IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 157

Suit No 616 of 2015

Between

Venkatraman Kalyanaraman

… *Plaintiff/Appellant*

And

(1) Nithya Kalyani
(2) Sri Murali s/o Sinnothei Renganathan
(3) Marimuthu Palaniswami

… *Defendants/Respondents*

GROUNDS OF DECISION

[Civil Procedure] — [Striking out]

[*Res judicata*] — [Extended doctrine of *res judicata*]

[*Res judicata*] — [Issue estoppel]

[Companies] — [Derivative action] — [Common law derivative action]

[Companies] — [Oppression] — [Minority shareholders]

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v
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Hoo Sheau Peng JC
4 January; 19 February; 18 April 2016

10 August 2016

Hoo Sheau Peng JC:

Introduction

1 Pursuant to an application brought by the defendants ("the Defendants") under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the learned Assistant Registrar ("AR") struck out the statement of claim ("SOC") and reply ("Reply") of the plaintiff, Mr Venkatraman Kalyanaraman ("the Plaintiff"). By way of Registrar's Appeal No 336 of 2015, the Plaintiff appealed against the AR's decision. I dismissed the appeal on the grounds that the claims based on a first set of allegations ought to be struck out as an abuse of process under O 18 r 19 (1)(*d*) pursuant to the rule in *Henderson v Henderson* (1843) 3 Hare 100 (to be referred to as "the *Henderson* rule" and "*Henderson*" respectively), and that the claims based on a second set of

allegations ought to be struck out as disclosing no reasonable cause of action under O 18 r 19(1)(*a*).

2 I should add that in the course of the appeal, the Plaintiff twice sought to amend the SOC. The first was an informal application, with the proposed amendments contained in a draft amended SOC ("the first draft amended SOC") annexed to a further round of written submissions. Thereafter, and pursuant to directions, a formal application was filed via Summons No 1228 of 2016, with revised amendments contained in the second draft amended SOC annexed thereto ("the second draft amended SOC"). As the second draft amended SOC would not cure the defects in the SOC in relation to the claims based on the second set of allegations, and would still be liable to be struck out on various grounds under O 18 r 19(1), I dismissed the Plaintiff's application to amend.

3 The Plaintiff has appealed against the outcome in Registrar's Appeal No 336 of 2015. I now give my reasons, beginning with the background facts.

Background facts

4 The parties' disputes relate to a company known as Akashya Systems Pte Ltd ("Akashya"). The Plaintiff, a resident of India, used to own 50% of the shares in Akashya. Following certain events in 2005, the Plaintiff's shareholding was reduced, and now stands at 8%.

5 The first defendant, Ms Nithya Kalyani ("the First Defendant") is a director of Akashya, as well as its secretary. The second defendant, Mr Sri Murali s/o Sinnothei Renganathan ("the Second Defendant") was the former auditor of Akashya. He is also the First Defendant's husband. The third defendant, Mr Marimuthu Palaniswami ("the Third Defendant") is an

Australian national who is a director and shareholder of Akashya. Like the Plaintiff, he used to own 50% of Akashya's shares, and presently his shareholding is also 8%.

6 The last shareholder of Akashya, owning the remaining 84% of its shares, is a company known as Collaborative Business Systems Pte Ltd ("Collaborative"). The Third Defendant is the sole shareholder of Collaborative, and the Second and Third Defendants are its directors.

7 The shareholding structure described above came about after an Extraordinary General Meeting purportedly held on 6 July 2005 ("the 6 July 2005 EGM"). At the 6 July 2005 EGM, a shareholders' resolution was ostensibly passed, issuing fresh shares for Akashya at S$1.00 each ("the 6 July 2005 resolution"). This substantially increased the share capital of Akashya. All the newly issued shares were purchased by Collaborative, resulting in the reduction in the Plaintiff's shareholding from 50% to 8%. The Plaintiff challenged the validity of the 6 July 2005 resolution, and this led to the events set out below.

The Plaintiff's complaints to the authorities

8 On 10 June 2009, the Plaintiff wrote to the Accounting and Corporate Regulatory Authority ("ACRA"), making various allegations against the Defendants. He claimed that the Defendants had falsified documents submitted to ACRA and falsified the Plaintiff's signature on various company documents, including the minute sheet for the 6 July 2005 EGM. In fact, the Plaintiff alleged that the 6 July 2005 EGM never took place. He also alleged that the fresh shares of Akashya were issued at below its actual value. Thus, the Plaintiff claimed that the Defendants "fraudulently conspired to cheat [the Plaintiff] by diluting [his] shareholdings" in Akashya from 50% to 8%. By the

actions, the Defendants had purportedly failed to comply with their duties of integrity, objectivity, professionalism and due care. The Plaintiff also lodged a police report on this matter in India.

DC 3814/2009: defamation proceedings by the Defendants

9 In response to the Plaintiff's allegations in his letter to ACRA, the Defendants commenced DC 3814/2009, bringing an action in defamation against the Plaintiff. The Plaintiff duly filed a defence, raising the defences of fair comment, justification and qualified privilege. In so doing, he elaborated that the Defendants had "conspired to defraud" him, that Akashya had issued new shares to Collaborative without his consent, knowledge and approval, that Collaborative was wholly owned by the Third Defendant, with the First and Third Defendants as its directors, and that his shareholding had been diluted from 50% to 8%.

10 On 12 September 2011, the first day of the trial for the matter, the parties reached a settlement and entered into two written agreements, both of which were tendered to the court for the terms to be recorded. The full terms of the first written agreement ("the Settlement Agreement") are as follows:

> 1. The [Plaintiff] hereby retracts all allegations made by him that are the subject matter of the proceedings herein [*ie*, in DC 3814/2009] whether such allegations were made in Singapore or India.
>
> 2. The [Plaintiff] undertakes not to make the same or similar allegations in Singapore or in India.
>
> 3. The [Plaintiff] shall withdraw any complaints or first information reports made, whether in India or in Singapore.
>
> 4. The [Defendants] shall not make any reports or complaints against the [Plaintiff], whether in India or in Singapore.
>
> 5. The [Plaintiff] shall pay the [Defendants] the sum of S$100,000.

> 6. In consideration of the above, the [Defendants] shall discontinue this action forthwith.

11 The second written agreement was a sale and purchase agreement, which provided that the Third Defendant was to purchase the entire shareholding of the Plaintiff in Akashya for S$750,000.

