Visionhealthone Corp Pte Ltd *v* HD Holdings Pte Ltd and others and another appeal [2013] SGCA 47

Case Number : Civil Appeals Nos 89 and 99 of 2012

Decision Date : 02 September 2013

Tribunal/Court : Court of Appeal

Coram : Sundaresh Menon CJ; Woo Bih Li J; Quentin Loh J

Counsel Name(s) : Dinesh Dhillon and Lim Dao Kai (Allen & Gledhill LLP) for the appellant in Civil Appeal No 89 of 2012 and the first respondent in Civil Appeal No 99 of 2012; Tan Chee Meng SC, Josephine Choo and Emily Su (WongPartnership LLP) for the respondents in Civil Appeal No 89 of 2012 and the appellants in Civil Appeal No 99 of 2012; Lee Yih Gia (Veritas Law Corporation) for the second and third respondents in Civil Appeal No 99 of 2012.

Parties : Visionhealthone Corp Pte Ltd — HD Holdings Pte Ltd and others

Tort – Conspiracy

Tort – Misrepresentation

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2010] 3 SLR 97.]

2 September 2013 Judgment reserved.

Quentin Loh J (delivering the judgment of the court):

Introduction

1 This is an appeal and cross-appeal ("CA 89/2012" and "CA 99/2012" respectively) from the decision of the learned trial judge ("the Judge") in Suit No 678 of 2009 ("the Suit"). The dispute centres on a sum of S$2.125m ("the Sum") which the appellant in CA 89/2012, Visionhealthone Corporation Pte Ltd ("VH1"), transferred or caused to be transferred to the second respondent in CA 89/2012, Xing Rong Pte Ltd (formerly known as Huadi Projects Pte Ltd) ("HPPL"), but which none of the parties are now able to locate. The crux of the dispute is the purpose for which the Sum was transferred to HPPL.

The parties

2 VH1 is a company incorporated in Singapore. At the material times, its directors were one Chan Wai Chuen ("CWC") and one Chan Siang Khing alias Roy Chan ("RC"). RC and CWC were added as third parties to the Suit. VH1, CWC and RC are also the respondents in the cross-appeal, CA 99/2012. HPPL and the first respondent in CA 89/2012, HD Holdings Pte Ltd ("HDH"), are both companies incorporated in Singapore. The third respondent in CA 89/2012, Liu Chunlin ("LCL"), is a Singaporean who was formerly a Chinese national from Fuzhou. He is the director and sole shareholder of HDH. He was also a director of HPPL between March 2006 and February 2007. [note: 1]

3 The fourth respondent in CA 89/2012, Vision Corporation Holdings Pte Ltd (in liquidation) ("VCH"), is a company incorporated in Singapore on 5 November 2003 for the purpose of a joint venture between VH1 and HPPL to set up a network of medical and healthcare centres in China ("the

Joint Venture"). A creditors' winding up of VCH was ordered on 9 January 2009. VCH is not a party to the cross-appeal in CA 99/2012. HDH, HPPL and LCL (collectively, "the CA 99 appellants") are the first, second and third appellants respectively in CA 99/2012.

Background to the dispute

Entering into the Joint Venture

4 CWC and RC were introduced to LCL by one Jonathan Lim Chee Yong ("LCY"), who was a key initiator of the Joint Venture. LCY had worked in a management company in China prior to 2003. He stated on affidavit that after leaving the company, he was keen to enter into a joint venture to set up a chain of medical and healthcare centres in Shanghai, and to that end, approached CWC and RC in mid-2003 with a view to having VH1 join him. Concurrently, VH1 was also keen to explore healthcare opportunities in Xi'an and Fuzhou. [note: 2] It is not disputed that LCY then shared VH1's investment plans with LCL, [note: 3] and sought VH1's and LCL's collaboration. On 2 October 2003, LCY sent an email to LCL stating that "[a]fter extensive discussion about the Political/Economic Risks, VH1 has decided to proceed with the [Joint Venture] but cautiously". [note: 4] The email then set out three alternative plans for the Joint Venture. Attached to the email was a detailed costing plan for the Joint Venture. [note: 5] On 18 October 2003, while CWC, RC and LCL were on a visit to China, VH1 and HPPL entered into the Joint Venture by executing a co-operation agreement ("the Agreement"). The Agreement was signed by CWC on behalf of VH1, and by LCL on behalf of HPPL. RC and LCY witnessed the Agreement. The Agreement provided for the formation of a joint venture company, and stated that VH1 was to be the "sole cash contributor" [note: 6] and "[p]rovide cash capital of up to RMB15 million or equivalent in foreign exchange", [note: 7] while HPPL was, *inter alia*, to "[s]afeguard all equity shareholdings directly or indirectly as per [the] Agreement" [note: 8] and "[f]acilitate business opportunities and speedy establishment of Joint Medical Facilities in China". [note: 9] On 5 November 2003, VCH was incorporated pursuant to the Agreement, with VH1 and HPPL holding, respectively, 60% and 40% of the shares in VCH as stipulated by the Agreement. A VCH board meeting was held on 2 December 2003, at which RC, CWC, LCL and LCL's sister, Liu Yun, were appointed as directors of VCH. At the same meeting, RC was appointed to "coord[inate] transferring RMB11m by Dec 03 to [HPPL] to facilitate the investment in Xian according to [the] Agreement". [note: 10] It was also decided at that meeting that RC would set up a subsidiary of VCH, Fuzhou Vision Huadi Consultancy Co, Ltd ("FVH"), in Fuzhou by December 2003, with a paid-up capital of RMB1m. [note: 11]

5 On or around 9 December 2003, LCY circulated to LCL, CWC and RC an agreement which provided for VCH's transfer of RMB11m to HPPL for investment in establishing a chain of clinics in Xi'an ("the Transfer Agreement"). [note: 12] Under the Transfer Agreement, the RMB11m was to be transferred in four tranches between 10 December 2003 and 24 January 2004. However, the Transfer Agreement was never signed.

