# Law Chin Eng and Another v Lau Chin Hu and Others
# [2008] SGHC 187

**Case Number** : Suit 839/2006, RA 273/2007

**Decision Date** : 30 October 2008

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Michael Kuah, Jiang Ke-Yue and Alma Yong (Lee & Lee) for the 1st & 3rd appellants / 1st & 3rd defendants; Lok Vi Ming SC, Audrey Chiang, Edric Pan and Chu Hua Yi (Rodyk & Davidson LLP) for the respondents / plaintiffs; Benedict Tan (Bernard & Rada Law Corporation) for the 2nd defendant

**Parties** : Law Chin Eng; Lau Chin Whatt — Lau Chin Hu; Lew Kiat Beng; Law Chin Chai; Hiap Seng & Co Pte Ltd; Winstant Holding Pte Ltd

*Civil Procedure – Striking out*

30 October 2008

Tan Lee Meng J:

1 The plaintiffs, Mr Law Chin Eng ("Chin Eng") and his brother, Mr Lau Chin Whatt ("Chin Whatt"), complained that their brothers, Mr Lau Chin Hu, and Mr Law Chin Chai, the 1st and 3rd defendants respectively, as well as their nephew, Mr Lew Kiat Beng, the 2nd defendant, breached their obligations as trustees of an alleged family trust. They sought, *inter alia*, a declaration that the defendants be removed as trustees of the family trust. In their Statement of Claim, the plaintiffs also alleged in [22] to [28] that the defendants, who, together with them, are directors and shareholders of the 4th defendant, Hiap Seng & Co Pte Ltd ("the Company"), breached their fiduciary duties to the Company. I ordered the striking out of [22] to [28] as well as prayer 12 of the Statement of Claim and now give the reasons for my decision.

**Background**

2 The plaintiffs are the sons of Mr Lew Huat Leng ("the patriarch"), the sole proprietor of Hiap Seng & Co ("the firm"), which was in the general hardware equipment business. The other members of the patriarch's family are as follows:

(a) his wife, Mdm Tan Geok Chew;

(b) his eldest son, Mr Lew Chin Hwa, who died in December 2001;

(c) his 2nd son, Mr Lau Chin Hu, the 1st defendant;

(d) his 3rd son, Mr Law Chin Eng, the 1st plaintiff;

(e) his 4th son, Mr Lau Chin Whatt, the 2nd plaintiff;

(f) his 5th son, Mr Law Chin Chai, the 3rd defendant;

(g) his eldest grandson, Mr Lew Kiat Beng, the 2nd defendant;

(h) his 1st daughter, Mdm Lau Bah Lee;

(i) his 2nd daughter, Mdm Lew Suo Lan; and

(j) his 4th daughter, Mdm Lou Aih.

3 According to the plaintiffs, the patriarch, who was assisted in the running of the firm by his sons, allowed his eldest son and his second son, the 1st defendant, to invest the firm's assets and profits. They asserted that the patriarch intended that he and his wife were each to have 20% of the family assets while his 5 sons and his eldest grandson were each to have 10% of the said assets. The plaintiffs contended that an express and/or an implied/ resulting trust ("the Lau family trust") was created and the beneficiaries were to have shares in the trust property in the proportions stated.

4 The plaintiffs further alleged that the patriarch intended to pass his own 20% share to his wife, who was to hold the same on trust in 7 equal portions. The patriarch's sons and eldest grandson were each entitled to a portion while the remaining portion was to be divided equally among the patriarch's daughters.

5 As for the patriarch's wife's own 20% share, it was claimed that she intended it to be distributed on her death to her daughters in equal shares.

6 In 1976, the Company was incorporated to take over the business and assets of the firm. As has been mentioned, the plaintiffs and the defendants are all directors and shareholders of the Company. Upon the demise of the patriarch and his wife, their shares in the Company were redistributed among the surviving shareholders in the manner mentioned in [3] above.

