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

[2021] SGHC 215

Suit No 714 of 2019

Between

Ross Earle Moller

… *Plaintiff*

And

Geyer Environments Pte Ltd

… *Defendant*

JUDGMENT

[Employment Law] — [Benefits]
[Employment Law] — [Contract of service]
[Employment Law] — [Pay]
[Employment Law] — [Termination]
[Employment Law] — [Employees' duties]

TABLE OF CONTENTS

Moller, Ross Earle
v
Geyer Environments Pte Ltd

[2021] SGHC 215

General Division of the High Court — Suit No 714 of 2019
Kwek Mean Luck JC
15–17, 22–25 June 2021, 2 September 2021

17 September 2021 Judgment reserved.

Kwek Mean Luck JC:

Introduction

1 The plaintiff, Mr Ross Earle Moller, is an Australian citizen. He was employed by the defendant, Geyer Environments Pte Ltd ("Geyer Singapore"), at the material time. The defendant is an interior design company incorporated in Singapore. In November 2018, the defendant was acquired by another company Valmont Holdings Pty Ltd ("Valmont"). In March 2019, the plaintiff was summarily dismissed by the new management of the defendant.

2 In this suit, the plaintiff claims against the defendant for his unpaid bonuses, relocation allowances, retention bonus and salary that he would have been paid if he was not summarily dismissed. In the main, the defendant submits that the plaintiff's bonuses were not properly approved, and the plaintiff was

justifiably dismissed summarily as he had breached his duties as a director of the defendant.

Factual background

3 The defendant is the wholly owned subsidiary of an Australian company, Geyer Pty Ltd ("Geyer Australia"). Geyer Australia itself was the wholly owned subsidiary of another Australian company, Geyer Corporation Pty Ltd ("Geyer Corporation"). I will refer to these companies collectively as the "Geyer Group".[1]

4 The plaintiff was appointed as the Chief Operating Officer ("COO") and Chief Financial Officer ("CFO") of Geyer Australia for a period of three years, from 2 December 2013 to 30 November 2016, under a letter of employment dated 28 November 2013 ("the 1st Employment Agreement"). It was stated therein that since the plaintiff would be based in Singapore, his employment would be through Geyer Singapore.[2]

5 The 1st Employment Agreement was renewed pursuant to the terms of a letter of employment dated 25 May 2016 ("the 2nd Employment Agreement"), for another three years, ending on 30 June 2019. Under the 2nd Employment Agreement, the plaintiff was appointed the COO and CFO of Geyer Australia and Geyer Singapore.[3] It was also stated in the 2nd Employment Agreement that since the plaintiff would be based in Singapore, his employment would be through Geyer Singapore.[4]

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1 Ross Earle Moller's Affidavit of Evidence-in-Chief ("Ross's AEIC") at paras 7 to 9.

2 Core Bundle ("CB"), Tab 2.

3 Ross's AEIC at para 10 and p 43.

4 CB, Tab 4; NE 15/6/21 6.

6 According to the plaintiff, around 2013, the Geyer Group experienced a decline in business and faced cashflow difficulties. The plaintiff, alongside other directors within the Geyer Group, agreed to accept deferred payment of their salary, contractual entitlements and other incentive payments. This was to give the defendant and Geyer Australia liquidity to operate their business.[5]

7 Around August 2018, Geyer Australia was acquired by Valmont for AUD$1, pursuant to a Share Sale Agreement between Geyer Corporation and Valmont ("the Share Sale Agreement"). Under the Share Sale Agreement, Valmont assumed responsibility for the net liabilities of Geyer Australia and Geyer Singapore, which were not to exceed AUD$1.5m.[6]

8 On 19 November 2018, the plaintiff sent the Management Accounts of Geyer Australia and Geyer Singapore as at 31 October 2018 ("the Management Accounts") to Mr Marcel Zalloua ("Mr Zalloua"), the director Valmont, and Mr Dominic Calandra ("Mr Calandra"), the Chief Financial Officer of Valmont. The Management Accounts included the net liabilities of Geyer Australia and Geyer Singapore, which were AUD$1,501,007.30.[7] The sale of Geyer Australia to Valmont was completed as of 27 November 2018 ("the Sale").[8]

9 On 19 March 2019, the plaintiff was informed by Mr Zalloua that his employment was terminated with immediate effect. He was issued with a termination letter ("the Termination Letter"), which states that the termination

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5 Ross's AEIC at para 12; Robyn Watts' AEIC at para 23.

6 Ross's AEIC at para 20; Ross's AEIC at Tab 7; Marcel Zalloua's Affidavit of Evidence-in-Chief ("Marcel's AEIC") at paras 25–26; Marcel's AEIC at Tab 11, see "Purchase Price" definition.

7 Marcel's AEIC at para 33; Marcel's AEIC, Tab 14, p 331.

8 Ross's AEIC at para 22.

was "on grounds of engaging in deliberate behaviour or conduct which is inconsistent with your duties as an employee and renders you, in [Geyer Singapore's] determination, unfit for continued service".[9]

10 On or around 31 May 2019, all the assets of Geyer Australia, including the shares in Geyer Singapore, were sold to Geyer Service Pty Ltd, an Australian company wholly owned by Valmont.[10]

11 As of 13 June 2019, Geyer Australia was placed into voluntary administration. On 18 July 2019, Geyer Australia was placed in liquidation.[11]

Plaintiff's claims

12 In this suit, the plaintiff claims against the defendant for the following:

(a) the outstanding salary payments owed to the plaintiff in the amount of $229,573.16 (for which summary judgment has been obtained);

(b) the outstanding bonus payments of $200,000;

(c) a retention bonus of $5,000;

(d) relocation allowances which include the cost of two economy class, one-way airfares from Singapore to Sydney in the amount of $2500 and relocation moving costs equivalent to one month's salary in the amount of $21,637.50 (collectively "relocation allowances"); and

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9 Ross's AEIC at para 35, Tab 15; Marcel's AEIC at paras 131–132.

10 Ross's AEIC at para 23.

11 Marcel's AEIC at para 140.

(e) salary for the period of 20 March 2019 to 30 June 2019 that would have been paid to the plaintiff if not for the wrongful dismissal by the defendant, in the amount of $73,271.11.

13 As summary judgment for the outstanding salary payments of $229,573.16 has already been obtained,[12] the trial proceeded on the basis of the plaintiff's remaining claims.

Outstanding bonus payments

14 The plaintiff claims for his unpaid performance bonus of $110,000 for the year 2015/2016 ("2016 Bonus") and his unpaid performance bonus of $90,000 for the year 2016/2017 ("2017 Bonus"). I will refer to the 2016 Bonus and 2017 Bonus collectively as the "Bonus Payments".

15 The plaintiff accepts that the award of the Bonus Payments is subject to the discretion of the board of the defendant. The plaintiff's case is that this discretion has been duly exercised.[13] He was awarded the 2016 Bonus following an annual review with Ms Robyn Watts ("Ms Watts") on or around 20 September 2016 and the 2017 Bonus following an annual review with Ms Watts on or around 18 October 2017.[14] Ms Watts was then the Chair of the board of Geyer Singapore, as well as the Chair of the board of Geyer Australia and Geyer Corporation. She remained so till 27 November 2018.[15] Both awards were recorded by Ms Watts on the plaintiff's KPI Annual Review Sheet for the respective years.