The transfer of the Sum

6 It was not disputed that between 5 November 2003 and 10 January 2004, VH1 and CWC transferred the Sum to HPPL's Bank of China account ("the HPPL Account") in three tranches by way of cheques in the following manner:

(a) S$1.1m was transferred from VH1 to VCH on 5 November 2003. [note: 13] This was then

transferred from VCH to HPPL on 24 December 2003. [note: 14]

(b) S$400,000 was transferred by CWC directly to HPPL on 24 December 2003. [note: 15]

(c) S$630,000 was transferred from VH1 to VCH on 6 January 2004. [note: 16] S$625,000 was then transferred from VCH to HPPL on 10 January 2004. [note: 17]

7 Shortly after the above transfers to HPPL, the Sum was gradually withdrawn from the HPPL Account (see [35] below).

Events after the transfer

8 In or around April 2004, VCH's wholly-owned subsidiary, FVH, was incorporated in China pursuant to the agreement at the VCH board meeting of 2 December 2003 [note: 18] (see [4] above). Two more subsidiaries of VCH, namely, Vision Corporation Shanghai Co ("VCS") and Shanghai Fudan Vision Medical and Health Care Centre ("SFVM"), were incorporated on or around 5 February 2004 and August 2004 respectively. [note: 19]

9 On 26 March 2004, LCL incorporated HDH in Singapore and became its 99% shareholder and co-director together with Liu Shi. Liu Shi held the remaining 1% of HDH's shares. Liu Shi resigned from his directorship on 9 April 2005, leaving LCL as the sole director and 100% shareholder of HDH. On 16 February 2005, HPPL transferred its 40% shareholding in VCH to HDH.

10 Relations between the parties soured in the second half of 2004 due to LCL's failure to respond to LCY's inquires as to the whereabouts of the Sum, as well as tension concerning LCL's involvement of Liu Shi and the financial controller of the Huadi group of companies ("the Huadi Group"), one Yu Yunzhuang ("YYZ"), in the corporate governance of VCH and FVH. [note: 20] The ensuing tension resulted in LCY ceasing involvement in VCH and in the Joint Venture after 28 August 2004. [note: 21]

LCL's inability to account for the Sum

11 The simmering tensions over LCL's failure to account for the Sum came to a head at a VCH management meeting held on 24 February 2007, [note: 22] when CWC asked LCL to assist in procuring the remittance of a portion of the Sum to China for use in a project between one of VCH's subsidiaries, PacificVision Medical Pte Ltd ("PacificVision"), and Marsa Guer Chained Enterprise Ltd to develop certain health and wellness clinics in China ("the Marsa Project"). CWC's evidence was that LCL then baldly stated that the Sum was no longer available for investment in China. [note: 23] LCL's evidence was that as a director of HDH and not HPPL after February 2007, he had nothing to do with the Sum and had no knowledge of its whereabouts, and he claimed as much in the flurry of correspondence exchanged amongst CWC, VCH, LCL, HPPL and HDH following the VCH management meeting on 24 February 2007. [note: 24]

12 The parties then engaged in myriad legal skirmishes, mostly to obtain court orders pertaining to the management of VCH and the appointment of its directors. [note: 25] On 24 October 2008, VH1 served a statutory demand on VCH for a judgment debt from an earlier suit representing shareholder's advances made by VH1 to VCH. HDH immediately filed Originating Summons No 1478 of 2008 to obtain an injunction restraining VH1 from commencing winding-up proceedings against VCH. Despite this, VH1 applied successfully on 12 December 2008 to wind up VCH, resulting in VCH being placed in liquidation

on 9 January 2009. Tam Chee Chong was appointed as VCH's liquidator ("the Liquidator"). [note: 26] On the same day, HPPL filed an application to be struck off from the register of companies. It was struck off on 6 June 2009. VH1 then successfully applied in Originating Summons No 1077 of 2009 for HPPL to be restored to the register of companies, and that occurred on 28 October 2009.

13 HDH also wrote to the Liquidator on 14 April 2009 alleging that CWC and RC had mismanaged VCS and SFVM, diverted business from the Marsa Project and dissipated the Sum [note: 27] – allegations which CWC and RC denied in their reply to the Liquidator's subsequent inquiries of them. [note: 28] Pursuant to the winding up of VCH, the Liquidator took out Originating Summons No 383 of 2009 on 31 March 2009 seeking answers, which had not been forthcoming, to interrogatories concerning the whereabouts and purpose of the Sum, as well as discovery of all documents relating to HPPL's possession or payment out of the Sum to one of the companies in the Huadi Group, Fuzhou Huadi Hebang Construction Renovation Engineering Company Limited ("FHH"), or any other parties. HPPL successfully resisted the Liquidator's application.

14 On 4 August 2009, VH1 commenced the Suit from which this appeal and cross-appeal arise. Pursuant to this, VH1 applied for third-party discovery against Bank of China ("BOC") on 16 November 2009 seeking documents relating to the movement of the Sum after its deposit in the HPPL Account. HPPL resisted the proceedings all the way to this court in Civil Appeal No 14 of 2010. It was ultimately unsuccessful as this court agreed on 5 July 2010 that the documents sought by VH1 were relevant and necessary for the disposal of the Suit (see *Xing Rong Pte Ltd (formerly known as Huadi Projects Pte Ltd) v Visionhealthone Corp Pte Ltd* [2010] 4 SLR 607 at [31]–[33]). As a result, VH1 obtained from BOC documents evidencing the inflow and gradual outflow of the Sum from the HPPL Account. These documents comprised the bank statements for the HPPL Account, BOC's financial history transaction list for the HPPL Account, and cheques issued from the HPPL Account to other parties ("the BOC Documents").

15 The Suit was tried before the Judge on various dates from October to December 2011 and on 3 May 2012. On 24 July 2012, judgment was given in favour of all four defendants to the Suit (*ie*, HDH, HPPL, LCL and VCH), who are also the respondents in CA 89/2012 (collectively, "the CA 89 respondents"), in respect of VH1's claim against them (see *VisionHealthOne Corp Pte Ltd v HD Holdings Pte Ltd and others (Chan Wai Chuen and another, third parties)* [2012] SGHC 150 ("the GD")). VH1 filed its Notice of Appeal for CA 89/2012 on 26 July 2012. Three of the four defendants to the Suit, namely, HDH, HPPL and LCL (*ie*, the CA 99 appellants), filed a cross-appeal in CA 99/2012 on 22 August 2012 challenging the Judge's findings:

(a) that LCL held 40% of VCH's shares through HPPL;

(b) that the Sum was not deposited into the HPPL Account pursuant to a separate agreement to exchange the Sum for an equivalent amount in RMB which would be paid to a party nominated by RC and/or CWC (see [17] below);

(c) that the Sum was transferred to China initially for the purpose of investment under the Agreement; and

(d) that the CA 99 appellants' third-party claim against CWC and RC be dismissed.