7 The patriarch's children did not remain a united family as allegations and counter-allegations against one another surfaced. On 13 December 2006, the plaintiffs instituted the present action against their brothers and nephew, in which they sought, *inter alia*, the following:

(a) a declaration that certain mentioned properties are held on trust by themselves and the defendants for the beneficiaries of the Lau family trust in the manner set out in [9] of the Statement of Claim or in such shares as the Court shall determine;

(b) An inquiry into what property subject to the trust was in the hands of the defendants and what has become of such property;

(c) An account of what is due to the trust from the defendants in respect of any trust property that has been applied for the benefit of the defendants or any of them, to the exclusion of the other beneficiaries; and

(d) An order that the 1st to 4th defendants be removed as trustees of the Family Assets.

8 The 1st and 3rd defendants applied to strike out the Statement of Claim on a number of grounds, one of which was that there is no evidence of any express trust because s 7(2) of the Civil Law Act (Cap 43), which requires that a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent

lawfully authorized in writing or by will, was not complied with.

9 On 17 September 2007, the Assistant Registrar dismissed the defendants' application and allowed the plaintiffs' application to amend their Writ of Summons.

10 The defendants appealed against the Assistant Registrar's decisions.

**Why paragraphs 22 – 28 and prayer 12 of the Statement of Claim were struck out**

11 Courts are reluctant to strike out a claim for the simple reason that a claimant should not be driven away from the seat of justice without good cause. In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1998] 1 SLR 374, the Court of Appeal stated as follows at [18]:

> In general, it is only in plain and obvious cases that the power of striking out should be invoked…. It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that, where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

12 While the plaintiffs' entire Statement of Claim should not be struck out, I upheld the defendants' contention that [22] to [28] in the Statement of Claim, should be struck out. The plaintiffs have since appealed to the Court of Appeal against the striking out of these paragraphs.

13 The struck out paragraphs, which appeared below the heading "Improper/fraudulent dealings in the Company", were as follows:

> [22] The Plaintiffs have since discovered that the 1st, 2nd and/or 3rd Defendants have conducted the affairs of the Company improperly and/or fraudulently.
>
> Particulars
>
> (a) Sometime in December 2001, the 1st, 2nd and/or 3rd Defendants had caused the Company to pay the sum of $4,406,589.23 to … "Hawker Enterprise Ltd" without the approval of the directors and shareholders of the Company. The said payment was not part of the ordinary business of the Company….
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> (b) The 2nd Defendant caused the Company to purchase a property in the Marsiling area for $2,000,000 without any proper valuation. No approval was sought and none was received from the other directors and shareholders of the Company in respect of the said purchase. These are the best particulars pending discovery and/or interrogatories.
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> (c) 2nd Defendant had procured the purchase by the Company of a property in Shenzhen without any proper valuation. No approval was sought and none was received from the other directors and shareholders of the Company in respect of the said purchase. These are the best particulars pending discovery and/or interrogatories.
>
> (d) The 2nd Defendant has admitted to forging the 2nd Plaintiff's signatures on the various Company resolutions and documents without his consent and/or approval.

(e) The 1st, 2nd and/or 3rd Defendants had generated fictitious trades between the Company and … Drilbo World-Trade Sdn Bhd….

(f) The 2nd Defendant caused an employee of the Company, one Stella Tai, to forge the signature of the 2nd Plaintiff on documents purporting to support the fictitious transactions with Drilbo….

(g) The 1st and 2nd Defendants had generated fictitious trades between the Company and … Mansfield Company, a company incorporated in Hong Kong….

(h) The 1st and 2nd Defendants had generated fictitious trades between the Company and … Aichi & Co Pte Ltd ….

(i) In December 2004, when the Company declared and paid out dividends, the 2nd Plaintiff did not receive his share of the dividends despite it being recorded in the Company's books that he had. It was only after repeated demands that the 2nd Plaintiff received his share of the dividends in late April 2005.

(j) The 1st and 2nd Defendants have ignored repeated demands to produce the accounts of the Company and its statutory records for inspection by the Plaintiffs until sometime in September 2005 after the Plaintiffs threatened legal action.

(k) Since 2002, the 1st and 2nd Defendants have failed to notify the Plaintiffs of any board or members' meetings of the Company. Accordingly, the Plaintiffs have not attended nor approved any of the resolutions that have been passed at these meetings.