DC 264/2012: enforcement proceedings by the Defendants

12 After futile attempts to proceed with the transfer of the Akashya shares under the second written agreement, and to obtain the payment of S$100,000 under clause 5 of the Settlement Agreement, the Defendants commenced DC 264/2012 to enforce the payment of S$100,000. On 8 November 2012, in light of the Plaintiff's failure to enter an appearance or file a defence, default judgment was entered in favour of the Defendants. The default judgment, *inter alia*, ordered the Plaintiff to pay the sum of S$100,000 to the Defendants. The Defendants proceeded to enforce the default judgment against the Plaintiff by way of a writ of seizure and sale on 13 May 2013. As the Plaintiff had no other assets in Singapore, his shares in Akashya were seized.

13 Almost a year after the default judgment, on 10 October 2013, the Plaintiff filed an application to set it aside and to stay any execution proceedings arising from the default judgment on the grounds that there had been irregular service of the writ of summons and/or that the two written agreements were void due to illegality or public policy. This application was dismissed by a deputy registrar on 21 July 2014. The Plaintiff's appeals to a District Judge and then to a High Court Judge were dismissed on 20 August 2014 and 26 November 2014 respectively. The Plaintiff's summons for leave to appeal to the Court of Appeal was dismissed by the High Court Judge on 21 January 2015.

14 The Defendants then proceeded to enforce the default judgment by way of a second writ of seizure and sale. The auction arising from the writ of seizure and sale was scheduled to be conducted on 8 July 2015.

The present action

The Plaintiff's pleaded case

15 Two weeks before the scheduled auction, on 22 June 2015, the Plaintiff commenced the present action. After the commencement of the action, the Plaintiff filed an injunction application to restrain the Defendants from dealing with his remaining 8% shares in Akashya, pending a final determination of the present suit. The parties subsequently agreed that there be no substantive order made on the application, while the Defendants would not proceed with the auction.

16 As pleaded in the SOC, the Plaintiff's case rests on two main causes of action, supported by essentially the same allegations. First, he claimed that the Defendants engaged in unlawful means conspiracy with one another to dilute the shareholding of the Plaintiff, gain control of Akashya, as well as deprive the Plaintiff of the ownership and profits of Akashya. Further or in the alternative, he claimed that the First and Third Defendants, as directors of Akashya, breached their duties to act *bona fide* in the interests of Akashya, and to act for proper purposes.

17 Broadly, the claims were premised on two sets of allegations:

(a) First, there are allegations relating to how the Plaintiff's shareholding in Akashya came to be diluted, which I will continue to refer to subsequently as "the first set of allegations" (as so referred to in [1]). Essentially, it is alleged that at the time of the 6 July 2005

EGM, a minimum of two shareholders was needed to pass certain resolutions, including a resolution to issue new share capital. After receiving calls from the Third Defendant who asked the Plaintiff to come to Singapore from India to attend a "CPIB probe" relating to Akashya, the Plaintiff duly came to Singapore on 5 July 2005 and returned to India on 7 July 2005. During the period he was in Singapore, the Defendants forged his signature on the EGM attendance sheet and minutes, thereby passing the 6 July 2005 resolution which issued 250,000 fresh shares for Akashya at S$1.00 each, on the pretext of obtaining additional finance for Akashya. All the fresh shares were bought by Collaborative. These shares were issued at an undervalue as they could have been priced at S$86.00 per share at that time. As a result of the events, the Plaintiff's shareholding in Akashya was reduced from 50% to 8%.

(b) Second, there are allegations relating to loans, diversion of assets and diversion of business from Akashya to other companies, which I will continue to refer to subsequently as "the second set of allegations" (as so referred to in [1]–[2]). Essentially, it is alleged that after the events above, from 2006 to 2012, the Defendants lent Akashya's assets to Collaborative. None of the loans were repaid. The Defendants also diverted Akashya's assets to Oceana Enterprises Pte Ltd ("Oceana"), a subsidiary of Collaborative. The Defendants further diverted Akashya's business to Collaborative.

18 The Plaintiff thus claimed, against the Defendants, damages, an order declaring that the 6 July 2005 EGM and the resolution were null and void, an order declaring that the sale of shares to Collaborative was null and void, and an injunction to prevent the Defendants from dealing with the Plaintiff's

remaining 8% shares in Akashya, pending a final determination of the Plaintiff's claims in the present action.

The Defendants' pleaded case and the application to strike out

19 In the Defence and Counterclaim (Amendment No 1), the Defendants denied the claims, and reserved the right to apply to strike out the SOC. According to the Defendants, the Plaintiff was aware that the purpose of the 6 July 2005 EGM was to issue fresh shares, had attended the meeting, and approved the resolution. The Defendants averred that Akashya was a dormant company, and charged interest on the loans extended to Collaborative. In any case, Collaborative was engaged in business of a different nature from that of Akashya. Subsequently, the Defendants applied for the SOC and the Reply to be struck out, relying on various limbs under O 18 r 19(1) of the Rules of Court. After the AR granted the Defendants' application, the Plaintiff appealed against the decision.

The parties' positions on appeal

20 On appeal, parties filed three sets of written submissions on 28 December 2015, 18 January 2016 and 13 April 2016 for the three hearings on 4 January 2016, 19 February 2016 and 18 April 2016 respectively. In the main, the second and third rounds of written submissions clarified the parties' positions which had shifted somewhat during the course of the appeal.

21 To summarise, the Defendants' principal contention was that the Plaintiff's claims ought to be struck out as an abuse of process under O 18 r 19(1)(*d*) of the Rules of Court pursuant to the *Henderson* rule. The Defendants contended that the first set of allegations had been brought up in DC 3814/2009, which culminated in the Settlement Agreement. The Plaintiff

should not be allowed to raise these same factual and legal issues in the present proceedings. Although the second set of allegations might not have been specifically raised in DC 3814/2009, it nonetheless fell within the ambit of the Settlement Agreement. In all the circumstances of the case, the Plaintiff should also be precluded from raising any claims based on the second set of allegations under the *Henderson* rule. Regarding the question of the validity of the Settlement Agreement, the Defendants' position was that the enforcement proceedings in DC 264/2012 had conclusively dealt with the issue. Therefore, issue estoppel applied and the Plaintiff should be estopped from alleging that the Settlement Agreement was void for illegality and/or public policy: *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal* [2015] 5 SLR 1104 ("*TT International Ltd*") at [100].