The arguments of the parties in the court below

16 In the court below, VH1 pleaded that LCL had represented to CWC and RC that VH1 should entrust its funds to HPPL, which would then transmit those funds to its sister company in the Huadi

Group, FHH, for onward investment in medical and healthcare centres in China. [note: 29] It was VH1's case that the Sum, which was part of the funds intended for investment in China, was never transferred to FHH, and remained unaccounted for after its transfer to HPPL. VH1 therefore argued that LCL had made fraudulent misrepresentations to induce VH1 to enter into the Joint Venture and to part with the Sum, knowing that the Sum would be dissipated instead of being invested pursuant to the Joint Venture. VH1 also claimed that LCL had conspired with HPPL to cause loss of the Sum to VH1. HDH was alleged to have joined the said conspiracy upon its incorporation on 26 March 2004. [note: 30] VH1's alternative claim was that LCL was personally liable for the Sum because he was the alter ego of HDH and HPPL. [note: 31]

17 The core of the CA 89 respondents' case (and also the CA 99 appellants' case) in the court below was that the transfer of the Sum to HPPL was wholly independent of the Joint Venture. They argued that the transfer was simply RC and CWC's plan to bring money into China under what became known in the court below as the "Currency Exchange Transaction". Under this transaction, upon HPPL's receipt of the Sum, it would pay the RMB equivalent of the Sum to a party nominated by RC and/or CWC. [note: 32] The CA 89 respondents argued that this transaction was in fact carried out. The key documents supporting the CA 89 respondents' Currency Exchange Transaction case theory were three notices of payment ("Notices of Payment") and three corresponding receipts ("Receipts") signed by RC and CWC. The Notices of Payment were issued by RC on behalf of VCH, and instructed HPPL to transfer the sums of S$1.1m, [note: 33] S$400,000 [note: 34] and S$625,000 [note: 35] respectively to FHH. The Receipts, in turn, were issued on FHH's letterhead, and stated that FHH acknowledged the receipt of the sums of S$1.1m, [note: 36] S$400,000 [note: 37] and S$625,000 [note: 38] respectively. The Receipts were endorsed with FHH's company stamp, but RC signed the Receipts "[f]or and [on] behalf of [VCH]", [note: 39] and CWC's initials were also appended. A single sentence at the bottom of each of the Notices of Payment and Receipts stated the prevailing S$-RMB exchange rate. The CA 89 respondents argued that the exchange rate quotation evidenced a Currency Exchange Transaction, and that CWC's and RC's signatures on the documents were conclusive proof that CWC and RC had received the RMB equivalent of the Sum pursuant to such exchange.

18 A further prong of the CA 89 respondents' case was that LCL exercised no control over HPPL and was simply an interpreter. It was their case that the true controller of HPPL was its managing director, Huang Haiqing ("HHQ"), who is also LCL's brother-in-law. LCL pleaded that it was HHQ who negotiated the terms of the Agreement with VH1 and acted on behalf of HPPL at all times, while LCL himself simply sent emails or executed documents at HHQ's behest. [note: 40]

The decision below

19 The Judge dismissed VH1's claims in the Suit. His view was that both sides had not disclosed the full story at the trial (see the GD at [9]). Nonetheless, he proceeded to make the following findings:

(a) the Sum was transferred to China initially for the purpose of investment, but along the way, the parties' intentions changed and it was not clear what became of the Sum (see the GD at [9]);

(b) the Sum was in fact transferred from HPPL to FHH (see the GD at [7]);

(c) RC and CWC must have known of this transfer and its purposes (see the GD at [9]);

(d) there was insufficient evidence to prove that the Joint Venture was proposed by LCL or came about from his representations (see the GD at [9]);

(e) there was insufficient evidence to found the CA 89 respondents' allegation that RC and CWC had mounted a corporate raid on VH1 through mismanagement of VH1's subsidiaries (see the GD at [8]); and

(f) LCL's fraud was not proved (see the GD at [8]).

20 In sum, the Judge found that VH1 had not proved its case as pleaded, even though the CA 89 respondents' alternative account (involving the Currency Exchange Transaction) was "similarly unconvincing" (see the GD at [9]). The CA 99 appellants had further failed to prove their case against the third parties, RC and CWC.

21 VH1 appealed against these findings, and, in particular, the finding that the Sum had been transferred from HPPL to FHH. It argued that the BOC Documents obtained through third-party discovery (see [14] above) clearly showed that the Sum, after being paid into the HPPL Account, had been disbursed to parties other than FHH. The CA 89 respondents, however, maintained that: (a) since CWC and RC had already received the RMB equivalent of the Sum under the Currency Exchange Transaction, VH1 thereafter no longer had a claim over the Sum in the HPPL Account; and (b) the withdrawal of the Sum from the HPPL Account by way of cheques signed by LCL was hence uncontroversial.

The issues to be determined

22 The issues arising in this appeal and cross-appeal are as follows:

(a) the purpose of the transfer of the Sum to HPPL;

(b) whether the Sum was received by FHH;

(c) whether there was fraudulent misrepresentation on the part of LCL; and

(d) whether there was a conspiracy between the CA 99 appellants to misappropriate the Sum.

We do not find it necessary to deal with the Judge's finding that LCL held 40% of VCH's shares through HPPL (see [15(a)] above) even though this particular finding was included in the CA 99 appellants' Notice of Appeal. This is because it was neither VH1's case (*vis-à-vis* CA 89/2012) nor the CA 99 appellants' case that LCL held the said shares through HPPL or, after 16 February 2005, through HDH. In any case, the CA 99 appellants took the position in their written case for their cross-appeal that this particular finding "will not have a bearing on the outcome of the case". [note: 41]

Our decision

Issue 1: Purpose of the transfer of the Sum to HPPL

23 The Judge's only finding as to the purpose of the transfer of the Sum was that the money was transferred to China initially for the purpose of investment in the Joint Venture (see [9] of the GD). By this, he was presumably referring to a transfer of the Sum from HPPL to its sister company, FHH. However, in order to determine the purpose for which the Sum was transferred from HPPL to FHH (or,

for that matter, if it was transferred to FHH at all), we find it necessary to first consider why the Sum was transferred to HPPL in the first place. On the evidence, we are of the view that the Sum was transferred to HPPL for the purpose of investment in the Joint Venture. The narrative carried by the available contemporaneous documentary evidence suggests to us no other purpose for the interaction and financial discussions between VH1 and HPPL other than the setting up of a network of medical centres in China. The parties' meetings in China in October 2003 culminated in the Agreement, which provided for VH1 to solely supply cash capital of up to RMB15m to this end. Further indication of the parties' intentions can be found in the minutes of the VCH board meeting held on 2 December 2003, as well as in the Transfer Agreement. The minutes of the 2 December 2003 VCH board meeting record that RC was to coordinate the transfer of RMB11m to HPPL by December 2003 "to facilitate the investment in Xian according to [the] Agreement". [note: 42] The Transfer Agreement [note: 43] then appears to give effect to this planned transfer in four tranches. While the Transfer Agreement remains unsigned, it still functions as one more piece of evidence of the parties' investment intentions, especially when read in the light of the minutes of VCH board meeting of 2 December 2003. Finally, the emails exchanged between VH1, HPPL and other Chinese partners between late-October and mid-December 2003 discussed the planned use of an impending RMB11m inflow of funds to China. The totality of the evidence is indicative of a certain momentum culminating in the transfer of the Sum in three tranches as elaborated at [6] above. We are therefore satisfied that it is more likely than not that the Sum was transferred to HPPL in pursuit of the Joint Venture's purposes and in fulfilment of VH1's investment obligations under the Agreement.