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12 Plaintiff's Opening Statement at para 7.

13 Plaintiff's Closing Submissions at para 25.

14 Ross's AEIC at Tab 4 and Tab 5.

15 Watts's AEIC at para 4.

16 Both bonus awards were decided on by Ms Watts and Mr Ivan Ross ("Mr Ross"), after consulting Mr Kim Thornton-Smith ("Mr Thornton-Smith").[16] Mr Ross was then a non-executive director of Geyer Singapore and Geyer Australia,[17] while Mr Thornton-Smith was then a director of Geyer Corporation.[18] Thus, all the relevant directors, namely Ms Watts, Mr Ross and Mr Thornton-Smith, had exercised their discretion to award the plaintiff the Bonus Payments, in accordance with the procedures.[19] There was no board resolution for or meeting minute that recorded the Bonus Payments, but contrary to the defendant's submission, they were not a pre-requisite.[20]

17 Further, the 2016 Bonus was recorded in the Remuneration Advice Forms dated 28 June 2016 and 23 September 2016 while the 2017 Bonus was recorded in the Remuneration Advice Form dated 28 February 2018.[21] The Bonus Payments were also recorded in the "Management Accounts Trial Balance & Consolidation Table" and sent to Valmont's lawyer on 20 November 2018, more than a week before the completion of the Sale.[22]

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16 Watts's AEIC at para 21; Kim's AEIC at para 22; Ivan Ross's AEIC at paras 5–8.

17 Ivan Ross's AEIC at para 4.

18 NE 16/6/21 93.

19 Watts's AEIC at paras 15–19, 21; Kim's AEIC at paras 16–17, 19–20, 22; Ivan Ross's AEIC at paras 5–6, 8; NE 16/6/21 62, 84, 88; NE 17/6/21 17.

20 Ross's AEIC at paras 75–77; Kim's AEIC at paras 28–29; Ivan Ross's AEIC at paras 29–30; Watts's AEIC at paras 29–30; Plaintiff's Reply Submissions ("PRS") at paras 12–16.

21 CB at pp 775, 778, 781.

22 CB Tab 47 and AB 258 Excel Table attached under Tab "Consolidation", row 92 column "N".

Retention bonus and relocation allowances

18 The plaintiff claims that at a meeting on or around 26 February 2019 between him and Ms Wendy Geitz ("Ms Geitz") the then CEO of the defendant, they agreed on the termination benefits that would be paid to the plaintiff before his term under the 2nd Employment Agreement ended on 28 June 2019.[23] His e-mail dated 26 February 2019 at 1.01pm captures the mutual undertakings of each party following their discussion.[24] This included an undertaking by the defendant to, amongst other things, pay the plaintiff the relocation allowances and a retention bonus.[25] Ms Geitz, as the CEO of the defendant, had the requisite authority for such agreement.[26]

19 In the alternative, the plaintiff submits that there was an agreement to pay the plaintiff the relocation allowances, as captured in the letter "Cessation of Contract Term" dated 22 February 2019 ("Cessation of Employment Letter") which Ms Geitz sent to him on 26 February 2019.[27]

Wrongful dismissal

20 In the course of trial, the plaintiff amended his pleadings to include a claim for wrongful dismissal by the defendant.[28] The 2nd Employment Agreement stated that the term of the plaintiff's employment would end on 30 June 2019. It could also be terminated by either party with six months' notice.

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23 NE 15/6/21 50.

24 PCS at para 187.

25 Ross's AEIC at Tab 10; NE 15/6/21 50–51.

26 PCS at para 189(b).

27 CB at p 542.

28 SOC Amendment No 1 at paras 28A–28D.

However, on 19 March 2019, the defendant terminated the plaintiff's employment with immediate effect by way of the Termination Letter. The plaintiff's case is that there was no basis for this summary termination and the plaintiff was wrongfully dismissed. He claims for his salary for the period of 20 March 2019 to 30 June 2019 that would have been paid if not for the wrongful dismissal, in the amount of $73,271.11.[29]

Defendant's case

Outstanding bonus payments

21 The defendant submits that the plaintiff is not entitled to the Bonus Payments. First, the plaintiff did not achieve 100% of his performance targets for the 2016 and 2017 Annual Review. Second, Ms Watts did not have the authority to determine the plaintiff's Bonus Payments. The approval of the board of Geyer Corporation was needed. There is no evidence of any board resolution of such approval.[30] Third, there is no record of the Bonus Payments in the accounts.

Retention bonus and relocation allowances

22 The defendant denies that there was a termination agreement between the parties on 26 February 2019. The plaintiff's email showed that there was only a discussion, but not an agreement.[31] The fact that there were subsequent e-mails between the plaintiff and Ms Robertson on 26 February 2019, 4 March

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29 SOC A1 at para 31(c)(i).

30 Marcel's AEIC at para 71.

31 DCS at para 131.

2019 and 5 March 2019[32] shows that no agreement had been reached.[33] Even if there was a termination agreement, the terms are encapsulated in the Cessation of Employment Letter. This letter does not provide that the plaintiff is entitled to a retention bonus. In fact, the Employee Retention Program had yet to be finalised or implemented when the plaintiff's employment was terminated.[34]

23 The defendant further submits that the plaintiff is not entitled to the relocation allowances because these are only for employees who relocate and continue to work for Geyer Corporation. However, the plaintiff is not being relocated to continue working for Geyer Corporation.[35]

Wrongful dismissal

24 The defendant claims that it was entitled to summarily dismiss the plaintiff, as he had breached his fiduciary duties as a director of the defendant and Geyer Australia. The defendant's case is that there are three breaches.

25 First, the plaintiff misrepresented the Geyer Group's financial position for the purposes of the Share Sale Agreement. One of the conditions of the Share Sale Agreement was that Geyer Group's Net Liabilities did not exceed AUD$1.5m ("Net Liabilities condition"). The Management Accounts which the plaintiff sent to Valmont showed Net Liabilities of around AUD$1.5m.[36] Valmont relied on it to complete the acquisition of all the shares of Geyer

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32 CB Tabs 66, 67, 71.

33 DCS at para 133.

34 Marcel's AEIC at para 115.

35 DCS at para 142.

36 Marcel's AEIC at para 35, Tab 15.

Australia as *per* the Share Sale Agreement.[37] However, Valmont subsequently discovered that the Work in Progress ("WIP") write-offs of Geyer Group were understated in the Management Accounts. Consequently, the Geyer Group's Net Liabilities was understated.

26 Second, the plaintiff breached his duties to the Geyer Group by failing to ensure that the minute books for the board meetings for Geyer Australia and Geyer Singapore were properly kept.[38]

27 Third, the plaintiff failed to disclose an audit notice from the Australian Taxation Office dated 15 November 2018 ("ATO Audit Notice") to other directors of Geyer Australia and Geyer Corporation or to Valmont.[39]

My decision

Bonus payments

28 The defendant raised three issues regarding the Bonus Payments.

29 First, the defendant submits that the plaintiff did not meet the pre-requisite performance targets for the issuance of bonus payments. However, while the HR documents referred to by the defendant mention that bonuses are dependent on the achievement of performance metrics and the company reaching its profit targets, these documents do not circumscribe the discretion of the directors to award bonuses if such targets are not achieved.[40] The

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37 SOD A3 at para 14(m).