(l) Over the years since the 2nd Defendant became an executive director of the Company, he had procured the Company to commit tax evasion in breach of various provisions of the Income Tax Act. Pending discovery, these are the best particulars which the Plaintiffs can give.

(m) Sometime in 2001, the Company had obtained various credit facilities totalling $5,400,000 from United Overseas Bank Ltd….

(n) Using money drawn from the OD Facility, the 2nd and/or 3rd Defendants procured the payment to Hawker Enterprise Ltd … of $4,406,589.23. No approval was sought from nor received from the other directors and shareholders of the Company in respect of the use of the OD Facility in this manner.

(o) Sometime in January 2002, the 1st and 2nd Defendants caused to be recorded in the Company's books that each of them had lent the Company $2,000,000 purportedly to repay the OD. In December 2002, the 1st, 2nd and 3rd Defendants procured that the Company paid the 1st and 2nd Defendants each the sum of $2,000,000 in purported repayment of the said "loans" …. No consent or approval was sought from the other directors and shareholders.

(p) By reason of the matters stated above, the Company has been subject to investigation by the Inland Revenue Authority of Singapore (IRAS) and is exposed to further sanction. The

2nd Plaintiff and other directors of Drilbo are also exposed to sanction by IRAS in relation to the said fictitious transactions. Pending discovery, these are the best particulars that the Plaintiffs can provide.

[23] At all material times, the 1st and 3rd Defendants had knowledge of and/or dishonestly assisted the 2nd Defendant in his actions as stated in the preceding paragraph. The 1st Defendant's dishonesty, knowledge and/or assistance of the 2nd Defendant's actions is evident from the fact that apart from the 2nd Defendant, the 1st Defendant is the only other director actively involved in the operations of the Company. In a board meeting in or around December 2006, the 1st Defendant had also expressed his approval of the 2nd Defendant's actions. The 3rd Defendant's dishonesty and/or knowledge and/or assistance of the 2nd Defendant's actions is evident from the 3rd Defendant's shareholding in Winstant Holdings and his acquiescence in the 2nd Defendant's actions mentioned in paragraphs 16 to 22 above.

[24] Further, by reason of the matters stated in paragraph 22 above, the 1st, 2nd and 3rd Defendants ***are in breach of their fiduciary duties as directors of the Company.***

[25] Further or in the alternative, by reason of the matters stated in paragraph 22 above, the 1st, 2nd and/or 3rd Defendants are in breach of Sections 157 and 157A of the Companies Act.

[26] Further or in the alternative, by reason of the matters stated in the preceding paragraphs, the 1st, 2nd and/or 3rd Defendants have acted in breach of trust.

[27] By reason of the foregoing, the Plaintiffs verily believe that the 1st, 2nd and/or 3rd Defendants have been involved in a systematic dissipation of the assets of the Company in favour of themselves or to entities controlled by them.

[28] Each of the 1st, 2nd and/or 3rd Defendants are accountable as trustees de son tort of the Lau Family Trust.

14 As for prayer 12, it was worded as follows:

And the Plaintiffs claim:

….

(12) An Order that the 1st, 2nd and/or the 3rd Defendants personally indemnify the Company, and the Plaintiffs, in respect of all penalties imposed upon them by the tax authorities in respect of the 1st, 2nd and/or 3rd Defendants' breach of duty to the Company and/or trust.

15 A minute and protracted examination of the documents and facts of the case is uncalled for when considering whether any part of a Statement of Claim should be struck out. All the same, the plaintiffs made it patently clear in [22] to [28] of their Statement of Claim that they are complaining about the defendants' *breach of their fiduciary duty to the company*.

16 It is trite that directors owe their duties to the company: see *Percival v Wright* [1902] 2 Ch 421. As such, attempts by others to sue for what is a breach of duty to the company are often

thwarted by the rule in *Foss v Harbottle* (1843) 2 Hare 461. In so far as this rule sets out "the proper claimant rule", it was succinctly summed up in *Burland v Earle* [1902] 1 AC 83, 93, PC, by Lord Davey as follows:

> [I]t is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should prima facie be brought by the company itself. These cardinal principles are laid down in the well-known cases of *Foss v Harbottle* and *Mozley v Alston* …..

