IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 84

Civil Appeal No 204 of 2017

Between

LIM SZE ENG

… *Appellant*

And

LIN CHOO MEE

… *Respondent*

In the matter of Suit No 1099 of 2016

Between

LIN CHOO MEE

… *Plaintiff*

And

LIM SZE ENG

… *Defendant*

JUDGMENT

[Contract] — [Contractual terms] — [Interpretation of contracts]

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v
Lin Choo Mee

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15 October 2018

30 November 2018 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 In the present proceedings, Mr Lim Sze Eng ("LSE") appeals against the decision of the High Court judge ("the Judge") to allow in part a claim brought by Mr Lin Choo Mee ("LCM") in Suit No 1099 of 2016 ("the Suit") seeking, *inter alia*, damages for LSE's alleged breaches of various terms under a settlement agreement: see *Lin Choo Mee v Lim Sze Eng* [2018] SGHC 7 ("the GD").

2 LSE and LCM are two brothers who had entered into a settlement agreement dated 28 December 2015 ("the Settlement Agreement") which provides for the disposal of LCM's shares in three family-run companies, namely, Tat Leong Investment Pte Ltd ("TL Investment"), Tat Leong Development (Pte) Ltd ("TL Development"), and Tat Leong Petroleum Co

(Pte) Ltd ("TL Petroleum") (collectively, "the TL Companies"), either by LSE purchasing LCM's shareholding in those companies or by capital reduction of those companies. The parties had entered into the Settlement Agreement in resolution of their differences arising out of Civil Appeals Nos 101, 102 and 103 of 2015 ("the Winding Up Appeals"), which were appeals brought by LSE against the decision of the High Court to: (a) grant LCM's applications in Companies Winding Up Nos 226, 227 and 228 of 2014 ("the Winding Up Applications") for the TL Companies to be wound up under s 254(1)(*i*) of the Companies Act (Cap 50, 2006 Rev Ed); and (b) order LSE to pay LCM costs fixed at S$40,000 excluding disbursements, with such costs and disbursements to be reflected solely against the value of LSE's shares in the TL Companies ("the Costs Order"): see *Lin Choo Mee v Tat Leong Development (Pte) Ltd and others and other matters* [2015] SGHC 99 ("the Winding Up Judgment").

3 Pursuant to the Settlement Agreement, LCM was entitled to receive a sum of money in lieu of his shares in the TL Companies ("the Consideration"), and this sum could only be determined once the sale price of a shop unit at 14 Scotts Road #03-11, Far East Plaza ("the FEP Unit") had been determined. LCM also alleged that LSE was obliged under the same agreement to satisfy the Costs Order. To date, the FEP Unit remains unsold, the Consideration remains unpaid, and the Costs Order remains unsatisfied. LCM thus commenced the Suit, alleging, among other things, that LSE had breached various terms under the Settlement Agreement by failing to both sell the FEP Unit and pay LCM the Consideration within the stipulated timeframes, and failing to satisfy the Costs Order. The Judge found in favour of LCM on these issues. LSE now brings the present appeal.

4 We reserved judgment following the hearing, and now furnish our decision and the accompanying reasons.

Background

5 LSE and LCM are respectively the eldest and second eldest sons of Mr Lin Whan Chiu ("the Father"), who, with his wife, Mdm Tan Ah Kar ("the Mother"), had a total of five sons and three daughters (collectively, "the Lin Family"). The Lin Family operated a business that was primarily focused on the petroleum industry, and which gradually diversified into properties. LSE was the driving force behind the Lin Family business.

The TL Companies

6 In June 1977, LSE and his wife, Mdm Tan Lay Hoon ("TLH"), incorporated TL Petroleum. LCM was appointed a director of TL Petroleum shortly thereafter. In January 1979, LSE and LCM incorporated TL Development, and were its founding directors and shareholders. In May 1983, LSE and LCM incorporated TL Investment, and were also its founding directors and shareholders. TL Investment is an investment holding company with the chief purpose of holding shares in TL Development – indeed, presently, the only assets that TL Investment holds are shares in TL Development. Leadership of the TL Companies was vested in the Father and three of his eldest sons, while ownership of the TL Companies resided primarily in the Father and all five of his sons. LSE was, at all times, either the joint or outright majority shareholder in TL Development and TL Investment. Following the transfer of the Father's shares in TL Development and TL Petroleum to LSE in 1991 (after the Father was diagnosed with cancer), LSE became the clear majority shareholder in the TL Companies, while LCM was a minority shareholder.

7 The TL Companies made several significant property investments over the years. In 1986, the Father and the Mother sold a portion of a piece of property that they owned at 5 Teo Kim Eng Road to TL Development, and

TL Development proceeded to redevelop the property into two semi-detached houses (*ie*, 25 and 27 Jalan Rimau). Whereas the Father's third son had occupied 25 Jalan Rimau from 1990 to 2000 and the youngest son has been residing there since 2000, LCM and his family moved into 27 Jalan Rimau in 1991 and resided there until 30 March 2016, when they moved out as required under cl 11 of the Settlement Agreement (see [20] and [27] below).

8 In 1990, TL Development purchased four shophouses. TL Development sold the first in 1994 and the remaining shophouses in 2000, and part of the sales proceeds was invested in two Chinese companies: Fujian Putian Minxin Building Coating Materials Co Ltd and Fujian Putian Yongda Construction Materials Co Ltd (also referred to by the parties as Yongda Building Material Co Ltd ("Yongda")) (collectively, "the Chinese Subsidiaries"). TL Development is the sole shareholder in both of the Chinese Subsidiaries.

9 Sometime after 1991, TL Petroleum purchased the FEP Unit, which initially functioned as the headquarters of the TL Companies, but has been rented out since 2007.

10 In 2000, the Father's third eldest son resigned as a director of TL Development and sold his shares in the TL Companies to LSE. In 2002, the Father's fourth eldest son sold his shares in TL Development and TL Investment to both LCM and the Father's youngest son, and sold his shares in TL Petroleum to LSE. On 7 March 2013, at the annual general meetings of both TL Development and TL Investment, LCM's term as director in both companies was not renewed, and LSE's wife (*ie*, TLH) was appointed as director in LCM's place in both companies.