38 Marcel's AEIC at para 123.

39 SOD A3 at para 36A.

40 AB1, Clause 4 of the Employment Agreement and Clause 5.2 of the Geyer Handbook – An Induction Guide: An Introduction to Geyer's Policies and Procedures.

defendant also referred to the Geyer Remuneration Advice[41] issued to the plaintiff for 2016 and 2017, which states that the plaintiff's bonus is dependent on the achievement of certain performance targets, which were not met. However, these documents are also the very documents that state explicitly that the plaintiff is eligible for the Bonus Payments.

30 Clearly, a decision was taken then to award the plaintiff the 2016 Bonus and the 2017 Bonus, despite the fact that the performance targets were not achieved.

31 Ms Watts explained that the directors took into consideration the following factors in deciding to award the bonus payments, even though the plaintiff did not meet his performance targets. She attested that the primary reason for awarding the 2016 Bonus to the plaintiff, was because the plaintiff had competently attended to and fulfilled additional duties of a CEO, when Geyer Singapore had no CEO. This was on top of his duties as a COO. The plaintiff carried out these roles extremely well, given the cashflow difficulties and pressures faced by the Geyer Group at the time. The same considerations applied to awarding the 2017 Bonus. The plaintiff also led the Turnaround Program to restructure the Geyer Group to optimise its various business processes. As such, Ms Watts, along with Mr Thornton-Smith and Mr Ross, agreed that the plaintiff was entitled to Bonus Payments.[42] I find that Ms Watts has provided ample grounds for the directors' exercise of their discretion to award the plaintiff the Bonus Payments.

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41 CB Tabs 5 and 7.

42 Robyn Watts's AEIC at paras 17, 20.

32 The defendant's second objection, is that the Bonus Payments were not approved by the board of Geyer Corporation, as Ms Watts could only recommend to the board of Geyer Corporation and could not make the determination for the actual award.[43]

33 The defendant's position is premised in part on a document on "Authorities and Delegated Authorities" that indicated that the authority for the remuneration of the "CEO/COO" is the "Board".[44] However, this document is dated 29 March 2018. Mr Ross testified that while the format of this document looked similar to that of earlier years, the content may have been different. For example, when he was CEO of the defendant from 2012 to 2015, he would decide on the award for the COO, in his capacity as CEO.[45] I thus find that the document titled "Authorities and Delegated Authorities", dated 29 March 2018, does not provide weighty insight into the processes when the bonuses were awarded in 2016 and 2017.

34 The other document relied on by the defendant is the "Protocols for Directors of Geyer Corporation Pty Ltd Subsidiary Companies" dated 26 June 2014 ("Geyer Protocol").[46] Clause 5.2 of Geyer Protocol states that certain functions are reserved to the Geyer Corporation Board or the CEO pursuant to delegation of authority from the Geyer Corporation Board. Clause 5.3(b) of Geyer Protocol provides that one such function is "the ongoing assessment and monitoring of performance, including managements' performance against strategic objectives, operating plans, financial targets, business plans and the

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43 DCS at para 24; NE 16/6/21 48.

44 CB at p 96.

45 NE 17/6/21 4–5.

46 AB 7.

like".[47] These clauses are less specific than the document "Authorities and Delegated Authorities", in that they do not specifically mention remuneration but instead refer more broadly to assessment and monitoring of performance.

35 The plaintiff, Mr Ross and Ms Watts did not agree with the defendant's interpretation of Clauses 5.2 and 5.3(b) of the Geyer Protocol, that it reserved to the board of Geyer Corporation the discretion to award bonuses to the plaintiff. The plaintiff acknowledged that based on Clauses 5.2 and 5.3(b) of the Geyer Protocol, the ongoing assessment and monitoring of performance is reserved to the board of Geyer Corporation,[48] but it is Geyer Singapore that decides in consultation with Geyer Corporation when it comes to the awarding of bonuses. In practice, concurrent meetings were held between Geyer Corp, Geyer Australia and Geyer Singapore to make such decisions. But ultimately, it is left to the subsidiaries to carry out the decisions made at the meetings.[49]

36 Mr Ross also did not agree that the intention of the Geyer Protocol was for the board of Geyer Corporation to assess the plaintiff's performance. He testified that he was not sure that it was intended to include the COO role. During the time Mr Ross that was at Geyer, the COO was assessed by him as the CEO and he did not recall putting a bonus position to the board during his tenure.[50]

37 Ms Watts testified that the Geyer Protocol was a document that extended to all subsidiaries of the Geyer Corporation, including Geyer Australia and

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47 AB 7.

48 NE 15/6/21 17.

49 PRS at para 7.

50 NE 17/6/21 6–8.

Geyer Singapore. She pointed out that the subtitle of the document is "Protocols for Directors of Geyer Corporation Pty Ltd ***Subsidiary Companies***" [emphasis added]. She testified that the reference in the Geyer Protocol to "GCPL" refers the boards of Geyer Corporation, Geyer Australia and Geyer Singapore, as that was how the boards operated, concurrently, with representatives of all the subsidiaries in it. This was how they interpreted the Geyer Protocol, and the way in which she chaired the board of Geyer Corporation, "operating concurrently with all three entities".[51] The reference to Board in the document "Authorities and Delegated Authorities" similarly related to all the subsidiaries of Geyer.[52] The prevailing protocol then was for the directors of Geyer Australia and Geyer Singapore to concurrently determine the bonus for the COO. In line with this, Ms Watts explained that the board minutes dated 7 September 2018 which recorded a decision to award bonus to Ms Geitz the CEO of Geyer Singapore,[53] was a record of "discussions that happened with Geyer Corporation … concurrent with the other two subsidiaries", and not a record of the decision of only the board of Geyer Corporation.[54]

38 The only plaintiff witness who accepted that Clauses 5.2 and 5.3(b) of the Geyer Protocol stated that it was for the Geyer Corporation board to make the call on bonuses, was Mr Thornton-Smith. However even then, his evidence was not materially inconsistent with that of the other witnesses of the plaintiff. He also testified that his interpretation was that Ms Watts, being the director of

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51 NE 16/6/21 37–40.

52 NE 16/6/21 37.

53 AB 75.

54 NE 16/6/21 43.

Geyer Singapore, had consulted him and he had made a decision that the plaintiff deserved the bonuses.[55]

39 Among the witnesses that gave testimony on this issue, I found Ms Watts's evidence to be the most reliable. She was the most involved and most senior in overseeing the work of the Geyer Group, having served as the Chair of the board of Geyer Corporation, Geyer Australia and Geyer Singapore. She had a good grasp of the details as well as a strategic perspective of the Geyer Group's work. I found her to be impartial and credible. She served as an independent director. In this Suit she served as an independent witness, with nothing to gain from her evidence. She was evenhanded and fair, speaking in favor of the plaintiff in respect of the Bonus Payments, but also against him in respect of the Retention Bonus, as discussed below at [92]. I therefore accept Ms Watts's evidence that the protocol prevailing then in the Geyer Group, did not reserve to the board of Geyer Corporation the power to exercise its discretion to award bonuses to the plaintiff. I note that this is also consistent with the evidence of Mr Ross, a fellow director of Geyer Singapore and Geyer Australia, and the plaintiff. I also accept Ms Watt's evidence, that it was for the board of Geyer Australia and the defendant to determine the bonus award concurrently.

