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

[2024] SGHC 178

Suit No 953 of 2020

Between

Inter-Pacific Petroleum Pte Ltd
(in liquidation)

… *Plaintiff*

And

Goh Jin Hian

… *Defendant*

GROUNDS OF DECISION

[Companies — Directors — Duties — Duty of skill, care and diligence — Section 157(1) of the Companies Act 1967 (2020 Rev Ed)]
[Companies — Directors — Duties — Duty to take into account interests of creditors — Whether test is subjective or part subjective, part-objective]
[Companies — Directors — Duties — Relief from liability — Section 391 of the Companies Act 1967 (2020 Rev Ed)]
[Insolvency Law — Winding up — Liquidator — Role of liquidator in adversarial proceedings]
[Insolvency Law — Winding up — Proof of debt — Whether insolvent company incurs liability before adjudication of proof of debt]
[Banking — Letters of credit — Fraud exception — Irregularities on the face of bills of lading — Whether fraud exception established]
[Banking — Letters of credit — Nullity exception — Irregularities on the face of bills of lading — Whether nullity exception established]

[Banking — *Quincecare* duty — Juridical basis of the *Quincecare* duty — Whether bank breached its *Quincecare* duty]
[Damages — Existence of loss — Liability to third party — Whether discharge of liability to third party necessary for claimant to suffer loss]
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Aedit Abdullah J:

1 The plaintiff, Inter-Pacific Petroleum Pte Ltd ("IPP"), is a company in insolvent liquidation. In this suit, the plaintiff brought claims against the defendant, Dr Goh Jin Hian ("Dr Goh"), alleging various breaches of duty on Dr Goh's part in his capacity as a director of IPP.

2 IPP's case, in summary, was that Dr Goh had been asleep at the wheel as a director and failed to take the steps required of him under the law to apprise himself of IPP's affairs and to monitor the same. Dr Goh's misfeasance – or, perhaps more appropriately in this context, nonfeasance – resulted in IPP being used as a vehicle of fraud by its other directors and officers. This fraud entailed IPP borrowing large sums from banks on the pretence of financing commercial transactions which were shams. As these transactions were shams, IPP incurred the liability of repaying the banks' financing, but did not actually receive any benefit or corresponding asset, as the assets the purchase of which the banks had

purportedly financed were, in fact, non-existent. The loss that IPP sought compensation from Dr Goh in this suit was, therefore, its liability to repay the banks these loans.

3 Having considered the parties' arguments and the evidence, I allowed IPP's claims against Dr Goh substantially, and held that Dr Goh was liable to pay US$146,047,099.60 in compensation to IPP in respect of his breaches of duty. Dr Goh has since appealed against my decision. I now set out the detailed grounds for my decision.

Background to the dispute

The parties

4 IPP was incorporated in Singapore on 28 June 2011. It was initially placed under judicial management on 4 September 2019.[1] Subsequently, it was placed into liquidation on 25 March 2021. Mr Lim Loo Khoon and Mr Tan Wei Cheong ("Mr Tan") (collectively, "the Liquidators") were appointed the joint and several liquidators of IPP.[2]

5 Dr Goh was a director of IPP for the period of 28 June 2011 until his resignation on 12 August 2019.[3] Although a major point of dispute between the parties was the role that Dr Goh had played in IPP at various points in time during this tenure, the fact that he was a director of IPP for the entirety of this period was not disputed.

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1 Agreed Statement of Facts and Common Chronology dated 31 March 2023, as enclosed in LVM Law Chambers' letter to court dated 31 March 2023, Annex A ("ASOF") at para 2.

2 ASOF at para 3.

3 ASOF at para 4.

6 At the time of Dr Goh's resignation from IPP on 12 August 2019, the other directors of IPP had been the following persons:[4]

(a) Cheung Lai Na ("Zoe"), who had been a director since 28 June 2011;

(b) Cheung Lai Ming ("Sara"), who had been a director since 15 February 2012, and also resigned from IPP's board on 12 August 2019; and

(c) Pek Chong Beng, who was appointed as a director on 12 August 2019.

7 IPP was at all material times part of a group of companies known as the Inter-Pacific Group. Within the Group, IPP was 100% owned by another Singapore-incorporated company, Inter-Pacific Group Pte Ltd ("IPG"),[5] which was the ultimate holding company of the Inter-Pacific Group. Dr Goh was also a director of IPG, as well as a 15% shareholder of IPG. Zoe was the other director and the remaining 85% shareholder of IPG.[6]

8 In addition to his directorship in IPG and IPP, Dr Goh was also a director of the following other entities that formed part of the Inter-Pacific Group of companies: (a) Inter-Pacific Petroleum Trading Pte Ltd; (b) Pacific Energy 8 Pte Ltd; (c) Pacific Energy 28 Pte Ltd; (d) Pacific Energy 138 Pte Ltd; (e) Pacific Energy 168 Pte Ltd; (f) Pacific Energy 328 Pte Ltd; and (g) Pacific Ship Management Pte Ltd.[7]

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4 ASOF at para 4.

5 ASOF at para 5.

6 ASOF at para 6.

7 ASOF at paras 8–9.

IPP's business operations

9 IPP had two main lines of business, namely, cargo trading operations and bunker trading operations.

10 In IPP's cargo trading business, it would purchase fuel oil from suppliers (under supply contracts) and then on-sell them to downstream customers (under sale contracts). IPP's suppliers under the supply contracts included Legend Six Holdings Ltd ("Legend Six"), Citus Pte Ltd and Citus Trading Pte Ltd (collectively, "Citus"),[8] and its customers under the sale contracts included Mercuria Energy Trading Pte Ltd ("Mercuria"), Minerva Bunkers Pte Ltd ("Minerva"), Sinochem International Oil (Singapore) Pte Ltd ("Sinochem") and Petco Trading Labuan Company Ltd ("Petco").[9] These transactions were usually entered into on a back-to-back basis, meaning to say that the fuel oil purchased by IPP would be delivered directly from IPP's supplier to IPP's customer (or to the customer's order), without IPP taking intermediate physical delivery of the cargo itself before delivering it to its own customer.[10]

11 In IPP's bunker trading business, it would purchase bunker fuel oil from its ex-wharf supplier and subsequently deliver the bunker fuel oil to its customers using its own vessels or vessels chartered by third parties. This process was referred to as "breaking bulk", as IPP would purchase bunker fuel oil in bulk before delivering it to multiple customers. As bunker trading was a regulated business, IPP required and had two licences granted by the Maritime Port Authority of Singapore ("MPA"). These were: (a) a bunker supplier licence ("Bunker Supplier Licence"), which was necessary for IPP to supply bunker

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8 SOC (Amendment No. 5) at para 16.

9 SOC (Amendment No. 5) at para 15.

10 ASOF at para 10(a).

fuel oil to customers; and (b) a bunker craft operator licence ("Bunker Craft Operator Licence"), which was necessary for IPP to operate its own vessels for taking physical delivery of bunkers from suppliers and supplying to its own customers.[11]

IPP's trade financing facilities

12 In order to finance its business operations, IPP had trade financing facilities (collectively, "the Facilities") from two banks (collectively, "the Banks"): Societe Generale, Singapore Branch ("SocGen" and "the SocGen Facility") and Malayan Banking Berhad ("Maybank" and "the Maybank Facility").[12]

13 The SocGen Facility could be used to finance both IPP's bunker and cargo trading activity.[13] The Maybank Facility, on the other hand, could only be used to finance IPP's cargo trading activity.[14]

Circumstances surrounding IPP's liquidation

14 Sometime around 13 June 2019, during enforcement checks conducted by the MPA, it was discovered that the mass flow meter of a bunker tanker chartered by IPP had been tampered with. As a result, IPP's Bunker Craft Operator Licence was placed under a temporary suspension by the MPA on 27 June 2019.[15]

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11 ASOF at para 10(b).

12 ASOF at para 11.

13 ASOF at para 12.

14 ASOF at para 14.

15 ASOF at paras 22–23.

15 After the suspension, Dr Goh took on a leading role in coordinating and directing IPP's response to the suspension. This included writing to the Banks to inform them of the suspension[16] and to provide them with updates on IPP's efforts at having the suspension lifted,[17] as well as taking point in IPP's representations and negotiations with the MPA. The latter included, in particular, a show cause letter in which Dr Goh signed off as an "Executive Director" of IPP.[18]

16 After the suspension, Dr Goh met Zoe in Hong Kong sometime in or around 11 August 2019. Apparently, Dr Goh was informed at this meeting of Zoe's decision to place IPP into judicial management as IPP was unable to finance its payments to the Banks. According to Dr Goh, he resigned from IPP on that same day.[19]

17 On 22 August 2019, Dr Goh met with the Banks in Singapore, where he discovered the extent of IPP's indebtedness of the Banks. At this meeting, he claimed to have been told that IPP owed almost US$90m to SocGen and US$60m to Maybank in respect of financing that had been extended by the Banks for IPP's cargo trading operations. On the same day, after his meeting with the Banks, Dr Goh reported his findings by email to the Singapore Police Force ("the Police").[20]

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16 ASOF at para 25.

17 ASOF at para 29, S/N 24–26.

18 ASOF at para 26.

19 1st Affidavit of Evidence-in-Chief of Goh Jin Hian dated 13 February 2023 ("1st AEIC of GJH") at para 110.

