IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 120

Suit No 672 of 2013

Between

(1) Beyonics Technology Ltd
(2) Beyonics International Pte Ltd

… *Plaintiffs*

And

(1) Goh Chan Peng
(2) Lee Bee Lan
(3) Wyser International Ltd
(4) Wyser Capital Ltd

… *Defendants*

JUDGMENT

[Equity] — [Fiduciary relationships] — [Duties]

[Equity] — [Remedies] — [Equitable compensation] — [Causation]

[Tort] — [Conspiracy]

[Trusts] — [Accessory liability]

TABLE OF CONTENTS

Beyonics Technology Ltd and another
v
Goh Chan Peng and others

[2016] SGHC 120

High Court — Suit No 672 of 2013
Hoo Sheau Peng JC
18–21, 25–28 August; 1–4, 8–10, 14–17 September; 9, 11 November; 23 December 2015

28 June 2016 Judgment reserved.

Hoo Sheau Peng JC:

Introduction

1 The first defendant, Mr Goh Chan Peng ("Mr Goh"), was a former director and chief executive officer ("CEO") of the plaintiffs ("the Plaintiffs"). The Plaintiffs allege that Mr Goh had breached various duties owed to them and further engaged in a conspiracy with the third defendant, Wyser International Limited ("Wyser International"), and a competitor to injure the Plaintiffs. Mr Goh's wrongdoing purportedly resulted in the diversion of certain business with a customer to the competitor and culminated in the loss of the entire business with the customer. For the role Mr Goh played, he allegedly received two payments from the competitor via Wyser International, which dishonestly assisted in Mr Goh's breach of duties. The First Plaintiff's claims relate to the loss of the customer's business (in part and in whole) and

the two payments made. Separately, the Second Plaintiff claims against Mr Goh for unjustified expenses and salary.

2 In response, the defendants ("the Defendants") deny that Mr Goh was in breach of duties and maintain that he acted in the best interests of the Plaintiffs at all times. While Mr Goh does not deny that he received payments from the competitor, he claims that they were for consultancy services provided to the competitor. Further, there was no conspiracy between Mr Goh, Wyser International and others to injure the Plaintiffs. Wyser International did not dishonestly assist in the breach of his duties. The loss of the customer's business, in whole or in part, was not caused by them. Finally, the expenses and salary were justified.

3 The trial dealt with both liability and quantum. It was heard over 19 days in August and September 2015, with written submissions filed in November and December 2015. I now deliver my judgment.

Background Facts

Parties, entities and persons

4 To begin, I set out the background facts of this case. The first plaintiff, Beyonics Technology Ltd ("the First Plaintiff"), is a company incorporated in Singapore on 9 November 1994. It was listed on the Singapore Stock Exchange on 30 August 1995. In February 2012, Channelview Investments Ltd ("Channelview"), a company incorporated in the British Virgin Islands, completed its acquisition of the First Plaintiff and became its sole shareholder. The First Plaintiff was delisted on 15 February 2012.

5 The First Plaintiff has wholly owned subsidiaries in many countries. The second plaintiff, Beyonics International Pte Ltd ("the Second Plaintiff"), is one such subsidiary. Collectively, the First Plaintiff and its subsidiaries shall be referred to as the "Beyonics Group". The Beyonics Group is engaged in a variety of businesses. In particular, its precision engineering division ("PE Division") manufactures (*inter alia*) baseplates, which are key components of hard disk drives ("HDDs"). The PE Division comprises the following subsidiaries:

(a) Beyonics Precision Engineering Pte Ltd, which is incorporated in Singapore;

(b) Beyonics Precision Machining Sdn Bhd ("BPM"), which is incorporated in Malaysia, and runs a plant in Tampoi, Johor Bahru, Malaysia;

(c) Wealth Preview Sdn Bhd ("Wealth Preview"), which is incorporated in Malaysia;

(d) Beyonics Technology (Thailand) Co Ltd ("BTT"), which is incorporated in and ran a plant in Thailand;

(e) Beyonics Technology Electronic (Changshu) Co Ltd ("BTEC") which is incorporated in China and runs a plant in Changshu, Suzhou, China; and

(f) Beyonics Asia Pacific Limited ("BAP"), which is incorporated in Mauritius.

6 While there are four defendants in this suit, substantively, the action is against Mr Goh and Wyser International. From 1 May 2000, Mr Goh was the

director and CEO of the Plaintiffs, as well as the CEO of the Beyonics Group. He resigned on 9 January 2013. Wyser International and the fourth defendant, Wyser Capital Limited ("Wyser Capital"), are companies incorporated in the British Virgin Islands. The companies are beneficially owned and controlled by Mr Goh. There is no substantive case against Wyser Capital. Nor is there any substantive claim against the second defendant, Mdm Lee Bee Lan ("Mdm Lee"), who is Mr Goh's wife. They were sued mainly for the purpose of a Mareva injunction application filed earlier by the Plaintiffs. I shall make no further mention of Mdm Lee and Wyser Capital in the judgment.

7 It is also necessary to introduce the "competitor" of the Beyonics Group mentioned in [1]. Nedec Co Ltd ("NEDEC") and Kodec Co Ltd ("KODEC") are both companies incorporated in South Korea. Together with other associated companies, they shall be referred to as the "NEDEC/KODEC Group". The NEDEC/KODEC Group is also involved in the precision engineering business, including the manufacturing of baseplates for HDDs. In particular, one of its entities, Langfang NEDEC Machinery & Electronics Co Ltd ("LND"), has a baseplate manufacturing facility located in Hebei, China. Mr Tae Sung Lee ("Mr Tony Lee") is the chief financial officer ("CFO") and managing director of the NEDEC/KODEC Group, while Mr Hwang Sejoon ("Mr Stephen Hwang") is the CEO of the same.

8 The "customer" of the Beyonics Group described in [1] is Seagate Technology International ("Seagate"), one of the largest manufacturers of HDDs, and a key customer that purchased baseplates from the PE Division of the Beyonics Group. Mr Billy Chua is the Senior Manager of the Asia Commodity Management Team at Seagate. He was the main point of contact with the Beyonics Group and the NEDEC/KODEC Group at the relevant time.

Key events

Manufacturing of baseplates for Seagate

9 I now set out the key events relevant to the present suit. From about 1987, Seagate began purchasing baseplates from the Beyonics Group. When Channelview was in the process of acquiring the First Plaintiff in early October 2011, Seagate remained an important customer of the First Plaintiff.

10 At this juncture, I briefly explain the process of manufacturing baseplates for Seagate. Broadly speaking, this can be divided into two main stages: the "First Stage Work" and the "Second Stage Work". The First Stage Work involves processes such as die-casting, and ends with e-coating so as to produce "e-coated baseplates". The Second Stage Work involves, among other things, precision machining and other works on the e-coated baseplates leading to the production of the "finished baseplates" supplied to Seagate.

11 Seagate baseplates are produced under various programmes, each having its own specifications. To be able to supply baseplates to Seagate for a particular programme, a supplier must undergo a qualification process. Over the years, the Beyonics Group has achieved qualification to perform both the First and Second Stage Work for numerous Seagate baseplate programmes, and supplied finished baseplates to Seagate. A programme known as "Brinks 2H" is the programme at the centre of the case.

Floods in Thailand and the aftermath

12 In October 2011, a major disruption to the global HDD business occurred. Severe floods in Thailand caused serious destruction to the facilities of many HDD manufacturers and component suppliers. BTT's factory, the

Beyonics Group's baseplate manufacturing facility in Thailand (see [5(d)]), was not spared and had to be shut down.

13 After the disaster, Seagate was anxious to secure capacity from the HDD component suppliers to supply baseplates for its HDDs. It reached out to its suppliers to assist. What transpired among Seagate, the Beyonics Group and the NEDEC/KODEC Group in the aftermath of the Thailand floods is heavily disputed, especially in relation to Mr Goh's role from October 2011 to 24 November 2011. I shall return to these disputes in due course.

The B–N Alliance

14 On 24 November 2011, at a meeting between Mr Billy Chua, Mr Tony Lee and Mr Goh, Seagate approved of a new collaboration between the Beyonics Group and the NEDEC/KODEC Group. This collaboration shall be referred to as the "B–N Alliance".

15 On 10 January 2012, the B–N Alliance was encapsulated in an agreement between BAP, a subsidiary of the Beyonics Group (see [5(f)]), and LND, a subsidiary of the NEDEC/KODEC Group (see [7]) ("the BAP–LND Contract"). In relation to the manufacture of Seagate baseplates for the Brinks 2H programme, it was agreed that BTEC, the Beyonics Group's plant in Changshu, China (see [5(e)]), would complete the First Stage Work to produce e-coated baseplates for supply to LND. LND would then perform the Second Stage Work, produce the finished baseplates and sell them to Seagate. From January 2012 to January 2013, the Beyonics Group duly supplied e-coated baseplates to the NEDEC/KODEC Group.

The Wyser Agreements

16 From 24 November 2011, there were negotiations concerning agreements to be entered into between the NEDEC/KODEC Group and Wyser International connected to the B–N Alliance. On 5 April 2012, two agreements were signed by Mr Goh, on behalf of Wyser International, and Mr Tony Lee of the NEDEC/KODEC Group. Both were backdated to 24 November 2011 ("the Wyser Agreements"). The first of these agreements ("the First Wyser Agreement"), entered into with KODEC, provided for a payment of US$0.02 per e-coated baseplate as follows:

> 1. Wyser assists in securing 6 million baseplates capacity business starting from April 2012 for the Seagate Brink 2H program for an approximately US$ 45.6 million sales per year supplying at least 1 million pieces of e-coated baseplates to Kodec ;
>
> …
>
> > 1) a monthly sales and management support service fee of US$0.02/pc X monthly Brink 2H shipping quantity under co-ordination of Wyser to Kodec (accepted quantity to LND based) starting from February 2012 till March 2013 ;
>
> Payment details: Wire Transfer to the follows:
>
> …
>
> Name of beneficiary: Wyser International Limited

17 The second agreement ("the Second Wyser Agreement"), signed with NEDEC, provided as follows:

> 2. Wyser assists in securing a US$ 2.5 million as the co-sharing grant of fixture and tooling cost funded by Seagate.
>
> > 1) US$500,000 payable in 2012 immediately upon receipt of payment from Seagate.
>
> Payment details: Wire Transfer to the follows:
>
> …
>
> Name of beneficiary: Wyser International Limited

18 By a third agreement, US$300,000 of the US$500,000 payable to Wyser International under the Second Wyser Agreement was to be transferred to Mr Stephen Hwang. The third agreement was apparently not signed.

Termination as supplier to Seagate

19 The Beyonics Group's sales to Seagate steadily declined from about Financial Year ("FY") 2012. In FY 2014, being the accounting period beginning 1 August 2013 and ending 31 July 2014, Seagate had terminated the Beyonics Group as its supplier of baseplates for Seagate HDDs. Thus, the Beyonics Group lost the entirety of its baseplate business for both the First and Second Stage Works with Seagate.

Summary of the cases

The Plaintiffs' case

20 I now set out the Plaintiffs' case as pleaded in the Statement of Claim (Amendment No. 1) ("the Amended Statement of Claim").

21 The First Plaintiff relies on several causes of action. First, according to the First Plaintiff, Mr Goh, as director and CEO, owed contractual, statutory and fiduciary duties to the Plaintiffs. In breach of these duties, Mr Goh committed acts which fell within four somewhat overlapping areas:

(a) *Securing the B–N Alliance.* Mr Goh entered into the BAP–LND Contract, which concretised the B–N Alliance, effecting a diversion of business (Second Stage Work for Brinks 2H baseplates) away from the Beyonics Group.

(b) *Procuring a US$2.5 million grant from Seagate ("the Seagate Grant").* Mr Goh procured the Seagate Grant for the NEDEC/KODEC Group, thus assisting to boost its technical capabilities, and facilitating its growth as a supplier of baseplates for Seagate HDDs.

(c) *Receiving payments under the Wyser Agreements.* For his role in diverting e-coated baseplates, payment was made under the First Wyser Agreement based on US$0.02 per e-coated baseplate diverted from the Beyonics Group to the NEDEC/KODEC Group. For his role in procuring the Seagate Grant under the Second Wyser Agreement, Mr Goh received a net gratification of US$200,000.

(d) *Facilitating the NEDEC/KODEC Group's business with Seagate.* Mr Goh further facilitated the NEDEC/KODEC Group to undertake business with Seagate in competition with the Beyonics Group, and the ultimate intention was for the NEDEC/KODEC Group to supplant the Beyonics Group in the supply of baseplates to Seagate. This included assisting the NEDEC/KODEC Group to develop e-coating capabilities to carry out First Stage Work, and aggressively pushing for the sale of BTEC to the NEDEC/KODEC Group, which would further strengthen the latter.

22 Second, the First Plaintiff claims that Wyser International dishonestly assisted Mr Goh's breaches of fiduciary duties and/or knowingly received the payments under the Wyser Agreements.

23 Third, the First Plaintiff contends that Mr Goh, Wyser International and the NEDEC/KODEC Group conspired by unlawful means to injure the First Plaintiff and its subsidiaries, with the ultimate intention of hollowing out

the baseplate production capacity of the Beyonics Group in favour of the NEDEC/KODEC Group.

24 The First Plaintiff's various wholly owned subsidiaries within the PE Division supplied the baseplates to Seagate, and the revenue from all these contracts were recognised in the accounts of BAP. As the holding company, the First Plaintiff claims against Mr Goh and Wyser International, *inter alia*, equitable compensation for its losses of profits as follows:

(a) Loss of profit as a result of the diversion of the Second Stage Work to the NEDEC/KODEC Group from January 2012 to January 2013 ("Diversion Loss").

(b) Loss of profit as a result of the loss of future baseplate business from Seagate ("Total Loss").

25 In relation to the payments under the Wyser Agreements, the First Plaintiff also claims against Mr Goh and Wyser International, among other things, for an account of the amounts received and payment of the amounts.

26 Separately, the Second Plaintiff alleges that in breach of his duties, Mr Goh caused or instructed staff members to make unjustified expense claims amounting to S$126,967.45 and HK$38,400.00 against the account of the Second Plaintiff, and claims for a payment of these amounts. Further, the Second Plaintiff claims that it is entitled to recover unjustified salary of S$45,900 paid to Mr Goh from 10 January to 31 March 2013, after Mr Goh's resignation on 9 January 2013, because Mr Goh did not disclose his breaches of duties.

The Defendants' case

27 In the Defence and Counterclaim (Amendment No 1) ("the Amended Defence"), the Defendants deny the breaches of contractual, statutory and fiduciary duties by Mr Goh, dishonest assistance and/or knowing receipt by Wyser International, and that Mr Goh and Wyser International had conspired by unlawful means with the NEDEC/KODEC Group to injure the Plaintiffs.

28 In relation to the four areas of alleged misconduct relied on by the First Plaintiff, the Defendants' broad positions are as follows:

(a) *Securing the B–N Alliance.* Seagate was the one who proposed that the Beyonics Group partner the NEDEC/KODEC Group. Further, there was already a commercial relationship between Seagate and the NEDEC/KODEC Group from around April 2011.

(b) *Procuring the Seagate Grant.* Mr Tony Lee secured the Seagate Grant for the NEDEC/KODEC Group, not Mr Goh.

(c) *Receiving payments under the Wyser Agreements.* Prior to agreeing to the B–N Alliance, Mr Goh visited the LND factory and found that the NEDEC/KODEC Group needed to make improvements to meet Seagate's requirements for the Brinks 2H programme. Mr Tony Lee asked Mr Goh to provide consultancy services to the NEDEC/KODEC Group for such improvements. He agreed to do so and was duly paid under the Wyser Agreements. The payments were not bribes but payments for consultancy services provided.

(d) *Facilitating the NEDEC/KODEC Group's business with Seagate.* The NEDEC/KODEC Group was capable of undertaking both the First and Second Stage Works for the manufacturing of baseplates,

and Mr Goh did not assist to develop such capabilities. Mr Goh also did not insist on taking charge of the proposed sale of BTEC. Instead, the sale was always subject to the review and approval of the Board of Directors. Therefore, he did not facilitate the NEDEC/KODEC Group's business with Seagate.

29 In relation to the claims by the Second Plaintiff, Mr Goh contends that the expenses claimed were incurred in the best interests of the operations and staff of the Second Plaintiff. Mr Goh, as the CEO, had the authority to incur the expenses claimed. The Second Plaintiff is also not entitled to recover the salary justifiably paid to Mr Goh. Instead, Mr Goh counterclaims S$17,000 from the Second Plaintiff for salary still unpaid to him for April 2013.

30 Further or in the alternative, Mr Goh states that he acted honestly and reasonably at all times. Specifically, it is pleaded that under s 391 of the Companies Act (Cap 50, 2006 Rev Ed), Mr Goh ought to be excused from liability for negligence, default or breach of duty, if any.

The trial

31 At the trial, the main witnesses for the Plaintiffs were Mr Kyle Arnold Shaw Jr ("Mr Shaw") and Mr Gerhard Hans-Joachim Christoph Mueller ("Mr Mueller") (who were both appointed as directors of the First Plaintiff after its acquisition by Channelview), Mr Michael Ng (who replaced Mr Goh as the CEO of the First Plaintiff), and Mr Lee Leong Hua (who is the general manager of BTEC). Mr Goh and Mr Tony Lee were the key witnesses for the Defendants, while Mr Billy Chua was subpoenaed as a witness for the Defendants. There were also two expert witnesses, one each for the Plaintiffs and the Defendants, who dealt with the quantification of the losses allegedly

suffered by the Plaintiffs. I shall deal with the relevant portions of the witnesses' evidence when discussing the specific issues in contention.

32 I should highlight at the outset that the Plaintiffs had to recover email communications between Mr Goh and the NEDEC/KODEC Group through digital forensics. These emails had been deleted from the desktop computer and the laptop Mr Goh used in his term with the Beyonics Group ("the recovered emails"). In the interlocutory stages of the action, Mr Goh admitted to deleting the emails, but claimed that he had done so because it was the company policy to free up memory space. At the trial, he denied that he had deleted the emails. Instead, he suggested that the deletion might have been the result of reformatting carried out as a matter of standard procedure after he resigned. However, the Plaintiffs' position is that the reformatting of Mr Goh's devices had not been carried out so as to enable forensic recovery of evidence. Mr Goh has not challenged this.