40 The evidence shows that the determination of the plaintiff's bonuses was in accordance with the established protocols of the defendant. Both Ms Watts and Mr Ross testified that they exercised their discretion as the directors of Geyer Australia and Geyer Singapore to award the Bonus Payments.[56] Ms Watts had also consulted Mr Thornton-Smith, who was a director at Geyer

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55 NE 16/6/21 81–82.

56 NE 16/6/21 62, 88, 94.

Corporation. Mr Thornton-Smith corroborated this and testified that such assessments took place, that he was consulted, and that he made a decision to award the plaintiff the Bonus Payments.[57]

41 Thus, the unrebutted evidence is that the directors on the boards of the Geyer Singapore, Geyer Australia and Geyer Corporation, Ms Watts, Mr Ross and Mr Thornton-Smith, had agreed to award the plaintiff the Bonus Payments.

42 I agree with the plaintiff that even if the defendant's case is accepted, that the board of Geyer Corporation had to approve the Bonus Payments, that has also been met on the evidence.

43 In their reply submissions, the defendant argues that the plaintiff's pleaded case is that the board of Geyer Singapore has the authority to approve the Bonus Payments, and the plaintiff should not be allowed to go beyond the bound of his pleaded case to also say that the board of Geyer Corporation would have the discussions and assessment on whether a bonus should be awarded and leave the actual discretion to the relevant subsidiaries.[58] However, this is clearly not a situation of going beyond a pleaded case. The plaintiff's pleaded case remains the same, that the board of Geyer Singapore had the discretion to and did approve the Bonus Payments.[59] Further, what the plaintiff is asserting, and rightly in my view, is that even if the defendant's pleaded case – that it is the board of Geyer Corporation that has the authority to award the Bonus Payments

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57 NE 16/6/21 82.

58 DRS at para 10.

59 PCS at paras 28 and 34; PRS at para 7(a).

– is accepted, the evidence shows that the board of Geyer Corporation did agree to the award.[60]

44 The defendant also submits that the Bonus Payments are not valid because they were not made by way of board resolution. However, they have not provided any evidence of such a requirement. On the other hand, Ms Watts, Mr Ross and Mr Thornton-Smith have testified that there is no requirement to formally document bonus awards through a board resolution.[61] In their closing submissions, the defendant introduced a fresh assertion that there was no board minutes of Geyer Corporation recording the deliberation or award of the Bonus Payments.[62] This was not their pleaded case, which was that a board resolution was needed. In any event, the defendant did not produce any evidence of such requirement. When Mr Ross was asked if the lack of minutes recording the bonus award meant that there was no award for 2016, he said that they had the conversation and he understood that there was an agreement about the bonus.[63] Ms Watts and Mr Thornton Smith testified that it was not a requirement to record bonuses in board meeting minutes.[64] I find no merit to the defendant's submission that there was a requirement for board resolution or board minutes in order for the Bonus Payments to be granted to the plaintiff.

45 The evidence is thus overwhelmingly in favour of the plaintiff's claim for the Bonus Payments. To advance their case against this, the defendant sought to impugn the credibility of Ms Watts, Mr Ross and Mr Thornton-

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60 PSC at para 35.

61 Ivan Ross's AEIC at para 14; Thornton-Smith's AEIC at para 28; Watts's AEIC at para 29; NE 16/6/21 86.

62 DCS at para 29.

63 NE 17/6/21 11.

64 NE 16/6/21 44, 86.

Smith's evidence by suggesting to each of them that they had an interest in giving evidence that was beneficial to the plaintiff even if such evidence was not true. This was roundly rejected by each witness.

46 I find no grounds to treat their evidence as biased. On the contrary, I find each witness to be forthright and impartial in their testimony. Importantly, the defendant's allegations of bias are completely unsubstantiated. While Mr Thornton-Smith acknowledged that he was owed certain sums from Valmont, the defendant has not shown how the plaintiff's success in this suit would assist Mr Thornton-Smith in his claims. Mr Thornton-Smith explained that as Geyer Corporation was in liquidation, he did not stand to receive anything back. Nor was he in a financial position to challenge Valmont. He had nothing to gain from this suit.[65]

47 As the evidence of Ms Watts is the most material to this issue, I set out below her emphatic rejection of the defendant's baseless allegation of bias.

> ***Cross-Examination of Ms Watts***[66]
>
> Q: I would suggest to you that given your relate---close relationship with Ross as well as your reservation of rights for unpaid sums, you have an interest in giving evidence that is beneficial to Mr Moller in these proceedings even if such evidence is not true. Would you agree or disagree?
>
> A: I strongly disagree. The reason that I'm---have agreed to be a witness is because I ethically and morally believe that Ross Moller is---you pay them these bonuses and the salary that was due to him. The fact that he hasn't been paid after this amount of time is---is, in my view, a complete disgrace ethically and I feel very, very strongly. I worked very closely with him during that time. I know how hard he worked while the impact it had on his health and well-being. While the impact it had on his family, and also the---the huge benefit that accrued to Geyer

65 NE 16/6/2021 91–92.

66 NE 16/6/21 60–61.

> during that time. If he hadn't been there, we would've been in a much worse position. I strongly believe that he is due those bonuses. That's why I'm doing it. It's got nothing to do with me. I don't stand to gain anything at all from this. I---and it's not because of close personal relationship with Ross. I have a very professional relationship with Ross and always have had. I'm the accounting director on a number of boards, including ASX-listed boards here in Australia and I pride myself in the level of governance and high levels of integrity that I perform my work with.
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> …
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> ***Re-Examination of Ms Watts***[67]
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> Q: Just to move to that final point that my learned friend raised. Do you yourself have---personally have any claims, financial claims, against the defendant via Environments Pte Ltd?
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> A: No, I don't. I don't have any claim. I don't intend to have any claims, I don't have any claims and I undertook with Marcel Zalloua that I would not have any claims and I---I don't have any intention of pursuing any claims. I really stand by my word to Valmont.
>
> Q Yet---and just for the record, do you have any outstanding claims against Geyer Proprietary Ltd?
>
> A: None that I'm going to pursue or have any intention of pursuing to exactly the same reasons. For me, I gave my word to Marcel Zalloua that I would not claim anything and I have no intention of claiming anything at all if---if there is anything still on the books. I know that Geyer Proprietary Ltd is in liquidation and pa---possibly I'm registered as a creditor there but I certainly don't intend to pursue that.

48 Ms Watts's testimony was internally consistent and corroborated by Mr Thornton-Smith and Mr Ross. I found her to be a credible witness who has no reason to lie. As she explained, she has no personal stake in the present suit and has no claims against the Geyer Group. I accept her evidence on the awarding of the Bonus Payments.

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67 NE 16/6/21 63–64.