17 More recently, in *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] 1 Ch 204, 210, the English Court of Appeal referred to "the elementary principle that A cannot, as a general rule, bring an action against B to recover damages or secure other relief on behalf of C for an injury done by B to C. C is the proper plaintiff because C is the party injured and, therefore, the person in whom the cause of action is vested." (the "*Prudential* principle").

18 The *Prudential* principle was affirmed by the House of Lords in *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 ("*Johnson*"). Lord Bingham said at pp 35-36 as follows:

> These authorities support the following propositions. (1) Where a company suffers loss caused by a breach of duty owed to it, only the company may sue in respect of that loss. No action lies at the suit of a shareholder suing in that capacity and no other to make good a diminution in the value of the shareholder's shareholding where that merely reflects the loss suffered by the company. A claim will not lie by a shareholder to make good a loss which would be made good if the company's assets were replenished through action against the party responsible for the loss, even if the company, acting through its constitutional organs, has declined or failed to make good that loss. So much is clear from *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] Ch 204, particularly at pp 222-223 …. (2) Where a company suffers loss but has no cause of action to sue to recover that loss, the shareholder in the company may sue in respect of it (if the shareholder has a cause of action to do so), even though the loss is a diminution in the value of the shareholding. This is supported by *Lee v Sheard* [1956] 1 QB 192, 195-196, *George Fischer* and *Gerber*. (3) Where a company suffers loss caused by a breach of duty to it, and a shareholder suffers a loss separate and distinct from that suffered by the company caused by breach of a duty independently owed to the shareholder, each may sue to recover the loss caused to it by breach of the duty owed to it but neither may recover loss caused to the other by breach of the duty owed to that other. I take this to be the effect of *Lee v Sheard*, at pp 195-196, *Heron International*, particularly at p 262, *R P Howard*, particularly at p 123, *Gerber* and *Stein v Blake*, particularly at p 726.

19 A derivative action is an exception to the principle that only the company can sue in respect of the first type of loss described above. When referring to such an action in *Wallersteiner v Moir (No 2)* [1975] 1 QB 373, Lord Denning MR explained at p 391 that "[s]tripped of mere procedure, the principle is that, where the wrongdoers themselves control the company, an action can be brought on behalf of the company by the minority shareholders on the footing that they are its representatives to obtain redress on its behalf". The defendants contended that the plaintiffs ought to have started a derivative action with respect to the complaints regarding the alleged breaches of fiduciary duty to the Company. However, the plaintiffs asserted that they are entitled, as beneficiaries of the alleged Lau family trust, to sue the defendants with respect to the breaches set out in [22] to [28] of the Statement of Claim in view of the decision of the English Court of Appeal in *Shaker v Al-Bedrawi* [2003] 1 Ch 350 ("*Shaker*"), which concerned the applicability of the *Prudential* principle. That case, when carefully analysed, does not support the plaintiffs' assertion.

20 The facts in *Shaker*, shorn of details for present purposes, are as follows. In 1989, S and his friend, A, invested in B's television and radio business in the United States, which was targeted at Arab-speaking consumers. S and A provided the required capital but did not want a directorship or any active role in the business. B operated the business through ANA Inc and he was its *sole* director and only shareholder. In 1993, another company, MBS purchased two of ANA Inc's subsidiaries, ANA Radio and ANA TV, for USD10m. However, the price was recorded in the sale and purchase agreement as USD3m. A side letter evidenced the purchaser's payment to ANA Inc of an additional USD6m. The remaining USD1m was paid to an undisclosed agent. B diverted USD6m of the sale proceeds to another company, Qube, which was his nominee. The balance of the sale proceeds was dissipated. In 1994, S asked B for the return of his investment together with profits. In May 1995, B signed an undertaking that USD6m from the sale proceeds were due to S and A. When B failed to pay the sum due to him, S sued B, who claimed that the *Prudential* principle barred S's claim because ANA Inc was the proper plaintiff to recover the proceeds of sale from him.