33 I shall set out my views on Mr Goh's credibility at [180] onwards, along with my observations of the other witnesses. For now, it suffices to comment that the recovered emails, together with other emails, form a contemporaneous record of the developing relationship between Mr Goh and the NEDEC/KODEC Group, the discussions between them, and the nature of certain transactions. The emails provide the invaluable context to understand the unfolding events, and I rely on them extensively to arrive at my findings.

Preliminary issue – an unpleaded defence

34 I turn to deal with a preliminary issue. In the Defendants' closing submissions, counsel for the Defendants, Mr Ng Lip Chih, argues that in view of the Plaintiffs' express admission in the Amended Statement of Claim that

the revenue from the baseplate contracts with Seagate was recognised in the accounts of BAP (see [24]), BAP, rather than the First Plaintiff, should be the proper party to claim for any damages and/or losses of profit arising from the alleged breaches by Mr Goh. It would be erroneous at law to equate a loss of profits incurred by BAP to a loss of profits by the First Plaintiff. At best, the First Plaintiff would have a claim for loss of dividends flowing from BAP to the First Plaintiff. However, there was no quantification of such a loss. Therefore, Mr Ng Lip Chih submits that the First Plaintiff's claims against the Defendants must fail. In the Plaintiffs' reply submissions, counsel for the Plaintiffs, Ms Marina Chin, makes two points. First, she contends that the defence has never been pleaded, and should be disregarded. Second, she argues that the defence is in any case unmeritorious. I shall deal with these points in turn.

35 It is uncontroversial that pursuant to O 18 r 8(1)(*a*) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), a party, in any pleading subsequent to a statement of claim, is required to specifically plead any matter which "he alleges makes any claim … of the opposite party not maintainable". A defence that BAP, and not the First Plaintiff, is the proper party should be specifically pleaded, as it is clearly intended to render the First Plaintiff's claim unsustainable. Alternatively, the defence should have been pleaded because it is a matter "which, if not specifically pleaded, might take the opposite party by surprise" (see O 18 r 8(1)(*b*) of the ROC). It is trite that if pleadings are not sufficiently specific, the courts may not allow the party to pursue a certain line of argument (see *Tan Kia Poh v Hong Leong Finance Ltd* [1993] 3 SLR(R) 429 at [30] and [33]).

36 Apart from the matter not being pleaded, I note that it is not even contained in any of the affidavits of evidence-in-chief ("AEICs") filed by the

Defendants' witnesses. Mr Ng Lip Chih alluded to this argument only on the first day of the trial, during the cross-examination of Mr Shaw. This drew an immediate objection by Ms Marina Chin on the ground that the defence has not been pleaded. Mr Ng Lip Chih acknowledged this, and did not touch on this point again for the rest of the trial. In addition, no step was taken to seek leave of court to further amend the Amended Defence so as to include this defence. In these circumstances, I am of the view that the Defendants should not be allowed to rely on this argument at all.

37 In any event, I agree with Ms Marina Chin that the defence is substantively flawed. The First Plaintiff's claims have always been for its own losses as the holding company of all the subsidiaries in the PE Division. It did not seek to equate the losses of BAP with its own losses, as the Defendants claim. As will be seen at [192] onwards, in computing the alleged losses, the First Plaintiff relied on financial information on a consolidated basis, and did so from the perspective of the First Plaintiff (and not its subsidiaries). There is nothing to show that the First Plaintiff is not in the position to direct and control the application of the cash and profits of its subsidiaries, including BAP. Therefore, I find that the First Plaintiff is able to pursue the claims. I should add that had this matter been pleaded, the First Plaintiff could have simply taken steps to add BAP to the action, if at all necessary.

The First Plaintiff's claims for breaches of duties

38 With that, I move on to the substantive claims by the First Plaintiff, beginning with Mr Goh's purported breaches of duties. Given that the First Plaintiff pleads breaches of contractual, statutory and fiduciary duties, analytically, there are three distinct causes of action grounded in contract, tort and equity respectively. Broadly speaking, the elements to be proved are the

existence of the duties, the breaches of these duties, and the breaches causing the losses allegedly suffered.

39 On the existence of the duties, as pleaded in the Amended Statement of Claim, the contractual, statutory and fiduciary duties owed to the First Plaintiff largely overlap. To prove the breaches of these three categories of duties, the First Plaintiff cites the same alleged misconduct. However, to establish causation, the First Plaintiff relies principally on the equitable principles applicable to breaches of fiduciary duties. The remedies elected are also primarily equitable ones. From the Plaintiffs' closing submissions, it seems clear to me that the First Plaintiff's case rests mainly on the equitable basis. Therefore, for the purpose of this judgment, my primary focus is on the breaches of fiduciary duties. If these are established, there will be no practical need to consider the alleged breaches of contractual and statutory duties.

Duties owed by Mr Goh

40 The company–director relationship is a well-established category of fiduciary relationship. It is not seriously disputed (nor do I think it can be seriously disputed) that Mr Goh, as a director and the CEO of the Plaintiffs, owed fiduciary duties to the Plaintiffs. In my view, Mr Goh owed these four overlapping duties which are pleaded in the Amended Statement of Claim:

> (a) Duty to act honestly and *bona fide* in the best interest of the First Plaintiff. In this regard, it has been stated that "[d]irectors … may only consider the interests of their company when making a decision. Their overriding motive must be to advance the company's interests": see *Walter Woon on Company Law* (Sweet & Maxwell Asia, 3rd Ed, 2009) ("*Walter Woon on Company Law*") at para 8.16.

(b) Duty to avoid and disclose conflicts of interest. Flowing from the duty to act honestly and in the best interests of the company, a director should not "place himself in a position where his duty and his interest conflict", such that there is a risk that he prefers his personal interest over that of the First Plaintiff: see *Walter Woon on Company Law,* at para 8.37 and 8.43.

(c) Duty not to make any secret or improper profit. This is a particular instance of the rule against conflicts of interest. As stated in *Walter Woon on Company Law* at para 8.45, this rule "is so strict that if an opportunity to make a profit or obtain a benefit comes to him because he is a director, that profit or benefit must be disclosed to the company and approved. In the absence of such disclosure and approval, the director is liable to account for that profit even if he has been guilty of no moral wrong."

(d) Duty to disclose wrongdoing. Encompassed within the duty to act *bona fide* in the best interests of the company is a duty on the fiduciary to disclose his wrongdoing to the company. In *Quality Assurance Management Asia Pte Ltd v Zhang Qing* [2013] 3 SLR 631 ("*Quality Assurance*") at [97], the High Court cited *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244 at [41]–[44] for the proposition that "[a]n employee who is also a fiduciary and who owes his employer a general fiduciary duty of loyalty – that is, a duty to act in good faith in the best interests of his employer – is obliged pursuant to that general duty to disclose his own wrongdoing to his employer".

41 For completeness, I should add that ss 156, 157(1) and 157(2) of the Companies Act impose statutory duties on directors, largely similar in scope

and extent to the abovementioned fiduciary duties. In particular, as observed by the Court of Appeal in *Townsing Henry George v Jenton Overseas Investment Ptd Ltd* [2007] 2 SLR(R) 597 at [59], s 157(1) of the Companies Act (which *inter alia* imposes a duty on a director to act honestly in the discharge of duties of his office) is the "statutory *equivalent* of the duty to act *bona fide* which exists at common law" [emphasis in original]. I also find that the employment contracts impose similar express or implied duties on Mr Goh. Nonetheless, as I stated at [39], it is unnecessary to go into these matters in any depth.

Whether the alleged acts were committed

42 I proceed to consider whether Mr Goh committed the alleged acts falling into four clusters of events as summarised at [21]. Mr Goh denies the First Plaintiff's version of the events and attempts to explain how and why, when viewed in context, his actions were in the best interests of the Beyonics Group. I shall discuss the factual disputes before dealing with Mr Goh's explanations.

Securing the B–N Alliance

43 The details of the B–N Alliance are set out at [14]. According to the First Plaintiff, after the Thailand floods, Mr Goh either conceived of or facilitated the formation of the B-N Alliance, thus diverting the Second Stage Work to the NEDEC/KODEC Group. However, Mr Goh stated that Seagate had requested the Beyonics Group to partner the NEDEC/KODEC Group.

44 I observe that Mr Billy Chua was consistent in maintaining (during both examination-in-chief and cross-examination) that it was Seagate which proposed the B–N Alliance. Thus, I accept that Seagate initiated the

collaboration. Be that as it may, I find that Mr Goh was instrumental in the process leading to the approval of the B–N Alliance by Seagate, and entry into the BAP–LND Contract. This is borne out by a close examination of the events prior to, and culminating in, a meeting on 24 November 2011.

Growing relationship between Mr Goh and the NEDEC/KODEC Group – June to September 2011

45 According to the First Plaintiff, in late June 2011, Mr Goh initiated contact with the NEDEC/KODEC Group. Thereafter, he pursued the relationship for his personal benefit. Mr Goh explained that at that juncture, he was in contact with the NEDEC/KODEC Group solely for the sale of BTEC, pursuant to the Beyonics Group's policy to divest the PE Division (see further discussions from [92] below).

46 From the emails produced before me, I note that in late June 2011, Mr Goh requested a business contact to introduce him to the NEDEC/KODEC Group. He was introduced to Mr Stephen Hwang, who indicated that he wanted to discuss with Mr Goh about business with Seagate. On 12 July 2011, Mr Stephen Hwang visited BTEC in China. From 4 to 7 September 2011, Mr Stephen Hwang and Mr Tony Lee visited BTT and BPM in Thailand and Malaysia.

47 After these visits, the parties exchanged a series of emails, which form part of the recovered emails with subject matter headings "Thank you for your favour" and "Appreciation for Hospitality". On 8 September 2011, Mr Stephen Hwang wrote to thank Mr Goh for "well meant advice [which would] be a great help how Nedec survives in HDD business". On the same date, Mr Tony Lee sent an email expressing his appreciation for the "warm hospitality", and stated that he had been informed that Mr Tay Peng Huat, the Chief

Financial Officer ("CFO") of the Beyonics Group, was "going to dispatch the data and information" that Mr Stephen Hwang and Mr Tony Lee had requested. On 30 September 2011, Mr Stephen Hwang extended an invitation to Mr Goh to visit LND, which Mr Goh accepted. Mr Tony Lee sent a reply on 4 October 2011, and expressed appreciation for Mr Goh's "intention to visit NEDEC factories around Nov. 10", and saw this as an opportunity for the parties to engage in "further talks for co-operation and collaboration."

48 From the above, it is clear that Mr Goh and the NEDEC/KODEC Group were open to pursuing business opportunities together. Even if there was the plan to divest BTEC and the PE Division, it does not seem to have been necessary for Mr Goh, as the CEO of the Beyonics Group, to offer a competitor of the Beyonics Group access to information on the PE Division and arrange factory visits at such an early stage, or to give advice on surviving in the HDD business. There was also no reason for Mr Goh to accept a visit to LND. In my assessment, even in the early days, there was already some indication that Mr Goh pursued the relationship partly in his personal capacity, rather than solely for the Beyonics Group.

Seagate's preference after the Thailand floods – October 2011

49 After the floods in Thailand in October 2011, the First Plaintiff claims that Seagate would have preferred to work with its existing suppliers (including the Beyonics Group) to increase production, rather than with a new supplier, as it would take some time for a new supplier such as the NEDEC/KODEC Group to become qualified as a Seagate baseplate supplier. Mr Goh refuted this by stating that the NEDEC/KODEC Group was an existing supplier of Seagate, not a new supplier.

50 In my view, Mr Goh's position is misleading. It was not disputed that Seagate acquired Samsung's HDD business sometime in 2011, and that by virtue of the acquisition, the NEDEC/KODEC Group had become pre-qualified to supply baseplates to Seagate for *Samsung* HDDs. However, the NEDEC/KODEC Group did not automatically qualify to supply baseplates for *Seagate* HDDs. Indeed, in October 2011, the NEDEC/KODEC Group was not a supplier of baseplates for Seagate HDDs. Further, Mr Billy Chua's evidence is that Seagate would have preferred to depend on existing suppliers. He explained that Seagate had stringent standards. It was not simple, quick or certain for a new supplier to obtain qualification for Seagate HDDs.

Level of commitment and support indicated by Mr Goh – mid-October 2011

51 Against this backdrop, around mid-October 2011, Mr Goh received a telephone call from Mr Billy Chua. According to Mr Goh, it was a brief conversation in which Mr Billy Chua merely asked what the Beyonics Group could do to help and requested for a proposal to support Seagate. Mr Billy Chua gave a different account of the conversation. He said that there was a discussion about the Beyonics Group's production capacity, with Mr Goh informing him that the Beyonics Group was only able to continue with the supply of three million Brinks 2H baseplates per quarter. Seagate, however, wanted a commitment of more than four million per quarter. On this point, I prefer the evidence of Mr Billy Chua. In my view, Mr Goh under-represented the Beyonics Group's capacity to produce baseplates at the time, and showed little commitment and willingness to support Seagate. I deal with the production capacity issue from [97] onwards.

Discussions on the B–N Alliance – 24 to 26 October 2011

52 Sometime on 24 October 2011, Mr Billy Chua contacted Mr Tony Lee for the first time via email to ask whether the NEDEC/KODEC Group wished to participate in Seagate's baseplate production programme. Later the same day, the parties spoke on the telephone. This conversation was recorded in an email at 5.20pm on the same day from Mr Billy Chua to Mr Tony Lee, indicating that the parties had discussed, *inter alia*, the Pharaoh 2H (another name for Brinks 2H) baseplate programme. I note that Mr Billy Chua's initial contact with the NEDEC/KODEC Group came *after* Mr Goh showed a lack of commitment to Seagate, as described immediately above.

53 While not stated in the email at 5.20pm, it appears that during the telephone conversation between Mr Billy Chua and Mr Tony Lee, the idea of a potential partnership between the NEDEC/KODEC Group and another baseplate supplier was also discussed. On 25 October 2011, Mr Tony Lee wrote an email to Mr Billy Chua stating that the NEDEC/KODEC Group would prefer to obtain e-coated baseplates for a "machining process service" (*ie* Second Stage Work), and asked whether it should obtain these for machining from the Beyonics Group, or another supplier, MMI. He also asked to meet Mr Billy Chua. Replying on the same day, Mr Billy Chua confirmed a meeting in Singapore on 27 October 2011 from 9am to 4pm to discuss matters.

54 On 26 October 2011, Mr Tony Lee sent an email to Mr Goh informing him of the full day meeting with Seagate confirmed for 27 October 2011. He stated that issues to be discussed might include a "'[j]oint operation' of your Changsu (*sic*) factory" (*ie* BTEC). He asked to meet Mr Goh on 28 October 2011. When cross-examined, Mr Goh said that he did not know what Mr Tony Lee wanted to discuss with him, and he had no clue what the "joint operation"

meant. Mr Goh insisted that he only found out about the B–N Alliance from Mr Billy Chua over the telephone on 27 October 2011. However, Mr Tony Lee testified that "joint operation" referred to the proposal for the Beyonics Group to supply e-coated baseplates to the NEDEC/KODEC Group.

55 From Mr Tony Lee's email of 26 October 2011 and his evidence, the clear inference I arrive at is that Mr Goh had already spoken to Mr Tony Lee about the proposed B–N Alliance *ie* the "joint operation" *before* the email on 26 October 2011. In fact, in Mr Goh's reply to the 26 October 2011 email, he simply agreed to a meeting on 28 October 2011, without asking any question as to what the "joint operation" meant, rendering his version quite incredible. I should add that the 26 October 2011 email between Mr Tony Lee and Mr Goh formed part of the recovered emails, and carried the subject matter heading "BTEC".

Meeting between Seagate and the NEDEC/KODEC Group – 27 October 2011

56 At 8.50 am on 27 October 2011, a mere ten minutes before Seagate was to meet Mr Tony Lee of the NEDEC/KODEC Group for the first time, Mr Goh sent a critical e-mail to Mr Billy Chua claiming that "due to having major losses in PE division; *our investment is limited and we could only exercise limited investment strategy* to help the current demand faced by our customers" [emphasis added]. This was purportedly Mr Goh's response to Mr Billy Chua's request for a proposal from the Beyonics Group to support Seagate. In cross-examination, Mr Goh accepted that when he sent this email, that he was aware that the 27 October 2011 meeting was due to commence, and that the NEDEC/KODEC Group was keen to do business with Seagate.

57 After the meeting on 27 October 2011, Mr Billy Chua sent an email to Mr Tony Lee including the minutes of the meeting. The minutes reflected that Seagate had agreed to a plan for a partnership between the Beyonics Group and the NEDEC/KODEC Group to produce baseplates, specifically for the NEDEC/KODEC Group to use the Beyonics Group's e-coated baseplates for the Brinks 2H programme (essentially the terms of the B–N Alliance). The email also stated that Mr Billy Chua had earlier spoken to Mr Goh, who had "no objection[s]". Mr Goh, however, insisted that the first time he heard about the proposed B–N Alliance was over the telephone from Mr Billy Chua after his email at 8.50am and after the meeting on 27 October 2011. When confronted with Mr Billy Chua's email recording the minutes of the meeting, he said he did not know "how [Mr Billy Chua] records his minute[s]".

58 As stated at [55], I find that well before 27 October 2011, Mr Goh knew about Seagate's proposal from Mr Tony Lee. It seems to me that Mr Goh's email at 8.50 am, and his indication of support of the partnership, were aimed at prompting Seagate to proceed to give approval for the B–N Alliance.

Meeting between Mr Goh and the NEDEC/KODEC Group – 28 October 2011

59 On 28 October 2011, Mr Goh met Mr Tony Lee and agreed that the Beyonics Group would participate in the proposed B–N Alliance, even though the parties had not even discussed fundamental terms such as pricing.