24 The Judge went on to say that despite the Sum being transferred initially for the purpose of investment, the intention of the parties later changed. Our preliminary observation is that a change of intention was never part of the CA 89 respondents' case theory. Their case was that the Sum was transferred to HPPL for the purpose of currency exchange all along. At the same time, it is not disputed that there was only one remittance of S$2.125m to HPPL, albeit in three tranches. If this was for the Currency Exchange Transaction (as opposed to the Joint Venture), we note that neither HPPL nor LCL ever called on VH1 to fulfil what must have been, according to the CA 89 respondents' case theory, VH1's separate and still-outstanding obligation under the Agreement to remit funds to HPPL for investment in the Joint Venture. Once it is accepted that there was only *one* remittance of money to HPPL and, on either side's case theory, only *one* purpose for the remittance, it must be that the Sum was remitted either for investment or for currency exchange.

25 We find no evidence of a change of intention by the parties. In this regard, we cannot, with respect, agree with the Judge's finding (at [7] of the GD) that between 2004 and 2007, neither VH1, CWC nor RC seemed concerned about the whereabouts and use of the Sum. In an email dated 4 November 2004, LCL directed Liu Shi to liaise with the "Fuzhou office", [note: 44] *ie*, FHH, to obtain a report on the use of the Sum. This email was sent in response to CWC's email to LCL on 2 November 2004 containing a proposal for the setting up of medical centres in Fuzhou, and requesting LCL to help obtain "an account of the current status of VCH's funds and their use since their remittance to Fuzhou". [note: 45] In an email dated 11 May 2006, LCL again replied to CWC's queries regarding the Sum by attaching a report from YYZ, the financial controller of the Huadi Group. The report stated: [note: 46]

> 1. The amount of S$2,125K [*sic*] from [VCH's] loan to [FHH] (which is [VCH's] business partner in Fujian) was used to fund the operation of joint medical facilities between [FVH] and [FHH].
>
> 2. There are [*sic*] no movement in this amount. We haven't used any amount of S$2,125K [*sic*] since we have not officially launched our Fuzhou Vision Medical Centre and is [*sic*] still finalizing our Medical Model and Shareholders structure in Fuzhou, and this amount will *fully be utilised in*

future for [FVH] to set up Fuzhou Vision Medical Centre.

[emphasis added]

In a further email dated 4 March 2007, CWC specifically referred to the three tranches comprising the Sum which had been "left in [HPPL]'s care", [note: 47] and requested for remittance of a portion of the Sum to fund the Marsa Project. All these emails speak of CWC and RC's concern that the Sum be used or at least reserved for healthcare-related investment from 2004 till 2007.

26 Besides specific references to the use of the Sum, there is also contemporaneous correspondence indicating that negotiations and investment activities in China were under way. While LCY was still actively participating in the Joint Venture in the earlier half of 2004, he and LCL made at least three trips to Xi'an and Fuzhou to negotiate with partners there and finalise the locations of the medical centres to be set up. [note: 48] LCY and LCL also visited Fuzhou from 14 to 21 March 2004 to conduct an in-depth study of the business environment there. [note: 49] After LCY's exit from the Joint Venture, CWC visited Fuzhou from 26 to 29 September 2004 and visited various hospitals with LCL. VH1 then prepared briefs for three possible projects which the Joint Venture could undertake with those hospitals. A chain of email discussions between CWC and LCL culminated in VCH entering into a memorandum of understanding ("MOU") with one of the hospitals, Fuzhou Shi'er Hospital, for the setting up of a medical and healthcare centre. [note: 50] In 2005, LCL and CWC also discussed the possibility of entering into an MOU with Fuzhou Shengji Jiguang Hospital. [note: 51] In December 2006, one of VCH's subsidiaries, PacificVision, entered into the Marsa Project. [note: 52] It was pursuant to this project that CWC sought LCL's assistance in procuring the remittance of a portion of the Sum to VCH at the VCH management meeting of 24 February 2007 (see [11] above). This does not appear to us to be the conduct of parties who were no longer interested in the Joint Venture and who had forgotten about their intention to invest the Sum. Neither did LCL's responses on behalf of HPPL and/or HDH accord with the theory that the Sum had been meant for currency exchange, and that VH1 had yet to remit a further sum in fulfilment of its investment obligations under the Agreement. Rather, the conduct of and the correspondence among the parties indicated that from 2004 to 2007, the Joint Venture was still in motion. In our view, the purpose of the transfer of the Sum to HPPL was, and remained throughout, investment pursuant to the parties' obligations under the Agreement.

27 In contrast, the CA 89 respondents' alternative case theory for the purpose of the transfer, namely, the Currency Exchange Transaction, was not borne out by the evidence. The only positive documentary evidence adduced in support of the Currency Exchange Transaction was the S$-RMB exchange rate quotation printed at the bottom of each of the Notices of Payment and Receipts. The CA 89 respondents contended that such a quotation would not have been necessary if the transfers had not been for the purpose of currency exchange. [note: 53] In our view, this was a wholly inadequate piece of evidence on which to hang the CA 89 respondents' entire currency exchange case theory as the quotation could have been printed on the Notices of Payment and Receipts for any number of reasons and not just for the purpose of currency exchange.

28 Furthermore, the CA 89 respondents' account of the workings of the Currency Exchange Transaction was itself fraught with inconsistency. As LCL claimed ignorance of such a transaction until HHQ told him about it in March 2007, it fell to HHQ to explain the transaction in his affidavit of evidence in chief. According to HHQ, the Currency Exchange Transaction was a personal arrangement between CWC and RC on the one part and himself on the other part. CWC and RC had apparently wanted to move funds into China through HPPL for their own investment purposes, and to that end, had proposed to transfer the Sum to HHQ in exchange for HHQ then passing the equivalent RMB

amount to CWC and RC's representative in Fuzhou. HHQ claimed that he agreed to the plan as he intended to keep some funds in Singapore for HPPL to use. He also agreed to have the Sum deposited into the HPPL Account, even though this was a personal transaction, because he did not have a personal bank account in Singapore. HHQ's evidence was that he gathered the RMB equivalent of the Sum and kept it in his office, and upon notification that the Sum had been received into the HPPL Account, he passed the equivalent RMB amount to an employee of HPPL known as Wang Xiong. Wang Xiong then handed the RMB equivalent of the Sum over to CWC and RC's representative. [note: 54] HHQ did not mention who the representative was, and claimed that he only found out that it was FHH who received the RMB equivalent of the Sum when Wang Xiong brought the Receipts issued by FHH back to his office on 1 and 17 January 2004. He claimed not to know the relationship between FHH, CWC and RC. [note: 55]

