or representative. As such, it is believable that he went to meet Mr Lee in that capacity in relation to the Transaction, and not as FEM's introducer and arranger.

91 Third, Axis relies on Mr Nathaniel Tan's ("Mr Tan") email dated 20 December 2017, wherein he enclosed queries from SGX on the extension letter dated 15 December 2017.[113] The second query in the SGX's query reads, "Please disclose the background of Axis Megalink Sdn Bhd".[114] As such, Axis and Mr Lee also rely on the fact that Mr Aljunied did not "raise any query with regard to the representative and/or beneficial owner of Axis despite having read the email and noted the [SGX] query" as allegedly evidencing the fact that Mr Hong and Mr Aljunied "already knew that the representative and beneficial owner of Axis was Mr Lee".[115]

92 I disagree with Axis's reliance on Mr Hong's and Mr Aljunied's lack of response to the SGX's query as support for its case. Indeed, their lack of response is consistent with FEM's case: they simply had no information as to who was behind Axis and trusted Mr Lim that Axis was an independent third party tasked to arrange the Transaction. Moreover, the fact remains that the queries were directed not only at FEM but to all parties listed in the addressee list in Mr Tan's 20 December 2020 email, including Mr Lee.[116] It is curious that

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113 PCS at para 395.

114 7 AB 5606.

115 PCS at para 395.

116 NE dated 26 October 2022 at p 89 lines 19–25; 7 AB 5538.

Mr Lee would let the query slip by when he could have very easily provided the answer.

93 Accordingly, I conclude that the events subsequent to the entering of the Engagement Letter show that Mr Lee conducted himself not as FEM's introducer and arranger, but as CBL's or Datuk Lim's legal advisor and representative. More pertinently, these events also show that FEM did not know that Mr Lee was the beneficial owner of Axis.

(G) MR TAN'S INDEPENDENT EVIDENCE ATTESTING TO MR LEE'S ROLE AS THE LEGAL ADVISOR AND REPRESENTATIVE OF DATUK LIM

94 Lastly, Mr Tan, an independent witness who has nothing to gain from these proceedings, gave clear evidence that Mr Lee conducted himself as Datuk Lim's legal advisor and representative, and that it never occurred to him that Mr Lee was FEM's arranger and introducer.[117]. Thus, in a crucial part of Mr Tan's evidence on the stand, he stated as follows:[118]

> Q. One last question before we move on to that. You were taken through the affidavit and you used the term "representative", as I highlighted to you, and later you were then introduced to the term "messenger", which you agreed with. Could you explain what you think – are these two terms the same and, if not, how do you explain the difference?
>
> A. *I would take it to be the same, based on my understanding.* An example would be when I sent out emails calling for meetings, you know, for various parties, Mr Lee would reply to say, "I will be attending". And in that meetings -- in those meetings, when we were discussing matters relating to the transaction, we would put to him to procure the necessary concurrence from Datuk. ***So I took it he was there as a representative of Datuk, sitting in place of Datuk and then passing***

117 NE dated 16 February 2023 at p 16 lines 14–19.

118 NE dated 16 February 2023 at p 55 lines 20–25; p 56 lines 1–12.

> ***the necessary messages to Datuk or procuring approvals from Datuk.***"
>
> [emphasis added in italics and bold italics]

It is clear from this exchange with Mr Joel Chng, counsel for FEM together with Ms Koh Swee Yen SC, that Mr Tan regarded Mr Lee as Datuk Lim's legal advisor and representative, in a sense that goes beyond just being a messenger. This understanding is further evidenced by the final contact list of the working group for the Transaction, which was circulated in July 2017 by Mr Tan[119] and which named Mr Lee as the "Chairman" of CBL[120] at the request of Mr Leyng.[121] When questioned during cross-examination as to why he made this request, Mr Leyng agreed that this was because "people saw [Mr Lee] as the representative of Datuk Lim".[122] In my judgment, all this supports FEM's case that it was not apparent to any outsider to the alleged Scheme, and especially not Mr Hong and Mr Aljunied, that Mr Lee was anything more than the legal advisor and representative of Datuk Lim and CBL.

95 Against this conclusion, Axis relies on one part of Mr Tan's evidence where he said that Mr Lee was akin to a translator and messenger for Datuk Lim[123] to argue that Mr Lee's scope of work for Datuk Lim and CBL only confined to as such, and that he did not play the added role of being Datuk Lim's legal advisor and representative.[124] However, in my judgment, this aspect of Mr Tan's evidence does *not* weaken FEM's case – indeed, the role of translator

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119 DBOD at p 1067.