Mr Goh's visit to LND – 10 November 2011

60 On 10 November 2011, Mr Goh visited LND. According to Mr Tony Lee, the B–N Alliance was discussed during this meeting. Mr Goh also suggested making improvements for the NEDEC/KODEC Group to achieve qualification to do the Second Stage Work for Seagate. While travelling from

Tianjin to Beijing in a three-hour car ride with Mr Tony Lee and Mr Stephen Hwang ("the car journey"), Mr Tony Lee said he proposed that Mr Goh be compensated for his consultancy services. Mr Goh did not say anything.

61 Mr Goh, however, disagrees with Mr Tony Lee's account of what transpired. In cross-examination, Mr Goh insisted that his visit to LND was regarding the sale of BTEC, and did not involve discussions regarding the B–N Alliance. He claimed that the Beyonics Group, as the vendor of BTEC, was obliged to visit LND, a potential purchaser of BTEC, to "understand the capability and integration between their plant [and] our plant after the completion of the process", and to make sure the NEDEC/KODEC Group was getting a good deal.

62 It is plain that Mr Goh's evidence that the visit was for the sale of BTEC is unbelievable. There is no commercial reason for a vendor to assist a potential buyer by ensuring that he was getting a good and suitable deal. Instead, it appears that Mr Goh was evasive and simply refused to reveal details of the visit. In fact, Mr Goh shifted his evidence on the purpose of the LND visit in the course of proceedings. In the Amended Defence, it is pleaded that the visit was "for the purposes of evaluating whether the NEDEC/KODEC Group was able to meet the requirements under the Brink 2H Programme". In Mr Goh's AEIC, he stated that he visited LND after Seagate's confirmation of the B–N Alliance. However, this was not borne out as Seagate's actual confirmation of the B–N Alliance came about only around 24 November 2011. Then, during the trial, Mr Goh's evidence was that he visited LND in relation to the sale of BTEC. Ultimately, he conceded the "possibility of a tie-up" being discussed during the visit.

Mr Goh's meeting with Seagate – 18 November 2011

63 On 18 November 2011, Mr Goh met Seagate concerning the B–N Alliance. In advance of the meeting, on 16 November 2011, Mr Goh forwarded to Mr Toh Han Chiow ("Mr HC Toh") a set of presentation slides which were to be used at the meeting. Mr HC Toh is the person Mr Billy Chua reported to within Seagate. Some of the salient points in the presentation slides included information on the substantial loss of equipment at BTT, such that there would be a "shortfall of HDD Base supply for the next 12 months due to shortage of [Computer Numerical Control ("CNC")] machines and other related equipment for HDD industry". CNC machines are critical for the Second Stage Work in the production of baseplates. More importantly, in the presentation slides, Mr Goh also pushed for the B–N Alliance.

Meeting of Seagate, the Beyonics Group and the NEDEC/KODEC Group – 24 November 2011

64 On 24 November 2011, representatives from Seagate, the Beyonics Group and the NEDEC/KODEC Group met at the Seagate office. Seagate gave confirmation of the B–N Alliance.

Findings on the B–N Alliance

65 Summing up, I have no doubt that Mr Goh was instrumental in the formation of the B–N Alliance, and ultimately the entry into the BAP–LND Contract. While Seagate might have initiated the concept and provided the final approval, Mr Goh, together with the NEDEC/KODEC Group, convinced Seagate to take this course of action, thus bringing on board the NEDEC/KODEC Group as a supplier of baseplates for Seagate HDDs.

Procuring the Seagate Grant

66 I now move on to Mr Goh's role in procuring the US$2.5 million Seagate Grant for the NEDEC/KODEC Group. According to the First Plaintiff, Mr Goh procured the Seagate Grant for the NEDEC/KODEC Group. Mr Goh, however, claimed that he only included the NEDEC/KODEC Group's request as part of the presentation slides to Seagate on 18 November 2011. Otherwise, it was Mr Tony Lee who obtained the Seagate Grant.

67 Contrary to Mr Goh's stance, Mr Tony Lee testified that it was Mr Goh who first suggested the idea of the Seagate Grant to him. In an email sent to Mr Billy Chua on 29 October 2011 to update him on the 28 October 2011 meeting between Mr Goh and himself, Mr Tony Lee said that Mr Goh had "advised [him] to ask Seagate to cover [the NEDEC/KODEC Group's] new tooling expenses which will shorten the necessary [lead time]". During Mr Goh's visit to LND on 10 November 2011, Mr Goh repeated this idea. In particular, during the car journey, Mr Goh "gave [them] the idea" of asking Seagate for a grant. Pursuant to this, Mr Goh was asked to assist the NEDEC/KODEC Group to act as an intermediary to obtain the Seagate Grant.

68 I note that after the LND visit, on 11 November 2011, Mr Tony Lee wrote to Mr Goh, stating that he was waiting "for good news from Seagate and from you." In reply, Mr Goh said he had not talked to Mr HC Toh about the Seagate Grant yet, but would "talk money" at the "executive discussion" the following week. Thereafter, at the 18 November 2011 meeting between Mr Goh and Seagate, the presentation slides were used to push for the Seagate Grant for the NEDEC/KODEC Group. After the meeting, Mr Goh updated Mr Tony Lee and Mr Stephen Hwang via email with the news that Seagate had given the "go ahead" for the B–N Alliance. Mr Tony Lee replied and asked

whether Seagate would be giving the NEDEC/KODEC Group any "concrete" assurance about the Seagate Grant. On 22 November 2011, Mr Goh told him "not worry for the US$2.5m, will get it". In response, Mr Tony Lee said "so long as you gave us the sign of 'OK', I have no doubt about that, sir". These emails, together with those at [67] above, form part of the recovered emails, and are contained in a thread with the subject matter heading "Re: B-N Alliance Issue".

69 In my view, Mr Goh initiated the idea of seeking the Seagate Grant, strategised on how to secure it, and assisted the NEDEC/KODEC Group in obtaining it. In fact, Mr Tony Lee entrusted him with the task. On these aspects, Mr Tony Lee's evidence is borne out by the email exchanges.

Payments under the Wyser Agreements

70 I next turn to the payments under the Wyser Agreements. Mr Goh admits that he received payments from the NEDEC/KODEC Group under the Wyser Agreements. It is also undisputed that these were not disclosed to the Board of Directors of the First Plaintiff. However, the parties disagree on the purpose of the Wyser Agreements. Mr Goh contends that the payments were purely for consultancy services he provided to the NEDEC/KODEC Group. The First Plaintiff characterises them as bribes. I now examine the transactions.

The draft Wyser Agreements

71 On 24 November 2011, a draft Wyser Agreement was forwarded by Mr Goh to Mr Tony Lee. Unfortunately, no copy of this was recovered. According to Mr Tony Lee, it contained a proposal to pay Mr Goh US$20,000 a month for the e-coated baseplates sent from the Beyonics Group to the

NEDEC/KODEC Group, as well as a lump sum of US$200,000. Mr Tony Lee separated the terms of draft Wyser Agreement into two documents, and made certain amendments to them. Thereafter, on 20 February 2012, Mr Tony Lee sent Mr Goh the two revised draft Wyser Agreements. The first document provided for the payment of US$0.02 per e-coated baseplate supplied, rather than a lump sum of US$20,000 per month. It also provided for a payment of US$500,000 for Mr Goh's assistance in securing the Seagate Grant. The second document provided that US$300,000 of the US$500,000 was to be paid out to Mr Stephen Hwang.

The finalised and executed Wyser Agreements

72 On 6 March 2012, the Wyser Agreements were finalised as three agreements. The terms of the Wyser Agreements are set out at [16]–[18]. In my view, it is clear from the natural language of the Wyser Agreements that the payment of money was for the "assistance [of Wyser International] in securing 6 million baseplates capacity business…for the Seagate Brink 2H program", "supplying at least 1 million pieces of e-coated baseplates to Kodec" and "assist[ing] in securing a US$2.5 million as the co-sharing grant of fixture and tooling cost funded by Seagate". Thus, Mr Goh and Wyser International were expressly required under the Wyser Agreements to assist the NEDEC/KODEC Group by obtaining business from Seagate, supplying e-coated baseplates to it and helping it secure the Seagate Grant.

73 Given the express wording of the Wyser Agreements, I find Mr Goh's assertion that the payments were for his consultancy services in relation to the improvements required by the NEDEC/KODEC Group to be ludicrous. First, there is no mention of any consultancy services in the Wyser Agreements. If Mr Goh's version was true, one would expect that the provision of

consultancy services would be a key point to be captured. This is especially when Mr Goh had himself provided the draft Wyser Agreement to Mr Tony Lee on 24 November 2011. Although there were subsequent negotiations, there was nothing to show that Mr Goh objected to their contents.

74 Second, there is absolutely no reason for a consultancy fee to be tied to, and dependent on, the number of e-coated baseplates supplied by the Beyonics Group to the NEDEC/KODEC Group, as was the case under the First Wyser Agreement. Mr Goh explains that his original proposal was for US$20,000 per month to be paid to him, presumably as a flat fee for his consultancy services. He said that the payment of US$0.02 per piece was Mr Tony Lee's idea. However, again, Mr Goh's account is unbelievable. Mr Goh estimated that he would spend two to three days a month "resolving his mass production issue for the [NEDEC/KODEC Group's] baseplate to be accepted by … Seagate". Compared to his salary of S$45,000 to S$50,000 per month from the Beyonics Group, US$20,000 was an incredible amount for two to three days' work per month. Instead, the US$20,000 per month proposal seems to accord with the intention that a minimum of one million pieces of e-coated baseplates was to be supplied to the NEDEC/KODEC Group per month, which at US$0.02 per piece works out to be US$20,000. This was precisely Mr Tony Lee's evidence, which I prefer.

75 To support his contention that the US$200,000 under the Second Wyser Agreement was for his consultancy services, Mr Goh stated that he did little to assist in procuring the Seagate Grant. However, as discussed above, it is evident that he actively assisted in procuring the Seagate Grant, and the clear provisions of the Second Wyser Agreement provide that the payment of US$200,000 was for such assistance.

Findings on the Wyser Agreements

76 Upon a review of the evidence, I find that it is patently clear that the Wyser Agreements provided for payments to Mr Goh for his assistance to the NEDEC/KODEC Group in securing business with Seagate, for the supply of e-coated baseplates and to procure the Seagate Grant. In my view, these are appropriately characterised as bribes. I should add that Mr Goh contends that if these were bribes, it would be "silly" of parties to document the transactions. Mr Tony Lee echoed such a sentiment. However, in cross-examination, Mr Goh did not deny that to deal with anti-money laundering concerns, banks might ask for proof to verify the validity of huge transfer of funds. While Mr Goh denied that he was preparing some legal documentation to support the transfer of funds in anticipation of any bank request, I note that in relation to the transfer of the sum of US$300,000 back to Mr Stephen Hwang, Mr Goh provided instructions to the bank, referring to it obliquely as being in relation to a "trade agreement". Overall, I find that the fact that that the parties documented the transactions by way of the Wyser Agreements did not detract from their improper nature.

Facilitating the NEDEC/KODEC Group's business with Seagate

77 With that, I move to the fourth and final area of Mr Goh's alleged misconduct, which concerns his apparent facilitation of the NEDEC/KODEC Group's business with Seagate. According to the First Plaintiff, after entry into the B–N Alliance and pursuant to the Wyser Agreements, Mr Goh continued to assist the NEDEC/KODEC Group's development as a supplier of baseplates for Seagate HDDs. In particular, it is alleged that Mr Goh did the following:

(a) Assisting and procuring the Beyonics Group to help with the NEDEC/KODEC Group's qualification and performance of the Second Stage Work for Seagate HDDs.

(b) Assisting the NEDEC/KODEC Group in developing the capability for First Stage Work for Seagate HDDs; and

(c) Pushing for the sale of BTEC to the NEDEC/KODEC Group, which would have increased the production capabilities of the NEDEC/KODEC Group.

78 Mr Goh denies all of the above. His position is that the assistance rendered for the Second Stage Work was to ensure the smooth implementation of the B–N Alliance. Further, the NEDEC/KODEC Group already had the capability to perform First Stage Work, and he did not assist to build such capacity. As for the sale of BTEC, it was always subject to the approval of the First Plaintiff's Board of Directors. I now deal with the alleged acts in turn.

Assistance to qualify and perform the Second Stage Work

79 As arranged by Mr Goh, personnel from BTEC were sent to LND on 13 December 2011, 5 January, 14 February, 20 February, 12 April, 22 June, and 30 July 2012. LND's personnel also visited facilities of BTEC and BPM. In his AEIC and during cross-examination, Mr Lee Leong Hua explained that during visits of BTEC to LND, assistance was provided as follows:

(a) *13 December 2011.* BTEC discussed and gave guidance on the production process plan (*ie*, the flow from raw casting to machining), engineering issues in relation to the Brinks 2H programme, Seagate's audit process, and the machining process for the Second Stage Work.

(b) *5 January 2012*. Mr Lee Leong Hua went to the production floor and identified areas which did not meet Seagate's requirements for the First and Second Stage Works, as well as areas which were experiencing bottlenecks.

(c) *14 February 2012*. BTEC personnel helped LND do "process mapping" of the production line to identify defects that were due to the NEDEC/KODEC Group's inexperience with Second Stage Work.

80 In my view, it is clear that Mr Goh rendered assistance to the NEDEC/KODEC Group in relation to the Second Stage Work.

Assistance to develop capability to perform the First Stage Work

81 Moreover, Mr Goh actively assisted the NEDEC/KODEC Group to develop its capabilities in e-coating, one of the key stages in the First Stage Work. For a start, I note that during a visit to LND on 5 January 2012, Mr Lee Leong Hua said that help was rendered to identify areas which did not meet Seagate's requirements for both the First and Second Stage Works: see [79(b)]. In addition, there are two further points I wish to raise.

82 First, Mr Tony Lee and Mr Stephen Hwang were allowed to visit BPM facilities, particularly to view the e-coating facilities. In an email dated 4 March 2012, Mr Tony Lee requested to see BPM's e-coating factory on 7 March 2012, as the NEDEC/KODEC Group was "really lack[ing] [an] e-coating facility". In a reply email on the same day, Mr Goh agreed to the visit and stated that "[he] will advise on the ecoating facility".

83 Second, Mr Goh also acted as an intermediary between Mr Tony Lee and two vendors to discuss the design of a new "ED Coating Line" for use by

KPI, a subsidiary of KODEC, based in the Philippines. The ED Coating Line was to be developed with the specific goal of satisfying Seagate's requirements. Mr Goh sent the vendors the NEDEC/KODEC Group's design requirements, had discussions with them, and requested for quotations. It was clear that Mr Goh took an active interest in assisting with the development of the e-coating capabilities of the NEDEC/KODEC Group.

84 Mr Goh tried to downplay his role by stating that his role as an intermediary was but a "five minutes job", and that it was "industry practice" to help develop another manufacturer's e-coating plant. Also, at the end of the day, the NEDEC/KODEC Group did not purchase the ED Coating Line from the two vendors. Nonetheless, at the relevant time, the NEDEC/KODEC Group was still reliant on the Beyonics Group for e-coating capabilities. There was simply no reason for Mr Goh to be assisting a direct competitor to strengthen its e-coating facilities.

Sale of BTEC

85 Further, the First Plaintiff's position is that Mr Goh was instrumental in pushing for the sale of BTEC, one of the Beyonics Group's largest manufacturing plants, to the NEDEC/KODEC Group, in negotiations which were not at arm's length. Mr Goh disagrees. He explained that there was nothing untoward about the proposed sale of BTEC, as it was in line with the Beyonics Group's general policy to divest the PE Division.

86 I note that as early as 26 October 2011, before the NEDEC/KODEC Group had even met Seagate in Singapore, Mr Tony Lee emailed Mr Goh to express interest in the "Changsu (*sic*) factory", *ie*, BTEC. He claimed in that e-mail that this was "another alternative solution for [the NEDEC/KODEC

Group] because [it is] currently expanding… [its] HDD business". Mr Tony Lee explained at trial that this "alternative solution" involved the NEDEC/KODEC Group buying BTEC so that BTEC can do the First Stage Work for the former as well. It should have been clear to Mr Goh that by acquiring BTEC, the NEDEC/KODEC Group would strengthen its capability for First Stage Work.

87 Thereafter, there was frequent correspondence between Mr Tony Lee and Mr Goh on the sale of BTEC which amounted to a promise by Mr Goh to deal exclusively with the NEDEC/KODEC Group. On 3 January 2012, Mr Goh informed Mr Tony Lee that he had rejected SEMCO, another interested buyer of BTEC, which Tony Lee lauded as a "superb strategy". At Mr Tony Lee's request to reject all other buyers and to consider the NEDEC/KODEC Group as a "top priority as agreed [in a meeting in Suzhou on 10 January 2012]" (where the BAP–LND Contract was signed), Mr Goh duly so promised.

88 In addition, Mr Goh quoted a "friend price" of US$40 million to Mr Tony Lee for the sale of BTEC, which was apparently below the US$50 million the Beyonics Group would have charged SEMCO. Mr Goh also engaged in extensive discussions with Mr Tony Lee, even proposing options for financing the NEDEC/KODEC Group's acquisition of BTEC.

89 I should also add that Mr Tony Lee informed Mr Billy Chua of the intended disposition to the NEDEC/KODEC Group. In my view, regardless of whether there was a policy to divest the PE Division, Mr Goh clearly favoured the NEDEC/KODEC Group when attempting to sell BTEC. This led to Business Development Asia LLC ("BDA") being engaged to be agents for the sale of PE Division, and to Mr Shaw telling Mr Goh in no uncertain terms that

all discussions should go through BDA and that Mr Shaw should also be informed. Specifically, Mr Shaw told Mr Goh that this "includes Nedec [which does not have] exclusivity at this time". Eventually, the NEDEC/KODEC Group did not purchase BTEC.

Findings on facilitating the NEDEC/KODEC Group's business with Seagate

90 To sum up, I find that Mr Goh further assisted the NEDEC/KODEC Group to build its capabilities, for both the First and Second Stages of Work, and favoured the NEDEC/KODEC Group when attempting to sell BTEC. The assistance went beyond what was required to implement the B–N Alliance.