20 26 AB 540–26 AB 541.

18 Dr Goh's findings were consistent with the findings of IPP's judicial managers (the "JMs"). The JMs determined that, in the period of around mid-June to July 2019, IPP drew down on the Facilities to the tune of some (a) US$146,047,090.60 to finance cargo trading transactions ("the June–July 2019 Cargo Trading Drawdowns"); and (b) US$10,508,238.71 to finance bunkering transactions ("the June–July 2019 Bunkering Drawdowns").[21] It was common ground between the parties that neither of these drawdowns (collectively, "the June–July 2019 Drawdowns") were repaid to the Banks.[22]

19 The JMs also discovered large outstanding receivables from cargo trading that were purportedly due and owing to IPP from various customers.[23] To follow up on this, the JMs wrote to these customers on 9 September 2019 seeking payment for these purported receivables. However, in all their responses to the JM's demands, the putative customers denied the existence of the vast majority of the cargo trading transactions that had supposedly given rise to these receivables due to IPP.[24] This led the JMs to the conclusion that the sales contracts with these customers, as well as the supply contracts purportedly entered into by IPP with suppliers in order to fulfil these sales contracts, were sham and non-existent transactions.[25]

20 In contrast, it was not disputed that the bunkering transactions entered into by IPP were legitimate transactions that had actually taken place.

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21 Affidavit of Evidence-in-Chief of Tan Wei Cheong dated 13 February 2023 ("AEIC of TWC") at para 32–33.

22 AEIC of TWC at para 34; ASOF at para 29, S/N 14–19.

23 AEIC of TWC at para 41.

24 AEIC of TWC at para 44.

25 AEIC of TWC at para 35.

21 It was against this backdrop that IPP brought the present suit against Dr Goh, alleging that, by reason of various breaches of duty on his part, this state of affairs had been allowed to occur. Specifically, Dr Goh failed to detect that IPP was being run in a fraudulent manner, and failed to prevent IPP from making the June–July 2019 Drawdowns so as to become liable to the Banks to repay the same.

Overview of the parties' cases

IPP's case against Dr Goh

22 IPP's case against Dr Goh was based on two types of breaches of duty: (a) first, a breach of Dr Goh's duty of skill, care and diligence; and (b) second, a breach of Dr Goh's duty to have regard to the interests of IPP's creditors ("the Creditor Duty").

IPP's claim in negligence

23 Starting with its claim for negligence, IPP submitted that Dr Goh was, at all material times, an executive director of IPP up until his resignation in August 2019, shortly before IPP was placed into judicial management.[26] As an executive director, Dr Goh ought to be held to a higher standard of care than a non-executive director in his obligation to monitor and supervise IPP's affairs.[27] IPP also relied on Dr Goh's supposed special knowledge and experience as reason for raising the standard of care that Dr Goh should be held to. First, Dr Goh was "an experienced and sophisticated businessmen", having held a "long string of directorships in many companies including listed companies".[28]

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26 Plaintiff's Closing Submissions dated 3 July 2023 ("PCS") at paras 45 and 56–77.

27 PCS at para 82.

28 PCS at para 87.

Second, in addition to being highly educated (holding a Bachelor of Medicine and Bachelor of Surgery, as well as a Master of Business Administration), Dr Goh possessed or had held himself out to possess specific expertise and knowledge in the oil and gas trade (*ie*, businesses which IPP was involved in).[29]

24 In the alternative, even if Dr Goh was properly categorised as a non-executive director, this would not, in any event, absolve him as a non-executive director is nonetheless subject to the same minimum and non-delegable core of duties as an executive director.[30] Specifically, a director – whether executive or non-executive – had to take reasonable steps to place himself in a position to guide and monitor the company's affairs and management.[31]

25 On the issue of breach, IPP submitted that Dr Goh had failed to act with the requisite skill and care for various reasons.

(a) First, Dr Goh did not even know of IPP's cargo trading business throughout his tenure as a director. The cargo trading business was, in fact, the very fraudulent scheme perpetrated by IPP that occurred right under Dr Goh's nose as he was blissfully unaware of even the existence of this line of business.[32] Such an egregious degree of ignorance was *ipso facto* a breach of Dr Goh's duty of care.[33]

(b) Second, regardless of whether Dr Goh did or did not know of IPP's cargo trading business, IPP pointed to three "red flags" which

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29 PCS at para 88.

30 PCS at para 46.

31 PCS at para 47.

32 PCS at para 47.

33 PCS at paras 124–125.

should, if he had acted with reasonable skill and care, independently have put Dr Goh on a path of inquiry into IPP's financial position and to uncover the sham and non-existent cargo trading transactions.[34] These red flags were:

(i) An audit confirmation request relating to amounts of receivables due to IPP from Mercuria, which Dr Goh signed and was sent to Mercuria on or about 7 February 2018;[35]

(ii) The suspension of IPP's Bunker Craft Operator Licence by the MPA on 27 June 2019;[36] and

(iii) The three confirmations of indebtedness to Maybank which Dr Goh signed on 17 July and 24 July 2019, shortly before IPP was placed under judicial management.[37]

26 IPP argued that it suffered loss from Dr Goh's negligence in the form of its liability to repay the Banks the June–July 2019 Cargo Trading Drawdowns which were made in respect of the sham or non-existent cargo trading transactions.[38] Further, but for Dr Goh's negligence, these losses would not have been suffered as the June–July 2019 Cargo Trading Drawdowns would not have been made.[39] Had he acted with requisite skill and care, Dr Goh would have uncovered the fact that IPP was involved in cargo trading, and more specifically, that there were fraudulent cargo trades. Any reasonable director in his position

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34 PCS at para 125.

35 PCS at paras 128–144.

36 PCS at paras 145–153.

37 PCS at paras 154–161.

38 PCS at paras 192–197.

39 PCS at paras 234–235.

would then have put a halt to any further cargo trading, and in turn, have prevented any further drawdowns by IPP on the Facilities.[40] Dr Goh's negligence was thus an effective and proximate cause of IPP's losses, such that it was fair that he should be held liable for them.[41]

IPP's claim for breach of the Creditor Duty

27 Turning to IPP's claim based on the Creditor Duty, IPP argued that, at the time of the June–July 2019 Drawdowns, IPP had been in a financially parlous state so as to engage Dr Goh's fiduciary duty to take into account the interests of IPP's creditors. Specifically, based on IPP's true financial position – *ie*, after discounting the sham receivables from the sham cargo trading transactions to zero – IPP was balance sheet insolvent by June 2019.[42] Furthermore, as IPP continued to draw down on the Facilities in June and July 2019, its financial state continued to worsen with each drawdown such that it became all the more incumbent for Dr Goh to take into account, and act in, the interests of IPP's creditors.[43]

28 On the issue of breach, IPP submitted that Dr Goh's failure to appreciate the true extent of IPP's financial peril (due to his ignorance of the sham transactions) and his resulting failure to prevent IPP from making the June–July 2019 Drawdowns constituted a clear disregard of the interests of IPP's creditors,[44] and thus a breach of his Creditor Duty.

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40 PCS at para 239.

41 PCS at para 261.

42 PCS at paras 271–276.

43 PCS at paras 277–278.

44 PCS at paras 283–285.

29 IPP argued that it suffered loss from Dr Goh's breach of the Creditor Duty in the form of its liabilities to repay the June–July 2019 Drawdowns to the Banks, which would not have occurred had he acted with sufficient regard for the interests of IPP's creditors.[45] As regards the June–July 2019 Bunkering Drawdowns in particular, although it was not disputed that the bunkering transactions financed by these drawdowns were legitimate transactions, IPP submitted that it nonetheless suffered loss as there was no reasonable prospect that IPP could have repaid these borrowings to the Banks even if the transactions were genuine.[46]

Dr Goh's defence

Dr Goh's defence to IPP's claim in negligence

30 Dr Goh disputed IPP's claim that he had been an executive director of IPP at the material time when the June–July 2019 Drawdowns were made. In contrast, he contended that he had intentionally transitioned into the role of a non-executive director of IPP from July 2015, and remained in this capacity until his resignation from IPP's board in August 2019.[47] Being a non-executive director, Dr Goh ought to be subjected to a lower standard of care; more specifically, he had substantially reduced obligations of monitoring of and supervision over IPP's affairs, and was entitled to rely on the information provided to him by his fellow directors and subordinates.[48]

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45 PCS at paras 289–293.

46 PCS at paras 292–293.

47 Defendant's Closing Submissions dated 3 July 2023 ("DCS") at paras 43–54.

48 DCS at paras 18–27.

31 Dr Goh also refuted IPP's allegation that he had been unaware of IPP's cargo trading business. First, he raised a procedural objection that this allegation of ignorance, which was central to IPP's case, had been inadequately pleaded.[49] Second, he argued that the evidence relied on by IPP in support of this allegation did not actually disclose a lack of knowledge on his part as to the existence of IPP's cargo trading business.[50]

32 As regards the three red flags cited by IPP as instances that ought to have sent Dr Goh on a path of inquiry to uncovering the sham transactions – *viz*, (a) the audit confirmation request to Mercuria;[51] (b) the suspension of IPP's Bunker Craft Operator Licence;[52] and (c) the three confirmations of indebtedness to Maybank[53] – Dr Goh either argued that these supposed red flags were red herrings altogether, or that he had nonetheless taken adequate steps when met by them so as to satisfy his standard of care.