120 DBOD at p 1070.

121 NE dated 28 October 2022 at p 45 lines 12–19.

122 NE dated 28 October 2022 at p 45 lines 23–25.

123 NE dated 16 February 2023 at p 21 lines 11–25; p 22 lines 1–6.

124 PCS at para 232.

and the messenger is not inconsistent with the more substantial role that Mr Lee can play (and did play) as Datuk Lim's legal advisor and representative. Moreover, from the preceding paragraph, it is clear that Mr Tan went further to testify that Mr Lee played the additional role of being the "representative of Datuk, sitting in place of Datuk". As such, I find that Mr Tan's evidence confirms that Mr Lee was the legal advisor and representative of Datuk Lim, which in turn lends support to FEM's case that he could not, at the same time, be reasonably regarded by Mr Hong and Mr Aljunied as being FEM's introducer and arranger due to the clear position of conflict that Mr Lee would be in.

96 To conclude, considering the totality of the evidence before me, I am satisfied that Mr Hong and Mr Aljunied of FEM did not know that Mr Lee was the beneficial owner of Axis when FEM entered into the Engagement Letter on 16 August 2016.

(3) Axis has not shown that Mr Hong and Mr Aljunied should have enquired as to Axis's beneficial ownership

97 Having assessed the evidence above, I turn to Axis's main argument in support of its position, which is that since Mr Hong and Mr Aljunied were experienced directors, they *should have* enquired as to the beneficial ownership of Axis. I reject this contention for the following reasons.

98 First, even if Mr Hong and Mr Aljunied had made the relevant enquiries, they would not have been able to find out that Mr Lee was the beneficial owner of Axis. This is because Mr Lee had asked Ms Ee and Mr Goh to take over Axis on his behalf. Thus, even if Mr Hong and Mr Aljunied had conducted checks on Axis, they would not have known that Mr Lee was connected with Axis. Indeed, Ms Chong acknowledged this during cross-examination, when she agreed that

"even if an SSM [*ie*, Companies Commission of Malaysia] search was done, Mr Aljunied and Mr Hong would not be able to see or know that Mr Lee Kien Han was the beneficial owner of Axis".[125] Moreover, as Mr Lee only became a director of Axis at 3 July 2018,[126] an SSM search done before or at the time of the signing of the Engagement Letter on 16 August 2016 would not indicated any connection between Axis and Mr Lee.

99 Second, and more fundamentally, as I explained above, because FEM has successfully shifted the tactical burden on Axis to refute the unfavourable evidence raised against it, Axis now has to discharge this tactical burden. In my view, Axis has not discharged this burden by, in essence, repeating that Mr Hong and Mr Aljunied *ought to* have checked on Axis's beneficial ownership. Indeed, while I accept that Mr Hong and Mr Aljunied are experienced directors, it is entirely plausible that they simply delegated the Transaction to Mr Lim to handle and trusted him to see that Axis would facilitate the Transaction sufficiently well. Furthermore, Axis has not explained away all of the problems which FEM has pointed out, including the various instances where the documentary evidence is clearly adverse to Axis's case.

100 Third, I also draw an adverse inference against Axis for not calling Datuk Lim as a witness in the discharge of its evidential burden. In this regard, pursuant to s 116 of the Evidence Act 1893 (2020 Rev Ed), the court can presume against a party who withholds evidence that the withheld evidence would be unfavourable to that party. Indeed, the Court of Appeal in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 held as follows (at [20]):

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125 NE dated 28 February 2023 p 49 at line 25; p 50 at lines 1–4.

126 10 AB 8920.

> …
>
> (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.
>
> (d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

101 I draw an adverse inference against Axis for not calling Datuk Lim as a witness because Datuk Lim is clearly a key person who would have been able to provide evidence on whether Mr Lee acted as his legal advisor and representative in the Transaction (see [94] above). Depending on whether this question is answered affirmatively, this would in turn be relevant to the question of whether Mr Hong and Mr Aljunied could have reasonably known (and accepted) that Mr Lee was the beneficial owner of Axis despite being in a position of conflict between FEM's interests on the one hand, and CBL's or Datuk Lim's interests on the other. While Mr Lee explained that Axis did not call Datuk Lim as a witness because he (Mr Lee) did not want to trouble his client to give evidence at trial,[127] this is not a credible explanation. Indeed, it is not Mr Lee's position that Datuk Lim was somehow unavailable or even unwilling to give evidence at trial. Mr Lee had simply assumed this without asking. As such, I infer that Datuk Lim would have given evidence contrary to Axis's case, likely that Mr Lee had conducted himself as CBL's or Datuk Lim's lawyer and representative throughout the Transaction.

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127 NE dated 25 October 2022 at p 21 line 25; p 22 lines 1–7.