Mr Goh's explanations for his actions

91 Having dealt with the factual disputes regarding whether the alleged acts were committed, I go to the Defendants' broad argument that considered in light of the surrounding circumstances, especially the four matters discussed below, Mr Goh acted in the best interests of the Beyonics Group at all times.

Limited investment in the PE Division

92 First, the Defendants assert that it has long been the policy of the Beyonics Group to make limited investments and to divest the PE Division which was sustaining losses. This allegedly explains Mr Goh's efforts to dispose of BTEC and his withholding of investments in the PE Division at the material time.

93 In the email dated 27 October 2011 from Mr Goh to Mr Billy Chua, ten minutes before the first meeting between Seagate and the NEDEC/KODEC Group, Mr Goh mentioned the Beyonics Group's "limited investment strategy": see [56]. Mr Goh claims that this strategy had been

decided on by the First Plaintiff's Board of Directors, referring to minutes of meeting of the Board of Directors on 13 December 2011. However, these minutes simply recorded that Mr Goh briefed the Board of Directors on the situation after the Thailand floods, and stated that "as we had decided on limited investments to the PES division, we informed [the HDD OEMs] that they have to provide us with some financial assistance". The minutes did not shed light on when and by whom this decision was made. In any case, the email of 27 October 2011 was sent before the 13 December 2011 meeting, and Mr Goh could not have been relying on the minutes at that earlier time.

94 Separately, Mr Goh stated that the decision to make limited investments in the PE Division was made more than ten years ago. In fact, when Mr Goh first joined the Beyonics Group in 2000, the PE Division was already incurring losses. The Board of Directors had decided then to divest the PE Division. During the period in which he was CEO, limited investments were made to the PE Division. However, Mr Goh accepted that there was no record of any such decision by the Board of Directors placed before the court.

95 This matter was not pleaded in the Defence or raised in Mr Goh's AEIC. Such a late introduction of a crucial allegation itself casts doubt on the truth of that allegation. Nonetheless, I will proceed to deal with the merits of the argument. The claim that there was a decision more than ten years ago to make limited investment in the PE Division is contradicted by the acquisition of BTEC in 2004. Further, a substantial shareholding in Wealth Preview, also a subsidiary within the PE Division (see [5(c)]), was acquired only in 2008. I therefore do not accept that there was a clear decision made by the Board of Directors of the First Plaintiff to make limited investments in the PE Division such a long time ago.

96 Even if there was such an earlier decision, given the situation which presented itself after the floods in Thailand, it was incumbent on Mr Goh, as CEO, to consider the appropriate strategy and recommend the best course forward purely in the interests of the Beyonics Group. However, he decided not to indicate commitment and support to Seagate, forged ahead with the B–N Alliance, accepted the payments under the Wyser Agreements and continued to pursue the sale of BTEC rather than consider whether it should be kept within the Beyonics Group, given the loss of BTT. No specific approval was sought from the Board of Directors.

Production capacity for Second Stage Work

97 Second, Mr Goh contends that the B–N Alliance was for the benefit of Beyonics Group because BTEC had already maximised its production capacity, and could not have undertaken both stages of work. A "realistic maximum production capacity" of BTEC was only about 2.5 to 2.6 million units per month. The First Plaintiff takes a contrary position, and contends that BTEC had the capacity to produce about 3.5 to 3.6 million baseplates per month, and thus had sufficient capacity to carry out the Second Stage Work on the one million e-coated baseplates diverted to the NEDEC/KODEC Group. Further, BTEC could have taken steps to ramp up production, or make capital investments to increase its capacity to meet Seagate's demands. Once again, Mr Goh's line of argument in relation to production capacity was not pleaded in the Amended Defence. However, it was raised in Mr Goh's AEIC, as well as the AEICs of the First Plaintiff's witnesses, and dealt with extensively at the trial. Thus, I proceed to deal with matter on its merits.

Overall assessment of production capacity

98 I start by reviewing four documents created near the time of entry into the B–N Alliance regarding BTEC's production capacity, as well as a series of emails from Mr Lee Leong Hua to Mr Goh from 11 November 2011 to 17 November 2011 (collectively referred to as the "What-If Analysis emails").

THE PE MEMO

99 The first document is the "Project PE – Information Memorandum" ("the PE Memo") dated 23 November 2011. This was sent by Mr Goh to Mr Shaw on 31 January 2012. The PE Memo stated that the PE Division "has the necessary machinery and equipment in the Die Casting, E-Coating and Precision Machining processes [*ie*, both the First and Second Stage Works] with high capacities" and this enables "the PE Division to manage high volume of orders from customers". It also stated that BTEC had 259 CNC Machines with a capacity of producing 3.5 million units per month.

100 The PE Memo was prepared by Mr Goh for distribution to potential buyers of the PE Division. A copy of this was provided to the NEDEC/KODEC Group. Relying on this document, the First Plaintiff contends that with the purchase of 10 more CNC machines in February 2012 (a fact which was undisputed), the machining capacity should proportionately increase to approximately 3.64 million baseplates per month, which would more than adequately cover the Second Stage Work on the one million e-coated baseplates diverted to the NEDEC/KODEC Group.

101 In cross-examination, Mr Goh explained that at the material time, he had accepted the figure of 3.5 million in the PE Memo as accurate, as the information had been provided by the engineering personnel. However, he

disassociated himself from the figure by claiming that it was based on a "theoretical maximum" of CNC machining capacity, and that the "realistic maximum" production capacity was only 2.5 to 2.6 million, about a million units fewer than what was stated in the PE Memo. Therefore, BTEC could not carry out the Second Stage Work on one million pieces of e-coated baseplates per month. Instead of the PE Memo, Mr Goh asked that weight be given to the following three documents instead.

THE DRAFT CAPACITY ANALYSIS

102 The next document is the "Draft Capacity Analysis" sent by Mr Lee Leong Hua on 14 March 2012 to the financial controller of the Beyonics Group. This was prepared by Mr Lee Leong Hua for the purpose of a management meeting at the instructions of Mr Goh. The Draft Capacity Analysis stated that BTEC's machining capacity, based on 247 CNC machines, was 2.36 million. However, this did not take into account a remaining 22 CNC machines at BTEC. It was also prepared on the basis of a five-day work week, and 22 working hours per day, and did not reflect the maximum capacity of BTEC.

THE CHANGSHU CAPACITY MATRIX

103 The "Changshu Capacity Matrix" was sent on 7 June 2012 by Mr Lee Leong Hua to Mr Mueller. After BDA was engaged as agents for the sale of the PE Division, it requested some information from the Beyonics Group, including the Changshu Capacity Matrix which Mr Lee Leong Hua filled in. The Changshu Capacity Matrix stated that BTEC had 269 CNC machines with a "theoretical capacity" of 100,000 baseplates daily, and that the current capacity utilisation rate was 88%. This was on the assumption of a 26-day

working plan. Therefore, BTEC had a machining capacity of 2.6 million baseplates per month.

104 At the trial, Mr Lee Leong Hua explained that the calculation did not take into account that there were 66 unused spare CNC machines available at BTEC. Instead, the calculation was based only on those CNC machines which were running at that point in time. Assuming that these 66 unused spare CNC machines were also used for the Second Stage Work for Brinks 2H baseplates, approximately 1.16 million additional Brinks 2H baseplates could be produced. Therefore, the total machining capacity would be approximately 3.76 million baseplates per month. On this, I accept Mr Lee Leong Hua's evidence that the Changshu Capacity Matrix did not reflect the maximum production capacity of BTEC.

THE BDA MEMO

105 Next, I turn to the confidential information memorandum prepared by BDA ("the BDA Memo") dated June 2012. In the section entitled "[c]apacity and production", it was stated that BTEC had an annual machining capacity of 36 million baseplates, or a monthly machining capacity of 3 million baseplates. These figures are stated to be on the assumption that "all capacity is used for production of baseplates". However, Mr Shaw explained that these figures were conservative, as the BDA Memo was meant to be a document for the sale of BTEC. While the Beyonics Group understood from the PE Memo that the capacity was 3.5 million, they were agreeable for BDA to use the more conservative estimate of 3 million. I accept the explanation by Mr Shaw.

THE WHAT-IF ANALYSIS EMAILS

106 The What-If Analysis emails started with Mr Goh's email on 11 November 2011 at 9.25am to Mr Lee Leong Hua and others stating that he would be asking Seagate for funding, and requesting Mr Lee Leong Hua to "do the calculation" on BTEC's baseplate production capacity. On the same day at 1.21pm, Mr Lee Leong Hua emailed Mr Goh stating that he would require a capital investment of US$4.18 million (to purchase new machines, jigs and fixtures) to meet the proposed monthly production plan of 1.1 million Seagate baseplates, 1.9 million Hitachi baseplates, 300,000 automotive parts and one million e-coated baseplates for the NEDEC/KODEC Group. Mr Goh claims that this shows that BTEC required large sums of capital investments to increase its production capacity to meet the proposed production plans.

107 However, Mr Leong Lee Hua explained that his computation was done on the basis that BTEC did not have any existing equipment or machinery which could be used for production. In fact, it was not necessary to invest in more CNC machines as there were unused CNC machines at BTEC. Instead, he opined in his AEIC that only a small investment for tools and fixtures was required for the Beyonics Group to carry out the Second Stage Work on the one million e-coated baseplates diverted to the NEDEC/KODEC Group.

108 Although US$4.18 million was requested by Mr Lee Leong Hua, at the meeting with Seagate on 18 November 2011, Mr Goh asked for twice the amount in the presentation slides, being US$8.8 million. In my view, the What-If Analysis Emails were prepared for the basis of getting investments from Seagate. For that purpose, they reflected the full extent of equipment and investments that the Beyonics Group would like to have. However, little weight should be placed on What-If Analysis Emails to establish what the

BTEC really required, much less be relied on to conclude that there was a lack of capacity on the part of BTEC.

FINDINGS ON DOCUMENTS ON THE OVERALL ASSESSMENT OF PRODUCTION CAPACITY

109 Based on the documentary and other evidence discussed above, I agree with the First Plaintiff that the information stated in the PE Memo appears to be the most reliable. It was originally endorsed by Mr Goh. Further, I note that the PE Memo was prepared closest in time to the entry into the B–N Alliance. As pointed out by the First Plaintiff, the timing of the documents was important as the overall capacity of a factory is not static and would vary depending on the mix of programmes being run by BTEC. The information in the PE Memo is thus more probative than that contained in other documents.

Objective evidence of the capacity of the CNC machines

110 More importantly, the above documents show that of the many factors which determined the production capacity of BTEC, the most crucial factor was the numerical sufficiency of CNC machines. This factor featured in all the documents discussed and was confirmed to be critical by Mr Lee Leong Hua.

111 The First Plaintiff sought to provide objective evidence that BTEC had a sufficient number of CNC machines to carry out the additional Second Stage Work, especially from January 2012 to January 2013, the period during which e-coated baseplates were diverted to the NEDEC/KODEC Group.

(a) First, Mr Lee Leong Hua referred to the BTEC weekly output reports and computed the number of CNC machines utilised at BTEC on a weekly basis. Deducting the number of utilised CNC machines from the total number of CNC machines at BTEC (which was 269), he then derived the number of CNC machines *not* utilised on a weekly

basis. This computation consistently showed that there were unused CNC machines at BTEC.

(b) Second, according to Mr Lee Leong Hua, each CNC machine would be able to produce about 600 Brinks 2H baseplates per day. On this basis, he computed the additional output by BTEC should the spare CNC machines be put to use.

(c) Third, from the Oracle records system of the Beyonics Group, Mr Lee Leong Hua extracted information to obtain the number of e-coated baseplates diverted to the NEDEC/KODEC Group in the corresponding period.

(d) Fourth, the First Plaintiff relied on another set of documents known as BTEC's weekly production reports which contained, *inter alia*, the actual total production figures for each BTEC baseplate programme. Extracting from the weekly production reports, the First Plaintiff tabulated BTEC's actual monthly production figures.

112 At the trial, the information for the first three items was collated into Exh P13, and presented on a monthly basis. As for the fourth item, the information was presented in Exh P15. For ease of reference, I reproduce the information from these two exhibits for January 2012 to January 2013:

Month	**Actual total production of baseplates (Exh P15)**	**Unused CNC machines out of 269 (Exh P13)**	**Extra output if unused CNC machines used (Exh**	**Baseplates supplied to NEDEC/ KODEC Group (Exh P13)**

			P13)	
Jan 2012	2,073,265	58–96	1,230,600	156,000
Feb 2012	2,214,118	52–80	1,113,000	240,000
Mar 2012	2,414,912	38–61	995,400	672,000
Apr 2012	1,948,770	50–77	1,011,990	636,000
May 2012	2,020,193	58–95	1,601,250	1,002,000
Jun 2012	1,882,656	76–101	1,545,740	1,188,000
Jul 2012	2,012,646	84–107	1,682,380	1,092,300
Aug 2012	1,618,863	129–165	2.976,190	1,121,280
Sept 2012	995,064	114–162	2,386,930	642,068
Oct 2012	684,256	163–185	2,228,940	601,920
Nov 2012	1,132,097	158–167	2,796,850	543,191
Dec 2012	1,615,380	153–181	3,619,560	126,720
Jan 2013	1,006,219	154–181	2,959,880	188,016

113 Even at a glance, it is clear from the figures in the table that BTEC had more than enough machining capacity to carry out the Second Stage Work for

one million e-coated baseplates a month that were diverted to the NEDEC/KODEC Group. I should also add that at the time of Mr Goh's email to Mr Billy Chua on 27 October 2011 at 8.50am (which was Week 43 of 2011), there were 131 unutilised CNC machines at BTEC. There did not seem to be any reason to think that BTEC did not have sufficient machining capacity then.

114 It is important to note that the Defendants did not challenge the figures presented in Mr Lee Leong Hua's AEIC, Exh P13 or Exh P15. In fact, after considering the documents, Mr Ng Lip Chih admitted that they were substantially correct. Therefore, I accept that these computations from the source documents were accurate. Even on another set of source documents known as BTEC's weekly production and manpower status reports, which the Defendants relied on, it is also clear that there were spare CNC machines at BTEC. However, the First Plaintiff explained that there was no complete record of these reports across the relevant period, and thus the Plaintiffs did not choose to rely on them. Nonetheless, the computation based on the weekly production and manpower status reports was produced as Exh P14 at trial.

115 At the end of the day, it is clear that the Defendants did not dispute that there were a substantial number of spare CNC machines at BTEC. Instead, the Defendants put forth a few arguments as to why these spare CNC machines could not be utilised to perform the Second Stage Work as follows:

(a) First, CNC Machines are committed to producing baseplates for a particular programme for a specific customer, such that when the customer's demand for baseplates for that particular programme decreases, the machines are left idle and cannot be used to carry out work for a different programme without the customer's consent. I do

not find this claim believable. In fact, Mr Billy Chua stated that Seagate does not require customers to commit specific CNC machines to them. Mr Lee Leong Hua also stated that if a customer's order does not use up the allocated machines, then the unused machines are available for another customer's use. From the tabulation of the machines allocated to Seagate, Hitachi and other customers of BTEC, it was also clear that the number of machines allocated to each customer changed significantly from one week to another.

(b) Next, the time taken to reconfigure a CNC machine to undertake work for a different programme is substantial, with an average of six months' lead time required. However, in contrast, Mr Goh said that the NEDEC/KODEC Group could have converted the CNC machine programming from a Samsung programme to a Seagate programme relatively quickly in two months. These contradictory positions render the argument on lead time unbelievable.

(c) Third, the older CNC machines can only be used for pre-machining works, and are unsuitable to be used for machining which requires more precision in Second Stage Work. Therefore, using older CNC machines for machining work could create quality issues, and BTEC did not factor in the older machines in planning for production. These matters were not raised at all by Mr Goh until the cross-examination of Mr Lee Leong Hua. In any case, Mr Lee Leong Hua explained that while BTEC generally deployed older CNC machines for pre-machining works as there were spare CNC machines, it did not mean that they could not be used for machining work. I accept his evidence.

(d) Fourth, again during the cross-examination of Mr Lee Leong Hua, it was contended that any unused CNC could not be reallocated to perform the Second Stage Work because BTEC was required to keep unused machines to provide for an "upside flexibility" in orders of up to 30%. However, Mr Goh himself conceded that this was not a position that the Beyonics Group adopted. I thus did not place any weight on this argument.

116 Based on the foregoing, I find that there were spare CNC machines at BTEC which could have been put to use to carry out the Second Stage Work on the e-coated baseplates supplied to the NEDEC/KODEC Group.

Other constraints to production capacity

117 Undoubtedly, production capacity is also affected by a host of other, albeit less critical, factors. The other constraints to production raised by Mr Goh include (a) the washing capacity of the washing lines (washing being a process that takes place after machining during the Second Stage Work); (b) the sufficiency of tools, fixtures and cutters (which are to be fitted to the CNC machines and other machines); (c) the quality of baseplates produced at BTEC; and (d) manpower. Mr Goh contends that in deriving the production capacity from the spare CNC machines as shown in Exh P13, Mr Lee Leong Hua had failed to take into account these matters.

118 I do not propose to go into these other factors in detail. Having reviewed the evidence, I find that BTEC had sufficient washing capacity. As for the tools, fixtures and cutters, these can be acquired quickly and required minimal capital investments, so any shortfall would not have been an obstacle to taking on the Second Stage Work. There were no major quality issues at

BTEC. As for manpower, I accept that there was manpower shortage not just during Chinese New Year in 2011 (as conceded by the First Plaintiff), but also in April 2012. However, the Defendants have not adduced sufficient evidence to show that this manpower shortage was persistent (*ie*, extended beyond the isolated incidents highlighted) such as to have a real impact on the production capacity of BTEC. On the whole, I find Mr Goh's allegations were largely unsubstantiated and not borne out by the evidence.