29 We have great difficulty accepting this account of the material events as it does not square with alternative accounts and with reality. First, it is striking that for all the detail in HHQ's account of the Currency Exchange Transaction, there was no mention of the location at which the exchange took place and the identity of the recipient who purportedly received the RMB equivalent of the Sum from Wang Xiong while simultaneously handing over the Receipts. That person was also not called as a witness. It is wholly unbelievable that HHQ would not so much as inquire about the identity of the recipient, and be content to have what he claimed were his personal funds passed to an unknown individual at an unknown location. Further, there is inconsistency between HHQ's evidence and LCL's evidence as the latter states on affidavit that "the Notices of Payment and Receipts were first signed by [RC] at the material time when the RMB was handed over to him". [note: 56] This suggests that it was RC, and not CWC and RC's representative, who received the RMB equivalent of the Sum. However, RC's passport indicates that he was not in China on 1 and 17 January 2004, the dates on which HHQ claimed that the exchanges took place. The dates of the exchanges are themselves unverified. HHQ's evidence was that it was Wang Xiong who informed him of the exchange dates. No explanation was given for the choice of these dates, or why it was that HHQ had to rely on a mere employee to inform him of the dates on which to transfer his personal funds. We cannot but surmise that these dates were conveniently lifted from the dates stated on the Receipts.

30 Second, there was no evidence that the RMB equivalent of the Sum was ever paid out of any HPPL corporate account. In this regard, HHQ argued that the transaction was conducted on a personal basis and, hence, would not appear on the company's accounts. However, this position was inconsistent with the evidence of LCL's brother, Liu Yongmin, who was also a director of HPPL. In an affidavit filed in the course of resisting the Liquidator's application to obtain answers to interrogatories and discovery of documents, Liu Yongmin stated that at the time RC purportedly proposed to exchange currencies: [note: 57]

> … [HPPL was] planning to carry out some international trading business and required funds in Singapore currency. Based on this mutual need, [HPPL] agreed to accept [RC]'s proposal and hence the monies were transferred by [CWC] and VCH to [HPPL] in the Singapore currency. Thereafter [HPPL] exchanged the monies into Chinese Yuan. …

Based on this account, the exchange was not a personal transaction at all, but a corporate one instead.

31 Most troubling, however, is how belatedly the Currency Exchange Transaction defence was raised. It was mentioned for the very first time in LCL's Defence (Amendment No 2), which was filed on 24 January 2011. One would imagine that such a defence, if true, would have been raised in each of the CA 89 respondents' very first Defence or, indeed, even earlier, as the most natural response to

CWC's urgent and repeated requests for an account of the Sum between 2004 and 2007. Instead, in his first Defence filed on 28 August 2009 and his first amended Defence filed on 29 January 2010, LCL simply denied that the Sum had been entrusted by VCH to HPPL. That denial was subsequently proved to be false in the light of the discovery of the BOC Documents in September 2010. It was only then that LCL applied to amend his defence, adding an entire new paragraph in his Defence (Amendment No 2) which described the Currency Exchange Transaction. [note: 58]

32 In our view, the CA 89 respondents' defence hinged on a Currency Exchange Transaction which was wholly unsubstantiated by evidence, and which was plagued by repeated and irreconcilable inconsistencies throughout. Conversely, the available documentary evidence supports VH1's position that the Sum had been transferred to HPPL for the purpose of onward investment in China. We therefore come to the conclusion that there was no Currency Exchange Transaction, and that the Sum was transferred to HPPL for the purpose of investment in China pursuant to the Agreement.

Issue 2: Whether the Sum was received by FHH

33 It was broadly agreed that the Sum, or its RMB equivalent, was intended for eventual receipt by FHH, whether pursuant to the Agreement or to a Currency Exchange Transaction. VH1 claimed that the Sum was not so received, while the CA 89 respondents argued that it was. The Judge agreed with the CA 89 respondents, stating that the incontrovertible evidence showed that the Sum was in fact transferred from HPPL to FHH (see the GD at [7]).

34 With respect, we are unable to come to the same conclusion as the Judge. The CA 89 respondents relied almost exclusively on the existence of the Notices of Payment and Receipts signed by CWC and RC to show that the Sum was transferred to FHH, but those documents are, in our view, insufficient evidence of FHH's receipt of any money from HPPL. For a start, the Receipts were issued on FHH's letterhead as an acknowledgment that *FHH* (and not VH1, CWC or RC) had received funds. By all accounts, CWC and RC had no control of FHH, and were therefore in no position to acknowledge receipt of any money on FHH's behalf. Rather, RC's signature and comment on the Receipts stated that he endorsed the Receipts "[f]or and [on] behalf of [VCH]". [note: 59] It might have been remiss of RC to have accepted the contents of the Receipts without verifying their truth, but it is not implausible that that was what he did. The signed Notices of Payment and Receipts are therefore not, in our view, incontrovertible evidence that FHH, an entity independent of CWC and RC, had received the Sum from HPPL.

35 What is to us incontrovertible is that VH1 was able to show that out of the S$2.125m transferred to the HPPL Account, S$2,085,236.42 was gradually disbursed to persons *other than FHH* between December 2003 and June 2004. There were withdrawals made by way of 25 cheques signed by two signatories, one of whom was LCL, and reflected in the bank statements for the HPPL Account. Before the transfer, the bank statement for the HPPL Account reflected that the account contained only S$168.39. [note: 60] After the transfer of the Sum into the HPPL Account in three tranches, the BOC Documents showed that LCL procured the withdrawal of S$2,085,236.42, out of which:

(a) a total of S$62,133 was remitted to his mother and sister in China;

(b) S$2m was transferred to the POSB account of Liu Shi in tranches of S$30,000, S$980,000 and S$990,000; and a further S$63.01 was transferred to another of Liu Shi's Singapore bank accounts; and

(c) amounts ranging from S$30 to S$14,000, totalling S$23,040.41, were paid to HPPL's contractors.

Although there was no specific evidence as to whom the S$39,763.58 (being the difference between the Sum and the S$2,085,236.42 so withdrawn), was paid, there is evidence showing that the HPPL Account had a nil balance by March 2006. [note: 61] As LCL's position was that all cheques issued by HPPL required the signatures of both signatories, [note: 62] we infer that LCL must have authorised the withdrawal of the difference as well, whether the withdrawal was by cheque or otherwise.