102 For all of these reasons, I find that FEM has discharged its burden of showing that it did not know that Mr Lee was the beneficial owner of FEM. In other words, I find that FEM did not know that Mr Lee was the beneficial owner of FEM at the time it entered into the Engagement Letter.

103 It next remains to be considered what the legal effect of this factual outcome is.

The legal effect of FEM not knowing that Mr Lee was the beneficial owner of Axis

104 In this regard, FEM pleads several defences, which correspond with the legal effect of FEM not knowing that Mr Lee was the beneficial owner of Axis at the time it entered into the Engagement Letter. These defences are: (a) unilateral mistake, (b) misrepresentation, and (c) illegality. FEM also mounts a counterclaim founded on (a) conspiracy and (b) misrepresentation.

(1) Unilateral mistake

105 Turning first to FEM's pleaded defence of unilateral mistake, I find that the Engagement Letter should be declared void due to a unilateral mistake at common law on FEM's part as to the beneficial ownership of Axis.

(A) THE APPLICABLE LAW

106 The applicable law in this regard is not controversial. The Court of Appeal in *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20 had summarised the applicable law as follows at [80]:

> In essence, one party must have transacted while operating under a mistake as to a fundamental term of the contract (see *Digilandmall.com* at [34] and [80]). …

> (a) For unilateral mistake at common law, the non-mistaken party must have had actual knowledge of the mistaken party's mistake, and if this is established, the contract will be rendered void.
>
> (b) For unilateral mistake in equity, the non-mistaken party must have had at least constructive knowledge of the mistaken party's mistake and must have engaged in some unconscionable conduct in relation to that mistake, and if this is established, the contract will be voidable.
>
> [emphasis in original omitted]

107 More specifically, in circumstances where the mistake concerns the identity of the person with whom one is contracting, the Court of Appeal stated in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") that it cannot then be said that a contract was ever concluded between the parties for there was never at any time a meeting of the minds. In that case, the plaintiff, a shipbrokering firm, was approached by a company, Dalzavod, to buy or to find a buyer for its (Dalzavod's) floating dock. The plaintiff intended to purchase the floating dock directly from Dalzavod and then resell this at a profit to the defendant. The plaintiff therefore entered into a first agreement with Dalzavod. The defendant only came to know of the plaintiff's role when the plaintiff faxed the defendant a second agreement in relation to the purchase. Later, Dalzavod informed the defendant that its first agreement with the plaintiff had lapsed for certain non-fulfilment of terms by the plaintiff. Dalzavod thereafter entered into an agreement directly with the defendant for the sale and purchase of its floating dock, thus bypassing the plaintiff entirely. The plaintiff sued the defendant for breach of the purported second agreement.

108 On appeal, the Court of Appeal in *Tribune Investment* decided that there was no consensus *ad idem* between the parties. Applying the principle in the seminal House of Lords decision of *Cundy v Lindsay* (1878) 3 App Cas 459,

Yong Pung How CJ held that there had been no contract between the plaintiff and the defendant. While Yong CJ recognised that the plaintiff had intended to contract with the defendant, the fact was that the defendant only intended to contract with another party. Yong CJ therefore approved and summarised the applicable principle in such cases of mistaken identity as follows (see *Tribune Investment* at [47]):

> … To summarise, the principle espoused in that case is simply that a person cannot make another a contracting party with himself, when he knows or ought to know that the other intends to contract not with him but with another.

109 In the final analysis, the true basis of *Tribune Investment* rests on the *party* which the mistaken party *intended* to deal with (see Andrew Phang and Goh Yihan, *Contract Law in Singapore* (Wolters Kluwer, 2nd Ed, 2022) at para 456). As such, the decision in *Tribune Investment* does not strictly rest on the distinction between *inter praesentes* and non-*inter praesentes* cases. It should, however, be noted that where a party enters into a contract with a *non-existent entity*, then it will generally be held by the courts that that party has contracted with *the writer of the correspondence* and that there would therefore *not* be an operative mistake as such (see the English Court of Appeal decision of *King's Norton Metal Co (Ltd) v Edridge, Merrett, and Co (Ltd)* (1897) 14 TLR 98).

(B) APPLICATION TO THE FACTS

110 Applied to the present facts, I conclude that the Engagement Letter should be declared void on the ground of unilateral mistake at common law by FEM as to the party it was contracting with.