Findings on production capacity

119 Based on the above, I accept that at the critical period when Seagate was anxious about the supply crunch, there were spare CNC machines at BTEC which could have been utilised. In the circumstances, I accept that the Beyonics Group, and specifically BTEC itself, had the capacity to perform the Second Stage Work on the e-coated baseplates supplied to the NEDEC/KODEC Group. BTEC could also have ramped up the number of production days from 26 days to 30 days a month, so as to increase production capacity. I accept that there might have been some investments required for equipment other than CNC machines, and note that Mr Lee Leong Hua candidly admitted that he thought some level of investment would have been necessary to perform the Second Stage Work (see [107]). However, compared to CNC machines, the other equipment would not be as costly. In this regard, I note that around December 2011, a total of US$1.1 million was paid by Seagate to BTEC, a sum which included payments for the costs of tools and fixtures so as to increase capacity for the manufacture of baseplates for Seagate. The receipt of this sum was not disputed by the Defendants. This amount is nearly a quarter of the sum of US$4.18 million investment originally estimated by Mr Lee Leong Hua in the What-If Analysis emails, which, it must be recalled, was made on the basis that that BTEC did not have

any existing equipment or machinery that could be used for production at all. This grant should have gone a long way to make any further investments required to perform Second Stage Work for Seagate. In any case, I shall return to the issue of investments required below at [121].

The B–N Alliance was not unique

120 Third, Mr Goh contends that the B–N Alliance was one of several partnerships after the Thailand floods. Apart from the pairing of the Beyonics Group and the NEDEC/KODEC Group, there were also two pairings of other suppliers, namely between MMI and Shinsung, and between Nidec and Foxconn. Thus, there was nothing improper about entering into the B–N Alliance. However, I note that Seagate dealt with these partnerships only *after* the B–N Alliance. While Mr Goh's presentation to Seagate was on 18 November 2011 and the confirmation of the B–N Alliance was on 24 November 2011, presentations for the other pairings took place only in early 2012. In any case, these pairings do not detract from the fact that Mr Goh acted to persuade and convince Seagate to proceed with the B–N Alliance without pitching for the Beyonics Group to perform the Second Stage Work. The fact that there were other pairings between suppliers does not strengthen Mr Goh's stance that he acted in the best interests of the Beyonics Group.

Benefits procured by Mr Goh for the Beyonics Group

121 Finally, Mr Goh argues that although he had in the 18 November 2011 presentation slides to Seagate included a request for the US$2.5 million Seagate Grant for the NEDEC/KODEC Group, he had also made a request on behalf of the Beyonics Group for an US$8.8 million investment, and eventually obtained a grant of US$1.7 million for it. However, I am more persuaded by the First Plaintiff's contention that the effect of the presentation

was that the Beyonics Group appeared to require a much larger investment from Seagate (twice that of Mr Lee Leong Hua's generous estimate in the What-If Analysis emails), while the NEDEC/KODEC Group was willing to ramp up production for a much smaller investment of US$2.5 million. It was in that context that the US$1.7 million grant was provided.

122 Further, Mr Goh took credit for obtaining from Seagate a "cost adder", which was a premium paid to the suppliers in addition to the sale price for a particular period. However, it appears that at the material time, Seagate paid a cost adder to all its existing suppliers; it was not something which Mr Goh would have had to specifically negotiate for. For this reason, Mr Goh cannot rely on this as evidence that he acted in the best interests of the Beyonics Group at all times.

Findings on Mr Goh's explanations

123 Finally, it was highlighted that Mr Goh had a "significant shareholding" of 6.47% in the First Plaintiff after the acquisition by Channelview. Therefore, there was allegedly no reason for him to prefer the growth of the NEDEC/KODEC Group as a competitor to the Beyonics Group. In my view, as a minority shareholder, Mr Goh had very little control over the dividends payable to him. By contrast, in collaborating with the NEDEC/KODEC Group, he was in a position to negotiate for and obtain personal benefits. Considering the evidence on these points in their totality, I am not persuaded by Mr Goh's explanations that his actions were taken in the best interests of the Beyonics Group.

Whether Mr Goh breached his duties

124 Based on my findings above, I am of the view that Mr Goh's actions were in breach of the four main fiduciary duties set out at [40]. For completeness, I also find that he has breached the statutory duties set out in ss 156 and 157 of the Companies Act.

125 First, it is clear that Mr Goh failed to act honestly and *bona fide* in the best interest of the First Plaintiff. Quite the contrary, Mr Goh had acted in the interests and for the benefit of the NEDEC/KODEC Group, a direct competitor of the Beyonics Group. In the critical time after the Thailand floods, it was in the Beyonics Group's best interest to secure the trust of Seagate, one of its largest clients, and to assure Seagate of its support in order to continue its business with Seagate. Mr Goh, however, under-represented the Beyonics Group's capacity and readily endorsed the B–N Alliance even when the Beyonics Group had sufficient production capacity to carry out the Second Stage Work, thus effecting a diversion of e-coated baseplates to the NEDEC/KODEC Group. Further, Mr Goh played an instrumental role in initiating and assisting the NEDEC/KODEC Group to procure the US$2.5 million Seagate Grant. Finally, he continued to facilitate the NEDEC/KODEC Group's business with Seagate, assisting with its qualification and performance of the Second Stage Work, developing its capacity to carry out the First Stage Work, and giving it preferential treatment in the sale of BTEC. While the sale of BTEC did not materialise, news of this leaked to Seagate. The culmination of Mr Goh's actions was that Seagate was given the impression that the Beyonics Group was not committed to the business with Seagate, while the NEDEC/KODEC Group was more than ready for it.

126 In addition, in playing an active role in the B–N Alliance, Mr Goh created a conflict between his duty to the First Plaintiff and his personal interest. His duty to the Beyonics Group was to help to seize opportunities for it. However, this conflicted with his personal interest to build on his relationship with the NEDEC/KODEC Group, a competitor of the Beyonics Group, and to explore opportunities for his own pecuniary benefit under the Wyser Agreements. Indeed, all of Mr Goh's actions were tainted by the receipt of the payments under the Wyser Agreements, which I have characterised as bribes.

127 In receiving the payments under the Wyser Agreements, Mr Goh has also breached the duty against taking secret profit and improper payments. The acceptance of the bribes is the clearest instance of the conflict between his duty to the First Plaintiff and his personal interest. The prohibition against taking secret bribes is a strict one. The very fact of the bribe is a clear breach of fiduciary duty: see John McGhee gen ed, *Snell's Equity* (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity*") at para 7-047.

128 Finally, Mr Goh did not disclose any of his above actions, least of all the payments under the Wyser Agreements, to the Board of Directors of the First Plaintiff. In fact, he hid his correspondence with the NEDEC/KODEC Group from the First Plaintiff by deleting a large number of incriminating emails which had to be recovered.

Whether the breaches caused the losses

Legal principles on causation

129 Having found that Mr Goh breached the fiduciary duties owed to the First Plaintiff, the next question is whether he *caused* the losses to the First

Plaintiff. Bearing in mind that the First Plaintiff seeks equitable compensation, it is appropriate to discuss the applicable legal principles of causation in this context.

130 The Plaintiffs analyse this legal issue in their closing submissions. They submit that where there is a clear fiduciary relationship, and grave and culpable breaches of the core fiduciary obligations of honesty and fidelity, the legal test for causation is less stringent than the common law "but for" test, such that it would suffice to show that the losses sustained were "in some way connected" to the fiduciary's breach of duties. Further or in the alternative, equity may require a shifting of the evidential burden to the fiduciary. Once the plaintiff adduces some evidence to connect the breach to the loss, the evidential burden would shift to the fiduciary to show that the plaintiff would have incurred those losses even if there had been no breach by the fiduciary. In contrast, the Defendants do not address the law regarding causation at all.

131 At the outset, I note that it is clear that "there is no equitable by-pass of the need to establish causation" (*Swindle v Harrison* [1997] 4 All ER 705 at 733); that is, the breach of fiduciary duties must have caused the loss before equitable compensation can be awarded. The more controversial issue is whether the strict common law "but for" test applies, and if not, what the less strict test is. In two recent High Court decisions of *Quality Assurance* and *Then Khek Koon v Arjun Permanad Samtani* [2014] 1 SLR 245 ("*Then Khek Koon*"), this area is considered in detail. As set out in these two cases, generally, there are two differing approaches.

132 The first approach is contained in the English House of Lords decision of *Target Holdings Ltd v Redferns* [1996] 1 AC 421 ("*Target Holdings*"), which applied the traditional "but for" test of causation. In *Target Holdings,*

the plaintiff finance company agreed to provide a loan of £1.5 million to a borrower on the security of a commercial property to be bought by the latter. The borrower had provided a professional valuation of the property at £2 million. The £1.5 million loan was transferred by the finance company to its solicitors. It was common ground that the solicitors were not to transfer the money to the borrower until the conveyance was completed and a charge over the commercial property in favour of the finance company was executed. However, in breach of trust, the solicitors paid away a large portion of the money prematurely to the borrower, before the completion of the conveyance, and without first securing the charge (both of which only took place some days later). Unknown to the finance company, the borrower fraudulently obtained an excessively high valuation of the property. It defaulted on the loan, and the property was sold at a loss. The finance company brought a claim against the solicitors for, *inter alia,* breach of trust. The solicitors claimed that because of the borrower's fraud (to which they were not party), the breach of trust left the finance company in exactly the same position as it would have been had there been no breach. Thus, the breach of trust by the solicitors could not be said to have *caused* the loss ultimately suffered by the finance company, as the loss would have been suffered in any event.

133 The House of Lords in *Target Holdings* at 434 highlighted that the fiduciary's breach of duty must be a "but for" cause of the plaintiff's loss. In other words, "even if the immediate cause of the loss is the dishonesty or failure of a third party, the trustee is liable to make good that loss to the trust estate if, *but for the breach, such loss would not have occurred* ... [T]here does have to be some causal connection between the breach of trust and the loss to the trust estate for which compensation is recoverable, viz. *the fact that the loss would not have occurred but for the breach*" [emphasis added]. On the

facts of *Target Holdings,* the House of Lords held that the "but for" test of causation was not made out as the finance company would be in exactly the same position if no breach of trust had occurred. It was thus not entitled to any equitable compensation from the solicitors.

134 By way of contrast, in the Privy Council decision of *Brickenden v London Loan & Savings Co of Canada* [1934] 3 DLR 465 ("*Brickenden*"), a less strict approach to causation appeared to be favoured. A solicitor had lent money to a mortgagor in return for three mortgages. He acted for both a finance company and the mortgagor in a refinancing transaction, where the finance company advanced a loan to the mortgagor against a new mortgage. The solicitor retained part of the loan advanced to discharge the existing mortgages which he held personally. He only disclosed to the finance company one of the three prior mortgages. When the mortgagor defaulted on repayment, the finance company sued the solicitor for breaching his fiduciary duty in failing to disclose his personal interest in the transaction. The solicitor was held liable to compensate the finance company for the losses suffered as a result of the mortgagor's default. *Quality Assurance* at [43] interprets *Brickenden* as authority for the proposition that a claim for equitable compensation will succeed so long as the wronged party can show that the fiduciary's breach of duty is "*in some way connected*" to the loss, even if it simply sets the occasion for the loss rather than being the cause of the loss in any legal sense.

135 Based on an analysis of *Target Holdings*, *Brickenden* and other authorities, *Quality Assurance* and *Then Khek Koon* classified breaches of fiduciary duties into different categories. It is held that the less strict approach in *Brickenden* "should and does apply with full stringency, at the very least, to: (a) a fiduciary who is in one of the well-established categories of fiduciary

relationships; (b) who commits a culpable breach; (c) who breaches an obligation which stands at the very core of the fiduciary relationship": *Quality Assurance* at [56]. Provided that the three conditions are satisfied, a fiduciary is liable to pay equitable compensation even if the *principal* is unable to prove "but for" causation: *Then Khek Koon* at [108(b)]. In other scenarios, the principal still has to satisfy the strict "but for" causation. In other words, the test of causation in the context of equitable compensation is not uniform. As the other scenarios are not relevant to the present facts, it is not necessary for me to deal with them.

136 In relation to the less strict approach to causation in *Brickenden*, *Quality Assurance* makes clear that, contrary to a literal reading of the former (as stated at [134]), the fiduciary is not *immediately* liable for all losses once the principal successfully proves that the breach is "in some way connected" to the loss. Instead, there is thereafter a shift of the evidential burden to the fiduciary to prove that "but for" his breach of fiduciary duties, the loss would still have occurred. Once the principal adduces *some* evidence to connect the breach to the loss, the evidential burden on causation shifts to the breaching fiduciary. Bearing in mind this burden-shifting function of the *Brickenden* rule, the statement in *Then Khek Koon* at [108(b)] (quoted in the preceding paragraph) that liability can be established even if the *principal* is unable to prove "but for" causation should not be understood as dispensing with the need for "but for" causation altogether. In addition, where the *Brickenden* rule applies, causation will be determined shorn of the rules of foreseeability, remoteness and *novus actus interveniens.* There will also be no examination of the contributory fault of other parties: *Quality Assurance* at [61].

137 For the purpose of the present case, I adopt the propositions set out in [135]–[136]. I note that this approach is in line with earlier local cases. In *John*

While Springs (S) Pte Ltd v Goh Sai Chuah Justin [2004] 3 SLR(R) 596 ("*John While Springs*") at [5]), the High Court interpreted *Kumagai-Zenecon Construction Pte Ltd v Low Hua Kin* [1999] 3 SLR(R) 1049 ("*Kumagai-Zenecon*") at [35], and held that the burden is on the plaintiff to prove that the losses and damages suffered are "caused by or linked to" the breaches of fiduciary duties. Thereafter, the burden shifts to the fiduciary to show that the plaintiff would have incurred those losses even if there had been no breach. In my view, where there is a culpable breach of a core duty of a well-established category of fiduciary relationship, the burden-shifting function of the *Brickenden* rule is sensible in that it does not hold the fiduciary liable for all losses linked in some way to his breach (as would occur if the fiduciary was not afforded the chance of exonerating himself from liability), but nonetheless deters breaches of core fiduciary duties. A fiduciary has been said to owe to his principal "the highest standard [of duty] known to the law" (see *Kumagai-Zenecon* at [13]). Thus, where the fiduciary acts in derogation from his core obligation of single-minded loyalty to his principal and prefers his own interest, the principal should not have to bear the heavy burden of proving strict "but for" causation.

The Diversion Loss

138 Having set out the legal principles, I turn to the issue of whether Mr Goh's breaches caused the Diversion Loss. The Defendants' argument is that the Beyonics Group did not have capacity to carry out Second Stage Work on the e-coated baseplates diverted to the NEDEC/KODEC Group. Therefore – the Defendants argue – the Diversion Loss would still have been suffered in any event. I reject this argument, having earlier concluded that BTEC had production capacity for the Second Stage Work. Thus, Mr Goh's misconduct directly caused the Diversion Loss suffered, and causation is established even

on the strict "but for" standard. For completeness, I should add that *a fortiori*, causation would also be established on the less stringent *Brickenden* standard, which can be applied given that this case quite clearly falls within the remit of *Brickenden* (see further, [153] below).

The Total Loss

139 Next, I consider whether the breaches of Mr Goh's fiduciary duties caused the Total Loss suffered. In this context, I note that the First Plaintiff's quantification for the Total Loss included the decline in baseplates sales to Seagate from FY 2012 to the beginning of FY 2014, and the total loss of business with Seagate from FY 2014 onwards.

140 Mr Goh argues that in any event, Seagate was intending to consolidate its baseplate suppliers and ultimately to remove the Beyonics Group as a supplier. Further, the Total Loss can also be attributed to the mismanagement of the Seagate account by the First Plaintiff's executives who took over from Mr Goh at the end of 2012, after the acquisition by Channelview. Thus, Mr Goh contends that the Total Loss would still have been suffered in the absence of his breaches.

141 On the other hand, the First Plaintiff argues that while there appears to be a multitude of factors behind Seagate's decision to terminate the Beyonics Group as a supplier of baseplates, ultimately, the decision was based on one key factor: the contrasting levels of commitment shown by the Beyonics Group and the NEDEC/KODEC Group. It was Mr Goh's misconduct which led to this disparity. Therefore, the First Plaintiff argues that the "but for" test is satisfied. In the alternative, the First Plaintiff submits that Mr Goh's breaches were of his core duties as a fiduciary, and therefore the less stringent

test of causation in *Brickenden* can be applied. The burden shifts to Mr Goh to show that the Total Loss would have been suffered independent of his breaches, and he is unable to do so.

142 Having set out the parties' positions, I turn to some further evidence concerning the termination of the Beyonics Group as a supplier to Seagate. I first refer to four sets of presentation slides prepared by Mr Billy Chua for the purpose of discussing the outlook of Seagate's baseplate commodity strategy with its management. From these, it is apparent that sometime in mid-2012, Seagate formed the intention of removing the Beyonics Group as a baseplate supplier, and by November 2012, appeared to have firmed up its plans.

143 In the first set of presentation slides entitled "CMT Review [on] Baseplate commodity" dated 15 December 2011, it was assessed that due to the impact of the Thailand floods, "Beyonics may be critically affected, recovery may be difficult & requires a longer period". This reflected Seagate's anxiety about the Beyonics Group's ability to continue to supply baseplates.

144 In the "Baseplate Commodity Strategy and Plan" presentation slides dated 2 July 2012, Seagate stated that it intended to start consolidating its baseplate suppliers by the third or fourth quarter of 2013, to maintain a stronger and more dedicated supply chain following the Thailand floods. Mr Billy Chua explained that Seagate had projected that the Beyonics Group would be one of the consolidated suppliers because of its low capacity in only having its "China facility" (BTEC) to produce baseplates, as its Thai facility (BTT) was destroyed in the floods. It also appeared that the NEDEC/KODEC Group was becoming a stronger presence in the market. One of the points in the presentation slides was that there would be "Reduced [supply from Beyonics] *thro' Nedec integration*" [emphasis added].

145 In the "Mech CMT Review Baseplate" presentation slides dated 13 September 2012, it was explicitly stated that Seagate intended to "eliminate Beyonics [as a supplier] in [the] near term". Another prong of Seagate's plan was to "continue forward plan growth with main [suppliers]: Nidec/NMB/MMI". Mr Billy Chua explained that Nidec and NMB were considered main suppliers because they also supplied motors in addition to baseplates, and MMI had the largest baseplate capacity support for Seagate.