22 The Plaintiff, on the other hand, argued that because the Settlement Agreement was a contract and no more, principles of *res judicata* and abuse of process (including the *Henderson* rule) did not enter into the equation at all. For this proposition, the Plaintiff cited *Cost Engineers (SEA) Pte Ltd and another v Chan Siew Lun* [2016] 1 SLR 137 ("*Cost Engineers*") and *Low Heng Leon Andy v Law Kian Beng Lawrence (administrator of the estate of Tan Ah Kng, deceased)* [2013] 3 SLR 710 ("*Low Heng Leon Andy*"). In any event, the Plaintiff maintained that the Settlement Agreement in DC 3814/2009 was void on the grounds of illegality and/or public policy because of fraud perpetuated by the Defendants. Even if the *Henderson* rule were to be applicable, the Plaintiff argued that he fell within "exceptions" thereto, as set out in *Tan Bee Hoon (executrix for the estate of Quek Cher Choi, deceased) and another v Quek Hung Heong and others* [2015] SGHC 229 ("*Tan Bee*

Hoon"). Further, and in any event, based on all the circumstances, the Plaintiff argued that he should not be barred from bringing the claims.

23 In the course of the first hearing, an issue which arose was whether the Plaintiff, as a shareholder of Akashya, was the proper plaintiff to bring claims based on the second set of allegations which appeared to be wrongs done to Akashya. If he was not, the claims were liable to be struck out as disclosing no reasonable cause of action under O 18 r 19(1)(*a*) of the Rules of Court. To overcome the proper plaintiff rule, in the second amended draft SOC, the Plaintiff proposed to introduce a further cause of action, namely, common law derivative action, and alluded to another cause of action, namely minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed). I shall deal with the contentions of the parties in relation to the proposed amendments in due course.

The issues on appeal

24 Given the foregoing, three main issues arose for determination as follows:

(a) First, whether the *Henderson* rule may be engaged in later proceedings if the earlier proceedings concluded in a settlement agreement.

(b) Second, if the *Henderson* rule may be engaged, whether the Plaintiff should be precluded from bringing claims based on (i) the first set of allegations, and/or (ii) the second set of allegations. This encompassed the sub-issue of whether the Plaintiff should be precluded from challenging the validity of the Settlement Agreement.

(c) Third, if the *Henderson* rule should not be applied to preclude the Plaintiff's claims based on the second set of allegations, whether the claims should be struck out as disclosing no reasonable cause of action under O 18 r 19(1)(*a*), on the basis that the Plaintiff was not the proper plaintiff to bring these claims. This required consideration of the sub-issue of whether the Plaintiff's proposed amendments by way of the second draft amended SOC would cure the defects in the SOC, and thus be allowed to save the claims from being struck out.

Issue (a): Whether the *Henderson* rule may be engaged in later proceedings if the earlier proceedings concluded in a settlement agreement

25 Before turning to the first issue proper, it is useful to briefly explain the *Henderson* rule. Also known as the "extended doctrine of *res judicata*", the *Henderson* rule extends the plea of *res judicata* "not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment on, but to every point which properly belonged to the subject of litigation, and which [the] parties, exercising reasonable diligence, might have brought forward at the time": *Henderson* at 115, endorsed in *TT International Ltd* at [101]. The *Henderson* rule operates to preclude litigants in later proceedings from raising points not previously decided because they were not raised in the earlier proceedings, even though they *could and should* have been raised in those proceedings. It extends *cause of action estoppel* and *issue estoppel* which, broadly speaking, are concerned only with precluding litigants in later proceedings from arguing points which had actually and already been decided by a court in earlier proceedings between the same parties: *TT International Ltd* at [102].

26 To recapitulate, the Plaintiff's argument (at [22]) was that the doctrines of *res judicata* and abuse of process would not apply at all to the present proceedings. The Settlement Agreement which concluded DC 3814/2009 was a contract and no more, and only contractual principles should apply to govern the Settlement Agreement (and presumably whether the parties should abide by it).

27 In my view, this argument was without merit, and the Plaintiff's reliance on *Cost Engineers* was misconceived. In *Costs Engineers*, the earlier proceedings terminated with a consent judgment, and the High Court held that a consent judgment was capable of forming the basis for the application of *res judicata* and giving rise to issue estoppel (at [56]). This was because a consent judgment was nonetheless a final decision, albeit obtained by consent of the parties rather than judicial pronouncement on the merits (at [57] and [60]). However, on the facts, the High Court held that issue estoppel did not arise in relation to the issue of the ambit of the expression "dividends and profits", as the consent judgment had not decided on this issue (at [80] and [83]).

28 Nonetheless, the High Court observed in *Costs Engineers*, at [62], that "issue estoppel would not be applicable" when the earlier proceedings concluded with a settlement agreement, without any consent judgment being entered into. Before me, the Plaintiff relied on this specific portion of *Cost Engineers* to argue that the *Henderson* rule would be inapplicable in the present case. However, as observed in *TT International Ltd* (at [98]), issue estoppel and the *Henderson* rule are "distinct but interrelated" principles. Issue estoppel arises "when a court of competent jurisdiction has determined some question of fact or law, either in the course of the same litigation (for example, as a preliminary point) or in other litigation which raises the same point between the same parties": *Watt (formerly Carter) and others v Ahsan* [2008]

1 AC 696 at [31], as cited in *TT International Ltd* at [100]. Issue estoppel is narrower than the *Henderson* rule. It is clear that *Costs Engineers*, at [62], did not preclude the application of the *Henderson* rule to cases that are ultimately settled.

29 Arguing to the contrary, the Defendants pointed me to the English position in *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 ("*Johnson*"), where Lord Millett stated (at 59) that the *Henderson* rule is capable of applying even in situations where the first action culminated in a compromise or settlement and did not continue through to a judgment (see also *Johnson* at 32 (*per* Lord Bingham of Cornhill) and *Foskett on Compromise* (David Foskett gen ed) (Sweet & Maxwell, 8th Ed, 2015) at paras 6-09, 6-14 and 6-15). This proposition was referred to in the recent local case of *Ng Kong Choon v Tang Wee Goh* [2016] 3 SLR 935 ("*Ng Kong Choon*") at [31], although the case itself was primarily concerned with whether a statutory prohibition would bar the institution of subsequent proceedings. I agreed with the position set out in *Johnson* for the following reasons.

30 First, the public policy grounds underpinning the *Henderson* rule are to bring finality to litigation and to avoid subjecting a defendant to the harassment of being involved in successive actions concerning the same subject matter (*Johnson* at 31 and 59). For this reason, the same effect should flow from a case that concludes with a settlement agreement as one that culminates in a judgment on the merits, since a settlement is intended to be an equally final form of resolution of the parties' disputes. Indeed, to hold otherwise would be to undermine the promotion of amicable settlements of disputes. The *Henderson* rule, which precludes the raising of issues that could or should have been raised in earlier litigation, would "protect the integrity of the settlement" and prevent a party from being "misled into believing that he

was achieving a complete settlement of the matter in dispute when an unsuspected part remained outstanding" (*Johnson* at 59). As Lord Bingham opined in *Johnson* at 32–33, "[a] second action is not the less harassing because [a party] has been driven or thought it prudent to settle the first; often, indeed, that outcome would make a second action the more harassing."