33 Additionally, Dr Goh went further to argue that there were "green flags" that he relied on such that no further inquiry had been necessary. These were as follows:

> (a) First, Dr Goh argued that IPP's business and financing mechanism was structured in such a manner that it was unnecessary for him to inquire into IPP's financials. According to Dr Goh, IPP's financing model *vis-à-vis* the Banks created an automatic "trip-wire", on the basis that IPP's ability to repay the Banks' financing was contingent

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49 DCS at paras 88–91.

50 DCS at paras 93–117.

51 DCS at paras 59–87.

52 DCS at paras 119–143.

53 DCS at paras 144–151.

on IPP being paid by its own customer. Thus, if IPP's customer failed to make payment, IPP would not be able to repay the Banks, resulting in the Banks calling a default and instantly cutting off any further financing to IPP. Dr Goh argued that, as a result of this mechanism, the fact that the Banks were continuously being repaid prior to the June–July 2019 Drawdowns functioned as a "reasonable proxy" that IPP was being paid by its customers (such that there were no significant outstanding receivables due to IPP). This therefore obviated the need for any inquiry on his part into the underlying transactions, IPP's receivables position, and IPP's financial situation generally.[54]

(b) Second, Dr Goh argued that he had been provided with financial information showing that IPP had been operating "business as usual".[55] In this regard, Dr Goh principally relied on an email he had been copied in from IPP's Chief Financial Officer, Mr Wallace To ("Wallace"), on 16 January 2019. This email had enclosed, *inter alia*, IPP's management accounts for September 2018. Dr Goh's position was that he had reviewed these management accounts which had not raised any red flags.[56]

34 Dr Goh also raised various legal arguments disputing the existence of loss suffered by IPP in respect of the June–July 2019 Drawdowns. These can be briefly summarised as follows:

(a) First, that IPP had suffered no loss from the June–July 2019 Bunkering Drawdowns as the transactions financed by these drawdowns

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54 DCS at paras 34–39.

55 DCS at para 152.

56 DCS at para 153.

were not sham transactions, such that IPP did receive real goods from its suppliers and/or payment from its customers.[57]

(b) Second, that IPP had suffered no loss from the June–July 2019 Cargo Trading Drawdowns as IPP could avail itself of various defences to the Banks' claims for repayment.[58]

(c) Third, that IPP had suffered no loss from the June–July 2019 Cargo Trading Drawdowns as the Liquidators had yet to adjudicate and more specifically, accept the proofs of debt filed by the Banks in IPP's liquidation claiming repayment for these drawdowns.[59]

(d) Fourth, that IPP had suffered no loss as it had yet to repay the Banks for the June–July 2019 Cargo Trading Drawdowns. Until IPP repaid the Banks, it was only the Banks that had suffered a loss, and it could not be said that IPP had itself suffered actual loss.[60]

(e) Fifth, that IPP had suffered no loss as the sham transactions involved the "round-tripping" of the moneys disbursed by the Banks under the June–July 2019 Cargo Trading Drawdowns. This meant that the funds paid out by the Banks to IPP's putative suppliers were routed back into IPP, such that IPP could not be said to have suffered any loss itself.[61]

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57 DCS at paras 197–198.

58 DCS at paras 302–320.

59 DCS at para 298.

60 DCS at para 297.

61 DCS at paras 285–291.

35 Apart from disputing the existence of loss, Dr Goh also disputed the element of causation between his breaches of duty and the loss suffered by IPP. According to Dr Goh, even if he had taken the steps that IPP alleged that he should have, it was likely that he would not have discovered the sham cargo trading transactions, such that IPP would have suffered the loss it did in any event.[62] Generally, this was because any attempt by Dr Goh to make any inquiry or investigation into IPP's financial situation and the sham cargo trading transactions would have been stonewalled by the other directors and employees in IPP who were the masterminds, or at least complicit to, the ongoing fraud.

Dr Goh's defence to IPP's claim for breach of the Creditor Duty

36 Dr Goh's defence to IPP's claim for breach of the Creditor Duty was two-pronged.

37 First, he contended that the Creditor Duty had not even been engaged as IPP had failed to prove that it was either insolvent or in a financially parlous position at the time of the June–July 2019 Drawdowns, or that he had or ought to have had knowledge of this.[63]

38 Second, Dr Goh argued that, even if the Creditor Duty had arisen, he nevertheless did not breach it as he had reasonably believed that the cargo trading and bunkering transactions financed by the June–July 2019 Drawdowns were in IPP's interests. This was because the back-to-back nature of these transactions meant that they were structured to ensure that IPP would derive a

62 DCS at para 216.

63 DCS at paras 175–182.

trading profit from them (*viz*, the mark-up charged to IPP's customer from the price paid by IPP to its supplier).[64]

39 Dr Goh also argued that he had not breached the Creditor Duty by IPP's entry into the drawdowns as the Banks were not part of IPP's creditors whose interests Dr Goh had an obligation to consider at the material time. As the Banks only became creditors of IPP as a result of the drawdowns, it could not be said that Dr Goh had an obligation to take into account their interests prior to IPP procuring the drawdowns.[65] Indeed, Dr Goh went further to contend that it was in fact in the interests of IPP's creditors for IPP to borrow moneys from the Banks through the drawdowns as this increased their returns in IPP's liquidation.[66]

40 Finally, Dr Goh argued that, even if he had breached his Creditor Duty, his liability should only be limited to the June–July 2019 Cargo Trading Drawdowns that he had been aware of. In this regard, the only drawdowns that Dr Goh had had knowledge of were the three borrowings from Maybank in respect of which he had signed confirmations of indebtedness for.[67]

Dr Goh's reliance on s 391 of the Companies Act

41 As a last resort, Dr Goh prayed in aid of the court's discretion to relieve directors' breaches of duty under s 391 of the Companies Act 1967 (2020 Rev Ed) (the "Companies Act").[68] He submitted that he had acted honestly and

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64 DCS at para 185.

65 DCS at paras 186–188.

66 DCS at para 189.

67 DCS at paras 191–193.

68 DCS at para 321.

reasonably, and that it was fair in the circumstances of the case that he be excused for any breaches of duty established against him.[69]

Issues arising for determination

42 Based on the parties' cases, the following issues arose for determination:

(a) First, whether Dr Goh breached his duty of care to IPP. This inquiry could be further divided into the following sub-issues:

(i) What standard of care Dr Goh should be held to, which included considerations of his role in IPP and any particular skills or expertise he possessed;

(ii) Whether Dr Goh had been ignorant of IPP's cargo trading business as IPP alleged; and

(iii) Whether Dr Goh failed to act reasonably in the face of the three red flags identified by IPP, being (see [25(b)] above):

(A) The audit confirmation request to Mercuria signed by Dr Goh on or around 7 February 2018;

(B) The suspension of IPP's Bunker Craft Operator Licence on 27 June 2019; and

(C) The three confirmations of indebtedness to Maybank signed by Dr Goh on 17 and 19 July 2019.

(b) Second, whether Dr Goh breached his Creditor Duty to IPP. This inquiry could be further divided into the following sub-issues:

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69 DCS at paras 323–338.

(i) Whether the Creditor Duty was engaged at the material time; and

(ii) Whether Dr Goh breached the Creditor Duty by allowing IPP to enter into the June–July 2019 Drawdowns.

(c) Third, whether IPP suffered any loss from the June–July 2019 Drawdowns.

(d) Fourth, whether Dr Goh's breaches of duty caused IPP's loss.

(e) Fifth, whether Dr Goh should be granted relief under s 391 of the CA.

43 However, before turning to the above issues, it is necessary to address two preliminary points arising from Dr Goh's case. These are as follows:

(a) Whether the cargo trading transactions financed by the June–July 2019 Cargo Trading Drawdowns were in fact shams; and

(b) The allegations levelled against the Liquidators' conduct by Dr Goh.

Preliminary issues

Whether the cargo trading transactions financed by the June–July 2019 Cargo Trading Drawdowns were shams

44 The first preliminary issue concerns a cornerstone of IPP's factual case against Dr Goh, namely, whether the cargo trading transactions financed by the June–July 2019 Cargo Trading Drawdowns were, in fact, sham transactions. It

was necessary to address this point as Dr Goh did not admit to this fact and put it into issue.[70]

45 I can deal with this point shortly. In my judgment, there was no arguable point in the face of the evidence before the court that the cargo trading transactions financed by the June–July 2019 Cargo Trading Drawdowns were not sham or non-existent transactions. Although there was a dearth of direct evidence on the fraudulent nature of these transactions before the court, the circumstantial evidence pointed overwhelmingly to the conclusion that they were indeed shams.

46 It was common ground between the parties that IPP's cargo trading transactions were generally entered into on a back-to-back basis; in other words, each transaction was constituted by (a) a supply contract between IPP and its supplier (which was financed by the Banks); and (b) a sale contract between IPP and its customer.[71] As a matter of logic, if both of these contracts in a given transaction were demonstrably shams, the entire cargo trading transaction would be a sham.