111 Reduced to its essence, FEM and Axis were not *ad idem* as to the party that FEM was contracting with. First, while FEM contracted with Axis and there

was no mistake in the sense that Axis was the *identified entity* that FEM intended to contract with, there was a mistake as to the *characteristics* of that entity. In this regard, I agree with FEM that its intention was to contract with an independent third party who would be able to assist FEM to complete the Transaction. As I have explained above, it would not make commercial sense for FEM to engage Mr Lee as its arranger for the Transaction since Mr Lee would clearly be in a position of conflict. This is given Mr Lee's capacity as CBL's or Datuk Lim's lawyer, a capacity that he continued to hold throughout the course of the Transaction. Thus, I find that FEM was unilaterally mistaken as to the characteristics of Axis. I further find that this was a mistake as to a fundamental term of the contract in the sense that Mr Hong and Mr Aljunied would not have caused FEM to enter into the Engagement Letter had they known that Mr Lee was the beneficial owner of Axis. This is because Mr Lee was clearly in a position of conflict vis-à-vis FEM on the one hand, and Datuk Lim and CBL on the other. While it is true that Mr Lee would have wanted the Transaction to succeed, which would have been to the mutual benefit of both FEM and CBL, the issue is *how* the Transaction was to be structured, and if it was ultimately more favourable to FEM or CBL.

112 Second, it is clear that Axis, through Mr Lee, would have been well aware of FEM's mistake. In this regard, Mr Lee is an experienced lawyer who would surely have known from 12 July 2016 that FEM would not have appointed him as FEM's arranger given the position of conflict of interest that he would be placed in. Indeed, Mr Lee's conduct throughout the Transaction, which was designed to create the impression that he continued to act solely as CBL's or Datuk Lim's lawyer, showed that he had, at the very least, constructive knowledge of FEM's mistake. But I go further and find that Mr Lee had actual knowledge of this mistake and omitted to rectify the situation.

113 Accordingly, I find that the Engagement Letter should be declared void for unilateral mistake at common law. The result is that the law deems that no valid Engagement Letter was entered into, such that Axis's contractual claim premised on the Engagement Letter must be dismissed.

(2) Misrepresentation and illegality

114 It follows that, for the specific purpose of determining Axis's claim, it is sufficient for me to conclude that FEM succeeds on its defence of unilateral mistake. It is not necessary for me to consider if the Engagement Letter should also be unenforceable for illegality. It is also not necessary for me to consider FEM's defence of misrepresentation for this purpose, although I will deal with it subsequently in the context of FEM's counterclaim against Mr Lee, Ms Chong, and Axis.

In any event, the Services under the Engagement Letter were not performed

115 In any event, even if I did not find that the Engagement Letter should be declared void by virtue of a unilateral mistake at common law on the part of FEM, I would have found that the Services within were not performed by Axis.

116 To begin with, as a matter of interpretation, I find that, on a plain reading of the Engagement Letter, the Arranger Fee is payable not only upon the completion of the Transaction but also upon the completion of the *entirety* of the Scope of Work prescribed as follows:[128]

> **Scope of Work**
>
> A) Introduce you to the ListCo.
>
> B) Act as liaison partly between the ListCo and you.

[128] 2 AB 1531.

> C) Assist you in the preparation and presentation of the Proposed Transaction to the ListCo.
>
> D) Assist all parties in the negotiation and finalization of the terms and conditions of the Proposed Transaction.

117 In this regard, clause 1 of the Engagement Letter provides that the Arranger Fee shall be paid to Axis "upon completion of the Proposed Transaction" and that "No Consideration shall be payable [Axis] [*sic*] in the event the Proposed Transaction is not completed for any reason whatsoever".[129] In my view, it must be contemplated within clause 1 that there must be a causal connection between the Services outlined in the "scope of work" and the completion of the Transaction. This is for at least two reasons. First, "Scope of Work" is defined immediately before clause 1, which suggests that the payment of the Arranger Fee in clause 1 is dependent on the completion of the Services outlined. Second, clause 1 provides that the Arranger Fee is not payable if the Transaction is not completed. This must contemplate that Axis must work towards the completion of the Transaction. Indeed, it does not make commercial sense for FEM to be liable to pay Axis the Arranger Fee if the Transaction is completed but not through the efforts of Axis in providing the Services.

118 With this interpretation in mind, Axis's case fails for the simple reason that Mr Lee could not have been acting as a representative of Axis at the dinner on 20 July 2016. The documentary records clearly show that Mr Lee's nominees, Ms Ee and Mr Goh, had yet to take over Axis on 20 July 2016. This was also recognised by Mr Lee himself in his answers to the interrogatories issued by FEM dated 28 December 2021, in which he confirmed that he was only appointed as a representative of Axis on or around 22 July 2016. As such, the fact is that Axis did not introduce FEM to CBL on 20 July 2016 because by

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129 2 AB 1531.

that time, Mr Lee had not become connected with Axis. Moreover, Axis also could not have provided the other Services in the lead-up to the Transaction. This is because Mr Lee was acting in the conflicting roles of Datuk Lim's or CBL's lawyer and (supposedly) FEM's arranger through his beneficial ownership of Axis.