146 Finally, in the "Baseplate Commodity-Suppliers Consolidation" presentation slides dated 20 November 2012, it was expressly stated that various secondary suppliers, being the Beyonics Group, Altum and JCY, would be eliminated "in consecutive phases". However, the elimination of the three secondary suppliers "all at once" was not recommended, in case of changes in the demand volume. Crucially, of the three secondary suppliers, the Beyonics Group was identified to be the first to be eliminated in Seagate's FY 2014, with the next secondary supplier (JCY) to be eliminated in Seagate's FY 2015. This order was confirmed by Mr Billy Chua in cross-examination.

147 On the reasons for proceeding with the consolidation strategy, Mr Billy Chua explained that its master schedule, which projects volume of HDDs required quarterly, revealed a slowdown in the overall projected volume requirements. Therefore, Seagate had to slow down its plans for baseplate capacity for its suppliers. Indeed, in the slides dated 20 November 2012, there was a projection of weak or minimal growth from Seagate's FY 2013 to FY 2015.

148 In addition, I note that Seagate appeared to be dissatisfied with the Beyonics Group as a supplier of baseplates. On 27 December 2012, having taken over as CEO of the First Plaintiff, Mr Michael Ng met with Seagate

representatives, including Mr HC Toh and Mr Billy Chua. In an email to Mr Shaw summarising the meeting, Mr Michael Ng said that Seagate had highlighted its concerns regarding the Beyonics Group's reluctance to invest after the Thailand floods. As a result, it did not have the requisite technology to compete effectively. Mr HC Toh was said to have made a direct comparison with the higher level of commitment shown by the NEDEC/KODEC Group. He indicated that "those who have made the investment during the Thai flood will proportionately be getting the higher allocation".

149 According to another email from Mr Michael Ng dated 8 January 2013, Seagate complained that it had to pay more for baseplates produced by the NEDEC/KODEC Group which used e-coated baseplates supplied by the Beyonics Group. Since the NEDEC/KODEC Group would in the near future be qualified to perform the First Stage Work, Seagate could directly buy finished baseplates manufactured solely by the NEDEC/KODEC Group without adhering to the B–N Alliance and without relying on the Beyonics Group for e-coated baseplates.

150 Overall, I am satisfied that Mr Goh's breaches caused the Total Loss on the traditional "but for" test of causation. I agree with the First Plaintiff that while there were other factors at play, the key reason for the termination of the Beyonics Group, rather than any other supplier, when the market demand fell was its lack of commitment and support shown to Seagate, in contrast to the higher level of commitment shown by the NEDEC/KODEC Group. Seagate's impression of the Beyonics Group's lack of capacity was a clear and direct result of Mr Goh's actions, in particular his under-representation of existing capacity, and his explicit communication that the Beyonics Group was only willing to make limited investments (see [51]).

151 It should be noted that the first indication that Seagate was worried about the Beyonics Group's capacity to produce baseplates was in the first set of slides dated 15 December 2011, *ie*, *after* Mr Goh had signalled the Beyonics Group's lack of commitment to Seagate (in mid-October 2011). In contrast, Mr Goh played an instrumental role in helping to build up the NEDEC/KODEC Group as a viable player in the baseplates market in direct competition to the Beyonics Group, including enhancing its capacity to perform First Stage Work as well (see [77]–[90]). As a result, the NEDEC/KODEC Group was consistently listed as a supplier of baseplates to Seagate, while the Beyonics Group was noted to have lost its technological edge.

152 At the end of the day, I found two factors most telling: first, that Seagate preferred to qualify and increasingly rely on a new supplier (the NEDEC/KODEC Group), when it was clear that Seagate would ordinarily have preferred to rely on existing suppliers (see [50]); and second, that the Beyonics Group was eliminated ahead of two other secondary suppliers. In the circumstances, I am satisfied that "but for" Mr Goh's breaches, Seagate would not have terminated the Beyonics Group as a supplier in FY 2014. That said, I accept that Seagate would likely have terminated the Beyonics Group as a secondary supplier at some point in time, and return to the relevance of this at [221]–[222] below.

153 In any event, I agree with the First Plaintiff that this case falls within the boundaries of *Brickenden* (see [135]) such that the First Plaintiff only bears the burden of proving that the breaches were "in some way connected" to the losses before the evidential burden shifts to Mr Goh. Mr Goh, as director and CEO of the First Plaintiff, is within one of the well-established categories of fiduciary relationships. He committed culpable breaches as his

actions were deliberate, dishonest and committed for personal gain while keeping the First Plaintiff in the dark. The obligations he breached are all aspects of the duty of honesty and fidelity which stands at the very core of the fiduciary relationship.

154 From the earlier analysis, the First Plaintiff has discharged its burden of proving that Mr Goh's breaches of fiduciary duties were at least "in some way connected" to the ultimate termination of the Beyonics Group as a supplier of baseplates in FY 2014, and the Total Loss suffered. The evidential burden accordingly shifts to Mr Goh to demonstrate that even without his breaches, the business with Seagate would still have decreased and the Beyonics Group terminated as a baseplate supplier by FY 2014, *ie*, that the Total Loss would still have been suffered. I am not satisfied that he has succeeded in discharging this evidential burden. Most fundamentally, Mr Goh has been unable to show proof that Seagate's decision to terminate the Beyonics Group's supply of baseplates was untainted by the effects of his misconduct. Seagate's progressive concretisation of its consolidation strategy as evident in the slides in July, September and November 2012 took place after Mr Goh's under-commitment in terms of capacity and investments (in mid-October 2011) and the commencement of the B–N Alliance (in January 2012). Seagate's decision to remove the Beyonics Group as a baseplate supplier in FY 2014 was clearly affected by Mr Goh's actions.

155 Finally, Mr Goh cannot shift the blame to the new executives of the Beyonics Group. Given that the present case clearly falls within the boundaries of *Brickenden*, as interpreted by *Quality Assurance*, the court will not consider the contributory fault of these executives, if any: see [136]. In any event, Mr Goh was the CEO until 9 January 2013, and was involved at the highest level of management of the Beyonics Group from July 2012 to

November 2012 when Seagate was working out its consolidation strategy and ultimately eliminated the Beyonics Group.

Finding on the First Plaintiff's claims for breaches of duties

156 By the above, I find that the First Plaintiff has proved its case against Mr Goh for breaches of fiduciary duties. I deal with the quantification of the losses below from [183] onwards.

The First Plaintiff's claim in dishonest assistance and knowing receipt by Wyser International

157 I next turn to the claim by the First Plaintiff against Wyser International for dishonest assistance in these breaches. In the Amended Statement of Claim, the First Plaintiff appears to allege such dishonest assistance in relation to breaches of fiduciary duties for all four clusters of acts listed in [21]. However, in the closing submissions, the First Plaintiff confines this cause of action to Wyser International's role in receiving payments under the Wyser Agreements. I shall restrict my findings on this basis.

158 A claim in dishonest assistance is a type of accessory liability: the defendant must have lent assistance to the commission of some breach of duty by a person in a fiduciary relationship with the plaintiff. Such assistance must have been given dishonestly, and this dishonesty is assessed on an objective basis: see *Snell's Equity* at paras 30-078 and 30-079. In other words, the defendant 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: *Swiss Butchery Pte Ltd v Huber Ernst* [2010] 3 SLR 813 ("*Swiss Butchery*") at [21].

159 In this case, Wyser International was used as Mr Goh's vehicle to enter into the Wyser Agreements. It received the payments under the Wyser Agreements and actively paid out US$300,000 to Mr Stephen Hwang. As to the *mens rea* of dishonesty, it is clear that Mr Goh was objectively dishonest, given his personal interest in receiving the payments in return for doing acts detrimental to the Beyonics Group. His dishonesty is to be attributed to Wyser International, which he owned and controlled. I find that Wyser International is liable for dishonest assistance in Mr Goh's breach of the fiduciary duty not to make a secret profit. However, Wyser International did not assist with the other acts which cumulatively led to the Diversion Loss and Total Loss. Given my conclusion on Wyser International's liability in dishonest assistance, I do not consider it necessary to deal with the Plaintiffs' alternative claim based on "knowing receipt" to seek the same reliefs for the payments.

The First Plaintiff's claim in unlawful means conspiracy

160 I now turn to the First Plaintiff's final substantive claim, which is that Mr Goh, Wyser International and the NEDEC/KODEC Group conspired to make payments under the Wyser Agreements, divert Second Stage Work from the Beyonics Group to the NEDEC/KODEC Group, and ultimately hollow out the Beyonics Group's baseplate business with Seagate.

161 The elements of the tort of unlawful means conspiracy can be summarised as follows:

(a) There must be a combination of two or more persons and an agreement between or among them to do certain acts: *Nagase Singapore v Ching Kai Huat* [2008] 1 SLR(R) 80 ("*Nagase*") at [23].

(b) The conspiracy must be done by "unlawful means". "Unlawful means" covers both a criminal act as well as an intentional tortious act: *Beckkett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452 at [120]. It includes a breach of fiduciary duties, as in *Chew Kong Huat v Ricwil Singapore Pte Ltd* [1999] 3 SLR(R) 1167 ("*Chew Kong Huat*") at [35].

(c) The act must actually be performed in furtherance of the agreement: *Nagase* at [23].

(d) There must be an intention to injure the plaintiff, but such intention need not be predominant: *Swiss Butchery* at [15].

(e) Damage must be suffered by the plaintiff: *Nagase* at [23].

162 In relation to the allegation of conspiracy to divert Second Stage Work away from it, I am of the view that it is made out. First, the email correspondence between Mr Goh and the NEDEC/KODEC Group, as well as the BAP–LND Contract, clearly shows that there was an agreement between the parties to divert e-coated baseplates from the Beyonics Group to the NEDEC/KODEC Group for the Second Stage Work to be done by the latter. It was clearly agreed that payments would accrue to Mr Goh through Wyser International. Second, the conspiracy was carried out by unlawful means through Mr Goh's breach of fiduciary duties. Third, the diversion of e-coated baseplates was carried out in furtherance of the agreement, in the manner detailed in the previous sections. Fourth, although the predominant intention of Mr Goh and Wyser International was to benefit Mr Goh and/or the NEDEC/KODEC Group, on analogy with *Chew Kong Huat* at [35], the necessary corollary of the benefit to the NEDEC/KODEC Group was loss to the First Plaintiff, as the e-coated baseplates were directly diverted from the latter to the former. Thus, if Mr Goh and Wyser International intended to

benefit the NEDEC/KODEC Group, they must also have intended to injure the First Plaintiff, even if this intention was not predominant. Finally, the First Plaintiff suffered damage in the form of the Diversion Loss.

163 However, in my assessment, the First Plaintiff's claim of unlawful means conspiracy is not made out in relation to the ultimate termination of the Beyonics Group's business with Seagate. Although Mr Goh played a substantial role in facilitating the NEDEC/KODEC Group's business with Seagate (see [77]–[90]), fundamentally, there is insufficient evidence of any obvious agreement between Mr Goh, Wyser International and the NEDEC/KODEC Group to do acts which would hollow out the baseplate business of the Beyonics Group entirely.

164 For completeness, I also dismiss the claim in unlawful means conspiracy in relation to payments under the Wyser Agreements. Fundamentally, the fifth element is not satisfied as there was no damage suffered *by the First Plaintiff* as a result of the payments to Mr Goh. In any event, nothing turns on this given that I have already found that Wyser International is liable for dishonestly assisting Mr Goh in his breach of fiduciary duties in relation to the payments under the Wyser Agreements.

The Second Plaintiff's claims for breaches of duties

Unjustified expenses

165 Having dealt with the First Plaintiff's claims, I turn to the Second Plaintiff's claims that Mr Goh breached various fiduciary duties in causing or instructing staff members to make unjustified expense claims for various items amounting to S$126,967.45 and HK$38,400 against the account of the Second Plaintiff. Mr Goh does not dispute the items and the amounts, but contends

that the company expenses incurred are completely justified as "general corporate business expenses that have been incurred in the course of Beyonics Group's usual operations", either as legitimate company expenses or as legitimate employee benefits, and he acted well within his powers as the CEO of the Beyonics Group.

Wine purchases – S$99,598.80

166 Between June 2006 and December 2012, Mr Goh caused the Second Plaintiff to make wine purchases costing a total of S$101,910. There are no records on how the wine was put to use, save for S$2,311.20 worth of the wine which was consumed at a company event in 2007. As such, the balance of S$99,598.80 remains unaccounted for. In the Amended Defence, it is pleaded that "the wines were given to customers or in exchange for gifts given by the customer and used for internal and external functions for the Beyonics Group's employees, their business associates and suppliers". This bare assertion was repeated in Mr Goh's AEIC, without details. Mr Goh also stated that most of the wine purchases were authorised by Mr Tay Peng Huat, the CFO of the Beyonics Group. However, this defence was not pleaded, thus I was less inclined to believe it. Together with the lack of records on the precise purposes for the exorbitant expenditure, I find that the sum of S$99,598.80 was an unjustified expense.

Medical equipment – HK$38,400

167 In May 2012, Mr Goh caused the Second Plaintiff to purchase medical equipment, classified as an impulse massager, from Hong Kong for HK$38,400. In the Amended Defence, it is pleaded that Mr Goh "had purchased the medical equipment from a trade show held in Hong Kong for the purposes of research and development. The medical equipment was bought

with the intention of evaluating whether the Beyonics Group would be able to develop and increase its product range and thus appeal to a wider range of customers". These bare assertions were repeated in Mr Goh's AEIC, again without any supporting evidence. I accept the Second Plaintiff's evidence that the Beyonics Group did not have its own product range to start with. It was a manufacturer of other entities' products or components, but did not have any customer that was making massagers. The equipment was thus completely irrelevant to its business. In fact, Mr Goh admitted that the equipment was sometimes in his room, and that he had used it. I find that this equipment was not purchased for company use. This expense was thus unjustified.

Course fees for Mr Goh's daughter – S$1,464.65

168 Mr Goh charged fees to the Second Plaintiff totalling S$1,464.65 during the period between July and December 2011 for two courses on interpersonal communication skills and financial statements, attended by his daughter. According to the Second Plaintiff, there was no basis for such expenditure. At the time, Mr Goh's daughter was merely a temporary staff member of the Beyonics Group, and the courses she was sent on did not assist with the work she was doing. In the Amended Defence, it was stated that Mr Goh's daughter "was sent on short external courses to gain knowledge in the relevant areas of her employment with the Beyonics Group. This was in accordance with the Beyonics Group's company policy at the time". These bare assertions were repeated in Mr Goh's AEIC without any supporting evidence.

169 I note that Mr Goh's daughter only worked for the Beyonics Group on a temporary basis from 5 January to 5 July 2007 and 1 June 2011 to 9 February 2012, and that she was assigned to the General Management and

Finance departments. There were also human resource policies in place which provide, quite sensibly, that the Beyonics Group should only be sending personnel to courses directly relevant to their job scopes, and the personnel's performances must have merited being sponsored for the courses. Given that Mr Goh's daughter was only a temporary staff member who was employed for relatively short spells, and that there were other, longer-serving officers in these departments, there could not have been any justification to send her for the two courses.

Payments to GAIN, Inc for alternative healthcare – S$8,225

170 From 26 July 2012 to 2 January 2013, petty cash amounting to S$10,329 was withdrawn from the Second Plaintiff's account by Mr Goh's secretary on Mr Goh's instructions. Invoices show that some of the monies withdrawn were paid to GAIN, Inc for treatments by a Japanese practitioner of alternative healthcare, including for procedures such as "electroacupuncture", which are not conventional medical treatments. Subsequently, S$2,104 was repaid by Mr Goh, leaving a balance of S$8,225.

171 In the Amended Defence, it is pleaded that "[m]edical expenses incurred by the employees of the Beyonics Group (including [Mr Goh]) and [Mr Goh's] family … are justified companies expense claims. This was in compliance with the Beyonics Group's company policy at the time". In another instance of a recurring theme, these were bare assertions which were repeated in Mr Goh's AEIC without any supporting evidence. To the contrary, it is clear from Clauses 2.5 and 2.5.10 of the Human Resources Manual of the Beyonics Group that the Beyonics Group's policies with regard to medical benefits extended only to conventional medical treatments. At the trial, Mr Goh claimed that he was unaware of such a policy. I do not accept this, and

find that the expense – since it was incurred for alternative healthcare treatments – was unjustified.

Sigma lens – S$1,679

172 A Nikon D-800 camera was purchased for S$4,066 on 21 September 2012 and charged to BAP's account, while a Sigma lens was purchased on 2 November 2012 for $1,679 and charged to the Second Plaintiff's account. The Second Plaintiff's position is that such equipment was completely unnecessary for the business of the Beyonics Group and should not have been purchased. Given the nature of the Beyonics Group's business, that position is only sensible. In response, it is pleaded, in the Amended Defence, that "the Sigma lens and camera were used for the purposes of conducting organization and method study on the Beyonics Group's manufacturing processes and work [behaviour] … Further, the Sigma lens and camera were used for corporate marketing purposes. Instead of professional photographers, the Beyonics Group used self-taken photos for the purposes of their corporate brochures, presentation slides, web marketing and exhibition stands". These bare assertions were repeated in Mr Goh's AEIC. I find it difficult to believe these explanations. There is no evidence that the alleged studies were carried out or that any such photographs were ever taken. As such, purchasing the lens is in my view a completely unjustified expense.

Fountain pens – S$16,000

173 On or around 7 December 2011, ten fountain pens worth S$1,600 each were purchased on the Mr Goh's instructions. A total of S$16,000 for these fountain pens was charged to the Second Plaintiff, but there are no records of the purpose of the fountain pens. In the Amended Defence, it is stated that five of the ten fountain pens were purchased as long service awards for senior

employees of the Beyonics Group, while the remaining five were given to "the previous Directors of the Board of the [First] Plaintiff when it was dissolved".

174 Again, these bare assertions were repeated in Mr Goh's AEIC, without identifying the relevant senior employees and directors. Mr Goh only named them at the trial. However, his claims were contradicted by the evidence of Mr Mueller, who testified that according to the Beyonics Group's records, long service award recipients in the year 2011 and 2012 only received cash vouchers and commemorative coins. Mr Goh did not dispute this evidence. In relation to the five fountain pens allegedly given to the previous Board of Directors of the First Plaintiff when the Board was dissolved, it was only when cross-examined at trial that Mr Goh admitted that he was one of the five recipients. There was no reason for Mr Goh to gift himself with an expensive pen while he remained with the company. In my view, it is clear that there was no proper justification for the purchases.