The Winding Up Applications

11 On 13 November 2014, LCM commenced the Winding Up Applications, seeking to wind up the TL Companies under s 254(1)(*i*) of the Companies Act on the basis that it was just and equitable to do so. LCM submitted that: (a) whereas there had been a mutual understanding that all the sons in the Lin Family would participate in the running of the TL Companies, LCM had been deliberately excluded from the management of the TL Companies; (b) the relationship of mutual trust and confidence between LCM and LSE had broken down, such that they were no longer able to work in concert in the management and conduct of the business of the TL Companies; and (c) the substrata of the TL Companies had ceased to exist, and were operating at a loss despite their significant assets.

12 On 13 April 2015, Steven Chong J (as he then was) issued the Winding Up Judgment, in which he found that: (a) the TL Companies were "family companies", in the sense that a relationship of mutual trust and confidence was central to the existence of those companies such that they were quasi-partnerships, and it was clear that this relationship of mutual trust and confidence between LSE and LCM had disintegrated (see the Winding Up Judgment at [74]–[79]); and (b) LCM had been deliberately excluded from the management of TL Development and TL Investment, in breach of an understanding that LCM was to have a management role in the TL Companies (at [80]–[81]). Accordingly, Chong J found that there was unfairness that warranted a court-ordered winding up of the TL Companies under s 254(1)(*i*) of the Companies Act, and granted the Winding Up Applications (at [82]–[89]). However, Chong J ordered, pursuant to s 257(1) of the Companies Act, the winding up order to be stayed for 30 days to allow the parties to reach an amicable settlement (at [98]). Finally, Chong J ordered LSE to pay LCM costs

fixed at S$40,000 excluding disbursements, with such costs and disbursements to be reflected solely against the value of LSE's shares in the TL Companies (*ie*, the Costs Order) (at [99]).

13 The parties failed to resolve their differences within 30 days. LSE thus filed the Winding Up Appeals on 23 May 2015. On 5 June 2015, LSE applied for a stay of the orders made in the Winding Up Applications. On 23 June 2015, a stay of Chong J's orders was granted.

14 On 23 November 2015, at the hearing of the Winding Up Appeals, the Court of Appeal suggested that parties attend mediation to resolve their differences. On 28 December 2015, the parties attended mediation and, at the conclusion of the session, entered into the Settlement Agreement.

The Settlement Agreement

15 The arrangement that the parties consented to under the Settlement Agreement was for: (a) LCM's shareholding in the TL Companies to be disposed of either by LSE purchasing LCM's shareholding in those companies or by capital reduction of those companies, with the net effect being that LCM would receive the Consideration in lieu of his shares in the TL Companies; and (b) each party to bear his own costs of the Winding Up Appeals (see cll 1 and 2 of the Settlement Agreement).

16 The Consideration was to be computed in accordance with cll 3 to 8 of the Settlement Agreement, which provide as follows:

> 3. The consideration for [LCM's] shareholding in the [TL Companies, *ie*, the Consideration] shall be the aggregate of the following:
>
> (a) in relation to the shareholding in [TL Development] and [TL Investment] the

> consideration shall be 23.44% of the net tangible asset value of [TL Development]; and
>
> (b) in relation to the shareholding in [TL Petroleum], 14.81% of the net tangible asset value of [TL Petroleum].
>
> 4. The net tangible asset value of [TL Development] shall be [-$200,431 - $1,088,537 + the Value of 25 and 27 Jalan Rimau - $1,051,501 + the Value of the Chinese Subsidiaries + $50,674].
>
> 5. The net tangible asset value of [TL Petroleum] shall be [$279,990 - $511,320 + *the Sale Price of [the FEP Unit]*].
>
> 6. The Value of 25 and 27 Jalan Rimau shall be the open market value with vacant possession fixed by M/s Colliers International Singapore, who shall be appointed by [TL Development], on their usual terms.
>
> 7. The Value of the Chinese Subsidiaries shall be [RMB1,430,422 + RMB9,752, 192 – RMB 6,504,057 - RMB8,226,423 - RMB2,000,000 + Value of the Building owned by [Yongda]] converted into S$ at the rate of S$1.00 to RMB 4.6098.
>
> 8. The Value of the Building owned by [Yongda] shall be the open market value with vacant possession fixed by M/s Colliers International Singapore, who shall be appointed by [TL Development], on their usual terms.
>
> [emphasis added]

17 In other words, cl 3 of the Settlement Agreement provides that the Consideration comprises two main figures: first, 23.44% of the net tangible asset value ("NTAV") of TL Development; and second, 14.81% of the NTAV of TL Petroleum. In relation to the NTAV of TL Development, it shall be computed in accordance with cl 4, and two of the individual components stated in cl 4 (*ie*, the value of 25 and 27 Jalan Rimau, and the value of the Chinese Subsidiaries) shall be computed in accordance with cll 6–8. As regards the NTAV of TL Petroleum, it shall be computed in accordance with cl 5, with one of its components being the "Sale Price of [the FEP Unit]".

18 Clause 9 states that Colliers International (Singapore) Pte Ltd ("Colliers") shall be the agent for the sale of the FEP Unit.

19 Clause 10 addresses the implementation of the Settlement Agreement, and provides as follows:

> 10. This agreement shall be implemented as follows:
>
> (a) The valuers will be appointed within 14 days of the date hereof. …
>
> (b) The agent for the sale of [the FEP Unit] will be appointed within 14 days of the date hereof. … *The sale of the said property is to be completed within six months hereof.*
>
> (c) *The payment of the [Consideration] to [LCM] shall be made*, whether by way of transfer of his shareholding or by capital reduction, … *within 9 months hereof or within 1 month of the completion of sale of both 27 Jalan Rimau and [the FEP Unit], whichever is earlier.*
>
> (d) The costs of all valuations under this agreement shall be borne equally by both parties.
>
> [emphasis added]

20 Clause 11 provides that LCM and his family shall move out of their current place of residence at 27 Jalan Rimau within a month after the date of the receipt of the valuation of 25 and 27 Jalan Rimau.

21 Clause 12 provides that the TL Companies shall not deal with their assets or take on any further liabilities "save as in the ordinary course of business and in respect of the sale of [the FEP Unit]", and that LSE's solicitors, Wee Swee Teow & Co, shall "act in the sale of [the FEP Unit] and 27 Jalan Rimau", and "hold the net sale proceeds as stakeholders until [LCM] is paid [the Consideration] in full …".