49 The defendant's third objection to the Bonus Payments is that they were not indicated in the financial documents. On this, the plaintiff and Ms Watts acknowledged that it was an omission for the earlier financial statements signed in March and April 2018 to not include the Bonus Payments. But they testify that this does not change the fact that awards for such bonuses were made.[68] In any event, the Bonus Payments were reflected in the financial documents conveyed to Valmont prior to the completion of the Sale.

50 I find the defendant's submission on this to be wholly misplaced. The key issue in respect of the Bonus Payments is whether the awards were properly made. If they were properly made, omission from the financial statements would not negate such awards. If anything, the defendant's submissions highlight that the defendant is wrongly focused on whether Geyer Corporation disclosed this liability to Valmont when closing the Sale. But that is an issue between Valmont and Geyer Corporation and is not relevant to this suit.

51 In any event, the evidence is that the Bonus Payments were indicated in documents conveyed to Valmont prior to the completion of the Sale. It was recorded in the list titled "Remuneration & Entitlements Due up to and including Friday 9 November 2018",[69] which Valmont confirmed was received as of 12 November 2018, save that the employee benefits would need to be assessed again on or immediately prior to completion.[70] The outstanding bonus sum was also captured in the 2018 Consolidated Management Accounts, sent to the Valmont's solicitor on 20 November 2018.[71] Someone on the Valmont side

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68 NE 16/6/21 50–52.

69 AB 250.

70 AB 262, see row 7.

71 AB 258, see attachment, "Consolidation" at row 92, column "N".

may have overlooked this disclosure and failed to bring it to Mr Zalloua's attention, but that does not mean that it was not disclosed.

52 In summary, I find that the 2016 Bonus and 2017 Bonus were properly awarded by the directors of Geyer Australia and Geyer Singapore and the plaintiff is entitled to the Bonus Payments of $200,000.

Wrongful dismissal

53 The plaintiff claims against the defendant for wrongful dismissal. The defendant in turn submits that it was entitled to summarily dismiss the plaintiff, as the plaintiff had committed breaches as a director of Geyer Australia and Geyer Singapore.

54 Clause 16 of the 2nd Employment Agreement states that the plaintiff may be terminated immediately if he commits "an act of gross misconduct or otherwise [engages] in any wilful or deliberate behaviour or conduct which is inconsistent with [his] expressed or implied duties as an employee and which, in Geyer's good faith determination, renders [him] unfit for continued service under this contract".[72]

55 Clause 20 of the 2nd Employment Agreement states that the plaintiff's employment will be governed by the laws of Victoria, Australia. Both parties thus called for expert evidence on the Australian legal position regarding summary termination. Mr Michael Horton ("Mr Horton") was the expert for the plaintiff while Mr Daniel Moujalli ("Mr Moujalli") was the expert for the defendant. Prior to the hearing, they produced a Joint Expert Table, in addition

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[72] AB 8, p 83.

to their individual reports. They gave their evidence at trial jointly, by way of hot tubbing.

56 The Australian law on summary termination, as put forth by Mr Moujalli and accepted by Mr Horton, is whether the conduct of the employee is "destructive of the necessary confidence between employer and employee" (*Blyth Chemicals Ltd v Bushnell* (1933) 49 CLR 66 at 81; *Concut Pty Ltd v Worell* (2000) 176 ALR 693 at [25]).[73] Both experts agree that clause 16 of the 2nd Employment Agreement is generally in alignment with the position in common law concerning summary dismissal.[74] The conduct in question must still be such that it destroys the confidence between the employee and employer. Such conduct could be wilful misconduct that breaches the employment agreement. Negligence could suffice to warrant summary termination if it irreparably damages the relationship of confidence.[75] But much depends on the circumstances of the case.

57 The defendant submits that the plaintiff committed three breaches which justified his summary termination.

Understatement of WIP write-offs

58 First, the defendant submits that the plaintiff understated the WIP write-offs in the Management Accounts conveyed to Valmont prior to the completion of the sale. He misrepresented the Geyer Group's financial position to satisfy the Net Liabilities condition in the Share Sale Agreement.[76]

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73 Joint Experts' Table, p 8.

74 NE 24/6/21 33, 35:3.

75 Joint Experts' Table, p 7.

76 Statement of Defence, Amendment 3 at para 14(m).

59 WIP is a measure of the unbilled work done by Geyer Group staff. WIP may not eventually be converted into receivables, for example, where the value of the unbilled work outstrips the contract value and the client does not agree to a variation order.[77] The defendant's witness, Mr Adrian Power ("Mr Power"), who was the Financial Controller of Geyer Australia, testified that WIP is provisioned for write-off when the WIP would probably be unbillable or unrecoverable. The WIP changes from month to month and the WIP stated on the Management Accounts is a snapshot at the point of time of 31 October 2018.[78]

60 As a preliminary observation, to the extent that the defendant alleges that the misrepresentation of WIP breaches the Net Liabilities condition of the Share Sale Agreement, it is irrelevant to this suit. It is Geyer Corporation and not the plaintiff that is a party to the Share Sale Agreement. Notably, Valmont did not seek to set aside the Share Sale Agreement and went ahead with the completion. Moreover, in an email dated 20 November 2018, the plaintiff explained to Mr Calandra, copying Mr Zalloua, that the Management Accounts would have required forecasting their accounting position. This is not the case where the plaintiff represented that the Management Accounts would be fully accurate. On the contrary, he forewarned the buyer, Valmont, that using 23 November 2018 as accounts settlement date "would mean Geyer is faced with having to complete accounting information mid monthly cycle. This would require forecasting the accounting position, which is not an exacting process". Geyer would have to use "accumulated monthly work-in-progress on 115 active projects as a proxy for revenue." Assumptions would be made that the supplier

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77 NE 17/6/20 50–51.

78 NE 23/6/21 16–17.

services invoices are those received to date. This "could artificially distort the profit position" and is "certainly not a fully accurate accounting position".[79]

61 What is pertinent to this suit, is whether the plaintiff's conduct in relation to the WIP write-offs in the Management Accounts is "destructive of the necessary confidence" between the plaintiff and the defendant. In this respect, the defendant's expert Mr Moujalli attested that the mere fact that the WIP provisions for write-off has been understated does not necessarily amount to negligence.[80] The real question is whether the plaintiff took all reasonable steps available to him to state the figures correctly. Whether he did so depends on whether the plaintiff has taken a diligent and intelligent interest in the information available to him, applied an inquiring mind to the responsibilities placed upon him, took steps to understand and focus on the contents of the Management Accounts, made further inquiries if such inquiries were called for and reviewed the Management Accounts to ensure so far as possible and reasonable that the information included was accurate.[81] If the plaintiff has taken such reasonable steps, he would not be in breach of his duties of care and diligence to Geyer Australia under the laws of Victoria, Australia.

62 Both the plaintiff and the defendant's witness, Mr Power, testified that the process of making WIP write-offs involves the project leaders, the CFO, the financial controller and the CEO, and takes into account the assessment by the project leaders who are more familiar with their respective business accounts, to assess how much of the WIP can be recovered and if there is scope for

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79 Adrian Power's AEIC, Tab 1.