47 This was borne out on the evidence. First, as regards IPP's supply contracts with its putative suppliers, it would be recalled that IPP's putative suppliers were Citus and Legend Six (see [10] above). In this regard, after IPP had been placed under judicial management, its JMs wrote to Citus and Legend Six seeking confirmation on the legitimacy of the purported supply contracts

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70 SOC (Amendment No. 5) at para 33; Defence (Amendment No. 5) at para 36; Defendant's Lead Counsel's Statement on Trial Proceedings dated 27 February 2023 at p 2.

71 ASOF at para 10.

between IPP and them.[72] No response was received from Legend Six. And while Citus did respond to the JM's letter, it did not provide the confirmation sought by the JMs.[73] Moreover, and more pertinently, the bills of lading purportedly issued by Citus and Legend Six were all confirmed by the purported carriers (stated on the bills) to be shams and fraudulent documents.[74] In my view, the failure on the part of the suppliers to offer a straightforward confirmation as to the legitimacy of the transactions, coupled with the fact that documents purportedly issued by these suppliers were indisputably fraudulent, led to the inexorable conclusion that the supply contracts financed by the June–July 2019 Cargo Trading Drawdowns were shams.

48 Turning to the sale contracts, IPP's JMs similarly wrote to the putative customers under the sale contracts – *viz*, Mercuria, Minerva, Sinochem and Petco – seeking confirmation on the legitimacy of the sale contracts which had supposedly given rise to receivables due from them to IPP.[75] Save for a few genuine transactions, these putative customers generally disclaimed the existence of any dealings between IPP and themselves.[76] This was confirmed in the affidavit evidence of a representative of Mercuria, Ms Cindy Chong Yoke Lin ("Ms Chong"),[77] who explained in some detail the steps she had taken to confirm that the sale contracts were non-existent prior to Mercuria's response to the JMs stating the same. Ms Chong's account was not challenged in any

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72 AEIC of TWC (Vol 1) at para 47; AEIC of TWC (Vol 6) at pp 3470–3475.

73 AEIC of TWC (Vol 1) at para 48; AEIC of TWC (Vol 6) at pp 3476–3477.

74 AEIC of TWC (Vol 1) at paras 50–62.

75 AEIC of TWC (Vol 1) at paras 43–44.

76 AEIC of TWC (Vol 1) at paras 44–46.

77 AEIC of Cindy Chong Yoke Lin dated 13 February 2023 at paras 5–15.

material aspect during cross-examination by Dr Goh's counsel.[78] In my view, the unequivocal denials of the legitimacy of the sale contracts by IPP's putative customers were, by themselves, sufficient to prove on the balance of probabilities that the sale contracts were also sham transactions.

49 Given that both the supply contracts and sale contracts were clearly shams, I had little difficulty in concluding that the cargo trading transactions upon which IPP had procured the June–July 2019 Cargo Trading Drawdowns from the Banks were shams. Indeed, I noted that, by the time of Dr Goh's closing submissions, he did not make any real attempt at arguing otherwise.

Dr Goh's allegations of impropriety against the Liquidators

50 The second preliminary issue arose out of allegations made by Dr Goh against the Liquidators in his closing submissions. Dr Goh appeared to take the position that the Liquidators had acted improperly by (a) bringing the present suit; (b) framing IPP's case against him as it was; and (c) giving evidence to support IPP's case. Indeed, rather strong words were used by Dr Goh to this end:[79]

> … Mr Tan accepted that as a liquidator, he owed duties to the Court, he gave evidence as an officer of the Court, and his role was not to advocate IPP's case. Yet Mr Tan has demonstrated himself to be an advocate, instead of an impartial officer of the Court. In the course of Mr Tan's cross-examination, Mr Tan tailored his evidence in service of finding all manner of possible claims against Dr Goh and presented a wholly biased view of events, constructed primarily on hindsight reasoning. He has overzealously and with tunnel vision contrived a case against Dr Goh, and his evidence should be treated with some caution.

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78 NE (4 April 2023) at pp 84–91.

79 DCS at para 28.

51 Leaving aside the issue of whether Mr Tan's evidence should be accepted as a matter of objective truth and probability, I considered Dr Goh's allegations against the Liquidators to be founded on a misconception as to the role of a liquidator in adversarial proceedings such as the present case. Dr Goh's position was premised on an assumption that a liquidator who brings proceedings on behalf of the company against a potential wrongdoer may not advocate the company's case. With respect, there is no such rule of law.

52 A liquidator is called upon to wear many hats: he takes on managerial responsibilities over the company's affairs, akin to that of the company's directors and executives; and he may on occasion also sit in a quasi-judicial capacity, such as in the proof of debt process where he is instituted by the insolvency legislation as the first line of adjudication in respect of creditors' claims against the company (see Andrew R Keay, *McPherson and Keay: The Law of Company Liquidation* (Sweet & Maxwell, 5th Ed, 2021) ("*McPherson and Keay*") at para 8-042). It is also trite that liquidators are officers of the court who are thus "required at all times to act in an honest, impartial and high-minded fashion", and are subject to the control of the court for the due performance of their duties (see *McPherson and Keay* at para 8-039).

53 But it does not follow either from the broad principle that a liquidator sometimes sits in a quasi-judicial capacity, or the fact that the liquidator is always an officer of the court who must act honestly and impartially, that a liquidator may never advocate the case or position of the company that he represents. As a matter of common sense, a liquidator who brings adversarial proceedings on behalf of the company against a potential wrongdoer necessarily takes on the role of an adversary in litigation, in the same way that any litigant in our system of adversarial litigation does.

54 Indeed, our courts have recognised that a liquidator may be required to take on an adversarial role in some proceedings. For example, in *Feima International (Hongkong) Ltd (in liquidation) v Kyen Resources Pte Ltd (in liquidation) and others* [2024] 4 SLR 101, Goh Yihan JC observed that, in appeals against a liquidator's adjudication of a proof of debt, "it would not be legally accurate to assert that the role of the liquidator *remains* that of a quasi-judicial function", as instead, the liquidator then takes on "the role of an adversary in the litigation" [emphasis in original] (at [31], citing Michael Murray & Jason Harris, *Keay's Insolvency: Personal and Corporate Law and Practice* (Thomson Reuters, 10th Ed, 2018) at pp 602–603). The same view was espoused by the High Court of Australia in *Tanning Research Laboratories Inc v O'Brien* (1990) 169 CLR 332 ("*Tanning*"). In their joint judgment, Brennan and Dawson JJ said that (see *Tanning* at 341):

> In such a proceeding, a liquidator who defends his decision to reject a proof of debt is no longer acting in a quasi-judicial capacity; *he is cast in the role of an adversary*, defending the assets available for distribution against a liability which, according to the view he formed when acting quasi-judicially, is not legally enforceable. The liquidator may defend those assets against the creditor's claim on any ground on which the company might have defended the claim had it been sued by the creditor. If the liquidator relies on those special defences which allow him to go behind a judgment, an account stated, a covenant or an estoppel in order to ascertain the true liability of the company, *he is none the less in the role of an adversary*. The issue in the proceeding is whether the liability referred to in the proof of debt is a true liability of the company enforceable against it. *The issue is contested between the putative creditor on the one hand and the liquidator on the other; the liquidator is a party litigant. And none the less so though the liquidator is required to act fairly in conducting the litigation.*
>
> [emphasis added]

55 There is thus no warrant for saying that a liquidator's role is not to advocate the company's case where one is concerned with litigation in which he represents the company and its creditors. As David Richards LJ observed in

the English Court of Appeal decision of *Fakhry v Pagden and another* [2021] 2 BCLC 35, "[i]t is important that liquidators should have a keen appreciation of the circumstances when they can act in an adverse capacity and those circumstances where neutrality is expected" (at [42]). By necessary implication of this statement, there is a right place and a right time for a liquidator to assume an adversarial mantle. In proof of debt proceedings before the court, the liquidator is an adversary for the purpose of protecting the company's scarce assets against false claims. By the same token, in proceedings for the recovery of assets from wrongdoers, the liquidator is cast in the role of an adversary for the purpose of augmenting the assets of the company for the creditors' benefit. Indeed, as IPP rightly submitted,[80] a liquidator is duty-bound to maximise recovery for the company's creditors (see the Court of Appeal decision of *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in compulsory liquidation)* [2015] 3 SLR 665 ("*Celestial Nutrifoods*") at [1]; *McPherson and Keay* at para 9-072). As Brennan and Dawson JJ rightly recognised in the passage from *Tanning* that I have quoted above, there is nothing inconsistent or incongruous in a liquidator taking an adversarial position in litigation on the one hand, and a liquidator "act[ing] fairly in conducting the litigation" on the other.

56 For a similar reason, there was also no merit in Dr Goh's attempt at imputing impropriety to the Liquidators based on the fact that the Banks were funding IPP's claim against him.[81] In the first place, this appeared to be, in substance, a collateral attack on the court's earlier decision to approve the funding agreement. The court there would have already weighed the risks of the Liquidators being swayed to act improperly in arriving at its decision.

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80 Plaintiff's Reply Submissions dated 2 August 2023 ("PRS") at paras 45(c) and 46.