22 Clause 13 provides that "[n]either party shall have any claim against the other in relation to any matter arising from or connected to the subject matter of [the Winding Up Appeals], *save for any costs orders already made*" [emphasis added].

23 Finally, it is allegedly *common ground*, based on the parties' pleadings, that the Settlement Agreement contains implied terms that:

> (a) first, the parties "shall take reasonable endeavours and/or do all that may be necessary to give effect to the spirit and intent of the Settlement Agreement and to implement the terms of the Settlement Agreement", and the "parties would cooperate to enable the sale of the [FEP Unit] and/or not to prevent performance of the sale of the [FEP Unit] by their acts and/or omissions" ("the Reasonable Endeavours Term"); and
>
> (b) second, "the sale price of the [FEP Unit] shall be reasonable" ("the Reasonable Price Term").

The developments after the Settlement Agreement

24 On 4 January 2016, LSE applied to withdraw the Winding Up Appeals by consent with no orders as to the costs of the appeals. This court granted the order on 26 January 2016. The parties then proceeded to appoint Colliers as: (a) the valuer of 25 and 27 Jalan Rimau; (b) the exclusive agent for the sale of the FEP Unit; and (c) the valuer of the building owned by Yongda ("the Chinese Factory").

25 On 29 February 2016, Colliers completed the valuation of 25 and 27 Jalan Rimau, and determined their value to be S$7m.

26 Between January and March 2016, the FEP Unit was marketed for sale in the open market, but no offers were made. Subsequently, the parties agreed to put the FEP Unit up for auction for the months of April and May 2016 at the reserve price of S$2.2m. This reserve price was based on an indicative valuation of S$2.1–2.2m provided by Collier on 29 March 2016.

27 On 30 March 2016, in accordance with cl 11 of the Settlement Agreement, LCM and his family moved out of 27 Jalan Rimau (see [20] above).

28 The auctions conducted on 20 April and 26 May 2016 were wholly unsuccessful, with not a single bid made.

29 On 29 April 2016, the Chinese Factory was valued at RMB6.5m.

30 On 28 June 2016, the six-month deadline provided for under cl 10(b) of the Settlement Agreement for the sale of the FEP Unit elapsed.

31 On 5 July 2016, LCM wrote to LSE, proposing that: (a) Colliers be discharged as the agent for the sale of the FEP Unit and another firm be appointed to perform an independent valuation of the FEP Unit; or alternatively, (b) the NTAV of TL Petroleum be assessed based on Colliers' indicative valuation of the FEP Unit. On 8 July 2016, LSE replied, stating that he did not agree with LCM's proposals. LSE counter-proposed that the parties auction the FEP Unit in July 2016 at the slightly reduced reserve price of S$2.1m.

32 On 12 July 2016, LCM's solicitors wrote to the mediator who had conduct of the mediation on 28 December 2015 ("the Mediator"), requesting that their dispute, which was one arising from the implementation of the Settlement Agreement, be referred to him for mediation pursuant to cl 14 of the

Settlement Agreement. A mediation session was originally fixed for 9 September 2016. However, the session was cancelled two days before it was scheduled to take place when the Mediator fell ill.

33 On 19 September 2016, LCM wrote to LSE, requesting that LSE pay him the sum of S$1,104,072.05 in exchange for LCM's shares in only TL Investment. On 22 September 2016, LSE replied, rejecting the proposal on the basis that the Settlement Agreement did not provide for part-payment of the Consideration. LSE also claimed that LCM was delaying the conclusion of the Settlement Agreement by failing to reply to his proposal of 8 July 2016 (see [31] above).

34 On 28 September 2016, the nine-month long-stop deadline provided for under cl 10(c) of the Settlement Agreement for the payment of the Consideration to LCM elapsed.

35 On 4 October 2016, LCM wrote to LSE, demanding that LSE complete the transfer of LCM's shares in TL Development and TL Investment for the sum of S$1,152,486.35. LCM also indicated that he was agreeable to auctioning the FEP Unit at the reserve price of S$2.1m, but only until 31 December 2016, beyond which the NTAV of TL Petroleum was proposed to be assessed based on the reserve price of S$2.1m. On 6 October 2016, LSE replied, maintaining that he was not obliged to make part-payment of the Consideration. LSE also stated that he would make the necessary arrangements for the FEP Unit to be auctioned at the reserve price of S$2.1m. Finally, LSE stated that he was not agreeable to using the reserve price of S$2.1m to assess the NTAV of TL Petroleum.

36 On 17 October 2016, LCM commenced the Suit.

37 Subsequently, auctions were carried out on 27 October 2016, 24 November 2016 and 15 December 2016 at a reserve price of S$2.1m. Again, not a single bid was received at the opening price of S$2.1m.

38 On 23 December 2016, LCM filed an application for partial summary judgment, seeking in particular an order that LSE complete the transfer of LCM's shares in TL Development and TL Investment for the sum of S$1,152,486.35 ("the Partial Summary Judgment Application").

39 On 9 January 2017, a further mediation session was held before the Mediator. The session was unsuccessful.

40 On 10 January 2017, LCM wrote to LSE, proposing to lower the reserve price of the FEP Unit for the auction to S$1.5m. LCM also stated that he was willing to consider a bid even if it was below S$1.5m. On 11 January 2017, LSE replied, proposing to retain the reserve price at S$2.1m.

41 On 19 January 2017, the FEP Unit was auctioned at the reserve price of S$2.1m. On 20 January 2017, an offer was made for the FEP Unit at the price of S$1m. Barely half an hour later, this offer was increased to S$1.1m. But this offer was ultimately not accepted.

42 On 3 February 2017, Chong J heard and dismissed the Partial Summary Judgment Application.

43 On 15 February 2017, LCM wrote to Colliers requesting a fresh indicative valuation of the FEP Unit and a recommendation on a reserve price for the sale of the FEP Unit at an auction. On 16 February 2017, Colliers replied, stating that the indicative valuation of the FEP Unit was S$2–2.2m, and

recommending a reserve price of S$1.6m. On 17 February 2017, LCM wrote to Colliers, instructing them to auction the FEP Unit at a reserve price of S$1.1m. But LSE likewise wrote to Colliers on the same day, objecting to LCM's instructions and insisting that the FEP Unit be placed on auction at the reserve price of S$2.1m.