31 Second, in fact, local cases have considered the applicability of the *Henderson* rule, even where the proceedings concluded amicably. In *Low Heng Leon Andy*, which the Plaintiff relied on, the original proceedings under O 81 of the Rules of Court were brought by the defendant against the plaintiff for immediate possession of a flat owned by his deceased relative. The parties then reached a settlement which was recorded as a consent order. The consent order stated that the defendant was to abandon any claims against the plaintiff if the plaintiff delivered vacant possession of the flat to the defendant. The plaintiff subsequently commenced an action against the defendant based on proprietary estoppel, seeking monetary compensation, as a challenge to the settled proceedings. The defendant applied to strike out the plaintiff's claim, *inter alia,* on the ground that the claim was *res judicata*. The court considered that issue estoppel did not arise, as the consent order was not conclusive on the merits of the O 81 application, including the issue of whether any equity in favour of the plaintiff arose by way of proprietary estoppel (at [54]). More importantly, the court duly considered whether the *Henderson* rule applied to render the plaintiff's belated claim an abuse of process. However, on the facts, the court concluded that it did not (at [61]).

32 The applicability of the *Henderson* rule was also examined in *Goh Yee Fong Peter v Cornelis Arnold Van Fenema (also known as Nol Van Fenema) and Others* [2004] SGDC 182 ("*Goh Yee Fong Peter*"), which both parties relied on before the AR and again before me on appeal. In that case, there was

a previous High Court suit brought by two companies against the plaintiff for unlawful conspiracy in diverting business away from these companies. After mediation, these proceedings were eventually settled by way of a settlement agreement on a "full and final" basis in respect of all issues in the High Court suit. Subsequently, the plaintiff brought an action in defamation against the defendants (a director and an employee of the two companies that brought the High Court suit), relying on two offending online articles which alleged that the plaintiff had committed criminal breach of trust and theft of office property. The District Judge allowed the defendants' application to strike out the plaintiff's action and found that it was an abuse of the process of the court based on the *Henderson* rule (at [25]), as the plaintiff had already been aware of the first article at the time of settling the High Court suit, but did not include his claim in the settlement agreement (at [24]). On appeal, this portion of the District Judge's decision was upheld by the High Court.

33 From the cases above, it is evident that the *Henderson* rule may be engaged when the earlier proceedings concluded amicably, be it by way of a consent judgment or order issued by the court (such as in *Low Heng Leon Andy*), or where the settlement agreement was entered into privately, without being embodied in a court judgment or order (such as in *Goh Yee Fong Peter*). In my view, there is no principled basis for drawing a distinction between the two forms of settlement. In either case, the policy considerations in favour of the *Henderson* rule applying (see [30] above) are equally relevant. By the foregoing, I was of the view that the *Henderson* rule may be engaged in the present case. With that, I shall turn to the next issue.

Issue (b): Whether the Plaintiff's claims should be precluded by the *Henderson* rule

The applicable approach

34 In applying the *Henderson* rule, it has been said that the question of whether a litigant should be prevented from taking a point that could have been raised in earlier proceedings is not a "dogmatic" inquiry, but rather, a "broad, merits-based judgment" focusing on whether, in all the circumstances, a party is abusing the process of the court by seeking to raise before it an issue which could have been raised before: *Johnson* at 31, cited in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [52] and *TT International Ltd* at [104]. In *Goh Nellie* at [53], it was stated that the relevant (non-exhaustive) factors the court should consider include:

(a) Whether the later proceedings in substance is nothing more than a collateral attack upon the previous decision;

(b) Whether there is fresh evidence that might warrant re-litigation;

(c) Whether there are *bona fide* reasons why an issue that ought to have been raised in the earlier action was not; and

(d) Whether there are some other special circumstances that might justify allowing the case to proceed.

35 At this juncture, I turn to the Plaintiff's contention that there are definite "exceptions" to the *Henderson* rule, as set out in *Tan Bee Hoon* at [21]. According to the Plaintiff, such "exceptions" include cases where (i) the second action was a consequence of the first, (ii) new circumstances subsequently arose, (iii) there was impecuniosity or other explanation for the lack of initial action, and (iv) there were other grounds in which it was

reasonable that an issue was not earlier raised. The present case, the Plaintiff argued, fell within the second and third "exceptions", and it would then follow that the Plaintiff should not be barred from pursuing the claims. In response, the Defendants argued that *Tan Bee Hoon* at [21] did not mean to set out definitively the circumstances in which the *Henderson* rule did not apply. This was because the High Court qualified at [23] that "[m]uch depend[ed] on an appreciation of the overall justice of the case" and that "[i]t [was] unlikely that any definitive rule could be developed".

36 In my judgment, *Tan Bee Hoon* did not set out definite "exceptions" to the *Henderson* rule. It surveyed and summarised precedent cases in which, *on the facts*, the *Henderson* rule did not apply because there are "reasonable grounds for not having raised the issue earlier" (see *Tan Bee Hoon* at [21]). The scenarios set out in *Tan Bee Hoon* are examples of the matters, especially the matters within the third factor in *Goh Nellie* (see summary at [34(c)] above), to be taken into account by the court. At the end of the day, the broad-based inquiry is whether, having regard to the substance and reality of the earlier action, the issues raised in later proceedings ought to reasonably have been raised earlier: see *Goh Nellie* at [53].

37 By way of further guidance in conducting this inquiry, where the earlier proceedings have concluded by way of a settlement agreement, the court in the later proceedings should examine the nature and scope of the settlement agreement so as to identify the precise disputes that have already been settled between the parties. Thereafter, the court will then be able to apply a broad-based approach to determine whether, despite the settlement, the later action is, in all the circumstances, an abuse of the process of the court: see *Ng Kong Choon* at [31]. However, before going there, it is appropriate to now deal with a distinct challenge by the Plaintiff as to the validity of the

Settlement Agreement. Should it be open to the Plaintiff to do so, it seemed to me that it would be an important circumstance to consider in applying the *Henderson* rule.

Validity of the Settlement Agreement

38 In essence, the Plaintiff submitted that the Settlement Agreement in DC 3814/2009 was void on the grounds of illegality and public policy because of fraud perpetuated by the Defendants. In response, the Defendants relied on issue estoppel. They argued that the enforcement proceedings in DC 264/2012 had conclusively dealt with the issue of the validity of the Settlement Agreement. Therefore, the Plaintiff should be barred from disputing the validity of the Settlement Agreement.