81 DCS at paras 33(b)(ii), 33(b)(vi) and 348.

57 In the second place, this submission ran contrary to the Court of Appeal's decision in *Celestial Nutrifoods*. In that case, it was suggested that a funding agreement that had the effect of allowing the liquidator to recover some of his own fees if the funded litigation turned out successful had compromised the liquidator's objectivity. The Court of Appeal was not impressed by this submission. Chao Hick Tin JA reasoned that there was "nothing objectionable" in the funding agreement as the liquidator was not the sole beneficiary of the funded claims, given that the company's creditors would also benefit from potential recoveries (at [52(a)]). Chao JA also observed that, because a liquidator's function was "precisely to maximise recovery" for creditors, the fact that these creditors included the funding creditors was "irrelevant". Indeed, the learned judge went as far as to say that the liquidator would have been in breach of his duties if he did not pursue potential claims despite having been put in funds to do so by some creditors (at [52(b)]). These observations were equally apposite to the present case.

58 Finally, taking a step back, it is necessary to bear in mind that the local courts have recognised a public policy imperative in favour of investigating and redressing allegations of misfeasance by former directors and controllers of insolvent companies (see the High Court decisions of *Re Mingda Holding Pte Ltd and another matter* [2024] SGHC 130 at [117] and *Song Jianbo v Sunmax Global Capital Fund 1 Pte Ltd (in compulsory liquidation)* [2023] 4 SLR 1575 at [39]). Given that this is a weighty consideration in favour of a court approving a funding agreement, it is coherent that a court should not, after granting such approval, them take a dim view of the liquidator's decision to bring such claims.

Whether Dr Goh breached his duty of care to IPP

59 I turn to IPP's claim in negligence against Dr Goh. To recapitulate, this claim could be parsed into the following sub-issues (see [42(a)] above):

(a) What standard of care Dr Goh should be held to;

(b) Whether Dr Goh was ignorant of IPP's cargo trading business; and

(c) Whether Dr Goh failed to act reasonably in the face of the three red flags identified by IPP.

The standard of care that Dr Goh should be held to

60 It was not disputed between the parties that Dr Goh as a director of IPP owed a duty of care, skill and diligence to IPP.[82] Indeed, s 157(1) of the Companies Act specifically provides that a director "shall at all times … use reasonable diligence in the discharge of the duties of his … office", thus encapsulating a director's common law duty of care (see the Court of Appeal decision of *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [134]).

61 It is well-established that the standard of care would never be lowered, but may be heightened, by the subjective characteristics of the particular director at hand. Thus, the standard of care that a director must observe is that of a reasonably diligent director having both: (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

82 PCS at para 42.

(b) the general knowledge, skill and experience which that director has (see the High Court decision of *Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848 at [27], citing the English High Court decision of *Re D'Jan of London* [1994] 1 BCLC 561 ("*D'Jan*") at 563).

62 In the present case, the parties' dispute over the applicable standard that Dr Goh's conduct should be measured against boiled down to two points. First, Dr Goh submitted that he had played a diminished role in IPP's management following a supposed transition into the position of a non-executive director from July 2015.[83] Thus, he should only be held to the lower standard of care of a non-executive director. Second, IPP argued that the standard ought to be raised as Dr Goh had possessed special knowledge or skills[84] as an "experienced and sophisticated businessman" who had held himself out as possessing particular expertise in the oil and gas trade (this being IPP's line of business).[85]

The extent of Dr Goh's involvement in IPP

63 Before turning to the factual issue of the extent of Dr Goh's involvement in IPP, I make two preliminary points.

64 First, I did not consider the proper approach to be to focus on whether Dr Goh's proper designation was that of an executive or non-executive director at any given time. A director's particular designation is not determinative or conclusive of the role that he plays in the company. Rather, the content of a director's duty is determined by the involvement, responsibilities or functions he undertakes. Put simply, the focus is on substance rather than form.

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83 DCS at para 43.

84 PCS at para 86.

85 PCS at paras 87–88.

65 The second point is that, regardless of whether Dr Goh was in form or substance an executive or non-executive director of IPP, the fact would remain that he would be subject to a "minimum objective standard of care which entails the obligation to take reasonable steps to place [himself] in a position to guide and monitor the management of the company" (see the Court of Appeal decisions of *Ho Yew Kong* at [137] and *BIT Baltic Investment & Trading Pte Ltd (in compulsory liquidation) v Wee See Boon* [2023] 1 SLR 1648 ("*BIT Baltic*") at [56]). Thus, even if Dr Goh were to succeed in his attempt at downplaying his role in IPP, he could not escape a duty to maintain a minimum degree of awareness and oversight.

66 Coming to the issue of Dr Goh's involvement in IPP, Dr Goh argued that he had transitioned into a non-executive role with IPP from July 2015, and remained as such until his resignation from IPP's board in August 2019.[86] According to him, the reason for this transition was that he had intended to take on a new role as the Group Chief Executive Officer of New Silkroutes Group ("New Silkroutes"), a public-listed holding company on the Singapore Exchange.[87] As there were overlaps in the businesses and interests of New Silkroutes (who was also involved in oil trading) and IPP, Dr Goh considered that he would be in a position of conflict of interest if he continued on as an executive director in both entities.[88]

67 In this regard, Dr Goh relied on a few pieces of evidence from around July 2015 to support his claimed transition.[89] This included: (a) an email that Dr

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86 DCS at para 43.

87 1st AEIC of GJH at para 51.

88 1st AEIC of GJH at para 53.

89 DCS at paras 44–45.

Goh had sent to Zoe and Ms Charlene Lim ("Charlene") – IPP's human resources manager – on 20 July 2015 informing them of the change;[90] (b) the change in the quantum of Dr Goh's remuneration from S$30,000 to S$12,000 per month after July 2015; (c) the change in the nature of Dr Goh's remuneration from being salary to directors' fees from July 2015; (d) IPP's cessation in making Central Provident Fund contributions to Dr Goh's account from July 2015;[91] and (e) two emails that Dr Goh had sent to the MPA on 7 May 2015 and 9 June 2015 in which Dr Goh sought MPA's approval to step down from IPP.[92]

68 In my judgment, these assertions did not determine the issue. I agreed with IPP that these contemporaneous statements of Dr Goh's intent to step down from IPP's board could, at best, only prove that Dr Goh had formed an intention of stepping down from IPP's board altogether or receding into a non-executive role around July 2015.[93] Crucially, they could say nothing about whether Dr Goh subsequently went through with this intention.

69 The pertinent question, therefore, was not whether Dr Goh had at any point in time intended to step down, but whether he subsequently did so as a matter of fact. In this connection, IPP submitted that contemporaneous evidence post-July 2015 indicated that Dr Goh's role in IPP did not change despite his professed intention to transition into a reduced role as a non-executive director.[94]

70 Although I agreed with Dr Goh that some of the circumstances cited by IPP were – if taken by themselves – neither here nor there, having regard to the

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90 DCS at para 44(a).

91 DCS at para 44(b).

92 1st AEIC of GJH at para 56(c).

93 PCS at para 57; PRS at Annex B, p 139, S/N 1.

94 PCS at paras 60–61.

totality of the circumstances and evidence, I was satisfied on the balance of probabilities that Dr Goh continued to be actively involved in IPP's management even after his supposed intention to transition out of executive functions in July 2015.

71 First, I found the fact that Dr Goh had remained recorded as an "Executive Director" on IPP's contact lists after July 2015 to be material, not for his styling as such *per se* (which, as explained at [64] above, would not be determinative), but the underlying circumstances of him being recorded as such. Although Dr Goh sought to downplay this as an oversight, I was not persuaded by this explanation. First, there were two separate contact lists across two years – 2017 and 2018 – that stated Dr Goh as an executive director. This meant that, on Dr Goh's case, the same mistake had to have been made not once but twice. Second, and rendering a mere lapse even less likely, was the fact that the contact lists had been prepared by Charlene. As Dr Goh conceded in cross-examination,[95] having been IPP's human resources manager, Charlene was well-placed to be aware of the roles played by any officer or employee in IPP. Moreover, Charlene had been specifically informed by Dr Goh in two emails – dated 15 July 2015 and 20 July 2015 – of his intention to step down from IPP's board. Given these factors, it was unlikely that Charlene would have made an error in reflecting Dr Goh's designation, unless circumstances after July 2015 countermanded Dr Goh's earlier instructions to her on his departure.

72 Dr Goh suggested in cross-examination that the oversight may have been the result of Charlene having merely "used the template".[96] I understood this suggestion to mean that Charlene had used a contact list from a previous

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95 NE (9 May 2023) at p 94 ln 21–25.

96 NE (9 May 2023) at p 96 ln 23–25.

year without making the necessary updates to reflect changes in IPP's staffing, including Dr Goh's apparent transition into a non-executive position. This was unconvincing for two reasons. First, Dr Goh admitted that this was nothing but his own speculation.[97] Second, and more importantly, on my own examination of the two contact lists in 2017[98] and 2018,[99] it was clear on a comparison of the two that Charlene had in fact made numerous updates to the contact lists, albeit that no change was made to Dr Goh's status. Specifically, the following persons who had been listed on the 2017 contact list were removed from the 2018 contact list: (a) Brian Leow; (b) Jason Tay; (c) Lawrence Wee; and (d) Kenny Kiang. On the other hand, the following persons who had not been on the 2017 contact list were added to the 2018 contact list: (a) Wallace To; (b) Milly Quek; (c) Dave Tan; and (d) Joseph Kumar.