44 On 22 February 2017, the FEP Unit was auctioned at the reserve price of S$2.1m. No bids were received.

45 On 6 April 2017, yet another further mediation session was held before the Mediator. The session was also unsuccessful.

46 On 28 April, 25 May, 21 June and 27 July 2017, the FEP Unit was again auctioned at the reserve price of S$2.1m. Once again, no bids were received at all.

The proceedings below

47 In the Suit, LCM claimed that LSE had breached:

(a) cl 10(c) by failing to complete the disposal of LCM's shares in TL Development and TL Investment and make payment of the sum of S$1,152,486.35 (which was derived from the application of cll 3(a), 4, 6, 7 and 8 to the valuations obtained for 25 and 27 Jalan Rimau and the Chinese Factory) to LCM by 28 September 2016;

(b) cll 5, 10(b) and 10(c) by failing to complete the sale of the FEP Unit by 28 June 2016 and make payment of the Consideration by 28 September 2016, and had breached the Reasonable Endeavours Term by failing to take reasonable steps to accomplish any of the foregoing;

(c) cl 12 by causing TL Development to transfer S$150,000 to Tat Leong Travel Pte Ltd ("TL Travel"), thereby causing TL Development to dispose of its assets outside of the ordinary course of its business; and

(d) cl 13 by failing to satisfy the Costs Order.

48 LCM thus sought remedies comprising:

(a) either: (i) the sum of S$1,152,486.35 for the completion of LCM's disposal of his shares in TL Development and TL Investment and an appropriate sum determined by the court for LCM's shares in TL Petroleum; or (ii) damages to be assessed in respect of his entire shareholding in the TL Companies;

(b) an injunction to restrain LSE from dealing with or disposing of assets of the TL Companies pending the completion of LCM's disposal of his shares in the TL Companies; and

(c) an order for damages to be assessed for LSE's failure to satisfy the Costs Order.

49 In the GD, the Judge found that:

(a) cl 10(c) was *not* severable or divisible, such that LSE did not have any obligation to pay for LCM's shares in TL Development and TL Investment separately from his obligation to pay for LCM's shares in TL Petroleum (at [43]–[45]);

(b) cl 10(b) imposed an absolute obligation on LSE to complete the sale of the FEP Unit by 28 June 2016, and LSE had breached this obligation (at [49]–[52]);

(c) even if LSE was not under an absolute obligation to complete the sale of the FEP Unit by 28 June 2016, LSE had breached the Reasonable Endeavours Term by refusing to agree to the lowering of the reserve price for the auction of the FEP Unit (at [53]–[54]);

(d) cl 10(c) imposed an absolute obligation on LSE to pay the Consideration to LCM by 28 September 2016, and LSE had breached this obligation (at [49(b)(i)] and [55]);

(e) LSE did *not* breach cl 12, given that LCM failed to show that LSE had procured TL Development to transfer S$150,000 from its own assets to TL Travel (at [59]–[60]); and

(f) LSE breached cl 13 by failing to satisfy the Costs Order, given that the phrase "save for any costs orders already made" was clearly meant to include the Costs Order (at [64]–[65]).

50 The Judge thus ordered: (a) judgment to be entered for LCM with damages to be assessed in respect of: (i) LSE's breaches of cll 10(b) and 10(c) for failing to complete the sale of the FEP Unit by 28 June 2016 and failing to pay the Consideration to LCM by 28 September 2016; and (ii) LSE's breach of cl 13 for failing to satisfy the Costs Order (at [68]–[71]); and (b) LSE to pay LCM 90% of the costs of the Suit on a standard basis (at [72]).

The issues to be determined

51 Whereas LSE has appealed against the Judge's findings that he had breached cll 10(b), 10(c) and 13 of the Settlement Agreement as well as the Reasonable Endeavours Term, LCM has *not* cross-appealed against the Judge's findings that: (a) cl 10(c) requires the Consideration to be paid to LCM in a

single lump sum (such that LCM cannot request that LSE pay him the sum of S$1,152,486.35 in consideration of LCM's shares in only TL Development and TL Investment); and (b) LSE did not breach cl 12 by procuring TL Development to transfer S$150,000 from its assets to TL Travel.

52 Accordingly, the only issues that arise for our determination are:

(a) whether LSE had breached cll 10(b) and 10(c) of the Settlement Agreement by failing to sell the FEP Unit by 28 June 2016 and pay LCM the Consideration by 28 September 2016 ("the Absolute Obligation Issue");

(b) whether LSE had breached the Reasonable Endeavours Term by refusing to lower the reserve price for the sale by auction of the FEP Unit to below S$2.1m ("the Reasonable Endeavours Issue"); and

(c) whether LSE had breached cl 13 of the Settlement Agreement by failing to satisfy the Costs Order ("the Costs Order Issue").

Our decision

53 In our judgment, LSE did not breach cll 10(b) and 10(c) of the Settlement Agreement by failing to sell the FEP Unit by 28 June 2016 and pay LCM the Consideration by 28 September 2016 because cll 10(b) and 10(c) did *not* impose an absolute obligation on him to do so. However, LSE was in breach of the Reasonable Endeavours Term by refusing to lower the reserve price for the sale by auction of the FEP Unit to below S$2.1m. Finally, LSE was also in breach of cl 13 of the Settlement Agreement by failing to satisfy the Costs Order. In the result, in so far as we uphold the Judge's finding that LSE had

breached the Reasonable Endeavours Term and cl 13, we ***dismiss*** the appeal. We now elaborate on our reasons for arriving at these findings.