39 At [28] above, I have set out how issue estoppel operates. In the present case, the specific issue in contention is the validity of the Settlement Agreement. It bears reminding that in DC 264/2012, the Defendants obtained a default judgment to enforce the Settlement Agreement. In attempting to set aside the default judgment, arguments on the validity of the Settlement Agreement on various substantive grounds had been raised by the Plaintiff. These were conclusively rejected by various tiers of courts of competent jurisdiction which refused the Plaintiff's application to set aside the default judgment: see [12]–[14]. In particular, from a perusal of the notes of evidence before the deputy registrar, the grounds of illegality, public policy and fraud were raised by the Plaintiff. The District Judge held that "the settlement [was] … one which was recorded in open court with all parties legally represented" and the High Court Judge similarly stated that the "[s]ettlement terms and agreement [were] clearly reached with [the] benefit of legal advice". Indeed,

this issue has been conclusively determined in the earlier proceedings, and in my view, the Plaintiff should not be allowed to re-litigate this point.

Nature and scope of the Settlement Agreement

40 With that, I turn to the nature and scope of the Settlement Agreement. The Plaintiff contended that the Settlement Agreement was entered in relation to DC 3814/2009, where the cause of action was in defamation. Thus, the Settlement Agreement should be read narrowly as putting an end only to the defamation matter. The writ of summons and SOC in the present suit on the other hand, the Plaintiff claimed, disclosed different causes of action. Thus, the Plaintiff should be given the opportunity to have these aspects of his pleadings heard, especially given that several matters developed only in recent years.

41 By contrast, the Defendants relied on the recent English High Court decision of *Jeff Brazier v News Group Newspapers Ltd* [2015] EWHC 1225 (Ch) ("*Brazier*") to argue that the Settlement Agreement should be construed more broadly to mean that the Plaintiff had agreed to compromise *all* allegations of fraud and unlawful conspiracy carried out by the Defendants, whether or not the Plaintiff, at the time of signing the Settlement Agreement, knew the full extent of the Defendants' purported acts.

42 At this juncture, I return to the pertinent terms of the Settlement Agreement which state:

> 1. The [Plaintiff] hereby retracts all allegations made by him that are the subject matter of the proceedings herein [*ie*, in DC 3814/2009] whether such allegations were made in Singapore or India.
>
> 2. The [Plaintiff] undertakes not to make the same or similar allegations in Singapore or in India.

In my view, read together, these two clauses relate to allegations "that are the subject matter of the proceedings herein [*ie*, in DC 3814/2009]". Under clause 1, the Plaintiff promised to "retract" these allegations. Under clause 2, the Plaintiff undertook "not to make the same or similar allegations" in the future.

43 As I shall expand on later, the Settlement Agreement could not be read as narrowly as contended by the Plaintiff, or as widely as contended by the Defendants (see [47] and [53]–[55] below). In essence, the Settlement Agreement sought to prevent any further disputes concerning "the same or similar allegations" raised in DC 3814/2009. At this juncture, therefore, the key questions are, first, what allegations were the "subject matter" of DC 3814/2009; second, what the allegations in the present suit were; and third, whether the two groups of allegations were "the same or similar".

Broad-based inquiry

44 By way of a table, which builds on an analysis by the Defendants, I compare the first and second sets of allegations raised in the present suit, with the allegations made in DC 3814/2009.

No	**Allegation**	**Nature of Allegation**	**DC 3814/2009**	**Present Suit**
First set of allegations relating to dilution of the Plaintiff's shareholding				
1	The Defendants unlawfully conspired to dilute the Plaintiff's shareholdings from 50% to 8%.	Dilution of the Plaintiff's shareholding	SOC in DC 3814/2009 paras 5(a), 5(e), 5(h), 6(a) and 6(c); Defence in DC 3814/2009 para 7(b)	SOC in S616/2015 paras 5, 6(r)
2	The Defendants falsely told the Plaintiff that		Plaintiff's Affidavit of	SOC in S616/2015

	the latter had to come to Singapore to attend a "CPIB probe".		evidence-in-chief ("AEIC") dated 14 January 2011, paras 5–7	paras 6(c)-6(i)
3	The Defendants forged the Plaintiff's signature in the EGM attendance sheet in 2005.		SOC in DC 3814/2009 para 6(b)	SOC in S616/2015 para 6(j)
4	The Defendants forged the Plaintiff's signature on a Statutory Declaration.		Plaintiff's AEIC dated 14 January 2011, para 139	SOC in S616/2015 para 6(j)
5	As a result, the Defendants were able to pass a shareholders' resolution which increased Akashya's share capital.		Defence in DC 3814/2009 para 11, 12	SOC in S616/2015 para 6(k), 6(m)
6	The Defendants transferred the additional shares in Akashya to Collaborative (where Second and Third Defendants are directors and the Third Defendant owned entire share capital).		Defence in DC 3814/2009 para 7(b), 7(c), 11, 12	SOC in S616/2015 para 6(n), 6(t)
Second set of allegations relating to loans, diversion of assets and diversion of business				
7	The Defendants lent Akashya's assets to Collaborative from 2006–2012. The loans have not been repaid.	Detriment to Akashya	-	SOC in S616/2015 para 6(u) and 6(w)(5)–(12)
8	The Defendants diverted Akashya's		-	SOC in S616/2015

	assets to Oceana.			para 6(w)(13)
9	The Defendants diverted Akashya's business to Collaborative.		-	SOC in S616/2015 para 6(v)

The first set of allegations

45 From the table above, it was evident that the first set of allegations completely overlapped with (*ie*, were clearly "the same or similar" to) the Plaintiff's allegations which were the subject matter of proceedings in DC 3814/2009.

46 In my view, the Settlement Agreement, as worded, aimed to put an end to the parties' disputes based on the first set of allegations. The Defendants undertook to discontinue DC 3814/2009 (clause 6) in exchange for the Plaintiff undertaking to retract the allegations made against the Defendants, and not to make the same or similar allegations in the future (clauses 1 and 2). The Plaintiff, having entered into the Settlement Agreement, should not be allowed to raise the same disputes, as that was precisely what he had undertaken *not* to do. In fact, I should say that in raising the very allegations that he had expressly undertaken not to in the Settlement Agreement, the Plaintiff had attempted to use the judicial process to circumvent the clear effect of a contractual agreement between the parties. The process of the court was thus used for some other ulterior or collateral purpose (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22].