36 The CA 89 respondents asserted that nothing was to be made of the withdrawals from the HPPL Account because under the Currency Exchange Transaction, CWC and RC had already acknowledged the receipt of the RMB equivalent of the Sum, and therefore, the Sum in the HPPL Account represented HHQ's personal money. We have already explained the implausibility of this claim (at [29]–[31] above). Furthermore, LCL and HHQ's explanation for the remittance of S$62,133 to their relatives was that it was to ascertain the prevailing S$-RMB currency exchange rate. [note: 63] Needless to say, this explanation is ill-matched with reality.

37 We are also unable to reconcile, on the one hand, the fact that LCL authorised the withdrawal of the Sum from the HPPL Account between December 2003 and March 2006 and, on the other hand, his claim that he only found out about the Currency Exchange Transaction from HHQ in March 2007. [note: 64] It is implausible that a man who had seen HPPL's entry into the Agreement with VH1 and who had subsequently seen the deposit of the Sum into the HPPL Account in manifest fulfilment of VH1's investment obligations under that Agreement would then feel free to systematically authorise the withdrawal of the Sum from that account to pay HPPL's contractors, his relatives and Liu Shi while still under the impression that the Sum was meant for the Joint Venture, since it was LCL's position that he was unaware of the Currency Exchange Transaction until March 2007. LCL's explanation for this is that he had simply made the withdrawals at the behest of HHQ. However, we do not accept this bare allegation. LCL was the one who was involved in the discussions with LCY, CWC and/or RC on investment in the Joint Venture and there was hardly any evidence of the role which HHQ played.

38 Conversely, the financial records of FHH, which VH1 obtained through a private investigator, did not reflect the Sum. The Liquidator gave evidence that although FHH's 2004 balance sheet was not exhibited by VH1, he was able to extrapolate FHH's closing balances for 2004 based on the opening balances for 2005. Based on the extrapolated figures, the Liquidator noted that between 2003 and 2004, there was no change to FHH's share capital, no substantial changes in FHH's sales revenues, losses and liabilities and an insignificant increase of approximately S$14,000 in FHH's total asset value, thus leading him to the conclusion that the Sum had not been remitted to FHH. [note: 65] The CA 89 respondents have seized on the omission of FHH's 2004 balance sheet to invite the court to draw an adverse inference against VH1. We agree that the omission to exhibit FHH's 2004 balance sheet raised a question about VH1's case, but we find it more questionable that having identified this omission, the CA 89 respondents did not then adduce the missing balance sheet themselves since a reflection on FHH's 2004 balance sheet that the Sum had been received by FHH would have supported their case. After all, LCL was the one who associated himself with FHH by reflecting the company's name on the reverse of his name card, [note: 66] and it is not disputed that FHH, like HPPL, was part of the Huadi Group.

39 Another case theory which the CA 89 respondents ran in the court below as well as before us was that CWC and RC had received the Sum, and had then proceeded to dissipate it for their own

purposes under the guise of expenditure by VCH and its Chinese subsidiaries. The CA 89 respondents pointed to VH1's financial statement for the year 2006, in which the Sum, which in 2005 had been listed as an "[a]mount due from business partner", [note: 67] appeared to have been written off. Counsel for VH1 sought to clarify that the omission of the Sum from VH1's 2006 financial statement was not a write-off, but rather, a provision made for an amount which was intended for eventual investment and which VH1 therefore did not expect to get back. This was supposedly done on the recommendation of VH1's auditors as a matter of prudence. This is by no means a watertight explanation, but on balance, we are prepared to give VH1 the benefit of the doubt. In any case, this accounting anomaly is but one factor in our understanding of the movements of the Sum. In this regard, it is critical to note, on the basis of the BOC Documents, that after the Sum was transferred to the HPPL Account, it was paid out in the manner set out at [35] above. It is clear beyond any question that contrary to the CA 89 respondents' case theory, no part of this money found its way to CWC or RC. The CA 89 respondents' case theory in fact can only rest on the hypothesis that there was a separate amount paid to CWC and RC in the context of the Currency Exchange Transaction, and this is a case theory that we have rejected for the multitude of reasons set out at [28]–[32] above.

40 Taken as a whole, the weight of evidence points to the fact that after the Sum was transferred to the HPPL Account, it was not received by CWC, RC or FHH. Instead, it was systematically withdrawn from the HPPL Account, and S$2,085,236.42 of it was clearly distributed to persons other than FHH by way of cheques signed by LCL and another signatory. Such dissipation is, on its face, clearly inconsistent with the parties' mutual understanding as to the use of the Sum under the Agreement, and the CA 89 respondents were unable to proffer a satisfactory explanation which would reconcile the dissipation with their assertion that FHH had in fact received the Sum in the form of its RMB equivalent. The CA 89 respondents' case stands or falls by their Currency Exchange Transaction defence, and as we have explained, this defence is fraught with inconsistency and unsubstantiated by documentary evidence. Once this defence falls, the CA 89 respondents' case entirely unravels.

Issue 3: Whether there was fraudulent misrepresentation on the part of LCL

41 In order for a claim in the tort of fraudulent misrepresentation to succeed, the following elements must be proved (see *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

(a) First, there must be a representation of fact made by words or conduct.

(b) Second, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff.

(c) Third, it must be proved that the plaintiff acted upon the false statement.

(d) Fourth, it must be proved that the plaintiff suffered damage by so doing.

(e) Fifth, the representation must be made with knowledge that it is false, in that it must be either wilfully false or made in the absence of any genuine belief that it is true.

42 The alleged misrepresentation by LCL was that VH1 should entrust the funds intended for investment in the Joint Venture to HPPL, which would then transmit those funds to one of HPPL's associated companies in China that was part of the Huadi Group for onward investment in medical centres in China. [note: 68] VH1 argued that this misrepresentation was made to CWC and RC during their meeting with LCL in China and through emails exchanged between the parties on 3 and

20 October 2003. Much was made of the email of 20 October 2003, in which LCL informed LCY that FHH and HPPL would be VH1's marketing and construction partners in the China and Singapore markets respectively. [note: 69]

43 The burden of proof for fraud and/or dishonesty is an onerous one, and more evidence is needed to satisfy the civil test of a balance of probabilities, as established in *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 (at [13]). To succeed, VH1 has to prove not only that a representation of fact was made by LCL and/or HPPL that VH1's funds would be invested in the Joint Venture, but also that VH1 was *induced by such representation of fact* to participate in the Joint Venture and to part with the Sum. In our view, the evidence raised by VH1 was insufficient to prove that such inducement occurred. Aside from the emails of 3 and 20 October 2003, there is no other documentary evidence of LCL taking the initiative in the Joint Venture and inducing VH1 to part with its money. The tone and content of the two emails do not constitute or point to any representation of the sort alleged by VH1 having been made by LCL and/or HPPL, much less to any inducement having occurred on the part of VH1 in reliance on any such representation. On the contrary, the totality of the evidence suggests that it was *LCY* who was orchestrating the Joint Venture and the planned investments (see [4] above). As for the witnesses' affidavits and oral evidence as to who first uttered the words and ideas which were embodied in the emails of 3 and 20 October 2003, it was simply one party's word against the other. The evidence simply points to the Sum being sent pursuant to a plan originating from LCY to invest in healthcare centres in China, which sum was then misappropriated over the subsequent months. In our view, the Judge's finding (at [9] of the GD) that there was insufficient evidence that the Joint Venture was proposed by LCL or came about from his representations is not plainly wrong or against the weight of evidence. We therefore see no reason to disturb the Judge's finding on this issue.