80 NE 24/6/21 15-16.

81 Joint Expert's Table at para 12.

obtaining variation orders from clients.[82] In view of the Net Liabilities condition, in the lead up to the completion of the Share Sale Agreement, the plaintiff took what he called a more conservative approach, to "most accurately reflect the value of the Defendant's assets in the lead up to the sale".[83] This was to immediately and directly write off WIP for projects instead of provisioning for WIP write-off in the books.

63 The defendant's case that the plaintiff misrepresented the WIP write-off provisions in the Management Accounts, is significantly undermined by the evidence of Mr Power, who was clearly the most familiar with the WIP issues amongst the defendant's witnesses. Mr Power affirmed that it was literally impossible for the plaintiff to singlehandedly manipulate the provisions as at 31 October 2018, that the plaintiff did not deliberately misstate the WIP write-off provisions and that as far as he is aware, there is nothing wrong with the Management Accounts that the plaintiff put forward for the sale of Geyer Corporation.[84]

64 Furthermore, the defendant's expert Mr Moujalli testified that where the board had full and genuine knowledge in relation to the preparation of the management, it would be difficult to say that the plaintiff's conduct was destructive of the relationship of confidence.[85] Ms Watts, who was then the Chair of the Geyer Corporation, confirmed that "[t]he WIP figures compiled for the purposes of the Sale were reviewed by myself, the Plaintiff, the Geyer

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82 NE 15/6/21 100; Adrian Power's AEIC at para 20.

83 Ross's AEIC at para 103.7.

84 NE 23/6/21 19, 39.

85 NE 24/6/21 20.

Group's accountants".[86] The defendant asserted in their reply submissions that Ms Watts was not a participant in the monthly WIP meetings and would not have known what was discussed or how the plaintiff performed during the monthly WIP meetings.[87] However, no questions were put to Ms Watts by the defendant during cross-examination to suggest that Ms Watts had not reviewed the WIP figures or was unaware. That the Chair of the board of the defendant was aware of the compilation of WIP figures in the Management Accounts and approved them further undermines the defendant's case that there was any misrepresentation or deliberate concealment on the plaintiff's part, or that his conduct was "destructive of the necessary confidence between employer and employee".

65 Neither is the defendant's case supported by the specific examples cited.

66 For example, the defendant referred to a WIP report ("AP WIP report") generated by Mr Power, as evidence that there should have been an additional AUD$301,498 written off as at 31 October 2018. Mr Power explained that unlike the usual WIP estimation process which involves predictive uncertainty, the AP WIP report was done with hindsight for the purposes of this suit, drawing on past WIP data from October 2018 to May 2019.[88] The AP WIP report utilises a new risk exposure rule, the 70% rule. This rule was implemented in April 2021, *four* months before this trial. Under the 70% rule, projects which have invoiced at least 70% of the contract value are marked out. The projects are then further assessed on the WIP accrued, costs to come and remaining amount to be

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86 Watt's AEIC at at para 34.2.

87 DRS at para 46(a).

88 Adrian Power's AEIC at para 32.

invoiced, to determine if there is a risk that the company would expend more than what it can invoice for.[89]

67 Given the background provided by Mr Power, it clear that the AP WIP report does not assist the defendant's case. First, as Mr Power himself attested, the analysis in the AP WIP Report was done in hindsight and the information that he drew on from Deltek Vision for the AP WIP Report, may not have been considered to be accurate at the time of the October 2018 WIP review.[90] But the test of the plaintiff's diligence necessarily has to be on the basis of what he did, using information available to him then around October 2018, and not information that only became available thereafter.

68 Second, the 70% rule does not take into account the possibility of variation orders, which could further reduce the amount for WIP write-offs. That is still subject to a discussion between the CFO and the project leaders. In other words, the additional AUD$301,498 write-off for October 2018 that Mr Power assessed in the AP WIP report, could be further reduced after considering variation orders. Mr Power accepted this.[91]

69 Third, Mr Power's evidence suggests that for all the defendant's objections to the WIP process used by the plaintiff, the defendant continued with it until at least April 2021. Mr Power's evidence is that the 70% rule was only introduced in April 2021 under Mr Zalloua when they were preparing the

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89 NE 23/6/21 53–59.

90 Adrian Power's AEIC at para 32.

91 NE 23/6/21 59.

affidavits for this suit.[92] The plaintiff could not have conducted the WIP assessment exercise using this rule in October 2018.

70 Mr Power was the defendant's witness. His answers in re-examination are thus telling. He was asked by the defence counsel, since he had earlier testified that the Deltek Vision figures were reasonably accurate, whether "this 300-odd thousand (referred to in the AP report) might well have been included in the 31 October management accounts", if the plaintiff had been more careful. Mr Power's answer was a qualified "[s]ome of the 300,000 may have".[93] Notably, this question was premised on the use of Deltek Vision figures, which as highlighted above, drew on more accurate information that became available only post-October 2018, according to Mr Power. The plaintiff would not have been privy to such information.

71 In response to a re-examination question that was more general and not premised on the use of Deltek Vision figures, Mr Power was much more circumspect:[94]

> Q: And would you agree that if Mr Moller had taken more care when reviewing these WIP figures, he might have come to a conclusion that this additional 300,000 ought to be written off?
>
> A: That's a difficult question to answer. And the reason that's difficult is because the studio leaders would not give us confidence that, well, the costs to complete projects were relevant and up to date, and previous months had shown that in some cases they were, and some cases they weren't. And we were in this case, 31st of October, they were obviously more up to date than we were led to believe.

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92 NE 23/6/21 53–54.

93 NE 23/6/21 49.

94 NE 23/6/21 48–49.

72 Another example cited by the defendant to prove that there was a misrepresentation is the fact that the WIP provisioned for write-off in October 2018 (AUD$152,444) was much lower than that in October 2017 (AUD$578,747).[95] However, the plaintiff has satisfactorily explained that this comparison is not useful as the amount of WIP in October 2018 (AUD$815,304) was also much lower than in October 2017 (AUD$1,845,336). On the stand, Mr Zalloua accepted that these figures cannot be seen in isolation.[96] Mr Power simply and categorically stated that they are "uncomparable".[97]

73 The defendant also referred to the increase in WIP write-offs from October 2018 (AUD$152,444) to December 2018 (AUD$406,000) as another example of the plaintiff understating the WIP provision.[98] However, the plaintiff has satisfactorily explained that staff would generally be away for holiday around December and would not have put in the WIP until they returned in January. There is therefore higher WIP write-off provision in December. Moreover, the Geyer Group business was invoicing around AUD$1m–AUD$1.4m a month, involving 120 employees of whom 100 were practitioners. The change in numbers from October 2018 to December 2018 is not large when seen in that context.[99]

74 The defendant also pointed to two specific projects, the Lagardere project and the KWM Melbourne project, to show that the plaintiff misrepresented the WIP write-off figures in the Management Accounts. For the

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95 Marcel's AEIC at para 44; AB 139.