47 In this respect, I noted the Plaintiff's position (at [40] above) that DC 3814/2009 was an action in defamation, whereas the present suit was

concerned with different causes of action. This might be true. However, the very purpose of the *Henderson* rule is to stop parties from bringing up "every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time". The present causes of action were based on the very same factual and legal disputes in the earlier proceedings and would still be susceptible of falling within the *Henderson* rule.

48 At this juncture, I turn to the Plaintiff's contention that there were new circumstances involved, as the Plaintiff was not aware of the full extent of the fraud allegedly perpetrated by the Defendants, until he received a "financial consultant's report" dated 3 November 2013 from an "independent financial consultant". Further, the Plaintiff claimed that he did not have the means or resources to carry out the present litigation at an earlier stage because he had no means to hire and pay for legal representation then. Based on these two circumstances, the Plaintiff contended that the claims should be allowed to proceed. I turn to each of these two matters.

49 First, in relation to the first set of allegations, it was clear to me that no *relevant* new circumstances had arisen after the Settlement Agreement. The first set of allegations was based on exactly the same facts as those raised at the time of DC 3814/2009 (see the table at [44] above). At [57] below, I recognise that part of the second set of allegations arose after the Settlement Agreement, and assess the impact on the claims based on that. Be that as it may, the second set of allegations (in relation to the misconduct after diluting the Plaintiff's shareholding) had nothing whatsoever to do with the claims based on the first set of allegations (which focused on the dilution of the Plaintiff's shareholding).

50 Second, as for the Plaintiff's claim that he lacked the means to bring the causes of action earlier, this appeared to be nothing more than a mere assertion on his part. On the contrary, I noted that the Plaintiff was legally represented in DC 3814/2009, up to the very first day of the trial. Having already raised the very same allegations against the Defendants by way of the defences of fair comment, justification and qualification, it was difficult to place any weight on the claim of impecuniosity preventing him from bringing a counterclaim in DC 3814/2009.

51 In my assessment, there were no *bona fide* reasons why the causes of action based on the first set of allegations could not have been brought at the time of DC 3814/2009. There were also no special reasons to allow the Plaintiff to re-litigate the first set of allegations. Since the Settlement Agreement specifically envisaged that the first set of allegations was not to be raised subsequently, I was of the view that it was an abuse of process under the *Henderson* rule for the Plaintiff to bring claims based on the first set of allegations. If claims based on the first set of allegations were not precluded under the *Henderson* rule, the very disputes that the Settlement Agreement intended to extinguish would be revived, and the Plaintiff would be allowed to escape from his earlier bargain.

The second set of allegations

52 Turning to the second set of allegations, from the table at [44], I was not convinced that the allegations were "the same or similar" to those which were the subject matter of proceedings in DC 3814/2009. In my view, therefore, the second set of allegations was not within the scope of the Settlement Agreement.

53 In this regard, the Defendants' reliance on *Brazier* to argue that the Plaintiff had, in the Settlement Agreement, undertaken to compromise *all* allegations of fraud and unlawful conspiracy carried out by the Defendants (including the second set of allegations) could not be sustained. In *Brazier*, the plaintiff sued a tabloid newspaper, complaining about the activities of an investigator who wrongfully intercepted voicemail messages left on his mobile phone (also known as "phone hacking"). The claim was eventually settled. The relevant clause in the settlement agreement stated that the parties had "agreed terms in full and final settlement of the Claimant's claim in proceedings HC 12C00607": *Brazier* at [8]. Faced with a second set of proceedings relating to the phone hacking activities by other investigators and journalists, counsel for the newspaper argued that the settlement agreement reached in the first set of proceedings precluded the complaints made in the second, and thus applied to strike out the latter claims or, in the alternative, for summary judgment: *Brazier* at [47].

54 The High Court at [72] (*per* Mr Justice Mann) applied the normal principles of contractual construction to the settlement agreement and interpreted the phrase "the Claimant's claim in proceedings HC 12C00607" to be wide enough to encompass claims for *all* phone hacking activities (at [76]). This was because the plaintiff's pleadings explicitly indicated that his claim was made in relation to all phone hacking carried on by the newspaper and its journalists, and which were directed at the plaintiff. For example, the generic particulars of claim contained language to suggest that the information available to the plaintiffs at the time was "but the tip of the iceberg", and demonstrated that the activities of all journalists were relied on (at [74]). The plaintiff also indicated that the claim would be broadened after disclosure and/or provision of further information (likewise at [74]). For these reasons, the plaintiff was not allowed to institute the second set of proceedings relating

to unlawful phone hacking activities carried out by other journalists subsequently discovered.

55 Evidently, a key plank of the High Court's reasoning when construing the scope of the settlement agreement was the broad language used in the plaintiff's pleadings. For this reason, *Brazier* could be distinguished from the present case. Unlike *Brazier*, paragraph 5 of the SOC in DC 3814/2009 particularised the allegations made by the Plaintiff in his letter to ACRA. Paragraphs 6 and 7 referred to "the said words", *ie*, the precise allegations that were listed in paragraph 5. Paragraph 8 explicitly stated that the Defendants have suffered damages by publication of "[t]he said words". Thus, I considered that the reference in the Settlement Agreement to the "subject matter of the proceedings herein [*ie*, in DC 3814/2009]" only related to settling the specific complaints made by the Plaintiff, which were relied on the proceedings in DC 3814/2009, and not any and all allegations against the Defendants. The Settlement Agreement was thus more limited in scope than that in *Brazier*.

56 Given my finding that the Settlement Agreement did not cover the second set of allegations, the next question was whether these allegations nonetheless ought to have been raised in the earlier proceedings. After careful consideration, I was of the view that it was not reasonable to have expected the second set of allegations to be brought in DC 3814/2009. This was for two reasons.

57 First, part of the claims in the second set of allegations took place only *subsequent to* the commencement of proceedings in DC 3814/2009, and the signing of the Settlement Agreement on 12 September 2011. For example, the loans from Akashya to Collaborative purportedly continued to take place all

the way until 2012. Therefore, there was a *bona fide* reason why the Plaintiff did not raise them earlier (see [34(c)] above). This case could be thus distinguished from *Goh Yee Fong Peter*. On the facts of *Goh Yee Fong Peter*, what was objectionable was that the plaintiff was clearly aware of the first allegedly defamatory article at the time of the settlement of the earlier High Court proceedings, because it had been published prior to the settlement. Yet, he had not pursued the claims at that time, or included his complaints in relation to that article in the settlement agreement. In the present case, at the time of the Settlement Agreement, the Plaintiff could not have known about all of the Defendants' actions, especially those which took place after the settlement.