73 Given that Charlene did make changes to update the contact lists between years, Dr Goh's claim that she had made an error was not likely on the balance of probabilities. If Dr Goh had in fact transitioned into a reduced role as a non-executive director, this would have been a material change – akin to a staff movement – that Charlene would likely have updated; indeed, the materiality of any such change would arguably have been of greater magnitude than the other staff movements Charlene had reflected, given Dr Goh's high station within IPP.

74 Second, I agreed with IPP that the board resolutions passed by IPP and IPG during Dr Goh's resignation and the circumstances of their coming into

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97 NE (9 May 2023) at p 97 ln 5–8.

98 35 AB 348.

99 36 AB 381.

being were highly significant. The board resolutions were undated, and insofar as they related to Dr Goh, they stated as follows:[100]

> **Resignation of Director**
>
> Resolved that the resignation of Goh Jin Hian of NRIC No: [redacted], as Director of the Company be and is hereby accepted with immediate effect.
>
> Resolved that the board acknowledged that Goh Jin Hian of NRIC No: [redacted] was appointed as a non-executive director and he has remote involvement and management in the Company's day to day operation. Goh Jin Hian was appointed as one of the directors solely to represent his voting rights as a member of the Company.

75 I accepted IPP's characterisation of the resolutions as "cynical and dishonest attempts by Dr Goh to craft a false narrative regarding his directorship and level of involvement in IPP".[101] The resolutions had to be read in context; namely, against the following email that Dr Goh had sent on 13 August 2019 (one day after Dr Goh had resigned from IPP's board) to various persons including Zoe:[102]

> Dear all,
>
> Thank you for the meeting yesterday. As discussed, the next steps are as follows:
>
> 1. My immediate resignation on 12 August 2019 as Director from IPP and IPG – letter issued yesterday to Zoe, c.c. Leo. Please confirm that Corporate Secretary has been informed.
>
> 2. IPP and IPG Board resolution to confirm my resignation and previous role as non-executive director, appointed due to me being a minority shareholder (and having to safeguard my interests as a shareholder). *It will be important and necessary to indemnify me from management decisions and corporate actions of the companies.* Please get Rajah and Tann or Corporate Secretary to issue the resolution and/or letter.

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100 44 AB 104–44 AB 107.

101 PCS at para 69.

102 26 AB 542.

> 3. The appointment of Deloitte as IJM, to which I have no objections as shareholder.
>
> All the best,
>
> Jin Hian.

76 This email inevitably gave the game away for Dr Goh. The only reasonable inference from his statement that "[i]t will be important and necessary to indemnify me from management decisions and corporate actions" was that the resolutions were an attempt by Dr Goh to cover his tracks. In particular, the word "indemnify" was allusive to Dr Goh having been aware that he was at risk of incurring legal liability.[103] For this reason, I rejected Dr Goh's submission that the resolutions had not been an attempt at protecting himself as there was no indication at the time of their passing that he would be sued down the line by IPP.[104] Clearly, Dr Goh had been alive to the possibility that he could face legal liability, thus the need for the indemnity he sought.

77 Further, the fact that Dr Goh had specifically sought an indemnity from "management decisions" indicated that he was aware that he had been involved in the management of IPP (*ie*, that he had exercised executive functions).[105] This was why, in the resolutions, Dr Goh sought to create a record that precisely the opposite had been true: that he "ha[d] remote involvement and management in [IPP's] day to day operations". This was a wholly unusual matter to be covered in a resolution by the company's board, which further supported the already clear inference that the resolutions were concocted to give Dr Goh's narrative some verisimilitude.

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103 NE (11 May 2023) at p 22 ln 20–p 24 ln 13.

104 Defendant's Reply Submissions dated 3 August 2023 ("DRS") at p 20.

105 PCS at para 67.

78 Further adding to the dubiousness of the resolutions was the fact that certain statements therein were inconsistent with Dr Goh's own narrative. This strengthened the inference that the resolutions had been hastily cooked up in a last-ditch effort by Dr Goh to protect himself. For instance, the resolutions stated that Dr Goh had been "appointed as a non-executive director". This contradicted Dr Goh's own case that he had been initially appointed as an executive director but had later transitioned into a reduced role in July 2015.[106]

79 The resolutions also stated that Dr Goh had been appointed as a director "solely to represent his voting rights as a member of the company". Although this made sense *vis-à-vis* IPG as Dr Goh was a shareholder of IPG, it did not *vis-à-vis* IPP since IPP was wholly owned by IPG.[107] Indeed, this error, coupled with the fact that the resolutions for IPP and IPG were in completely identical wording, inexorably pointed to the underlying haste and carelessness in the resolutions' creation. Moreover, the statement that Dr Goh had only been appointed to IPP's board to represent his shareholder rights also did not gel with Dr Goh's own account in his affidavit that his appointment to IPP's board was due to IPP's Bunker Craft Operator Licence and Bunker Supplier Licence having "been awarded by the MPA to IPP on the condition that [Dr Goh] held a minimum of 15% stake in IPP and was its director".[108] It would be recalled that the imposition of this condition was the reason why Dr Goh had written to the MPA to seek its blessing as to his intended departure from IPP's Board in July 2015.

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106 PCS at para 69; NE (11 May 2023) at p 18 ln 5–20.

107 NE (11 May 2023) at p 20 ln 21–p 22 ln 14.

108 1st AEIC of GJH at para 53.

80 In these circumstances, I found that Dr Goh was, at all material times, an executive director of IPP.

Whether Dr Goh possessed special skills or expertise

81 I turn to IPP's submission that Dr Goh should be held to a higher standard as he possessed special skills or expertise. These special skills or expertise were: (a) Dr Goh having been an "experienced and sophisticated businessman" with substantial prior experience holding directorships in other companies; and (b) Dr Goh having been highly educated and having held himself out as possessing particular expertise in the oil and gas trade.[109]

82 I was not persuaded that these factors warranted an increase in the standard of care applicable to Dr Goh. Although Dr Goh could fairly be characterised as an "experienced and sophisticated businessman", the same could be said of the hypothetical reasonable man occupying his position as an executive director of a company in a similar line of business, and of comparable scale, as IPP. For a similar reason, I did not think that the evidence relied on by IPP clearly established that Dr Goh had expertise and knowledge of oil and gas trading over and beyond that which would be reasonably expected of persons occupying his position. There was thus no need to further increase the applicable standard of care to Dr Goh on account of these factors.

Conclusion on the applicable standard of care

83 To draw together the threads on the issue of the applicable standard of care to measure Dr Goh's conduct against, I found that Dr Goh ought to be held to the standard of a reasonably diligent executive director. Such a person would,

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109 PCS at paras 87–88.

in the ordinary course, be expected to have considerable experience in the management of companies, as well as knowledge of his company's line of business.

84 In light of my finding that Dr Goh should be held to the standard of care of an executive director, the various *dicta* from cases espousing the prospect of non-executive directors being subjected to a lower standard of care, which Dr Goh placed reliance on, could not assist him. In any event, as I noted at [65] above, even if I had accepted Dr Goh's claim that he had transitioned into a reduced non-executive role in IPP's management after July 2015, this did not absolve him from a minimum level of responsibility.

85 In this regard, given the nature of the breaches alleged by IPP, nothing really turned on the issue of whether Dr Goh had been an executive or non-executive director. The alleged breaches related either to Dr Goh's lack of knowledge about one of IPP's two lines of business, or his lack of adequate supervision over IPP's affairs by failing to respond appropriately to red flags. To my mind, these were not matters that were within the exclusive remit of executive directors. On the contrary, these were the very matters that a non-executive director was entrusted with, given that the principal function of non-executive directors is to provide supervision of the company's affairs under the executive management and hold them to account (see *Company Directors: Duties, Liabilities and Remedies* (Mark Arnold KC gen ed) (Oxford University Press, 4th Ed, 2024) ("*Company Directors*") at para 14.51). In metaphorical terms, a non-executive director is tasked to "act as a guard dog and be prepared to bark when necessary" (see *Company Directors* at para 14.58). As Chan Seng Onn J observed in the High Court decision of *Abdul Ghani bin Tahir v Public Prosecutor* [2017] 4 SLR 1153 (at [65]):

> It is antithetical for a person to agree to be a director on the condition that he will not exercise *any* form of supervision or control over the affairs of the company. Whilst I can accept that a non-executive director is not obliged to keep constant tabs on his company, I cannot accept that he can completely relinquish even the duty of having some minimal level of supervision over the company's affairs.
>
> [emphasis in original]

86 As a matter of logic, for a director – whether executive or non-executive – to discharge his supervisory functions, he would have to be sufficiently apprised of the company's business and affairs in the first place (see the English High Court decision of *Re Barings and others (No 5)* [1999] 1 BCLC 433 ("*Barings*") at 489).[110] A guard dog that has no understanding of what it is guarding cannot sensibly discharge its function (see the High Court decision of *Vita Health Laboratories Pte Ltd and others v Pang Seng Meng* [2004] 4 SLR(R) 162 ("*Vita Health*") at [21]). This is why, in the statement of the Court of Appeal in *Ho Yew Kong* that I have quoted above at [65], the court expressed the "minimum objective standard" of all directors as including an obligation to "take reasonable steps to *place oneself in a position* to guide and monitor the management of the company" [emphasis added].