21 On the assumed facts, Lawrence Collins J found that S had an interest in the shareholding of ANA Inc, which suffered a loss as a result of B's machinations. As such, it was for ANA Inc to sue B in respect of that loss and S had no cause of action against B for the misappropriation of ANA Inc's assets unless he could establish independent duties in contract, tort or equity which B owed him. His Lordship added that even if S had such a cause of action on the principal claims, the proceedings would still be barred on the basis that the damages sought by S were purely reflective of ANA Inc's loss.

22 S's appeal against Lawrence Collin J's decision was allowed but the decision of the Court of Appeal must be viewed in the proper perspective. For a start, the court thought that the judge below had no basis for assuming that S's case concerned the misappropriation of ANA Inc's assets. In the court's view, S was actually complaining about a misappropriation of *his own* money by B. The court noted that S did not plead that he had any interest in ANA Inc. Peter Gibson LJ, who delivered the judgment of the court, explained as follows at [56]:

> [S's allegation] is clearly an allegation of misappropriation of what should have gone to the beneficiaries and *says nothing about a breach of duty to ANA Inc*. … *nor have we been shown any clear statements that Mr Shaker was alleging misappropriation from the company*. … . *Mr Shaker's claim was that the misappropriation was from Mr Shaker and [his friend]*. The judge says (at [140]) that "On the assumed facts, there can be no doubt that ANA Inc would have claims for breach of fiduciary duty against [B], but there is no finding that there was a misappropriation by [B] of the company's moneys ….

23 Admittedly, the Court of Appeal also considered the applicability of the *Prudential* principle in circumstances where a beneficiary with an equitable interest in a company's shares which are held in trust by a trustee sues the trustee for an account of the profit taken by the trustee. The court put the question as follows: Does the *Prudential* principle debar the beneficiary's claim when the possibility cannot be excluded that the claim may extend to moneys lawfully extracted in respect of which the company can have no claim against the trustee director?

24 It is important to note that in *Shaker*, S's counsel had put the right of a beneficiary to sue in such circumstances on a very broad basis. Relying on *Re Lucking's Will Trusts* [1968] 1 WLR 866 and *Walker v Stones* [2001] 1 QB 902, S's counsel argued that where a beneficiary has a proprietary claim against the trustee director to moneys for which an account is sought, the *Prudential* principle can have no application. In his view, the court should recognise that the company's potential claim against the director for those moneys gives rise to competing claims to a single fund and to the extent that the company's claim does not succeed, the beneficiary's claim should prevail. This broad

approach was roundly rejected by the Court of Appeal. As for when the *Prudential* principle does not preclude an action brought by a claimant not as a shareholder but as a beneficiary under a trust against his trustee for a profit, Gibson LJ outlined the boundary at [83] as follows:

> In our judgment the Prudential principle does not preclude an action brought by a claimant not as a shareholder but as a beneficiary under a trust against his trustee for a profit **unless it can be shown by the defendants that the whole of the claimed profit reflects what the company has lost and which it has a cause of action to recover**…. If in the present case, it could be shown that the $6m was misappropriated from ANA Inc or unlawfully distributed so that ANA Inc was entitled to the whole of the $6m, we would accept that the Prudential principle applied to bar [S's] action.

25 In *Shaker,* S's counsel made it clear that S's claim against B was for the secret profit made by B in diverting USD6m to Qube and had nothing to do with any breach of fiduciary duties. In fact, S's counsel went so far as to suggest that part of the profit from the sale of ANA Inc's two subsidiaries could have been *lawfully* taken from ANA Inc by B, either as director's remuneration or as dividends, and that such remuneration or dividends could have been authorised by B himself as the *sole* shareholder of ANA Inc. The reason for running this line of argument was obvious. The lack of a breach of fiduciary duty meant that ANA Inc had no competing claim against B.

26 The Court of Appeal, which accepted S's counsel's submission as outlined above, agreed that it may well be the case that some of the claimed profit from the sale of ANA Inc's two subsidiaries might not reflect what the company had lost. The court added that to the extent that B took at least part of the USD6m without being in breach of fiduciary duty to ANA Inc, he would have to account to his beneficiary for that profit, referable as it was to the trust holding of shares in ANA Inc.