Findings on unjustified expenses

175 To conclude, a review of the evidence and proceedings at trial shows that Mr Goh's predominant lines of defence were bare assertions not supported by evidence, supplemented by allegations that the Plaintiffs were being "petty" and subjecting him to "personal attacks". Some of his defences were also only asserted on the stand and were neither pleaded nor present in his AEIC. I am of the view that these expenses charged by Mr Goh to the Second Plaintiff's accounts were unjustified. They were not incurred for the benefit of the company. Instead, they were incurred for his personal benefit and/or that of his family members. This was a clear breach of his fiduciary duties.

Unjustified salary

176 It is undisputed that the Second Plaintiff initially agreed that Mr Goh was to continue receiving a monthly salary from 10 January to 30 April 2013, after his resignation on 9 January 2013. It is also undisputed that a total of S$45,900 in salary was in fact paid out to Mr Goh between 10 January and 31 March 2013. The Second Plaintiff's case is that Mr Goh is not entitled to these payments due to his failure to disclose the various breaches of duties to the Second Plaintiff. The Second Plaintiff therefore sought to recover the unjustified salary of S$45,900 paid to Mr Goh during the relevant period. Mr Goh contends that the Second Plaintiff is not entitled to the return of the S$45,900 because he did not breach any of his duties. He further counterclaims $17,000 as the "outstanding salary" for April 2013.

177 Given my conclusions that Mr Goh has breached his fiduciary duties as outlined above, including the duty to disclose his wrongdoing, I find that the salary paid to Mr Goh was unjustified and should be repaid to the Second Plaintiff: see *John While Springs* at [7]. I agree with the Plaintiffs' submission that although *John While Springs* related to the payment of bonuses, the same principle ought to apply to salaries paid after resignation. No reasonable employer would agree to continue to pay the fiduciary salary when faced with knowledge of the fiduciary's breach of duties and lack of good faith. Consequently, I dismiss Mr Goh's counterclaim for "outstanding salary".

Defence under s 391 of the Companies Act

178 At this juncture, I turn briefly to Mr Goh's overall defence under s 391 of the Companies Act, which states:

> **Power to grant relief**
>
> 391(1) – If in any proceedings for negligence, default, *breach of duty* or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof *but that he has acted honestly and reasonably* and that, having regard to all the circumstances of the case including those connected with his appointment, *he ought fairly to be excused* for the negligence, default or breach *the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.*
>
> (1A) For the avoidance of doubt and without prejudice to the generality of subsection (1), "liability" includes the liability of a person to whom this section applies to account for profits made or received.
>
> [emphasis added]

179 Relief under s 391 is only available where a defendant "has acted honestly and reasonably". As stated above, I find that Mr Goh has breached the core duty to act honestly and *bona fide* in the interests of the Plaintiffs, among other duties. Therefore, he cannot avail himself of the defence under s 391. In any event, relief under s 391 is at the court's discretion, as indicated by the words "may relieve him … on such terms as the court thinks fit". In the circumstances, even if relief under s 391 were available, I see no reason to excuse him for the breaches so as to relieve him wholly or partly from his liability.

Credibility of the witnesses

180 To close my analysis of the liability issues, I make some observations about the credibility of the key witnesses. First, from the analysis above, it is clear that Mr Goh's evidence has been inconsistent, with him shifting stances on various matters, many of which were not even pleaded. In addition, I find that he was generally reluctant to divulge the details of the dealings with the NEDEC/KODEC Group and was evasive in cross-examination. At times, he

also provided answers which were implausible. He further attempted to explain away the incriminating contents of some of the recovered emails by shifting the blame to Mr Stephen Hwang and Mr Tony Lee for the way they expressed themselves. On various aspects, the evidence of Mr Tony Lee and Mr Billy Chua directly contradicted him. On the whole, I find Mr Goh to be an unreliable witness and am unable to accept his evidence.

181 As for Mr Lee Leong Hua, the Defendants have submitted at length about the unreliability of his evidence on the production capacity at BTEC. They argue that he "came to trial as a witness simply because he was instructed by the Plaintiffs' management to support their case theory that there was 'something suspicious' about the tie-up between the Beyonics Group and the NEDEC/KODEC Group". I am unable to agree. In my judgment, Mr Lee Leong Hua's evidence regarding production capacity was supported by the objective documentary evidence. He was also able to give logical explanations on the discrepancies in numbers between the various source documents relating to production capacity. I thus accept his evidence.

182 Moving on to Mr Billy Chua, I am of the view that he is an independent witness who was unaware of the dealings between Mr Goh and the NEDEC/KODEC Group. I find his testimony truthful. As for Mr Tony Lee, I am also satisfied that he is a credible witness at least in the aspects of the case that do not implicate him or the NEDEC/KODEC Group, and I accept those parts of his evidence accordingly.

Remedies

183 With that, I turn to consider the remedies sought by the First Plaintiff to recover the payments under the Wyser Agreements, the Diversion Loss and

the Total Loss. Thereafter, I will turn to the remedies sought by the Second Plaintiff for the unjustified expenses and salary.

Account of and repayments under the Wyser Agreements

184 It is well-established that a fiduciary who takes secret bribes in breach of his fiduciary duties is not allowed to retain any of the profits and must account for them to the principal and disgorge the profits: *Snell's Equity* at para 7-054 and *Mona Computer Systems (S) Pte Ltd v Singaravelu Murugan* [2014] 1 SLR 847 at [15]. The net quantum of US$200,000 received by Mr Goh under the Second Wyser Agreement is undisputed, and Wyser International dishonestly assisted in this process. Mr Goh and/or Wyser International are to account for and pay the First Plaintiff US$200,000.

185 The key contention relates to the quantification of the payments received under the First Wyser Agreement. The First Plaintiff alleges that a total of US$166,554.02 was received by Mr Goh through Wyser International. This figure is calculated as follows. Based on the sales figures extracted from the Oracle record system, 8,327,701 e-coated baseplates were shipped from the Beyonics Group to the NEDEC/KODEC Group from January 2012 to January 2013. This figure takes into account the baseplates returned or rejected by the NEDEC/KODEC Group. The amount received by Mr Goh would be 8,327,701 multiplied by US$0.02 per e-coated baseplate as agreed under the First Wyser Agreement, which is US$166,554.02.

186 The number of diverted e-coated baseplates was originally disputed by Mr Goh, who put forth a lower figure of 8,075,653. However, in the course of the trial, Mr Goh accepted the figure of 8,327,701 as accurate. The disagreement turned to the sum he actually received for these diverted

baseplates. In his AEIC, Mr Goh alleges that payment under the First Wyser Agreement was "based on the shipping quantity [of e-coated baseplates] shipped from [BTEC] to [LND] and subject to [the] supplied baseplate not being rejected for unsatisfactory quality". He claimed that he had only received US$88,411.59 due to the rejection of baseplates. However, to accept this position would entail accepting that half of the e-coated baseplates supplied to the NEDEC/KODEC Group were rejected, which is plainly inconceivable.

187 At trial, Mr Goh's explanation took on a different slant. He alleged that the NEDEC/KODEC Group would only pay Mr Goh based on the e-coated baseplates shipped from KODEC to NCC (the entity which received the baseplates and assembled them into HDDs on behalf of Seagate), and not from BTEC to LND. Payment would also only take place after NCC had paid KODEC. The NEDEC/KODEC Group had only paid Mr Goh about US$88,000 because up to January 2013, NCC had only paid the NEDEC/KODEC Group for about 4.4 million e-coated baseplates. NCC paid the NEDEC/KODEC Group for the balance of about 3.9 million baseplates after January 2013. By then, the Beyonics Group had stopped shipping the e-coated baseplates to the NEDEC/KODEC Group, and Mr Tony Lee decided to stop paying Mr Goh.

188 Mr Goh's explanation at the trial as to why he only received about US$88,411.59 was contrary to what was stated in his AEIC, and inconsistent with the wording of the First Wyser Agreement that the payment would be based on the quantity accepted by LND (rather than NCC). It appears to be a mere afterthought. Given that Mr Goh accepted the figure of 8,327,701 as accurate, I find that payment of US$166,554.02 is to be made by Mr Goh and/or Wyser International to the First Plaintiff.

Quantification of the Diversion Loss and Total Loss

189 Mr Goh's breaches of fiduciary duties allow the First Plaintiff to avail itself to a claim for payment of equitable compensation for losses (in this case the Diversion Loss and Total Loss) caused by the breaches: see *Snell's Equity* at para 7-058. The parties, however, disagree on the quantification of the losses. Thus, I now turn to the evidence of the accounting experts, who are Mr Ramasamy Subramaniam Iyer @ Rajendran ("Mr Iyer") for the Plaintiffs and Mr Kon Ying Tong ("Mr Kon") for the Defendants.

190 I make two preliminary comments about the overall approaches of the experts. First, Mr Iyer opined only on the quantum of the Diversion Loss and Total Loss. He acknowledged in his amended report that "as the financial expert, it [was] not [his] duty to discuss the liability aspects of the case". In contrast, Mr Kon, pursuant to instructions received, dedicated a large part of his report to his opinion on liability issues. In particular, he opined on whether the Beyonics Group had the capacity to do the Second Stage Work on the e-coated baseplates diverted to the NEDEC/KODEC Group and, if not, whether it was worthwhile for the Beyonics Group to make capital investments to do so.

191 I note that in the exchange of correspondence between the parties' counsel prior to the trial, it was clear that the scope of the accounting experts' evidence would be limited to the quantum of loss. Accordingly, on 6 July 2015, the Plaintiffs filed a Notice of Objection to Contents of AEIC in respect of the parts of Mr Kon's report relating to liability. I am of the view that Mr Kon ventured into areas which are outside the remit of an accounting expert, and which fall to be determined by the court based on the evidence of the

other factual witnesses. In fact, without reference to Mr Kon's evidence, I have already made most of the necessary findings above.

192 Second, I turn to the source materials relied on to compute the losses. In his amended report, Mr Iyer recognised that he was calculating the losses as suffered by the First Plaintiff on a consolidated basis as the holding company of the subsidiaries within the PE Division. To obtain the necessary financial information, he relied on a range of records of the Beyonics Group which I shall refer to as "the accounting documents":

(a) The consolidated financial statements of the First Plaintiff for FY 2011, FY 2012 and FY 2013, as audited and signed off on.

(b) Information from the Beyonics Group's Oracle record system.

(c) Dashboard reports for FY 2012 and FY 2013, which are the unaudited management financial statements prepared each month covering (i) the profit and loss statement by operating companies; (ii) the balance sheet for each operating company; and (iii) sales by major customers, volume of shipment by major products for the major customers and derived average selling price information.

193 On the other hand, Mr Kon relied on specific documents and instructions provided by Mr Goh. In particular, he uncritically relied on two emails sent by Ms June Yang, the finance director of BTEC, setting out the cost figures for producing each baseplate under the Brinks 2H programme. At the trial, the contents from the two emails of 29 June 2012 and 3 December 2012 were collated and presented as Exh P19. For ease of reference, I have reproduced the essential information from Exh P19 at Annex A below. I will elaborate on my concerns about relying on the information in the two emails

shortly. For now, my observation is that Mr Iyer relied on a more comprehensive range of source materials. I now turn to the Diversion Loss.

The Diversion Loss

Mr Iyer's evidence

194 Mr Iyer identified the Diversion Loss to be the loss of earnings on the units shipped to the NEDEC/KODEC Group, represented by the difference that the First Plaintiff would have otherwise earned had the Beyonics Group carried out the Second Stage Work less the payment it received from the NEDEC/KODEC Group for the First Stage Work. To calculate this, Mr Iyer took the following steps:

(a) From the Oracle record system, the monthly numbers of e-coated baseplates shipped to the NEDEC/KODEC Group were obtained.

(b) The price differential between the price of a finished baseplate and the price of an e-coated baseplate was computed. This represented what the Beyonics Group would have earned if it supplied a finished baseplate to Seagate, less the payment it received from the NEDEC/KODEC Group for the e-coated baseplates diverted to it.

(c) The monthly numbers of e-coated baseplates derived at step (a) were multiplied by the price differential derived at step (b) to obtain the loss of revenue on Second Stage Work.

(d) An adjusted gross profit margin ("Adjusted GP Margin") was applied to the loss of revenue on Second Stage Work derived at step

(c) to obtain the loss of marginal cash flow. I shall return to Mr Iyer's computation of the Adjusted GP Margin shortly at [195].

(e) The monthly cost adder that would have been earned (if finished baseplates had been shipped to Seagate) was obtained by multiplying the cost adder per baseplate by the number of e-coated baseplates shipped to the NEDEC/KODEC Group for that month.

(f) From the loss of marginal cash flow obtained at step (d), adjustments were made to take into account baseplates which were returned, as well as for the monthly cost adder derived at step (e) to obtain the net loss of marginal cash flow.

(g) As the net loss of marginal cash flow was calculated separately for BTEC and BPM which both supplied the e-coated baseplates to the NEDEC/KODEC Group at the material time, the losses for BTEC and BPM were then added to obtain the aggregate loss for the PE Division of the Beyonics Group.

(h) Finally, RMB 504,672 was deducted from the aggregate loss. This represented the capital expenditure that would have been required to ensure that the Beyonics Group had sufficient capacity to undertake all required Second Stage Work. The capital expenditure figure was obtained from para 94 of Mr Lee Leong Hua's AEIC, where he stated that a capital expenditure of RMB 504,672 was required to purchase the necessary tools, fixtures and cutters.

The net aggregated loss after deducting the capital expenditure from the aggregate loss, *ie,* the Diversion Loss, was computed to be US$2,970,559. Mr Iyer's calculations are contained in Appendix 7A of his amended report.

195 I turn next to the Adjusted GP Margin which was applied to the loss of revenue at [194(d)]. In ordinary cases, the gross profit ("GP") is simply the sales revenue less the total costs (including the costs of materials, labour and manufacturing overheads), and the gross profit margin ("GP Margin") is the GP divided by the sales revenue. In this case, Mr Iyer retrieved financial data from the dashboard reports to obtain the cost adders on different products which applied from December 2011 to December 2012 (see [122]). The various cost adders were tabulated to obtain the monthly total cost adders. The monthly cost adders were removed from the monthly sales revenue of BTEC and BPM respectively to obtain the revised sales revenues. The revised GP, which was the revised sales revenue less the total costs, was obtained. Thereafter, the Adjusted GP Margin was obtained by dividing the revised GP by the revised sales revenue. As explained by Mr Iyer, it was necessary to use the Adjusted GP Margin to prevent double counting because the cost adders for these particular months were then separately computed for the quantities of e-coated baseplates diverted to the NEDEC/KODEC Group, and were added back in computing the Diversion Loss: see [194(f)].

196 In the main, the Defendants sought to cast doubt on Mr Iyer's computation of the Adjusted GP Margin. First, it was alleged that Mr Iyer used an overall margin, rather than one that is specific to the Brinks 2H programme. This is because Mr Iyer took into account information relating to all the baseplate programmes undertaken by the Beyonics Group (not just Brinks 2H baseplates) in computing the Adjusted GP Margin. Instead, it was suggested to Mr Iyer that he could have taken into account the costs stated in Ms June Yang's emails, which dealt specifically with costs for the Brinks 2H programme.

197 Mr Iyer highlighted that it was not clear how Ms June Yang came up with the numbers reflected in the emails. He did not think that the emails were reliable. Therefore, he preferred to rely on the "actual numbers in the management accounts", because they were "very clear[,] … contemporaneous [and] … in the books and records", which had been audited and signed off on, cross checked against the dashboard reports. However, Mr Iyer explained that the accounting documents were not captured at a level of detail to enable a computation specific to the baseplates for the Brinks 2H programme. He had to rely on the best available information and use the average for BTEC and BPM. I accept Mr Iyer's explanations. For the reasons I set out at [207] below, the figures in Ms June Yang's emails cannot form the basis of any credible computation. Given the insufficiency of information specifically on the Brinks 2H programme from the accounting documents, Mr Iyer's approach is reasonable.

198 Second, Mr Kon challenged Mr Iyer's computations on the basis that his calculation of margins excluded costs such as for packing and shipping. These are items set out in Ms June Yang's emails. I am of the view that this criticism is misconceived. Mr Iyer's computation of costs is derived from the dashboard reports, which I accept already take into account all costs to generate profits. This would necessarily include packing, shipping and any other costs incurred. This is not an effective rebuttal of Mr Iyer's position.

199 Third, it is argued that Mr Iyer should have taken into account depreciation in computing the Adjusted GP Margin. In this regard, Mr Kon said that depreciation should have been factored in not just in respect of new machines that had to be acquired but even existing machines which could be put to alternative use. It was also put to Mr Iyer that depreciation for machines already purchased formed part of the incremental cost of sales, and therefore

should be included for an accurate computation of Adjusted GP Margin. However, I agree with Mr Iyer's explanations at trial for his exclusion of depreciation in his computation of the Adjusted GP Margin:

(a) He was applying the concept of marginal cash flow, but depreciation was part of the costs of machines which were sunk costs. Since the machines were already paid for, there was no incremental cost of sale in producing more or fewer baseplates.

(b) Equipment is more often than not used for much longer periods than the years applied under a company's depreciation policy.

(c) Based on the concept of marginal return, the additional cash from selling an additional baseplate is the selling price of the baseplate less the cost of producing that baseplate. The depreciation, however, remained constant regardless of the number of baseplates sold.

200 Despite the criticisms levied regarding Mr Iyer's computation of the Adjusted GP Margin, Mr Kon agreed that broadly speaking, Mr Iyer's approach, *ie*, sales revenue minus cost of sales, was one way to determine profit margin, and that it was right and proper for Mr Iyer to remove the effect of the cost adder in revising the GP Margin. Mr Kon also agreed that Mr Iyer's approach to computing the Diversion Loss was generally correct. In my view, Mr Iyer's method is objective, systematic and logical. His reliance on the accounting documents as his source of data enhances the objectivity and reliability of his computation.