58 Second, and more importantly, DC 3814/2009 was a defamation suit brought principally on the basis of the Plaintiff's specific allegations in the letter he wrote to ACRA on 10 June 2009. The Plaintiff's defence and AEICs sought to flesh out the allegations it had made to ACRA, especially in relation to how the Defendants conspired to dilute the Plaintiff's shareholding, in order to substantiate his defences of fair comment, justification and qualified privilege. The second set of allegations relating to the purportedly fraudulent transfer of assets and business of Akashya to various other companies related to the Defendants were not mentioned at all in Plaintiff's letter to ACRA, and was therefore naturally not part of the defamation claim in DC 3814/2009. I did not think it was reasonable to expect the Plaintiff to raise this second set of allegations in 2009 when defending his original allegedly defamatory statements, which only contained the first set of allegations.

59 For these reasons, it could not be said that the Plaintiff, by bringing the second set of allegations, was doing nothing more than mounting a collateral attack upon the proceedings in DC 3814/2009 (see [34(a)] above). Hence, the

Plaintiff should not be precluded from raising claims based on the second set of allegations by virtue of the *Henderson* rule.

Decision

60 Accordingly, I was of the view that the *Henderson* rule applied in relation to the first set of allegations, and the claims arising therefrom, but not the second set of allegations, and any claims arising therefrom. In this regard, it was not disputed by the parties that where claims should be precluded under the *Henderson* rule, they are liable to be struck out as an abuse of process under O 18 r 19(1)(*d*) of the Rules of Court. Consequently, at the second hearing, I indicated that portions of the SOC relating to the first set of allegations should be struck out.

Issue (c): Whether the claims based on the second set of allegations should be struck out as disclosing no reasonable cause of action

The proper plaintiff rule

61 In light of the analysis thus far, it would seem that I should allow the appeal in part, permitting claims based on the second set of allegations to continue. However, in the course of the first hearing, it was clear that while the first set of allegations on the dilution of shareholding related to wrongdoing done to the *Plaintiff*, the second set of allegations concerned acts committed against Akashya, the *company* (see the table at [44]). Therefore, I invited the parties to address me on the issue of whether the Plaintiff was the proper plaintiff to pursue claims concerning the latter.

62 In the second round of written submissions, the Defendants contended that the proper plaintiff in an action in respect of a wrong alleged to have been done to a corporation was, *prima facie*, the corporation: *Foss v Harbottle*

(1843) 2 Hare 461. Thus, the Plaintiff did not have *locus standi* to bring the claims based on the second set of allegations, and the claims should be struck out as disclosing no reasonable cause of action under O 18 r 19(1)(*a*) of the Rules of Court.

63 While the Plaintiff did not dispute the proper plaintiff rule in *Foss v Harbottle*, the Plaintiff submitted that he had *locus standi* to bring the claim on behalf of Akashya, by way of a common law derivative action. In particular, he would rely on the "fraud on the minority" exception to the proper plaintiff rule to justify shareholder intervention. In this respect, he argued that there was wrongdoer control by the Defendants, as well as a *prima facie* case of wrongdoing. Accordingly, together with the second round of written submissions, the Plaintiff attached the first draft amended SOC, to introduce the common law derivative action.

64 In my view, it was patently clear that the Plaintiff did not have *locus standi* to bring the claims based on the second set of allegations as contained in the SOC. In fact, to address this material defect, the Plaintiff sought to propose amendments to the SOC, thereby acknowledging that the SOC was defective. I found that the claims as pleaded in the SOC did not disclose a reasonable cause of action. Accordingly, they were liable to be struck out. However, pursuant to O 18 r 19(1), instead of striking out any pleading, the court may order the pleading to be amended so as to cure any defect, and it is to the proposed amendments to the SOC that I now turn.

Proposed amendments to the SOC

65 At the second hearing, upon reviewing the first draft amended SOC, I found that it still had procedural irregularities and lacked particulars in relation to the common law derivative action. Nonetheless, I gave the Plaintiff a

further opportunity to address the concerns, and directed the Plaintiff (should he so wish) to formally apply to amend the SOC to regularise and particularise the claims based on the common law derivative action.

66 Pursuant to the direction, the Plaintiff duly filed Summons No 1228 of 2016 to apply to amend the SOC, attaching the second draft amended SOC: see [1]. However, other than striking out some (but not all) of the portions relating to the first set of allegations, which I had earlier directed should be deleted in any event (see [60] above), the second draft amended SOC was exactly the same as the first draft amended SOC. In particular, both contained an additional paragraph towards the end which read:

> Further and/or in the alternative, the Defendants, having dominant power in Akashya unlawfully oppressed, disregarded the Plaintiff's minority interest, discriminated against and/or otherwise displayed prejudicial conduct against the Plaintiff, who was at the time a minority shareholder of Akashya…As a result of the said minority oppression, *the Plaintiff* suffered loss and damage to be assessed.
>
> [emphasis added]

67 The Defendants noted that the discernible causes of action in the Plaintiff's second draft amended SOC were the common law derivative action, as well as a minority oppression action under s 216 of the Companies Act. However, the Defendants argued that the Plaintiff should not be allowed to amend the SOC because in any event, the second draft amended SOC would be liable to be struck out under O 18 r 19(1)(*a*) because it disclosed no reasonable cause of action.

(a) With respect to the common law derivative action, the Plaintiff fundamentally still claimed reliefs for himself, rather than for Akashya (see [66] above). Procedurally, there were defects in the SOC.

Substantively, the elements of the common law derivative action were not pleaded, and the pleadings were "grossly deficient" in details.

(b) With regard to the minority oppression action, there was again no pleading of the elements of a minority oppression claim. Further, although the same facts of breaches of directors' duties were used as the basis of the minority oppression claim, there was no explanation as to how the claims for breaches of directors' duties correlated with the claim in minority oppression. Finally, the Plaintiff failed to show that he had personally suffered loss as minority shareholder, above and beyond any reflective loss, which was not claimable.

68 The Defendants argued that the Plaintiff's second draft amended SOC would also be liable to be struck out under O 18 r 19(1)(*b*) of the Rules of Court as it was obviously unsustainable for largely the same reasons. In addition, it would also be liable to be struck out under O 18 r 19(1)(*c*) as it would cause expense, trouble and delay for the Defendants and the court. Finally, there was a lack of particulars within the second draft amended SOC, and it would be liable to be struck out as an abuse of process under O 18 r 19(1)(*d*).

Common law derivative action

69 I turn to consider the Plaintiff's reliance on the cause of action of common law derivative action. To bring a claim under the common law derivative action, the following procedural requirements must be met (*Abdul Rahim bin Aki v Krubong Industrial Park (Melaka) Sdn Bhd & Ors* [1995] 3 MLJ 417 ("*Abdul Rahim*")):

(a) A minority shareholder must bring an action on behalf of himself and all the other shareholders of the company, excluding the majority wrongdoers.