96 NE 17/6/21 98.

97 NE 23/6/21 28.

98 CB p 503.

99 NE 15/6/21 105-107.

Lagardere project, there was no more additional work to be done and the entire WIP of AUD$99,322.63 should have been written off (instead of the sum of AUD$66,105 provisioned for write-off) in October 2018.[100] The fact that the total amount of AUD$139,747.63 had to be written off for the Lagardere Project in January 2019 proves this. For the KWM Melbourne project, since the project was completed, the entire AUD$120,514 stated as WIP should have been provisioned for a write-off in October 2018.[101]

75 In respect of the Lagardere Project, the plaintiff explained that at the end of October 2018, following consultation with the project leader, Ms Robyn Lindsey ("Ms Lindsey"), who was an experienced project leader, they wrote off two thirds of the project's WIP. One third was not written off as Ms Lindsey assessed that there was a possibility of securing variation orders.[102] The defendant submits that the plaintiff should not have relied on Ms Lindsey's assessment. But it is the evidence of not just the plaintiff, but also the defendant's witness Mr Power, that the WIP process involves the assessment of project leaders who are more familiar with each project. It is also the evidence of Mr Power that Ms Lindsey would be best placed to make the judgment call on whether a variation order could have been obtained for the Lagardere Project.[103]

76 In respect of the KWM Melbourne project, the plaintiff explained that there were multiple projects across multiple locations. A lot of the work would be replicated, and the project leader was seeking to recover some of the work

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100 DCS at para 74.

101 DCS at para 77.

102 NE 15/6/21 87, 93–94.

103 NE 17/6/21 57.

done on one project that would be replicated in other locations. This is because most corporate services have the same fittings and design language. The first project would potentially have an overrun because design standards were being established and costs would be imposed on that project, but there would be benefits in multiple flow-on projects in other locations.[104] As at October 2018, the KWM Melbourne Project was an active project with 81.8% complete based on the total amounts invoiced at the time.[105] Since it was active, it was reasonable to record the WIP for the KWM Melbourne project as an asset.[106]

77 In both the Lagardere Project and KWM Melbourne Project, the plaintiff reached his decision after consultation with the project leaders who were most familiar with the projects. Within the broader context of the WIP process in Geyer Group and in the particular circumstances of the projects, I find that the plaintiff was entitled to rely on the advice of his project leaders for both projects.

78 Ultimately, the question of whether the plaintiff breached his duty in understating the WIP write-off has to be assessed in the context of what the WIP calculation entails and what it is intended for. The nub of the defendant's complaint is that the WIP in the Management Accounts was not precise and accurate enough for the purposes of the Net Liabilities condition of the Share Sale Agreement.[107] But as the plaintiff explained to Mr Calandra and Mr Zalloua in his email dated 20 November 2018 (before the completion of the Sale), the WIP figures rely on the accumulated monthly WIP on 115 active projects taken as proxy for revenue, and is "certainly not a fully accurate accounting

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104 NE 15/6/21 81.

105 AB 230, the Excel Spreadsheet attached to the said document, see Tab "Exposure & WIP Prov", at row 41, column H.

106 PRS at para 27–29.

107 DCS at para 81.

position".[108] It was not intended to be. It is most telling, that the defendant's own witness Mr Power, who is most familiar with the WIP issues, affirmed that the plaintiff did not deliberately misstate the WIP write-off provisions and that he was not aware of anything wrong with the Management Accounts that the plaintiff put forward for the sale of Geyer Corporation.[109]

79 In summary, for the reasons stated, I find that the plaintiff's conduct in respect of the WIP write-off provisions in the Management Accounts is not "destructive of the necessary confidence" between the plaintiff and the defendant.

Failure to keep minute books

80 The defendant submits that the plaintiff's second breach that justified summary termination is his failure to keep the statutorily required minute books of the defendant and Geyer Australia for the financial years 2015–2017, as required under s 189(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), and s 251A(5) of the Corporations Act 2001 (Cth) ("Corporations Act 2001"). I find no merit to this submission.

81 The defendant's case is that the minute books were not readily available and accessible to whomever was requesting for them. In support of their position, the defendant points to the plaintiff's response to Mr Zalloua when he requested the plaintiff on 28 February 2019 to provide the board meeting minutes of Geyer Australia from 2015 onwards. Mr Zalloua had been appointed a director of Geyer Australia from 27 November 2018. The plaintiff responded that he was not able to provide it as he did not have the sole authority to provide

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108 Marcel's AEIC, Tab 14.

109 NE 23/6/21 19, 39.

"Geyer Corporation information" and asked Ms Watts to deal with Mr Zalloua's request.[110] The plaintiff explained that this was because such minutes also contained sensitive information relating to Geyer Corporation that were subject to non-disclosure agreements with other parties, and Mr Zalloua was a third party at that time to Geyer Corporation.[111] The defendant argues that this shows that the minutes were never regarded as the board meeting minutes of Geyer Australia.[112]

82 I find that the board meetings of Geyer Australia and the defendant were recorded in the meeting minutes and complied with the relevant statutory provisions. First, the plaintiff's witnesses, including Ms Watts who was the Chair of the Geyer Group, have consistently testified that the board meetings for Geyer Corporation, Geyer Australia and the defendant were held concurrently for operational reasons. The minutes kept by Geyer Corporation were also minutes of Geyer Australia and the defendant. Mr Zalloua also accepted in cross-examination that when the relevant directors of the three companies, namely Ms Watts, Mr Thornton-Smith and the defendant, sit on the board meetings, the three companies could be regarded as having board meetings at the same time.[113] There is no requirement under Australian law that Geyer Australia needed to hold separate board meetings from Geyer Corporation.[114] Nor is it against the Companies Act for the defendant to hold its meetings concurrently with the Geyer Corporation. While the defendant has pointed to statutory provisions, namely s 251A(1) of the Corporations Act 2001,

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110 CB 565.

111 NE 15/6/21 26.

112 DRS at para 51.

113 NE 17/6/21 46–47.

114 Joint Experts' Table at para 24.

and s 188(1)(a) of the Companies Act, that require the keeping of minutes, it has not pointed out any statutory provisions or case authority that prohibits the defendant or Geyer Australia from keeping concurrent minutes when their board meetings were conducted concurrently with Geyer Corporation. In any event, the decision to keep concurrent minutes was not one for the plaintiff to make, but for the Chair and the boards of Geyer Singapore and Geyer Australia to make. Given that the Chair of the board of Geyer Group had decided to only adopt concurrent minutes, the lack of separate board minutes cannot be attributed to any breach of duty flowing from the plaintiff.

83 Second, the plaintiff has also testified that all statutorily required minutes of the defendant were compiled and kept on the premises of the defendant up till December 2016, and with Intertrust Singapore Corporate Services Pte Ltd (the defendant's professional corporate secretary) from 1 January 2017 onwards.[115] There is no evidence that Intertrust, as the Corporate Secretary, has complained that the defendant failed to send it statutory minutes for filing. Nor is there evidence that the regulatory authorities in Singapore or Australia have complained about the lack of filing of statutory minutes by Geyer Singapore or Geyer Australia.

ATO Audit Notice

84 The defendant submits that the third breach by the plaintiff that justified summary termination is his failure to disclose the ATO Audit Notice to the other directors of Geyer Australia and Geyer Corporation or to Valmont. I find no merit to this.

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115 NE 15/6/21 17.