119 Accordingly, Axis's claim also fails because it simply did not render the Services provided under the Engagement Letter.

FEM's counterclaims against Mr Lee, Ms Chong, and Axis

120 I turn now to FEM's counterclaim against Mr Lee, Ms Chong, and Axis. In brief, FEM's counterclaim proceeds along two causes of action, namely, (a) unlawful and lawful means conspiracy and (b) fraudulent and/or negligent misrepresentation.

121 It is important to note that the consequence that FEM seeks from its counterclaim, via either cause of action, is largely the same. This is that FEM wishes to *reverse* the effects of the Engagement Letter, either by (a) rescinding it, or, (b) in the event that it is made to perform the terms of the Engagement Letter, to be compensated by damages equivalent to the Arranger Fee it would have paid over pursuant to the Letter, and costs of S$10,210 which FEM incurred to investigate the alleged conspiracy. Thus, apart from the comparatively minor sum (relative to the Arranger Fee) of S$10,210, the main outcome that FEM wishes to obtain from its counterclaim is really to avoid the payment of the Arranger Fee pursuant to the Engagement Letter.

122 With this background in mind, I turn to consider FEM's counterclaim against Mr Lee, Ms Chong, and Axis in (a) misrepresentation and (b) conspiracy.

The defendants in counterclaim, except for Ms Chong, misrepresented by their conduct or silence as to the beneficial ownership of Axis

(1) Misrepresentation

(A) THE APPLICABLE LAW

123 In general, a misrepresentation, simply put, is a false representation of past or existing fact which materially induces the innocent party to enter into the contract in reliance on it. Regardless of the type of misrepresentation, the common elements which must be satisfied were set out by Lai Siu Chiu J (as she then was) in the High Court decision of *Rahmatullah s/o Oli Mohamed v Rohayaton binte Rohani and Others* [2002] SGHC 222, as follows at [73]:

> It is trite law that for a misrepresentation to be actionable, the following conditions must be satisfied:
>
> (i) a representation was made by one party;
>
> (ii) the representation was acted on by an innocent party;
>
> (iii) the innocent party suffered detriment as a result.
>
> …

Furthermore, in as much as fraudulent misrepresentation is concerned, it must additionally be proved that "the representation must be made with the knowledge that it is false; it must be wilfully false, or at least made in the absence of genuine belief that it is true" (see the Court of Appeal decision of *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]).

124 In the present case, there are two specific issues of law that need to be addressed. The first is whether mere silence can ever amount to an operative misrepresentation. In this regard, the Court of Appeal explained in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley*")

that the law has always been cautious in ascribing legal significance to a party's silence. This is because "silence, being passive conduct, and inherently lacking the definitive quality of an active statement, is rarely considered sufficient to amount to a representation" (see *Broadley* at [28]). However, as the Court of Appeal in *Broadley* explained, silence can amount to a misrepresentation if there is a duty on the alleged representor to speak or disclose certain facts to the representee. Such a duty may arise out of the parties' relationship, or other circumstances if a reasonable person would view the silence as being improper in the circumstances. Furthermore, the High Court in *Liu Tsu Kun and another v Tan Eu Jin and others* [2017] SGHC 241 has also stated at [24] that silence can also constitute a representation if it is "part of a factual matrix that includes the defendant making some positive statement or representation, but the silence consists in omitting to mention material facts within that statement or representation". Ultimately, the court must closely scrutinise the facts to determine that a duty to disclose has arisen.

125 The second issue of law is whether it matters that the alleged representees in this case (*ie*, Mr Hong and Mr Aljunied of FEM) did not take steps to ascertain the true ownership of Axis. The answer is that so long as reliance on the false representation is proven, it does *not* matter that the representee was *negligent* in not verifying the representation, notwithstanding the availability of materials for verification (see the English Court of Appeal decision of *Redgrave v Hurd* (1881) 20 Ch D 1). However, if it can be shown that the representee relied on his own independently acquired information and/or verification and did *not*, in *any* way, rely upon the misrepresentation, the element of inducement would be lacking, and there would thus be *no* operative misrepresentation, as was the case in the House of Lords decision of *Attwood v Small* (1838) 6 Cl & Fin 232 ("*Attwood*"). The Court of Appeal endorsed these

principles in *Jurong Town Corp v Wishing Star Ltd* [2005] 3 SLR(R) 283. The court declined to read *Attwood* as standing for the broad proposition that if the representee had the chance to ascertain the falsity of the representations, but failed to do so, then there would be no inducement. Indeed, the court observed that it would not be logical to penalise a party who chose to act carefully but failed to find out the falsity of the representation (at [113]).