(b) The wrongdoers must be named as defendants. The company must also be joined as defendants so that it is bound by the result of the action.

(c) The SOC must disclose that it is a derivative action, and recite the facts that made it so.

According to *Abdul Rahim,* an action that does not meet these requirements is liable to be struck out as being frivolous and vexatious (that is, under O 18 r 19(1)(*b*) of the Rules of Court). *Abdul Rahim* was cited with approval in *Sinwa SS (HK) Co Ltd v Morten Innhaug* [2010] 4 SLR 1 at [16].

70 Substantively, the action must at least fall within the boundaries of an exception to the proper plaintiff rule in *Foss v Harbottle*, one of which is where (i) what has been done amounts to fraud and (ii) the wrongdoers are themselves in control of the company. In that case, the rule is relaxed in favour of the aggrieved minority shareholders, who are allowed to bring a derivative action on behalf of themselves and the other minority shareholders: see *Sinwa SS (HK) Co Ltd v Nordic International Limited and another* [2016] SGHC 111 at [12(b)].

71 After consideration, I found that, as pleaded in the Plaintiff's second draft amended SOC, the claim on common law derivative action based on the second set of allegations did not suffice. My reasons were as follows.

72 First, none of the procedural requirements for bringing a common law derivative action were met. In the second draft amended SOC, there was no indication that the claim was brought by the Plaintiff in a representative capacity, on behalf of Akashya. Akashya was also not joined as a defendant to the action. Nothing in the second draft amended SOC disclosed that the Plaintiff was bringing a derivative action, and it did not recite any facts that made it so. Such a pleading would be liable to be struck out under O 18 r 19(1)(*b*) (see *Abdul Rahim*).

73 Second, the Plaintiff failed to plead that the *company*, Akashya, suffered losses for the wrongs committed. Instead, paragraph 9 of the Plaintiff's second proposed amended SOC (see [66] above) continued to refer to loss and damage suffered by the Plaintiff *personally*. If the Plaintiff wished to bring a common law derivative action, this would be a representative action brought on behalf of the company for losses that the company, not a shareholder such as the Plaintiff, suffered. Therefore, the cause of action could not be sustained. This provided ground to strike out under O 18 r 19(1)(*a*).

74 Third, the second draft amended SOC was substantively devoid of the necessary details undergirding the claim of common law derivative action. It is trite law that pleadings must be sufficiently specific. Even the elements of the cause of action (as set out at [70]) have not been expressly pleaded. A party who intentionally drafts a pleading in a manner which would result in delay (for example, by failing to provide sufficient particulars) would be liable for abuse of process and his pleadings can be struck out under O 18 r 19(1)(*c*) or (*d*): see Jeffrey Pinsler, *Principles of Civil Procedure* (Academy Publishing, 2013) at para 9.008.

Minority oppression

75 Turning to the other cause of action based on minority oppression, at the outset, I should state that the Plaintiff did not specifically argue that this was being relied on. Nonetheless, since paragraph 9 of the second draft amended SOC (see [66]) appeared to raise this cause of action, I shall deal with it.

76 Again, I found the second draft amended SOC completely lacking in the necessary details to sustain the claim. I agreed with the Defendants that the Plaintiff had not properly pleaded the elements of a minority oppression action, had merely made a bare assertion of oppression, discrimination and prejudicial conduct, and had relied on the alleged "breaches of directors' duties" without explaining how the breaches correlated with minority oppression. In this regard, I refer to [74] above, on the requirement to provide sufficient particulars in a pleading.

77 Further, the Plaintiff failed to show what his personal loss, separate and distinct from that suffered by the company (from the loans, diversion of assets and diversion of business), could conceivably have been. At the most, he might have suffered reflective loss (loss that was merely a reflection of that suffered by the company) through a fall in value of his shares. However, such reflective loss, even if suffered, was not claimable (see *Prudential Assurance Co v Newman Industries* [1982] 1 All ER 354 at 366). I was of the view that there was basis to strike out such a pleading under O 18 r 19(1)(*a*), (*c*) or (*d*) of the Rules of Court.

Decision

78 In addition to the reasons above, I should add that I agreed with a submission by the Defendants that the proposed amendments appeared to be an afterthought by the Plaintiff to salvage his action, and that the Plaintiff did not have any genuine belief that he had claims based on the common law derivative action and/or minority oppression. In fact, this was conceded by the Plaintiff's Counsel, who indicated that the Plaintiff's focus was really to seek redress for the wrongdoing done to him as a shareholder by diluting his shareholding.

79 I should also add that the Plaintiff appeared aggrieved by the enforcement action taken against his shares in Akashya in satisfaction of the S$100,000 to settle the defamation proceedings in DC 3814/2009. However, should the Plaintiff not wish for such action to be taken against his shares in Akashya, it was open to the Plaintiff to find other means to settle the outstanding amount of S$100,000. It was not, however, open to the Plaintiff to re-litigate the very disputes in DC 3814/2009 which parties had agreed to settle by way of the payment of S$100,000 as provided for in the Settlement Agreement, or to dispute the Settlement Agreement which had been conclusively upheld in DC 264/2012.

80 At the end of the day, given that the second draft amended SOC would nonetheless be liable to be struck out under various grounds in O 18 r 19(1) of the Rules of Court, it followed that I should not allow the Plaintiff to so amend. Accordingly, I dismissed the Plaintiff's application to amend the SOC in Summons No 1228 of 2016. As stated in [64], based on the SOC as it currently stood, the Plaintiff's claims on the second set of allegations should

be struck out under O 18 r 19(1)(*a*) as the Plaintiff did not have *locus standi* to bring the claims.

Conclusion

81 Accordingly, the Plaintiff's appeal was dismissed, and the AR's decision to strike out the SOC and the Reply was upheld. The AR also ordered that the costs of the striking out application and action are to be paid to the Defendants, and to be taxed if not agreed. The AR did not fix costs because the costs for the injunction application (see [15]) which form part of the costs of the action also had to be dealt with. Pursuant to the Defendants' submission, and in line with the costs orders below, I ordered that the costs of the appeal are to be paid by the Plaintiff to the Defendants, with such costs to be taxed.

Hoo Sheau Peng
Judicial Commissioner

Mahmood Gaznavi (Mahmood Gaznavi & Partners) (instructed) and Lazarus Nicholas Philip (Justicius Law Corporation) for the plaintiff/appellant;
N Sreenivasan SC and Tan Kai Ning Claire (Straits Law Practice LLC) for the defendants/respondents.