85 The plaintiff was notified of the ATO Audit Notice when he was copied in an e-mail dated 26 November 2018 from Mr Power to Taria Wheeler ("Ms Wheeler") who handled payroll matters for the Geyer Group.[116] Mr Power testified that he did not see the need to seek guidance from any of the directors to deal with the ATO Notice, as he and Ms Wheeler knew what needed to be done and were adequately positioned to deal with the ATO tax audit.[117]

86 The plaintiff's evidence is that he did not read Mr Power's email then as he was tied down with the sale completion matters. This was the day before the completion of the Sale.[118] Even if he had read the email at the time it was sent, he would not have done anything different. In any event, he would have followed up by asking Mr Power and Ms Wheeler to work on the ATO Audit Notice, which they were already doing. I find this to be a reasonable explanation. The defendant has not adduced any evidence that the plaintiff had wilfully or deliberately chosen not to disclose the ATO Notice.

87 The defendant's main concern is evidently that Geyer Corporation did not disclose the ATO Notice to Valmont. But in so far as this suit is concerned, both legal experts agreed that the plaintiff owes no duty to disclose the ATO Notice to Valmont.[119] If there were any obligation to disclose, that obligation would have fallen on Geyer Corporation who was the party to the Share Sale Agreement to Valmont, and not on the plaintiff.[120] Further, there was no

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116 Adrian Power's AEIC, Tab 26.

117 NE 23/6/21 38.

118 NE 16/6/21 14.

119 Joint Experts' Table at paras 31–36.

120 Joint Experts' Table at para 36.

complaint made by Valmont that Geyer Corporation had failed to disclose the ATO Notice.

88 I therefore find that the plaintiff did not breach his duty as a director in not disclosing the ATO Audit Notice to other directors or to Valmont.

89 As I have found that there are no grounds to the three alleged breaches of duty committed by the plaintiff, I find that the defendant did not have a basis to summarily terminate the plaintiff on 20 March 2019. The plaintiff is therefore entitled to his salary due for the period of 20 March 2019 to 30 June 2019, in the amount of $73,271.11.

Retention bonus

90 The plaintiff's case for the retention bonus of $5,000 is that Ms Geitz, then CEO of the defendant, agreed on behalf of the defendant to this payment.[121] According to the plaintiff, there was an oral agreement entered into at the 26 February meeting between the plaintiff and Ms Geitz. In his email dated 26 Feb 2019 at 1.01pm,[122] the plaintiff sets out his understanding of this agreement. This includes the retention bonus.

91 Ms Geitz replied to the plaintiff by email dated 26 February 2019 at 5.48pm. She says "[t]hanks for the summary below. Subsequent to the meeting, here is the formal letter."[123] Ms Geitz's reply mentions the plaintiff's summary but does not confirm it. Instead, she refers to a letter, which is the Cessation of Employment Letter. It states that the plaintiff will receive the relocation

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121 Ross's AEIC at paras 88–90, Tab 10.

122 CB at p 556.

123 AB 314.

allowance but does not mention the retention bonus.[124] There is therefore no express agreement by the defendant to pay the plaintiff the retention bonus. The plaintiff submits that Ms Geitz did not qualify the plaintiff's summary, but the fact is that her response to him was to issue the Cessation of Employment letter, which did not contain mention of the retention bonus.[125] In these circumstances, the fact that she did not detail in her email reply what she accepted or rejected from the plaintiff's summary, does not mean that she agreed fully with it.

92 The position taken by the defendant in the Cessation of Employment Letter, to exclude the Retention Bonus, is consistent with the evidence of Ms Watts, who testified that the policy intent was not to include the plaintiff in the Employee Retention Program since he had already indicated that he wanted to leave at the end of his term under the 2nd Employment Agreement.[126]

93 I therefore find that the plaintiff is not entitled to the retention bonus of $5,000.

Relocation allowances

94 In contrast, the Cessation of Employment Letter clearly states that the plaintiff is entitled to the relocation allowances claimed by the plaintiff, namely two economy class, one-way airfares from Singapore and relocation moving costs of an amount equal to one month's salary.[127] The internal correspondence of the defendant also took this position, in Ms Robertson's email dated 6

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124 CB at p 559.

125 PCS at para 187.

126 NE 16/6/21 56.

127 CB at p 542.

February 2019 to Mr Zalloua and in Ms Robertson's email dated 22 February 2019 to Ms Geitz copying Mr Zalloua.[128]

95 The defendant submits the subsequent email correspondence between the plaintiff and Ms Robertson on 26 February 2019, 4 March 2019 and 5 March 2019 showed that no agreement had been reached with the defendant as to the payments to be made to the plaintiff.[129] However, there is nothing in these correspondence that contradicts the Cessation of Employment Letter. In the 26 February 2019 email of 6.42pm, the plaintiff encloses a list of role transition matters for another Geyer staff. In his email of 4 March 2019, the plaintiff asks if there will be a response to his request for a payment plan for accrued remuneration. In his email of 5 March 2019, the plaintiff states that he is offering a payment plan rather than to seek immediate payment "as a personal offer to help Geyer progressively fulfil this commitment" to him.

96 The defendant also submits that there was no agreement in the Cessation of Employment Letter to pay the plaintiff the relocation allowances, as the letter meant that the relocation allowances would be paid only if the plaintiff was so entitled under the 2nd Employment Agreement. However, the letter does not have such a caveat. It informs the plaintiff in plain language that he "will receive repatriation allowances as outlined in your employment contract of:" and then specifies such entitlements, including "2 x economy class, one-way airfares from Singapore" and "[r]elocation moving costs of an amount equal to one month's salary". There was clearly an explicit agreement on the part of the defendant to pay the plaintiff the relocation allowances. It is also the evidence of Mr Zalloua that he considered the relocation allowances to be payable as of

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128 CB at pp 506, 540.

129 CB Tabs 66, 67, 71; Zalloua's AEIC at Tab 60.

6 February 2019 when Ms Robertson emailed him about this. In response to the question what changed between then and now, he testified that the plaintiff "was terminated and to—still in Singapore."[130]

97 The defendant's remaining objection is that the plaintiff has not left Singapore, he had always intended to remain in Singapore, and he could have conducted litigation in this suit from Australia instead of Singapore.[131] On this, I accept the plaintiff's evidence that he intends to return to Australia but has remained in Singapore purely for the purposes of seeing out this case.[132]

98 I therefore award the plaintiff his claim for relocation allowances, which is for the cost of two economy class, one-way airfares from Singapore to Sydney, Australia in the amount of $2500 and relocation costs equivalent to one month's salary in the amount of $21,637.50.

Conclusion

99 In conclusion, I find that the plaintiff is entitled to his claims for the Bonus Payments, the relocation allowances and the salary that he would have been paid if he were not summarily dismissed. The plaintiff is also entitled to his claim for interest, at the rate of 5.33% per annum pursuant to s 12(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) for the claims allowed, from the date of service of the writ till the date of judgment.

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130 NE 17/6/2021 109–110.

131 DCS at para 143.

132 NE 15/6/21 58.

100 I will hear parties on cost.

Kwek Mean Luck
Judicial Commissioner

Lim Yee Ming, Chan Qing Rui Bryan (Chen Qingrui) (Kelvin Chia Partnership) for the plaintiff;
Tham Wei Chern, Wang Chunhua (Fullerton Law Chambers LLC) for the defendant.