The Absolute Obligation Issue

54 The legal issues raised in the present appeal are straightforward, save in relation to this first issue. It is an established principle of contract law that a term cannot be implied where it would contradict the express terms of the contract (see, for example, *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 06.054). In this respect, a perusal of the text of the *express* terms, *viz*, cll 10(b) and 10(c) of the Settlement Agreement, as well as the general context of these clauses suggests that the obligations imposed therein are *absolute* in nature. This is because they support the inference that the parties had sought *closure* in relation to their various disagreements, and this was to be achieved by disengaging from their relationships in the TL Companies promptly within the periods of time stipulated in cll 10(b) and 10(c). However, it was argued before us and below that a term ought to be *implied* to the effect that the sale price of the FEP Unit ought to be a reasonable one (*viz*, the Reasonable Price Term) (see [23(b)] above). That particular term, by its very nature, would undermine the *absolute* obligation pursuant to cll 10(b) and 10(c) of the Settlement Agreement, given that if a seller were subject to both an obligation to sell a property by a fixed date *and* an obligation to sell it at a reasonable price, he would necessarily be in breach of either of these obligations if the stipulated date has arrived but the price offered for the property remains unreasonable. Hence, the Reasonable Price Term would ordinarily *not* have been implied given the established principle referred to earlier. This is in contrast to the Reasonable Endeavours Term, which is not only consistent with but also complements cll 10(b) and 10(c) (see [23(a)] above). The specific difficulty that arises in respect of the present appeal, however, is that it is

common ground between the parties that the Reasonable Price Term *is* an implied term of the Settlement Agreement. Put simply, the parties have themselves introduced an implied term that *undermines* the otherwise absolute nature of cll 10(b) and 10(c). This engenders an unusual (and even ironic) situation, to say the least, since such an implied term is *created by the agreement of the parties themselves*.

55 Counsel for LCM, Mr N Sreenivasan SC ("Mr Sreenivasan"), very properly and candidly said he had not seen this conflicting argument before it was pointed out during the course of oral submissions before this court. Mr Sreenivasan then helpfully brought us through the relevant pleadings which might have conduced to this state of affairs.

56 Mr Sreenivasan first referred us to para 15A of the Statement of Claim (Amendment No 1) dated 28 March 2017 from LCM, which reads as follows:

> 15A. It is ***an implied term*** of the Settlement Agreement that parties shall ***take reasonable endeavours and/or do all that may be necessary*** to give effect to the spirit and intent of the Settlement Agreement and to implement the terms of the Settlement Agreement.
>
> [LCM] will rely on the Settlement Agreement for its full terms and effect at the trial of the Suit herein, or any earlier hearing to determine any or all of the issues between the parties.
>
> [underlining in original; emphasis added in bold italics]

57 Mr Sreenivasan then directed our attention to para 4A of the Defence (Amendment No 1) dated 11 April 2017, where LSE pleaded, in response to LCM's averment at para 15A of the Statement of Claim (Amendment No 1), as follows:

> 4A. To the extent that it is an implied term of the Settlement Agreement that parties shall take reasonable endeavours and/or do all that may be necessary to give

> effect to the spirit and intent of the Settlement Agreement and to implement the terms of the Settlement Agreement, ***Paragraph 15A is not denied***. [LSE] further asserts that it is an implied term of the Settlement Agreement that:
>
> a. parties would cooperate to enable the sale of the [FEP] Unit and/or not to prevent performance of the sale of the property by their acts and/or omissions;
>
> b. in the event that the Far East Plaza Unit could not be sold within 6 months, parties will continue to engage in efforts to sell the same so that [LCM's] shares in [TL Petroleum] could be disposed of in accordance with the Settlement Agreement;
>
> c. ***the sale price of the [FEP] Unit shall be reasonable***.
>
> [underlining in original; emphasis added in bold italics]

By so pleading, LSE asserted that there were in fact three implied terms, two of which were the Reasonable Endeavours Term (which comprised para 15A of the Statement of Claim (Amendment No 1) read with para 4A(a) of the Defence (Amendment No 1)), and the Reasonable Price Term (at para 4A(c) of the Defence (Amendment No 1)).

58 Finally, Mr Sreenivasan brought us to para 5A of the Reply (Amendment No 1) dated 25 April 2017 from LCM, which reads as follows:

> 5A. Save that ***Paragraph 4A(b)*** of the Defence is ***not admitted***, Paragraph 4(A) of the Defence is admitted.
>
> [underlining in original; emphasis added in bold italics]

By the Reply (Amendment No 1), therefore, LCM admitted and accepted the implied terms in paras 4A(a) (which is complementary to cll 10(b) and 10(c) of the Settlement Agreement) and 4A(c) of the Defence (Amendment No 1), with the latter resulting in an agreed implied term that the sale price of Far East Plaza Unit shall be a reasonable one (*ie*, the Reasonable Price Term).

59 What, then, is the resulting legal position in so far as the present appeal on this rather unusual case is concerned? On the one hand, it could be argued that even the parties themselves cannot alter the legal position, which is that cll 10(b) and 10(c) are *express* contractual terms that impose absolute obligations on the parties, and the parties cannot be permitted to introduce an *implied* term (*viz*, the Reasonable Price Term) that *contradicts* the absolute obligations imposed under cll 10(b) and 10(c). Whilst there is much force in this particular argument, the argument itself *presupposes* that cll 10(b) and 10(c) impose *absolute* obligations in the first place (as held by the Judge). With respect, however, we are of the view that cll 10(b) and 10(c) do ***not*** in fact impose *absolute* obligations on the parties. Let us elaborate.

60 In our judgment, it is necessary to give effect to the parties' intentions in relation to their agreement to plead the Reasonable Price Term. In *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 ("*CIFG*"), this Court pithily summarised the general principles in relation to contractual interpretation in the following manner (at [19], approved more recently in *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2018] SGCA(I) 6 at [120]):

> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason that the court has regard to the relevant context is that it places the court in the 'best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context' (see

> *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

61 And in *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 ("*Yap Son On*"), this Court made the following observations on the contextual approach to contractual interpretation (at [30]):

> A comprehensive summary of the law on contractual interpretation in Singapore may be found in our recent decision in *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd* [2015] 5 SLR 1187 … at [30]–[42]. In gist, the purpose of interpretation is to give effect to the objectively ascertained expressed intentions of the contracting parties as it emerges from the contextual meaning of the relevant contractual language. Embedded within this statement are certain key principles: (a) first, in general ***both the text and context must be considered*** (at [2]); (b) second, it is the *objectively ascertained intentions of the parties* that is relevant, not their subjective intentions (at [33]); and (c) third, the object of interpretation is the verbal expressions used by the parties and so, *the text of their agreement is of first importance* (at [32]). … [emphasis in original in italics; emphasis added in bold italics]

62 The key point to note from the foregoing extracts for the purpose of the present analysis is that although the text of the contract will undoubtedly be the first port of call for the court when interpreting a contract, the court should always proceed to examine the relevant *context* even if the relevant text appears, at first glance, to be plain and unambiguous. This point is perceptively put by Prof Goh Yihan in his very recently published seminal treatise on contractual interpretation in Singapore, *Interpretation of Contracts in Singapore* (Sweet & Maxwell Asia, 2018), in the following manner (at paras 2.042 and 2.043):