(B) APPLICATION TO THE FACTS

126 Applying these principles to the present case, I find that Mr Lim, Mr Lee, and Axis made a fraudulent misrepresentation to FEM. Although FEM has discontinued its counterclaim against Mr Lim, a finding here as to Mr Lim's fraudulent misrepresentation to FEM is relevant to my separate finding that Mr Lim breached his fiduciary duties to FEM (at [50] above). As such, while I will confine my subsequent discussion on liability at [127]–[131] to Mr Lee and Axis, Mr Lim should also be taken to be responsible for the facts described therein.

127 Turning now to the elements of fraudulent misrepresentation, I first find, in light of my findings above, that Mr Lee and Axis did not inform Mr Hong and Mr Aljunied that Mr Lee was the beneficial owner of Axis, despite knowing that this would be material to the Engagement Letter.

128 Second, it is clear that FEM relied on this misrepresentation and entered into the Engagement Letter. I accept that FEM would not have entered into the said Letter had it known that Mr Lee was behind Axis, for that would place Mr Lee in a position of conflict between the interests of CBL and Datuk Lim on the one hand, and FEM on the other hand.

129 On this point, it is immaterial that Mr Hong and Mr Aljunied could have taken steps to verify the true ownership of Axis but did not. Even if Mr Hong and Mr Aljunied had taken steps to verify the true ownership of Axis, they would not have realised that Mr Lee was the true beneficial owner. As I explained above at [98], this is because Mr Lee had arranged matters such that Mr Hong and Mr Aljunied would never have realised that Mr Lee was the beneficial owner of Axis before FEM entered into the Engagement Letter with Axis.

130 Third, given that Mr Lee and Axis maintained their silence despite knowing it to convey a falsity, I find that this misrepresentation was made fraudulently. Indeed, this is precisely the type of situation contemplated by the High Court in *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 when it stated at [66] that fraudulent misrepresentation by silence involves "a *wilful suppression* of material and important facts thereby rendering the statements untrue" [emphasis added].

131 The result is that I find Mr Lee and Axis liable for fraudulent misrepresentation. FEM is entitled to rescind the underlying agreement (*ie*, the Engagement Letter) and to claim damages. As I have earlier found that the Engagement Letter should be declared void on the basis of unilateral mistake at common law, the additional result of my finding here is that Mr Lee and Axis are liable to compensate FEM for the costs which it incurred as part of investigations, which amounts to S$10,210,[130] on a joint and several basis.

132 Turning now to Ms Chong, I do not, however, find her liable for misrepresentation. First, I do not think that Ms Chong's silence amounts to an

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130 DBOD at p 2337.

actionable representation. More specifically, in assessing whether a duty to speak arose, the context of each case is paramount. In the present case, unlike Mr Lim who had extensive powers, including the power to reach out and communicate with external parties and to negotiate or discuss the terms of FEM's engagement with such parties,[131] Ms Chong's role in FEM was only that of a salaried employee who was only involved in the Transaction to a limited extent. Indeed, it is telling that FEM does not dispute that Ms Chong's role was to "assist [Mr Lim] with documentation, records and paperwork required for the proposed listing exercise of FEM and/or its mining subsidiary and perform day to day operations for FEM and other ad hoc assignments as required".[132] In so far as the alleged Scheme is concerned, Mr Aljunied also conceded during cross-examination that Ms Chong was not a party to the negotiations between Mr Lim, Mr Lee, and Mr Khor.[133] Even if she knew that Mr Lee was the beneficial owner of Axis, she would have not fully appreciated the importance of this fact and its significance to the Transaction. Accordingly, I do not find that a duty to speak on her part arose – the result of which is that Ms Chong's silence does not amount to an actionable representation for which she can be held liable.

The defendants in counterclaim did not engage in a conspiracy to cause damage or injury to FEM

133 Given that FEM would have achieved the very aim it seeks by successfully establishing misrepresentation, it is not necessary for me to deal with their counterclaim in conspiracy (whether by lawful or unlawful means) in

131 NE dated 17 February 2023 at p 14 lines 13–21.

132 Chong Wan Ling's AEIC at para 13.

133 NE dated 21 February 2023 at p 98 lines 2–5.

any great detail. In brief, however, I do not find that FEM succeeds in showing conspiracy, whether by unlawful or unlawful means.

134 To begin with, the following elements must be proved in a claim for unlawful means conspiracy: (a) two or more persons combined to do certain acts; (b) the conspirators intended to cause damage or injury to the claimant by those acts; (c) the acts were unlawful (including intentional acts that are tortious); (d) the acts were performed in furtherance of the agreement; and (e) the acts caused loss (see the Court of Appeal decision of *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]).