Mr Kon's evidence

201 In computing the Diversion Loss, Mr Kon took the following steps in his report. At the outset, he considered whether the Beyonics Group had the

capacity to do the Second Stage Work which was diverted to the NEDEC/KODEC Group, and concluded that it did not. He then considered whether it was worthwhile for the Beyonics Group to make capital investments in order to perform the Second Stage Work.

202 Next, Mr Kon calculated the total profit generated for the Beyonics Group through selling e-coated baseplates to the NEDEC/KODEC Group ("First Stage Profit"). The following steps were taken:

(a) The gross margin for each e-coated baseplate was computed by deducting the cost of performing the First Stage Work from the price of each e-coated baseplate sold to the NEDEC/KODEC Group. The cost of performing the First Stage Work was taken to be US$1.14, a figure obtained from Ms June Yang's email of 3 December 2012: see Annex A below.

(b) The quantities of e-coated baseplates shipped to the NEDEC/KODEC Group were multiplied by the gross margin for each e-coated baseplate to obtain the First Stage Profit. This was computed to be between US$522,805 and US$727,285.

203 Thereafter, Mr Kon calculated the total profit that would have been earned if the Beyonics Group had carried out the Second Stage Work itself and sold the finished baseplates to Seagate ("Second Stage Profit"):

(a) The gross margin for a finished baseplate was calculated by deducting the cost of performing both the First and Second Stage Works on a baseplate from the selling price of a finished baseplate sold to Seagate (with the cost adder). The cost of performing both stages of

works, based on the figures provided in Ms June Yang's email of 29 June 2012, was US$1.626: see Annex A below.

(b) The quantities of the e-coated baseplates shipped to the NEDEC/KODEC Group were multiplied by the gross margin for a finished baseplate to obtain the Second Stage Profit. This was computed to be US$936,965 to US$1,301,622.

204 Based on the above, Mr Kon calculated the difference between the Second Stage Profit and the First Stage Profit to derive the range of forgone profits as US$414,160 to US$574,337. Then, he expressed the opinion that in any case, the Beyonics Group had saved on the additional US$10 million required to invest in CNC machines and US$4.45 million required to acquire related equipment in order to carry out the Second Stage Work on its own.

205 While I do not disagree with Mr Kon's methodology in principle, there are two fundamental flaws with his report. The first is that, as mentioned at [191], the question of whether the Beyonics Group had capacity to do the Second Stage Work diverted to the NEDEC/KODEC Group is a factual one which was not, in my assessment, within Mr Kon's remit as an expert. Under cross-examination, Mr Kon admitted as much, saying that he was "not an expert on capacity and perhaps engineers and management would be the best person to do that [*ie*, to comment on issues of production capacity]". He also agreed that his conclusion on this issue was premised upon emails and information provided to him by Mr Goh, especially the AEICs of the Defendants' witnesses. In any case, I have already found earlier that the Beyonics Group had sufficient production capacity (particularly with respect to the CNC machines) and therefore place little weight on this portion of Mr Kon's report.

206 As for the issue of whether it was worthwhile for the Beyonics Group to make capital investments in order to perform the Second Stage Work, this is similarly outside the purview of an accounting expert. Indeed, Mr Kon agreed that it would be more appropriate for a factual witness to comment on this issue. On this, Mr Lee Leong Hua's evidence is that only a small investment for tools and fixtures is required to equip the Beyonics Group to perform the Second Stage Work on the e-coated baseplates diverted to the NEDEC/KODEC Group: see [107]. As I stated at [119], the Beyonics Group had obtained a grant from Seagate which would have gone a long way to meeting the investment requirements. I accepted Mr Lee Leong Hua's computation of the capital investment the Beyonics Group required, which was used by Mr Iyer in his calculations at [194(h)].

207 The second issue with Mr Kon's report was his sole reliance on the two emails from Ms June Yang for the costs of the First and/or Second Stage Works. This data was untested, unverified and unreliable. Mr Kon himself admitted that he did not know how the figures in Ms June Yang's emails were derived. Mr Kon also agreed that the figures in the two emails were different in respect of the same line items. At the end of the day, there was no indication of the parameters which were used by Ms June Yang and whether the same parameters were applied for both emails. In my view, the accounting documents Mr Iyer used in his amended report were more reliable than Ms June Yang's emails. Even after being served with Mr Iyer's original report on 30 June 2015, the Defendants took no steps to have Mr Kon consider the accounting documents. Mr Kon did not comment on them, or seek to derive any alternative computation based on them for comparison purposes. I should add that the original report was substantially the same as the amended report which served to correct certain figures and calculations.

Findings on the Diversion Loss

208 In light of the above, I prefer Mr Iyer's computation of the Diversion Loss to Mr Kon's computation. Mr Iyer's amended report is detailed, considered, and based on hard financial data found in the books and records of the Beyonics Group. In contrast, Mr Kon's reliance on the emails is misplaced. In these circumstances, Mr Iyer's computation of the Diversion Loss at US$2,970,559 is adopted. I should point out that conceptually, the remedy that is available to the First Plaintiff against Mr Goh and Wyser International in relation to the Diversion Loss under the claim for unlawful means conspiracy is damages, not equitable compensation, as the claim is in tort and not in equity. However, the quantum of the damages is the same as the Diversion Loss quantified above.

The Total Loss

209 In relation to the computation of the Total Loss, Mr Iyer and Mr Kon adopted a similar approach by considering the length of time over which the loss should be assessed ("the relevant period"), before quantifying the loss during the relevant period. I shall deal with each in turn.

The relevant period

MR IYER'S EVIDENCE

210 Mr Iyer reviewed articles about the industry and concluded that new customers were difficult to acquire and that customers also tended to stay with a manufacturer for a long time. He noted that Seagate had been a long-time customer of the Beyonics Group since 1987. On the basis of information available to him, Mr Iyer opined that the loss period should be five years from the base year, FY 2012. I accept that Mr Iyer's approach is generally sound.

MR KON'S EVIDENCE

211 The portion of Mr Kon's report relating to the Total Loss spans only three pages. He refers to an email dated 8 January 2013 from Mr Michael Ng to Mr Lee Leong Hua, which stated that Seagate had informed the Beyonics Group that the latter would not be one of Seagate's suppliers after March 2013. On the basis of this email, Mr Kon concludes that if there is any loss of profit for the post-breach period, it should be limited to the first three months of 2013.

212 In my view, this is misconceived. Based on the sales figures from the Oracle record system, there were sales by BTEC to Seagate at least up to July 2013. Mr Kon admitted that the cut-off date of 31 March 2013 was based on the Defendants' instructions, and he has not considered whether this accurately reflects the eventual date of termination. Even assuming that the termination occurred in March 2013, to use this as the end date is arbitrary. Mr Kon has assumed without substantiation that the effects of the breach by Mr Goh came to an end immediately upon termination. There is no real basis to support the position that the loss computation should be limited to the three-month period of January to March 2013.

213 Alternatively, Mr Kon suggested a using a time-frame of six months, based on *MFM Restaurant Pte Ltd v Fish & Co Restaurants Pte Ltd* [2011] 1 SLR 150 ("*MFM v Fish & Co*"). He concluded in his report that the post-breach period should be 12 months, the effect of the breach would taper off over the 12 months, and an average of six months may be used to calculate the loss of profits for the post-breach period.

214 However, I agree with the Plaintiffs that *MFM v Fish & Co* can be distinguished. In that case, the plaintiff ran a chain of seafood restaurants. The

second defendant helped set up another chain of seafood restaurants for the first defendant. The plaintiff brought proceedings against the second defendant for breaching certain confidentiality and non-competition clauses in his employment contract. However, the action was settled. Under the settlement deed, the defendants undertook not to use certain pans, slogans, or sauces similar or identical to those used by the plaintiff. The plaintiff subsequently sued on the settlement deed, alleging that the defendants' breaches of the settlement deed resulted in confusion in the market, thus affecting its sales. In respect of the plaintiff's claim for damages for the post-breach period, the Court held that the relevant period of assessment was six months. 12 months was thought to be a reasonable duration given that consumers would take some time to become aware of the changes, but the damages were halved because there would be a gradual decrease in the effect of the defendants' breaches.

215 The facts of *MFM v Fish & Co* are markedly different from the present case, where the effect of the breaches would not decrease with time. The basis of the loss here was not that the breaches led to confusion among customers. Seagate was aware that it was terminating the Beyonics Group as a supplier, and that the NEDEC/KODEC Group was a competitor of the Beyonics Group. The passage of time alone would not cause the lost sales to gradually restore themselves. I am of the view that Mr Kon's alternative approach is also misguided.

The quantum of loss

MR IYER'S EVIDENCE

216 To calculate the Total Loss, Mr Iyer did the following:

(a) First, he considered the number of units sold to Seagate in FY 2012, FY 2013 and FY 2014. He noted that the sales quantity decreased from FY 2012 to FY 2013, and decreased further to almost nothing by FY 2014. By FY 2015, there were no more baseplate sales to Seagate. Therefore, he used FY 2012 as the base year to peg the maximum quantity for which the loss for subsequent years would be computed. He assumed that there would have been no growth in the Beyonics Group's baseplate business with Seagate from FY 2012.

(b) To obtain the loss in quantity of baseplate sold in FY 2013 and FY 2014, he computed the difference between the quantities sold in FY 2012 and those in FY 2013 and FY 2014 respectively. For FY 2015 to FY 2017, he used the entire quantity of FY 2012 to represent the loss in quantities, given that there were no more baseplate sales by then.

(c) The loss in quantity for each FY was multiplied by the average selling price of baseplates to Seagate for that FY to obtain the loss in sales revenue from Seagate for that FY. I shall return to the calculation of the average selling price for each FY shortly at [217].

(d) The loss in sales revenue from Seagate for each FY was then multiplied by either an Adjusted GP Margin or an average Adjusted GP Margin to obtain the loss of marginal cash flow. I shall return to the calculation of these margins shortly at [217].

Adding up the net present values of the losses for the five years from FY 2013 to FY 2017, Mr Iyer computed the Seagate Total Loss to be US$10,067,868. Mr Iyer's calculations are contained in Appendix 11A of his amended report.

217 Turning to the average selling price, Mr Iyer explained that he obtained the sales revenue for Seagate from the dashboard reports for FY 2012 and FY 2013, the most proximate years to Mr Goh's breaches, and deducted the cost adders from the sales revenue to obtain the revised sales revenue. Then, he divided the figures against the quantities supplied to Seagate to obtain the actual average selling prices for FY 2012 and FY 2013. For FY 2014 to FY 2017, he applied the average of the actual average selling prices for FY 2012 and 2013. Turning to the Adjusted GP Margin, in a process similar to that for the calculation at [195], he calculated the figures for the PE Division for FY 2012 as 7.5% and FY 2013 as 8.6%. For FY 2014 to FY 2017, he then used the average of the two figures of 8% as the average Adjusted GP Margin.

218 Mr Goh sought to cast doubt on the reliability of Mr Iyer's approach by asserting that FY 2012 was an "exceptional" year due to the floods in Thailand. He claims it should not have been used as the base year, as it is not representative of the average profits for the PE Division. However, based on the figures which were reviewed by both parties, it is evident that the volume of baseplates supplied to Seagate tended to fluctuate over the years. Relying on FY 2012 figures was conservative, as higher volumes had been supplied in other years. To illustrate, a significantly larger number of baseplates were shipped from the Beyonics Group to Seagate in FY 2011 compared to FY 2012: 25,641,783 versus 15,672,552. If FY 2011 were to be used as a base year, an even higher quantity of sales would be used as the base number to compute loss.

219 It was suggested to Mr Iyer that the PE Division was a loss-making business from FY 2011. However, as Mr Iyer explained, the basis of his computation of loss was the net cash generated by the PE Division. Although the historical sunk costs on fixed assets remain, the more the fixed assets are

used, the higher the cash generated, which then improves the returns. I accept this explanation.

MR KON'S EVIDENCE

220 Turning to the quantum of loss, Mr Kon opined in his report that because the cost adder was removed after December 2012, the Beyonics Group in fact suffered a loss for each finished Brinks 2H baseplate sold to Seagate. This assertion was based on Ms June Yang's email dated 29 June 2012, which suggests that BTEC would suffer a loss of US$0.19 per finished baseplate: see Annex A below. Therefore, Mr Kon concluded that there is no loss of profit for the post-breach period at all. Again, in my assessment, Mr Kon has placed undue reliance on a single email without taking into account its context and any other contradictory information, and without knowing the background as to how the figures therein were derived. For the reasons set out above, Mr Kon's reliance on the costing figures in Ms June Yang's email is flawed.

Findings on the Total Loss

221 In my assessment, Mr Iyer's overall methodology should be preferred to Mr Kon's. However, turning to the relevant period, it appears to me that five years is not justifiable. There were a number of factors, as set out in [145]–[147], which indicate that the Beyonics Group would likely have been terminated sooner or later, and which are significant in determining the relevant period. Although it is undisputed that the Beyonics Group had been producing baseplates for Seagate since 1987, there were clearly other competitors in the market and other suppliers to Seagate which could replace the Beyonics Group. It is also evident from the events from 2011 to 2013 that market conditions can change dramatically, affecting Seagate's strategy in

relation to the suppliers. In October 2011, the reduced supply caused by the floods in Thailand led Seagate to consider alternatives to increase its supply. However, the projected fall in demand of HDDs in 2013 led Seagate to consider the consolidation of its secondary suppliers. Seagate then formed the view that it would be more efficient to rely more heavily on its primary suppliers, which either also manufactured motors for HDDs or had large production capacity. The Beyonics Group would not have been able to break into this category of suppliers even without Mr Goh's breaches of duty.

222 Thus, while I have found that Mr Goh's breaches caused Seagate to eliminate the Beyonics Group *first* out of the three secondary suppliers, I am also satisfied on the balance of probabilities, based on the other factors stated above, that the Beyonics Group would have been terminated as a secondary supplier in due course. With these factors in mind, a period of five years is not supportable. The more difficult question is what, then, the appropriate period would be. It is impossible to state with certainty and precision at which point the Beyonics Group would have been terminated without Mr Goh's breaches. It should be noted that the *Brickenden* rule cannot resolve this uncertainty. Its ambit is the causation of loss (*ie*, whether Mr Goh's breaches had led to the decrease in sales and termination of business with Seagate in FY 2014). It does not extend to matters relating to the quantification of loss once causation is proven (*ie*, what the relevant period of loss would be). Ultimately, it still falls to the court to decide, on all the evidence, what the relevant period would be. Giving due weight to the factors discussed above, it appears to me that *two and a half years* from the base year of FY 2012 (*ie*, FY 2013, FY 2014 and half of FY 2015) is a reasonable period. As the last shipment of baseplates to Seagate was in August 2013 (see [19]), the first month of FY 2014, the Beyonics Group is compensated for the decrease in sales and the complete loss

of business until about one and a half years after its termination. This would be sometime in the midst of Seagate's consolidation exercise.

223 For the quantum of the losses, I accept Mr Iyer's computation at US$1,184,178 for FY 2013, US$2,404,979 for FY 2014 and US$1,204,434 for half of FY 2015 (*ie,* half of US$2,408,867). The Total Loss is US$4,793,591.

Quantification of unjustified expenses and salary

224 I have already found that all the claims for unjustified expenses and salary have been established. The sums payable would be S$126,967.45 and HK$38,400 for the unjustified expenses and S$45,900 for unjustified salary.

Conclusion

225 In conclusion, I find that the First Plaintiff's claims against Mr Goh for breaches of fiduciary duties, against Mr Goh and Wyser International for unlawful means conspiracy in relation to the Diversion Loss, and against Wyser International for dishonest assistance with respect to payments under the Wyser Agreements have been made out. Accordingly, I grant judgment to the First Plaintiff against Mr Goh and Wyser International jointly and severally for

(a) US$166,554.02 paid under the First Wyser Agreement;

(b) US$200,000 paid under the Second Wyser Agreement; and

(c) US$2,970,559 for the Diversion Loss.

In addition, I grant judgment to the First Plaintiff against Mr Goh for the Total Loss quantified at US$4,793,591.

226 I also find that the Second Plaintiff's claims against Mr Goh for unjustified expenses and salary are made out. Accordingly, I grant judgment to the Second Plaintiff against Mr Goh for the sum of S$126,967.45 and HK$38,400 as unjustified expenses and S$45,900 as unjustified salary.

227 The counterclaim is dismissed.

228 I will hear the parties on costs.

Hoo Sheau Peng
Judicial Commissioner

Marina Chin, Cheryl Nah, Alcina Chew, Eugene Low and Kristy Teo
(Tan Kok Quan Partnership) for the plaintiffs;
Ng Lip Chih (NLC Law Asia LLP) for the defendants.

Annex A: Cost figures in Ms June Yang's emails

Breakdown	**Ms June Yang's email of 29 June 2012 (Costs of First and Second Stage Works)**		**June Yang's email of 3 December 2012 (Cost of First Stage Work)**
	Old cost (US$) (converted from RMB at rate = 6.3540)	**Automation cost (US$) (converted from RMB at rate = 6.3540)**	**Cost (US$) (converted from RMB at rate = 6.240)**
MBOH	0.713	0.713	
Materials	0.614	0.614	0.624
Tooling	0.068	0.068	0.069
Freight	0.0103	0.0103	0.046
Clearance			0.004
Plastic bag	0.006	0.006	
Packing	0.0144	0.0144	0.024
Casting	0.163	0.163	0.163
Deburring	0.0879	0.0451	0.054
E-coating	0.142	0.142	0.126
VMI			0.025
Total (First Stage Work)	**1.1067**	**1.0638**	**1.137**
Selling price (First Stage Work)			1.180
Margin (First Stage Work)			3.66%
Machining	0.4716	0.3905	
Washing	0.0475	0.0478	
Total (Second Stage Work)	**0.5191**	**0.4383**	
Total (First and Second Stage Works)	**1.6257**	**1.5022**	
Selling price (before cost adder)	1.4360	1.4360	
% Margin	**-13.21%**	**-4.61%**	