27 In stark contrast, in the present case, the plaintiffs pleaded in the paragraphs of Statement of Claim that were struck out that the defendants breached their fiduciary duties to the Company. In [24] of the Statement of Claim, the plaintiffs pleaded as follows:

> Further, by reason of the matters stated in paragraph 22 above, the 1st, 2nd and 3rd Defendants *are in breach of their fiduciary duties* as *directors of the Company.*
>
> [emphasis added]

28 Furthermore, in his affidavit dated 25 July 2007, the second plaintiff, Chin Whatt, stated as follows at [28]:

[28] In these proceedings, the Plaintiffs had pleaded, inter alia, that the 1st and 2nd Defendants had mismanaged the Company, *are in breach of their fiduciary duties as directors* as well as Sections 157 and 157A of the Companies Act.

[emphasis added]

29 All the particulars of the alleged breaches by the defendants in [22] to [28] of the Statement of Claim, including causing the Company to pay $4.4m to Hawker Enterprise Ltd without approval, the purchase of property in Marsiling or in China without proper valuation or approval, the generating of fictitious trades with other companies and the dissipation of the Company's money, relate to wrongs done *to* the Company and losses suffered *by* the Company. The Company has a cause of action in respect of all these alleged wrongs. It will be recalled that in *Shaker* (*supra,* [24]), Gibson LJ made it plain at [83] that if the USD6m had been misappropriated from ANA Inc or unlawfully distributed *so*

*that ANA Inc would have been entitled to the whole of the USD6m*, S's claim would have been barred by the *Prudential* principle. It follows that as the plaintiffs in the present case claimed that the defendants had acted in breach of their fiduciary duty to the Company when they committed the alleged wrongful acts, they are barred by the *Prudential* principle from mounting a claim of their own against the defendants because the Company is the proper plaintiff. Furthermore, the plaintiffs are not entitled to sue because of the "no reflective loss" principle. When applying this principle in *Shaker*, Gibson LJ stated at [81]:

> We agree … that if the claim by [S] for an account is in substance a claim to moneys to which ANA Inc has a claim against [B], then consistently with the reasoning is [*Johnson*] the *Prudential* principle would bar [S's] claim for what in effect reflects part of the loss suffered by ANA Inc, and *it matters not that the causes of action of [S] and ANA Inc are different…. [T]the Prudential principle still bars a claim reflective of the company's loss* see [*Johnson*] at p 35 per Lord Bingham and at p 66 per Lord Millet.
>
> [emphasis added]

30 In *Gardner v Parker* [2005] BCC 46, Neuberger LJ, who delivered the judgment of the English Court of Appeal, stressed at [43] that "it appears clearly to have been determined in *Shaker* that even when the claim is brought by a beneficiary against a trustee for breach of fiduciary duty, it can be barred by the rule against reflective loss".

31 The defendants rightly asserted that the plaintiffs are in effect trying through [22] to [28] and prayer 12 of the Statement of Claim to mount a derivative action. After all, the plaintiffs had complained of wrongful conduct and oppression by the defendants and in his affidavit dated 25 July 2007, the second plaintiff, Chin Whatt, stated as follows at [29]:

> By reason of the matters aforesaid, we verily believe that there is wrongful conduct and oppression by the 1st and 2nd Defendants which are prejudicial to the Company and its shareholders.
>
> [emphasis added]

33 It should not be overlooked that in *Shaker* (*supra*, [21]), the Court of Appeal was rather concerned that if the plaintiff, S, was not entitled to proceed with his action against the defendant and trustee, B, because of the *Prudential* principle, this might leave B holding a profit without being accountable for it to his beneficiary. After all, S, who put his own money in the television and radio business, was neither a director nor shareholder of ANA Inc, whose sole director and only shareholder was B. In contrast, in the present case, both the plaintiffs are directors and shareholders of the Company. There is thus nothing inequitable about preventing the plaintiffs from bringing within the embrace of their action for a breach of the alleged family Lau trust, what is, if proven, the Company's own loss.

34 For the reasons stated, [22] to [28] and prayer 12 of the Statement of Claim were struck out. In view of this, the heading "Improper/fraudulent dealings in the Company", which appeared before [22] of the Statement of Claim was also struck out.