135 Specifically, in relation to the element of intention to cause damage or injur*y* in the tort of unlawful means conspiracy (*ie*, element (b) above), FEM would have to show that the unlawful means and the conspiracy were "targeted or directed" at FEM. This means that damage or injury to the claimant must be intended as either a means to an end or an end in itself. It is not sufficient that harm to FEM would be a likely, or probably or even inevitable consequence of the alleged conspirators' conduct. Lesser states of mind, such as an appreciation that a course of conduct would inevitably harm FEM, would also "not amount to an intention to injure, although it may be a factor supporting an inference of intention on the factual circumstances of the case" (see *EFT Holdings* at [101]).

136 Applying these principles, I find that FEM's claim in unlawful means conspiracy fails because Mr Lee and Axis, along with the other alleged conspirators, did not intend to cause damage or injury to FEM. FEM has pleaded in this regard that the alleged conspirators intended to cause loss and damage to FEM by procuring the Arranger Fee even though Axis would not render any of the Services to FEM, as Mr Lee would have in any case done the work as the

legal advisor and representative of CBL and Datuk Lim.[134] However, even if this were the intention, damage or injury to FEM was not intended as the means of procuring the Arranger Fee, neither was it an end in itself. This at best amounts to an appreciation that a course of conduct would inevitably harm FEM, which is insufficient to establish the existence of a conspiracy by unlawful means targeted or directed at FEM.

137 Similarly, I also find that FEM's claim in *lawful* means conspiracy is not made out. In contrast to the requirement in *unlawful* means conspiracy that a defendant must have an intention to cause damage or injury, the requisite mental state in lawful means conspiracy is higher – that the *predominant* purpose of the alleged conspirators must be to cause damage or injury to the plaintiff (see the High Court decision of *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [23(b)]). As I have found above that the alleged conspirators had no intention to cause damage or injury to FEM *at all*, it follows that the higher requisite mental state in respect of lawful means conspiracy is not satisfied as well.

138 Accordingly, I find that the claims by FEM in lawful and unlawful means conspiracy are not made out.

FEM's counterclaims against Ms Chong specifically

139 I turn finally to FEM's counterclaim against Ms Chong specifically, for (a) breach of her fiduciary duties to FEM, and breach of the express and implied terms of their contracts of employment with FEM; and (b) dishonest assistance on the part of Ms Chong in assisting Mr Lim in breaching his duties to FEM

134 Defence & Counterclaim at para 23.3.

and/or the terms of his contract of employment with FEM. I dismiss both claims for the following reasons.

Ms Chong did not breach any of her duties to FEM

140 First, I do not find that Ms Chong has breached any of her duties to FEM, whether of a fiduciary or contractual nature. For one, I do not find that Ms Chong can be said to have breached any fiduciary duties, as I do not think that she was in a fiduciary relationship with FEM to begin with. To reiterate what I explained earlier at [48], the test for finding a fiduciary relationship is whether the putative fiduciary voluntarily placed himself in a position where the law can objectively impute an intention on his or her part to undertake fiduciary duties. In ascertaining whether this test is met, the court must broadly examine and evaluate the specific nature of the role played by the putative fiduciary, including the extent to which the putative fiduciary may exercise discretion which affects the position of the supposed principal and the degree of vulnerability to which the supposed principal is subject.

141 In the present case, I do not think that a fiduciary relationship arose between Ms Chong and FEM. Indeed, as I have mentioned, Ms Chong's responsibilities in FEM were limited to those of an administrative nature and she was not a party to the negotiations. Unlike Mr Lim (see [49] above), she also did not have the same broad powers to contract as an agent for FEM. Therefore, it can hardly be said that she had any discretionary power to exercise which could have affected the position of FEM, or that FEM was vulnerable to her exercise of power. As such, I do not find that Ms Chong was a fiduciary for FEM and, for this reason, FEM's claim against her for breach of fiduciary duties fails.

142 Turning now to FEM's claims against her for breach of her contractual duties, FEM argues that Ms Chong breached the terms of FEM's human resource policy,[135] which is referenced in Ms Chong's employment contract with FEM at cl 3(e) of her letter of appointment.[136] The human resource policy provides in cl 5.7.1.1 that employees shall "[c]onduct themselves honestly and act in good faith, so as not to bring discredit to FEM or themselves", and in cl 5.7.1.3 that employees shall "[n]ot, directly or indirectly, participate in payment or receipt of funds or assets for any unlawful or unethical purpose (e.g., influencing customers, personal gain, encouraging improper conduct, influencing legislation, etc.)".