> 2.042 More broadly, *the Court of Appeal has also emphasised the interaction between both text and context in every*

> *case, even as the text ought always to be the first port of call for the court.* Thus, *what might at first glance appear to be plain and unambiguous text may not in fact be so, once the court has examined the relevant context.* Indeed, where the text is ambiguous, the relevant context will become very important in ascertaining the parties' objective intention. In the end, as the Court of Appeal put it aptly in *Y.E.S.* [*F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 ("*Y.E.S.*")], there is "no magic formula or legal silver bullet" and that "[c]ontractual interpretation is (often at least) hard work, centring on a meticulous and nuanced (yet practically-oriented) analysis of the relevant text and context".
>
> 2.043 In essence, the text of the contract remains an important restraint on the ultimate meaning derived by the court. Thus, as Coomaraswamy J suggested in *HSBC Trustee*, the courts cannot stray too far from the penumbral meaning of the words used by the parties. However, as the Court of Appeal explained in *Y.E.S.* …, this *does not mean that, where the parties have used unambiguous language, the court must apply those words without utilising the relevant context to assist in the process of contractual interpretation. The context can still be used to derive the plain meaning of the text. This is entirely in line with the Court of Appeal's sentiment that the text and context interact with one another in the interpretative exercise.* It also gives effect to an often-missed point that the determination of words as "unambiguous" is itself an interpretative exercise, that takes place against the relevant context, be it the internal context of the document, or the relevant background information, however broad.
>
> [emphasis added]

63 In our judgment, counsel's agreements in the pleadings in relation to the Reasonable Price Term sheds *additional (and very important) light* on the ***context*** in which the Settlement Agreement in general and cll 10(b) and 10(c) in particular were entered into, by giving an insight into the parties' objective intentions at the time that they entered into the Settlement Agreement. It is clear, in our view, that cll 10(b) and 10(c) were ***not*** intended by the parties to impose *absolute* obligations inasmuch as the specific timelines stipulated therein were

not intended to be absolute *so long as* a reasonable price for the FEP Unit could not be achieved, or, to turn the coin to the other side, if by doing so the FEP Unit would only fetch an unreasonable price. Put simply, the relevant context was one that *not only embraced closure for the parties, but also ensured that their economic interests were safeguarded*. Hence, there was in fact no contradiction or variation of any absolute obligation to sell the FEP Unit and pay the Consideration by the stipulated dates by the implication of the Reasonable Price Term because, in context and in truth, the timeline apparently stipulated by the express terms was subject to an unexpressed bottom line which was objectively in the mind of the parties at that time, and which subsequently found expression, independently and sequentially, in adversarial pleadings.

64 Of course, what that bottom-line price was or what would be considered an unreasonable price would depend very much on the particular facts and circumstances of this case, and should also be considered in the light of the fact that the agreement is one entered into as a result of a successful mediation. What was an unreasonable price would also be very closely intertwined with the Reasonable Endeavours Term, an issue which we address later (at [70]–[80] below).

65 During the hearing, in the light of this court's queries on the apparent absolute obligation in cll 10(b) and 10(c), Mr Sreenivasan submitted that LCM *accepted* the implied terms introduced by LSE at para 4A of the Defence (Amendment No 1) (see [57] above), which added to the implied term first pleaded by LCM in the Statement of Claim (Amendment No 1) (see [56] above), but with a key modification. In particular, he submitted that LCM had accepted *only* paras 4A(a) and 4A(c), and *not* para 4A(b), of the Defence (Amendment No 1). That this is in fact the case is clearly spelt out in para 5A of the Reply (Amendment No 1) (see [58] above). Mr Sreenivasan therefore

maintained that LCM's case was *still* premised on the argument that cll 10(b) and 10(c) were *absolute* (presumably because LSE had *not* accepted para 4A(b) of the Defence (Amendment No 1)).

66 With respect, we find this particular argument difficult to follow. If, indeed, cll 10(b) and 10(c) were absolute, then it would have been wholly unnecessary (or, indeed, even contrary) to LCM's case for him to have accepted the existence of the Reasonable Price Term (which has been asserted to be an implied term). As a matter of logic (if not law), any qualification (here, by way of an implied term) would have rendered cll 10(b) and 10(c) less than absolute. Indeed, LCM's case reflects precisely this last-mentioned point in the following two ways. First, LCM's Statement of Claim (Amendment No 1) reflects, in the first place, *only* an implied obligation on the part of the parties to take reasonable endeavours to give effect to as well as implement the terms of the Settlement Agreement (including cll 10(b) and 10(c)) in accordance with the spirit and intent of that agreement itself (see [56] above) (which is embodied in the Reasonable Endeavours Term). No mention was originally made of anything remotely related to the Reasonable Price Term. Second, and more generally, a perusal of the Statement of Claim (Amendment No 1) as a whole reveals that LCM's original claim was based, in substance, on a failure by LSE to take reasonable endeavours to ensure that the obligations contained in cll 10(b) and 10(c) were fulfilled. Put simply, LCM's case was – in substance, if not also form – *never* based on the alleged breach of absolute obligations to sell the FEP Unit and pay LCM the Consideration by the stipulated deadlines as such.

67 In fairness to Mr Sreenivasan, as we have noted earlier (at [55] above), when faced with the points set out above during oral submissions, he did candidly concede (correctly, in our view) that LCM's original claim was indeed based on an alleged failure on the part of LSE to take reasonable endeavours to

ensure that the obligations in the Settlement Agreement in general and in cll 10(b) and 10(c) in particular were fulfilled. The complications detailed above arose only as a result of the introduction by LSE of the additional implied terms stipulated in para 4A of the Defence (Amendment No 1). On this note, we pause to remind parties to bear in mind the basic legal principles relating to implied terms when setting forth their respective cases in respect of implied terms. The present case serves as a useful cautionary tale that there can be unnecessary complications when implied terms are averred in the course of pleadings. Returning to the present case, we are therefore satisfied that, based on the parties' pleadings, the parties did *not* intend cll 10(a) and 10(b) to impose *absolute* obligations at the time they entered into the Settlement Agreement.