Dr Goh's alleged breaches of duty

87 Having calibrated the appropriate standard, I turn to the alleged breaches of duty identified by IPP. To recapitulate, IPP identified the following instances of negligence by Dr Goh:

(a) First, that he had been ignorant of IPP's cargo trading business, which was the source of the fraud; and

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110 PCS at para 49.

(b) Second, that he had failed to act reasonably by making inquiries in the face of certain red flags that would have led him to discover the fraud in IPP's cargo trading business.

Whether Dr Goh was ignorant of IPP's cargo trading business

88 I deal first with the allegation that Dr Goh had been ignorant of IPP's cargo trading business. The parties' dispute on this issue generally panned out as a disagreement on the proper interpretation or inferences to be drawn as to Dr Goh's knowledge from a few pieces of evidence.

89 In my judgment, the weight of the evidence pointed roundly towards the conclusion that Dr Goh had indeed not known that IPP had been involved in cargo trading for basically the *entire* duration of his directorship of IPP. Specifically, the evidence showed that Dr Goh only discovered that IPP had a cargo trading business on or around 22 August 2019, which was, in fact, after he had resigned from IPP's board (on 12 August 2019).

(1) Dr Goh's email to the Police on 22 August 2019

90 An email sent by Dr Goh on 22 August 2019 to the Police,[111] in which he reported his findings following a meeting with the Banks on the same day, showed clearly that Dr Goh had no knowledge of IPP's cargo trading business prior to this meeting with the Banks.

91 That Dr Goh had not known of IPP's cargo trading business was the only possible reading of paragraph 3 of his email, which read as follows:

> *Apparently*, IPP owes SocGen almost USD90M and Maybank USD69M. As these amounts cannot be explained by the

111 26 AB 540.

> bunkering business (we only turn over USD60-70M a month), I have asked the banks to tell me the nature of the bank lines, i.e. what they were given for.
>
> [emphasis added]

Dr Goh's use of the word "[a]pparently" indicated that he had not known of the facts that he then went on to state, and that he had just found out about it. Indeed, Dr Goh conceded this point in cross-examination.[112]

92 As the sums of money owed by IPP to the Banks were too large to be attributable to IPP's bunkering business, Dr Goh "asked the banks to tell [him] the nature of the bank lines, i.e. what they were given for". This was highly telling. It was not disputed that IPP only had two lines of business. Thus, if Dr Goh had known of IPP's cargo trading business, the fact that he had been able to rule out IPP's bunkering business as the cause of IPP's indebtedness would have led him to conclude, by himself, that the cargo trading business was the cause. But he was ostensibly unable to do so, as he had to ask the Banks "what [the bank lines] were given for". This suggested that, after ruling out the bunkering business, Dr Goh could not independently think of another reason why IPP could have owed so much money to the Banks; this inability was consistent with a lack of knowledge of IPP's cargo trading business.[113]

93 The inference that Dr Goh had not known of IPP's cargo trading business was strengthened by his demonstrated lack of knowledge as to any details on said line of business in paragraph 4 of his email:

> Both banks explained that the lines were extended for cargo trading on a back-to-back basis, ie structured trades where the banks issue LCs only upon receipt of shipping documents. Apparently the counter-parties that Zoe has traded with are:

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112 NE (9 May 2023) at p 104 ln 10–16.

113 PCS at para 99.

> A) Citus
>
> B) Legend Six
>
> C) Mercuria
>
> D) Sinochem
>
> There may be others, but the banks told me they had issued LCs and received payments from these 4 companies at various times, ie they could be the buyer or seller. The banks dealt mainly with Wallace To and Cecilia for these transactions. Trading contracts were usually signed by Zoe and Stephen.

94 Three points can be made from the above. First, all the details stated by Dr Goh in this paragraph were not matters that he had had personal knowledge of. Instead, he was merely parroting what the Banks had told him. Second, Dr Goh conceded in cross-examination that his use of "[a]pparently" in this paragraph disclosed that he had not known of IPP's trading counterparties in its cargo trading business.[114] Third, Dr Goh evidently had no involvement at all in the cargo trading business, as the Banks only identified "Zoe", "Wallace To", "Cecilia" and "Stephen" as persons that they had dealt with. Dr Goh was conspicuously absent. All these factors were consistent with a finding that he had not known of IPP's cargo trading business.

95 Finally, the following paragraph in Dr Goh's email also indicated that he had not known of IPP's cargo trading business:

> In terms of money flow, I therefore feel that we are barking up the wrong tree. I don't think the issue lies with the bunkering business (it's small relative to the lines extended by the banks for cargo trading). You were asking me how the company made its money. It now appears that Zoe has been engaging in cargo trades, some of which may now turn out to be fraudulent.

96 This paragraph had to be understood in the context that Dr Goh had, prior to this email on 22 August 2019, been in communications with the

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[114] NE (9 May 2023) p 107 ln 16–22.

Police.[115] That the Police had ongoing investigations into IPP at the time was not disputed by the parties.

97 In my judgment, the point that Dr Goh was conveying to the Police in this paragraph was that the Police had been "barking up the wrong tree" by hitherto focusing their investigative efforts on IPP's bunkering business. Evidently, when the Police had asked Dr Goh previously "how the company made its money", Dr Goh had only informed them of IPP's bunkering business. The fact that Dr Goh had not apprised the Police of IPP's cargo trading business was another factor consistent with his lack of knowledge of it.[116]

98 Dr Goh attempted to explain away his omission in informing the Police earlier about IPP's cargo trading business on the basis that the Police's investigations had been confined to IPP's bunkering business.[117] Specifically, the Police's concern as to "how [IPP] made its money" related to their concern that IPP had been cheating its customers by tampering with the mass flow meter on IPP's bunker tankers after such an incident of tampering had been discovered during an inspection by the MPA (and which led to the suspension of IPP's Bunker Craft Operator Licence).[118]

99 I did not accept this explanation. The natural interpretation of Dr Goh's statement that he had been asked "how the company made its money" was that the Police had been looking into IPP's business as a whole, and not merely its bunkering business. Thus, Dr Goh's failure to tell the Police about the cargo

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115 PCS at para 93.

116 PCS at para 101.

117 NE (9 May 2023) at p 149 ln 6–7; NE (11 May 2023) at p 59 ln 8–25 and p 64 ln 7–18.

118 DCS at para 109.

trading business despite the Police's inquiry into IPP's entire business also suggested that he had not known of it.

100 Dr Goh also attempted to explain that, by his statement that "[i]t now appears that Zoe has been engaging in cargo trades, some of which may now turn out to be fraudulent", he had only intended to convey his discovery of fraudulent cargo trades. This was as opposed to him having discovered both (a) that Zoe had been engaging in cargo trading generally; *and* (b) that some of these cargo trades were fraudulent.[119] The difference between these two interpretations was that, in the former, Dr Goh could maintain that he had known of IPP's cargo trading business, albeit he had not been aware of the fraud,[120] whereas the latter interpretation was consistent with IPP's case that he had been ignorant as to the cargo trading business as a whole.

101 I was also not convinced by this explanation. It was an entirely unnatural reading of what Dr Goh had said. Dr Goh had clearly made a compound discovery of two facts (a) that Zoe had been engaging in cargo trading; and (b) some of Zoe's cargo trades were fraudulent. Had Dr Goh only intended to convey the latter, his reference to his discovery that "Zoe has been engaging in cargo trades" would have been superfluous.

102 For the above reasons, I agreed with IPP that Dr Goh's email to the Police on 22 August 2019 strongly suggested that Dr Goh had not known of IPP's cargo trading business prior to his meeting with the Banks on the same day.

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119 NE (9 May 2023) at p 114 ln 21–p 115 ln 23.

120 NE (11 May 2023) at p 58 ln 13–15.

(2) Dr Goh's interview with IPP's JMs on 27 February 2020

103 IPP also relied on an interview of Dr Goh by IPP's JMs on 27 February 2020. It submitted that, in the course of this interview, Dr Goh had stated on multiple occasions that IPP had not been involved in cargo trading, and that this disclosed that he had been unaware of IPP's cargo trading business.[121]

104 Dr Goh's response was twofold. First, as a threshold point, he submitted that IPP was precluded from relying on the interview and its contents as the interview had been conducted on a "without prejudice" basis.[122] Second, Dr Goh submitted that, in any event, what he had said during the interview did not support the inference that he had been ignorant of IPP's cargo trading business.[123]

105 I did not think there was anything in the first submission. The issue of what the parties had meant by the interview being conducted on a "without prejudice" basis had already been litigated and decided before trial by Mavis Chionh J in HC/SUM 2874/2021. Chionh J held there that the parties had not meant that the contents of the interview were cloaked with privilege from disclosure in litigation or admission as evidence in subsequent proceedings, but that Dr Goh "should not be bound by or held to what he said at that meeting and would instead be entitled to correct anything he said at the meeting".[124] To my mind, all this meant was that IPP would be entitled to make whatever submission it intended to on the inferences to be drawn from the interview, and Dr Goh could put forward such alternative interpretations and inferences as he

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121 PCS at para 103.

122 DCS at para 94.

123 DCS at para 97.

124 Reply (Amendment No. 1) at para 6A(a).

saw fit to rebut IPP's understanding. Thus, if Dr Goh considered that IPP had "engaged in unfair cherry picking and curating" of the interview in its submissions,[125] he was well-entitled to point that out to the court, and to make the relevant arguments to invite the court to arrive at the same conclusion. Put simply, the interview fell to be treated in the same way as any other piece of evidence before the court.