Issue 4: Whether there was a conspiracy between the CA 99 appellants to misappropriate the Sum

44 VH1 pleaded that the CA 99 appellants engaged in conspiracy by unlawful means to cause loss of the Sum to VH1, and/or conspiracy by lawful means with the predominant purpose of injuring VH1. The elements of unlawful and lawful means conspiracy are set out in *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 (at [23]) as follows:

(a) There must be a combination of two or more persons and an agreement between and amongst them to do certain acts.

(b) If the conspiracy involves lawful acts, then the predominant purpose of the conspirators must be to cause damage or injury to the plaintiff; but if the conspiracy involves unlawful means, then such predominant intention is not required.

(c) The acts must actually be performed in furtherance of the agreement.

(d) Damage must be suffered by the plaintiff.

45 This court has noted in *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 (at [19]) that proof of conspiracy will normally be inferred from other objective facts.

Liability of LCL and HPPL

46 In the present case, the Judge's conclusion that there was insufficient evidence of conspiracy

flowed from his finding that the purpose of the transfer of the Sum was indeterminate. We have, however, reached the conclusion (at [32] above) that the Sum was transferred with an attached obligation for onward investment pursuant to the Agreement. Therefore, we are satisfied that the withdrawal and dissipation of the Sum from the HPPL Account constitutes a breach of HPPL's obligations under the Agreement, and accordingly, it was an unlawful act. The withdrawal and dissipation of the Sum also leads to the inexorable inference of a combination between HPPL and LCL to deprive VH1 of its intended use of the Sum. In this regard, we agree with the observation of Belinda Ang Saw Ean J in *The "Dolphina"* [2012] 1 SLR 992 (at [264]) that the requirements of "combination" and "unlawful act", although theoretically discrete, in practice often have to be considered together because proof of an agreement among the alleged conspirators is often gathered from the unlawful act committed. We also note that a company can, together with its controlling director, be liable for the tort of unlawful act conspiracy (see *Chew Kong Huat and others v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167 at [35]). We find that with regard to HPPL and LCL, the elements of the tort of unlawful act conspiracy have clearly been established on the facts. Given this finding, it will not be necessary to deal with the alternative plea of lawful act conspiracy.

47 We also have no doubt that LCL and HPPL are jointly and severally liable for the misappropriation of the Sum (see [35] and [40] above). These dealings with the Sum were wholly inconsistent with the purpose for which the Sum was transferred to HPPL.

Liability of HDH

48 VH1 submitted that although the misappropriation of the Sum predated HDH's formation, HDH joined the conspiracy after its incorporation on 26 March 2004 by aiding HPPL and LCL to conceal the dissipation of the Sum. We are unable to accept this argument. VH1's key gravamen against the CA 99 appellants is the loss caused by a conspiracy to misappropriate the Sum. This conspiracy to misappropriate was hatched and executed before HDH came into existence, making it impossible for HDH to have been privy to the agreement or to have taken concerted action in pursuit of such agreement (see *QB Net Co Ltd v Earnson Management (S) Pte Ltd and others* [2007] 1 SLR(R) 1 at [116]). Furthermore, it is not apparent to us that there is a separate claim for conspiracy to conceal, or that VH1 suffered additional loss from the concealment of the misappropriation of the Sum. As such, we decline to find HDH party to HPPL and LCL's conspiracy to cause VH1's loss of the Sum.

Conclusion

49 For the reasons enumerated above, we dismiss the appeal in CA 89/2012 in respect of the tort of fraudulent misrepresentation, but allow the appeal in respect of the tort of unlawful act conspiracy on the part of HPPL and LCL. We dismiss the appeal with regards to HDH's liability for unlawful act conspiracy. We dismiss the cross-appeal in CA 99/2012 as we find that the Sum was at all times transferred for the purpose of investment under the Agreement, and not pursuant to a Currency Exchange Transaction. Further, the CA 99 appellants' third-party claim against CWC and RC is, in our view, misguided. We find no relationship in contract or otherwise between the CA 99 appellants on the one hand and CWC and RC, as the directors of VH1 at the material times, on the other hand that would give rise to an obligation for CWC and RC to indemnify the CA 99 appellants (see *Eastern Shipping Company, Limited v Quah Beng Kee* [1924] AC 177 at 182–183). More fundamentally, the third-party claim was untenable from the start. If any of the CA 99 appellants (who, together with VCH, constitute the CA 89 respondents) were found liable to VH1, it would be on the basis that the Sum was transferred to HPPL for investment, and that it was wrongly withdrawn from the HPPL Account instead of being transferred to FHH. On that basis, there would be no reason for the CA 99 appellants to make a third-party claim against CWC and RC. Whether CWC and RC have separately committed any wrongdoing is another matter. On the other hand, if the allegation about the Currency

Exchange Transaction were made out (*ie*, if the CA 99 appellants were not liable to VH1), the claim by VH1 would be dismissed and there would be no need for any third-party claim against CWC and RC.

50 To conclude, VH1 is entitled to claim jointly from HPPL and LCL damages representing the S$2.125m that was lost. Pursuant to an order of court dated 15 October 2009, such damages are to be paid first to VCH towards the satisfaction of just and proper debts owing by VCH to its creditors and all reasonable costs and expenses incurred by the Liquidator in respect of the liquidation of VCH, with the balance remaining after such application to be paid by the Liquidator to VH1. We decline to grant the remedy of an account of profits because VH1 never argued that a fiduciary relationship existed as between itself and the CA 89 respondents or that there was a *de facto* partnership or that there were any grounds that would entitle it in the circumstances to expect that any of the CA 89 respondents would act in VH1's interests to the exclusion of their own interest, or indeed that any fiduciary duty was breached. Its claim for an account of profits was no more than a throwaway line in its prayers for relief which was unsupported by any pleadings in its Statement of Claim. We are therefore not in a position to grant an account of profits based on breach of fiduciary duty. For the same reason, we are not in a position to order a constructive trust over assets, and furthermore no traceable product of the Sum has been identified.