68 Finally, we pause to note that it might, strictly speaking, be argued that the pleadings which we have taken into account above in aiding the court in ascertaining the context in which the Settlement Agreement was entered into were drafted *subsequent to* the time that the particular contract was entered into. However, a moment's reflection will reveal that we are dealing here with a *highly unusual* fact situation. In particular, we are dealing with an agreed set of pleadings between parties who are in an adversarial position. There is also no issue relating to the objective reliability of the material that establishes the truth of the averments in the pleadings. This is quite unlike the usual case where it is one party that seeks to adduce evidence (whether written and/or oral) after the contract concerned had been entered into. In such a situation, it would undoubtedly be the case that that evidence would (unlike the situation in the present case) be *controverted* by the other party whilst simultaneously being subject to all the dangers from subjectivity, uncertainty and consequent unreliability that constitute the principal reasons why such evidence is generally *not* accepted by the Singapore courts. Looked at in this light, the present case

must be viewed against its highly unusual backdrop and can therefore set no general precedent in so far as future cases are concerned. Indeed, even if the stringent criteria set out by this Court in both *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (at [132]) regarding the admissibility of extrinsic evidence for the purpose of interpretation, and *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 regarding the requirements of civil procedure that must be met before extrinsic evidence may be relied on for the purpose of interpretation (at [65] and [72]–[74]) were taken into account, we are of the view that, given the unusual facts of the present case, the evidence substantiating the relevant pleadings would in fact pass legal muster.

69 For these reasons, we find in favour of LSE in so far as the Absolute Obligation Issue is concerned. However, the resolution of the Absolute Obligation Issue does not conclude the present appeal in favour of LSE because he has *also* to demonstrate that he had *not* breached the Reasonable Endeavours Term. It is therefore to this issue that we now turn.

The Reasonable Endeavours Issue

70 The Judge found that LSE had, in any event, breached the Reasonable Endeavours Term because even though the spirit and intent of the Settlement Agreement was for the parties to achieve closure within the stipulated time frame by LCM relinquishing his shareholding in the TL Companies in exchange for the Consideration, LSE refused to agree to the lowering of the reserve price for the auction of the FEP Unit from S$2.1m despite: (a) the FEP Unit having received no bids at multiple auctions at the reserve price of S$2.1m, and (b) Colliers having recommended a reserve price of S$1.6m on 16 February 2017 (see the GD at [53]–[54]).

71 On appeal, counsel for LSE, Ms Hui Choon Wai ("Ms Hui"), contends that LSE had not acted in breach of the Reasonable Endeavours Term by failing to agree to a lowering of the reserve price of the FEP Unit given that:

(a) first, even if the reserve price was reduced from S$2.1m, there would not have been any offer to purchase the FEP Unit; and

(b) second, LSE is not required to sacrifice the commercial interests of the TL Companies in satisfaction of his obligations.

72 We reject Ms Hui's submissions and affirm the Judge's finding that LSE had breached the Reasonable Endeavours Term by failing to lower the reserve price for the auction of the FEP Unit from S$2.1m.

73 In *KS Energy Services Ltd v BR Energy (M) Sdn Bhd* [2014] 2 SLR 905 ("*KS Energy*"), this Court endorsed (at [46]) the interpretation of a "best endeavours" clause previously taken by this Court in *Travista Development Pte Ltd v Tan Kim Swee Augustine* [2008] 2 SLR(R) 474 ("*Travista*") at [27], and set out the following guidelines (at [47]):

> (a) The obligor has a duty to do everything reasonable in good faith with a view to procuring the contractually-stipulated outcome within the time allowed. This involves taking all those reasonable steps which a prudent and determined man, acting in the interests of the *obligee* … and anxious to procure the contractually-stipulated outcome within the available time, would have taken.
>
> (b) The test for determining whether a 'best endeavours' obligation has been fulfilled is an objective test.
>
> (c) In fulfilling its obligation, the obligor can take into account its own interests.
>
> (d) A 'best endeavours' obligation is not a warranty to procure the contractually-stipulated outcome.
>
> (e) The amount or extent of 'endeavours' required of the obligor is determined with reference to the available time for

> procuring the contractually-stipulated outcome; the obligor is not required to drop everything and attend to the matter at once.
>
> (f) Where breach of a 'best endeavours' obligation is alleged, a fact-intensive inquiry will have to be carried out.
>
> [emphasis in original]

74 The court also clarified that "the test for determining whether an 'all reasonable endeavours' obligation has been fulfilled should ordinarily be the same as the test for determining whether a 'best endeavours' obligation has been fulfilled" (at [62]), and proceeded to set out further guidelines that apply to both "all reasonable endeavours" and "best endeavours" clauses (at [93]):

> (a) Such clauses require the obligor 'to go on using endeavours until the point is reached when all reasonable endeavours have been exhausted' … or 'to do all that it reasonably could' ….
>
> (b) The obligor need only do that which has a significant … or real prospect of success … in procuring the contractually-stipulated outcome.
>
> (c) If there is an insuperable obstacle to procuring the contractually-stipulated outcome, the obligor is not required to do anything more to overcome other problems which also stood in the way of procuring that outcome but which might have been resolved ….
>
> (d) The obligor is not always required to sacrifice its own commercial interests in satisfaction of its obligations …, but it may be required to do so where the nature and terms of the contract indicate that it is in the parties' contemplation that the obligor should make such sacrifice ….
>
> (e) An obligor cannot just sit back and say that it could not reasonably have done more to procure the contractually-stipulated outcome in cases where, if it had asked the obligee, it might have discovered that there were other steps which could reasonably have been taken ….
>
> (f) Once the obligee points to certain steps which the obligor could have taken to procure the contractually-stipulated outcome, the burden ordinarily shifts to the obligor to show that it took those steps, or that those steps were not reasonably required, or that those steps would have been bound to fail ….

75 In our judgment, the foregoing guidelines set out by this Court in *KS Energy* at [47] and [93] (and in *Travista* at [27]) should apply to guide the interpretation of the Reasonable Endeavours Term in the present case. Although the Reasonable Endeavours Term does not expressly state that the parties are to take *all reasonable endeavours* or take their *best endeavours* to sell the FEP Unit, it does specifically require the parties to "*do all that may be necessary* to … implement the terms of the Settlement Agreement" [emphasis added] (see [23(a)] above). The Reasonable Endeavours Term should thus be construed to impose on the parties an obligation to take all reasonable endeavours or take their best endeavours to sell the FEP Unit.