143 However, I do not find that the terms of FEM's human resource policy are incorporated into Ms Chong's employment contract with FEM. Fundamentally, I have doubts about the authenticity of that human resource policy. While the policy document is dated "01 January 2015" on the first page,[137] the address at the bottom of the last page states "50, Armenian Street #03-04 Singapore 179938".[138] Yet, a business profile search with the Accounting and Corporate Regulatory Authority on 8 June 2021 revealed that FEM only moved to the address at 50 Armenian Street on 7 November 2018, more than three years after the date of 1 January 2015 that is stated in the human resource policy. Therefore, the document that was provided by FEM could not have existed on 1 January 2015. Moreover, Mr Lim[139] and Mr Aljunied[140] both

135 DBOD at pp 33–42.

136 DBOD at p 84.

137 DBOD at p 33.

138 DBOD at p 42.

139 NE dated 20 October 2023 at p 85 lines 7–8.

140 NE dated 21 February 2023 at p 96 lines 2–4.

testified that there was no evidence that the human resource policy was ever made available to Ms Chong. Therefore, I do not think that Ms Chong was contractually bound by the purported terms of FEM's human resource policy.

144 In any event, even if I were to find that Ms Chong had an implied duty in contract to act honestly and in the best interests of FEM, I am of the view that she has not breached that duty. Given her limited administrative role in the Transaction, she would not have reasonably appreciated why it mattered that Mr Lee was the beneficial owner of Axis (see [132] above). Indeed, as Mr Hong acknowledged during cross-examination, Ms Chong was reliant on Mr Lim to provide her with an update on what had happened during the meeting on 20 July 2016.[141] Specifically, Mr Lim had informed her that he had told Mr Hong and Mr Aljunied that there would be an arranger fee payable to Mr Lee.[142] It thus cannot be said that she acted dishonestly by not informing Mr Hong and Mr Aljunied of Mr Lee's beneficial ownership of Axis even if she knew of it, since, to her mind, Mr Hong and Mr Aljunied would have already known of it. Moreover, given her limited job scope and appreciation of the significance of Axis's beneficial ownership, I also do not find that she breached any duty to act with reasonable diligence in not informing Mr Hong and Mr Aljunied of the matter.

Ms Chong did not dishonestly assist Mr Lim's breach of fiduciary duty

145 Second, I find that Ms Chong did not dishonestly assist Mr Lim in his breach of fiduciary duty. In this regard, the elements of a claim in dishonest assistance are: (a) the existence of a trust or fiduciary duty; (b) breach of trust

141 NE dated 20 October 2022 at p 127 lines 13–16.

142 NE dated 20 October 2022 at p 128 lines 13–21.

or fiduciary duty; (c) assistance rendered by the third party towards the breach; and (d) a finding that the assistance rendered by the third party was dishonest (see the Court of Appeal decision of *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*Ho Chi Kwong*") at [20]).

146 In my judgment, FEM's claim against Ms Chong in dishonest assistance fails because the element of dishonesty (*ie*, element (d) above) is not satisfied. As regards this element, a dishonest assistant "must have such knowledge of the irregular shortcomings of the transaction that ordinary honest people would consider it to be a breach of standards of honest conduct if he failed to adequately query them" (see *Ho Chi Kwong* at [22]). For the same reasons stated in [144] above, I do not think that Ms Chong had such knowledge that would have put her on inquiry.

147 Ultimately, it leaves me to observe that Ms Chong had nothing to gain from procuring FEM to enter into the Engagement Letter. It is slightly curious that she was even brought into the entire matter to begin with.

Conclusion

148 In the premises, I dismiss Axis's claim against FEM. I find in favour of FEM in regard to its counterclaim premised on misrepresentation against Mr Lee and Axis, and award it S$10,210 in damages. However, the outcome is the same: FEM is not bound to the terms of the Engagement Letter and is consequently not liable to pay the Arranger Fee to Axis.

149 I dismiss all of FEM's claims against Ms Chong.

150 In closing, I thank all counsel for their able assistance in this matter. Unless they are able to agree, the parties are to make submissions on costs within 14 days of this decision, limited to 10 pages each.

Goh Yihan
Judicial Commissioner

Koong Len Sheng and Daniel Yeap Zhu Chuean (David Lim & Partners LLP) for the plaintiff and first and fourth defendants in counterclaim;
Koh Swee Yen SC, Chng Zi Zhao Joel, Felicia Soong Wanyi and G Kiran (WongPartnership LLP) for the defendant and plaintiff in counterclaim;
Luo Ling Ling, Noor Heeqmah Binte Wahianuar, Sharifah Nabilah Binte Syed Omar and Joshua Ho Jin Le (Luo Ling Ling LLC) for the third defendant in counterclaim.