51 The usual consequential orders will apply. The appellant in CA 89/2012 (*ie*, VH1) and the respondents in CA 99/2012 (*ie*, VH1, CWC and RC) will have their respective costs of the appeal and the cross-appeal. VH1, CWC and RC are also to have their costs below. The parties have 14 days from the date of this judgment to make their written submissions to this court with respect to:

(a) the quantum of the costs of the appeal and the cross-appeal (including reasonable disbursements);

(b) the quantum of costs that ought to be awarded for the proceedings in the court below (including reasonable disbursements); and

(c) the rate at and the period for which interest is payable on the said amount of S$2.125m.

[note: 1] See the Statement of Claim (Amendment No 1) ("SOC") at para 4, and LCL's affidavit filed on 15 September 2011 at para 48 (in the Appellant's Core Bundle for CA 89/2012 ("ACB") Vol 2 at p 112).

[note: 2] See LCY's affidavit filed on 10 October 2011 at paras 8-9 (in the Respondents' Supplemental Core Bundle in CA 89/2012 ("RSCB") at p 11).

[note: 3] See Exhibit LCY-2 of LCY's affidavit filed on 10 October 2011 (in the Joint Record of Appeal ("JRA") Vol 3 (Part 10) at pp 39–49).

[note: 4] See RSCB at p 133.

[note: 5] See RSCB at pp 135–142.

[note: 6] See ACB Vol 3 at p 110.

[note: 7] *Ibid*.

[note: 8] *Ibid*.

[note: 9] *Ibid*.

[note: 10] See ACB Vol 3 at p 28.

[note: 11] *Ibid*.

[note: 12] See ACB Vol 3 at pp 32–34.

[note: 13] See ACB Vol 3 at p 126.

[note: 14] See ACB Vol 3 at p 128.

[note: 15] See ACB Vol 3 at p 127.

[note: 16] See ACB Vol 3 at p 151.

[note: 17] See ACB Vol 3 at p 152.

[note: 18] See CWC's affidavit filed on 10 October 2011 at paras 41–42 (in JRA Vol 3 (Part 6) at p 19).

[note: 19] See LCL's Defence (Amendment No 2) at para 30.

[note: 20] See LCY's affidavit filed on 10 October 2011 at paras 63–70 (in JRA Vol 3 (Part 10) at pp 25–27), and CWC's affidavit filed on 10 October 2011 at paras 54–60 (in JRA Vol 3 (Part 6) at pp 23–25).

[note: 21] See LCY's affidavit filed on 10 October 2011 at para 74 (in JRA Vol 3 (Part 10) at p 29).

[note: 22] There are no minutes of this meeting.

[note: 23] See CWC's affidavit filed on 10 October 2011 at para 105 (in ACB Vol 2 at p 48).

[note: 24] See ACB Vol 3 at pp 62, 65 and 69–85; JRA Vol 3 (Part 7) at pp 260–261; and SOC at para 29.

[note: 25] See CWC's affidavit filed on 10 October 2011 at paras 144–150 (in JRA Vol 3 (Part 6) at pp 51–54).

[note: 26] See CWC's affidavit filed on 10 October 2011 at paras 151–156 (in JRA Vol 3 (Part 6) at pp 54–55).

[note: 27] See ACB Vol 3 at pp 87–89.

[note: 28] See ACB Vol 3 at pp 94–98.

[note: 29] See SOC at para 21.

[note: 30] See SOC at paras 41–42.

[note: 31] See SOC at para 43.

[note: 32] See the Respondents' Case for CA 89/2012 ("RC (CA 89)") at para 9.

[note: 33] See RSCB at pp 181–182.

[note: 34] See RSCB at pp 170–171.

[note: 35] See RSCB at pp 194–195.

[note: 36] See RSCB at pp 186–187.

[note: 37] See RSCB at pp 175–176.

[note: 38] See RSCB at pp 201–202.

[note: 39] See, *inter alia*, RSCB at pp 175–176.

[note: 40] See LCL's Defence (Amendment No 2) at paras 14–16.

[note: 41] See the Appellants' Case for CA 99/2012 at para 10.

[note: 42] See ACB Vol 3 at p 28.

[note: 43] See ACB Vol 3 at pp 32–34.

[note: 44] See ACB Vol 3 at p 49.

[note: 45] See ACB Vol 3 at p 50.

[note: 46] See ACB Vol 3 at p 59.

[note: 47] See ACB Vol 3 at p 62.

[note: 48] See LCY's affidavit filed on 10 October 2011 at paras 42–45 (in JRA Vol 3 (Part 10) at pp 18–19).

[note: 49] See CWC's affidavit filed on 10 October 2011 at para 52 (in JRA Vol 3 (Part 6) at p 22).

[note: 50] See Exhibit CWC-128 of CWC's affidavit filed on 10 October 2011 (in JRA Vol 3 (Part 7) at pp 125–133).

[note: 51] See Exhibit CWC-132 of CWC's affidavit filed on 10 October 2011 (in JRA Vol 3 (Part 7) at pp 147–156).

[note: 52] See Exhibit CWC-147 of CWC's affidavit filed on 10 October 2011 (in JRA Vol 3 (Part 7) at pp 243–249).

[note: 53] See RC (CA 89) at paras 10–11.

[note: 54] See HHQ's affidavit filed on 10 October 2011 at paras 25–28 (in JRA Vol 3 (Part 12) at pp 178–180).

[note: 55] See HHQ's affidavit filed on 10 October 2011 at para 44 (in JRA Vol 3 (Part 12) at p 187).

[note: 56] See LCL's affidavit filed on 15 September 2011 at para 74 (in ACB Vol 2 at p 114).

[note: 57] See Liu Yongmin's affidavit dated 29 April 2009 at para 7 (in ACB Vol 3 at p 213).

[note: 58] See LCL's Defence (Amendment No 2) at para 19.

[note: 59] See, *inter alia*, RSCB at pp 175–176.

[note: 60] See ACB Vol 3 at p 115.

[note: 61] See BOC financial history transaction list in ACB Vol 3 at pp 117–119.

[note: 62] See LCL's affidavit filed on 15 September 2011 at para 56 (in JRA Vol 3 (Part 12) at p 59).

[note: 63] See LCL's affidavit filed on 15 September 2011 at para 77 (in ACB Vol 2 at p 115).

[note: 64] See LCL's affidavit filed on 15 September 2011 at paras 65–67 (in JRA Vol 3 (Part 12) at pp 63–64).

[note: 65] See RSCB at pp 219–220.

[note: 66] See ACB Vol 3 at p 208.

[note: 67] See RSCB at p 129.

[note: 68] See the Appellant's Case for CA 89/2012 at para 57.

[note: 69] See ACB Vol 3 at p 13.