76 Applying the *KS Energy* guidelines to the present facts, we find that LSE had breached the Reasonable Endeavours Term by failing to agree to lower the reserve price of the FEP Unit.

77 First, there is no evidence to support Ms Hui's contention that even if the reserve price had been reduced from S$2.1m, there would still have been no offers to purchase the FEP Unit. The evidence shows that LSE had:

(a) refused to appoint a new agent to perform an alternative independent valuation of the FEP Unit after the six-month deadline provided for under cl 10(b) had elapsed (see [30] and [31] above);

(b) refused to lower the reserve price from S$2.1m even after the nine-month long-stop deadline provided for under cl 10(c) had elapsed (see [34] above);

(c) refused to lower the reserve price from S$2.1m to S$1.5m when LCM requested for LSE to do so on 10 January 2017 (see [40] above);

(d) declined to respond to the offer of S$1.1m made on 20 January 2017 (see [41] above);

(e) refused to lower the reserve price from S$2.1m to S$1.6m even after Colliers had recommended a revised reserve price of S$1.6m on 16 February 2017 (see [43] above);

(f) objected when LCM instructed Colliers on 17 February 2017 to auction the FEP Unit at the reserve price of S$1.1m (see [43] above); and

(g) further refused to lower the reserve price from S$2.1m for the next six months even though no bids were received in any of the subsequent auctions at all (see [44] and [46] above).

78 It is significant that LSE had insisted on a high and unrealistic price to fix as the reserve price for the FEP Unit even though it was evident from at least the first six months of attempting to sell the FEP Unit that the property market at the material time was bearish. Most unacceptably, LSE first declined to appoint an alternative valuer for the FEP Unit when LCM first proposed this in July 2016, and subsequently refused to heed Colliers' recommendation to lower the reserve price to S$1.6m in February 2017. In our judgment, this is clear evidence that LSE had failed to "do everything reasonable in good faith with a view to procuring the contractually-stipulated outcome within the time allowed", given that he certainly did not take "all those reasonable steps which a prudent and determined man, acting in the interests of the *obligee* and anxious to procure the contractually stipulated outcome within the available time, would have taken" [emphasis in original] (*KS Energy* at [47]).

79 Next, as for LSE's assertion that the Reasonable Endeavours Term does not require him to sacrifice the commercial interests of the TL Companies in satisfaction of this term, this submission is, with respect, unmeritorious. In *KS Energy*, this Court held (at [93(d)]) that: "[t]he obligor is not always required to sacrifice its own commercial interests in satisfaction of its obligations …, *but it may be required to do so where the nature and terms of the contract indicate that it is in the parties' contemplation that the obligor should make such sacrifice*" [emphasis added]. In our judgment, this was a case where the nature and terms of the Settlement Agreement clearly indicated that it was in the parties' contemplation that LSE should take the initiative to lower the reserve price when it was apparent that it was necessary for him to do so in order to sell the FEP Unit. This argument is therefore a complete non-starter.

80 Accordingly, we are satisfied that the Judge rightly found that LSE had breached the Reasonable Endeavours Term by refusing to agree to lower the reserve price for the auction of the FEP Unit to below S$2.1m.

The Costs Order Issue

81 Finally, the Judge held that LSE had breached cl 13 of the Settlement Agreement by failing to satisfy the Costs Order, given that: (a) the Costs Order plainly fell within the scope of the phrase "save for any costs orders already made"; and (b) it was illogical for cl 13 to be interpreted to supersede the orders made in the Winding Up Applications, including the Costs Order, as it would render both cll 1(b) and 13 otiose.

82 We agree with the Judge's reasoning. Based on the established principles of contractual interpretation (see [60]–[61] above), the Judge rightly first considered the text in question, and correctly, in our view, found cl 13 to

be plain and unambiguous in conveying the meaning that the Costs Order, which was "already made" at the time of the Settlement Agreement, ought to be encompassed within the scope of the phrase "save for any costs orders already made". The Judge next proceeded to consider the surrounding context, which included the other provisions in the Settlement Agreement, and was also correct, in our view, to hold that finding that cl 13 superseded the Costs Order would: (a) render cl 13 itself otiose, given that the parties would surely have known that no costs orders were made in the Winding Up Appeals at the time the Settlement Agreement was being drafted; and (b) render cl 1(b) redundant, given that if cl 13 only preserved a right to claim for costs orders in the Winding Up Appeals, cl 1(b) would be entirely unnecessary.

83 Ms Hui submits that the Judge had erred in his reasoning by disregarding the material parts of the evidence provided by LCM. We disagree. Considering the evidence provided by LCM at trial, it is clear that at the time the Settlement Agreement was entered into, LCM knew that he was entitled to the sum of S$40,000 as costs ordered to him for being successful in the Winding Up Applications (*ie*, the Costs Order), and hence he should remain entitled to this even after the Settlement Agreement has been entered into:

Court:	So you're not able to say why this is inside the agreement, is it? I just need---I'm just trying to understand what was your---what was in your mind when you---
[LCM]:	To my mind that he had to pay me 40,000 first, then we go for---for the settlement agreement.
Court:	Right, but that didn't happen.
[LCM]:	It didn't happen.
Court:	Okay, so what is the implication of putting this in? What did you want to cover? I'm trying to understand what you wanted to protect.
[LCM]:	The 40,000.

> Court: Is that what you intended?
>
> [LCM]: To cover my---the 40,000 to cover my damage of go through all this thing. Go through the Court to bring him and calculation, never go to work. It's a long time that I have---I---I have to go through Court, everything.

84 We are therefore satisfied that the Judge was correct to find that LSE had breached cl 13 of the Settlement Agreement by failing to satisfy the Costs Order.

Conclusion

85 For the reasons set out above, we dismiss the appeal. However, as LSE has nevertheless succeeded on the Absolute Obligation Issue, we award LCM the costs of the appeal fixed at S$24,000 (inclusive of disbursements) as well as two-thirds of the costs in the proceedings below (to be taxed if not agreed). There will be the usual consequential orders.

Andrew Phang Boon Leong	Belinda Ang Saw Ean	Quentin Loh
Judge of Appeal	Judge	Judge

Hui Choon Wai and Ho Si Hui (Wee Swee Teow LLP) for the appellant;
Narayanan Sreenivasan SC and Tan Kai Ning Claire (Straits Law Practice LLC) for the respondent.