106 As for the main issue as to the proper inference to be drawn from the interview, I accepted IPP's position that the interview supported the finding that Dr Goh had not known of the cargo trading business. I shall refer to some excerpts from the interview to illustrate this.

107 I first considered the following exchange between Dr Goh and the JMs:[126]

> Mr Tan: So when you signed those documents in relation to the Maybank, would you not be able to tell that these are cargo trades?
>
> Dr Goh: *Yes, but I thought it was ex-wharf, lah.* When I went – when I informed the police and the police asked me the same thing, I kept saying, *"No, all these are bunker, bunker: so bunker, what cargo? We don't do cargo, we're only doing bunker."* We are not like cargo, because when I went to my list co I told them "You only do cargo", and by "cargo" it means you move shipments from -- I buy from Sinopec, you know, in China, I ship to Korea, I buy from whatever …
>
> [emphasis added]

108 This exchange revealed Dr Goh's belief that IPP had only been involved in bunkering and not cargo trading. In my view, the context of Dr Goh's

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125 DCS at para 76.

126 25 AB 129–25 AB 130.

statement – the question that Mr Tan had put to him – was critical: Dr Goh was asked whether, at the time he signed documents relating to the *Maybank* Facility, he had known that these documents related to IPP's cargo trading business. The fact that Mr Tan had specifically directed Dr Goh's attention to the Maybank Facility was crucial as it was not disputed that the Maybank Facility only financed IPP's cargo trading, and not its bunkering, operations (see [13] above).

109 Given that the Maybank Facility exclusively financed IPP's cargo trading business, the fact that Dr Goh responded that he had "though it was ex-wharf" – *ie*, bunker fuel oil – indicated that he had been labouring under a misapprehension that he had been signing off on bunkering transactions all the while.[127] In other words, Dr Goh had (mistakenly) believed that IPP was only involved in bunkering. Indeed, this mistaken belief was confirmed by Dr Goh himself, as he stated that he had told the Police that "all these are bunker, bunker, so bunker, what cargo? We don't do cargo, we're only doing bunker".

110 Dr Goh raised an objection in his reply submissions that this was "patently unfair" as this allegation had never been put to him.[128] I did not agree. The point had indeed been raised to Dr Goh by IPP's counsel in cross-examination:[129]

> Q … Now, would it be fair to say that all along, when you were signing documents in relation to Maybank, you always thought that these were in respect of cargo ex-wharf, correct?
>
> A Yes, your Honour. Because they were picked up at Tanjung Pelapas.

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127 PCS at para 111–112.

128 DRS at para 50.

129 NE (9 May 2023) at p 120 ln 20–p 121 ln 4.

> Q So you thought that all of these were bunker trades?
>
> A Bunker fuel oil cargo trades.
>
> Q And these were not part of cargo trading, right?
>
> A Not from one country to another, your Honour.

111 Dr Goh's mistaken belief that IPP had only been involved in bunkering was subsequently confirmed in the following exchange:[130]

> Dr Goh: … *My assumption was we are in the bunker industry. The bank lines, I signed off for bunker, so everything is purely bunker-related. Cargo, ex-wharf cargo from breaking bulk, yes.* But not cargo as in we are buying -- like I said, what I'm doing the other side: buying from one refinery here, shipping to a buyer somewhere else. Chuang Xin may have been doing it. To be fair, Chuang Xin may have been doing it, but like I said, I have no visibility. *My responsibility in my mind is IPP: can IPP do cargo? That's what they asked. I say, "You look around my team. Which one of these guys are cargo traders?" I said, "There's not a single cargo trader in my company." And I said, "As a bank, all of you bankers know there is no cargo trader in my company.* All your Woon Leongs, I don't [*sic*] what their names are, I have already forgotten their names.
>
> Mr Chong: Dave.
>
> Dr Goh: Dave, and then --
>
> Mr Chong: Jensen.
>
> Dr Goh: Jensen. *I said these are all bunker traders. They're not cargo traders.* I said, "The only guy who may qualify as a cargo trader is called Ken Bei. Ken Bei is working for a company called Pacific Dragon, which is not even IPP; Pacific Dragon is part of Chuang Xin. *So I said, "Why would you even tell me that I should know that IPP is a cargo trader?" I said, "There is no cargo trading I have to admit. There isn't a cargo trader in IPP." So if the banks allow the lines to be used,*

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130 25 AB 131–25 AB 132.

> *they knowingly allow it to be used at the Chuang Xin level.*
>
> [emphasis added]

112 First, Dr Goh's statement that "[m]y assumption was we are in the bunker industry" and his belief that "[t]he bank lines [he] signed off for bunker, so everything is purely bunker-related" corroborated the inference above that, even when signing off on a banking facility that solely financed IPP's cargo trading business (*ie*, the Maybank Facility), Dr Goh had been under a misimpression that he was only signing off on bunkering transactions (see [109] above).

113 Second, in this exchange, Dr Goh stated no less than seven times – either in the form of an unequivocal statement or rhetorical question – that there was "not a single cargo trader in [IPP]". Indeed, Dr Goh even elaborated on why he had held this belief: he had been under the impression that cargo trading had been undertaken not by IPP, but Chuang Xin, a related company in Hong Kong.[131] Thus, Dr Goh considered that if the Banks had allowed the Facilities to be used for cargo trading, they must have "knowingly allow[ed] it to be used at the Chuang Xin level" instead of by IPP.

114 Both of these points were also apparent in the following exchange:[132]

> Mr Tan: … So internally in a way -- you said that Zoe was the one who did most of the operations?
>
> Dr Goh: Yes.
>
> Mr Tan: (unclear). So on your part, how do you have oversight over what she's doing, in terms of all these trades?

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131 PCS at paras 105–106; PRS at para 128.

132 25 AB 143–25 AB 145.

> Dr Goh: I have no oversight. She's mainly in Hong Kong. (unclear) She is not in Singapore. *I only have some oversight over the physical bunkering operations. That's what IPP was set up to do. IPP is a bunker company with a bunker supplier licence and a ship -- I don't know what the licence is called; the ship management whatever licence. Basically, there are two licences for bunker.* …
>
> *So, my responsibility, like I said, is purely bunkering operations for IPP. If today, you know, there are -- the banks say, "We know you are doing cargo trade", to be frank, I would say, "Look, I have no cargo traders in Singapore", which means if you allow the bank lines to be used for cargo trading, it's your own call at the bank's level. You must obviously know that the trader is in Hong Kong, because there is no trader in Singapore doing cargo. So you are dealing wholly with Zoe and Sarah in Hong Kong, you ae allowing a line that was -- the clause specifically states for bunkering to be used for other purposes, that's your own call.* Maybe you want -- you think so highly of the company, you will allow variations of the line. But if you allow a variation of the bank line, you know, it's a departure from the -- what the line was meant to be used. That's your own call. You know, as a bank you make that call. I mean I didn't ask for it. That's why I keep saying, I didn't ask for it. *As far as I'm concerned, where is the expertise? I have no expertise in Singapore. How can I have the oversight? I have no clue. Because I will openly tell you there is no cargo trader sitting in the IPP office.* Right? None of these -- all of the counterparties, the last three that the police asked me to look at, they were Hong Kong companies. …
>
> [emphasis added]

115 A few points from this are worth noting. First, Dr Goh referred to IPP as "a bunker company". This again suggested that he had not been cognisant of the fact that IPP had two lines of business in bunkering and cargo trading. Second, Dr Goh also reiterated his belief that, if the Banks had "allow[ed] the bank lines to be used for cargo trading", they must have "obviously know[n] that the trader

is in Hong Kong, because there is no trader in Singapore doing cargo". This was consistent with his asserted belief that only Chuang Xin (a Hong Kong company), and not IPP, had been involved in cargo trading. Third, Dr Goh stated that the Banks had "allow[ed] a line that was … specifically … for bunkering to be used for other purposes". This was a peculiar statement, given that neither of the Facilities granted by SocGen or Maybank were *exclusively* for IPP's bunkering operations only. Indeed, the only exclusivity of purpose restriction was in the Maybank Facility, which could only be used for *cargo trading*. The fact that Dr Goh had misapprehended that there had been a Facility that could be used only for bunkering also supported the inference that he had believed IPP to be only involved in bunkering.

116 Dr Goh attempted to explain away his apparent concession on the basis that the parties (including himself) had not been precise in their use of "cargo" through the interview.[133] Thus, Dr Goh had supposedly used and understood "cargo" at various times as referring to: (a) cargo which includes bunker fuel; (b) cargo that was not bunker fuel; and/or (c) a situation of IPP taking possession of cargo itself and physically delivering it from port-to-port (this being distinct from IPP's cargo trading operations).[134] Thus, the interview could not be read as an unequivocal admission of his ignorance of IPP's cargo trading business.

117 I was not persuaded by this explanation. Dr Goh demonstrated an ability during the interview to clearly distinguish between "cargo" *simpliciter* and "ex-wharf cargo from breaking bulk" (which described IPP's bunkering business). The distinction between cargo trading and bunker trading was thus apparent to

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133 DCS at paras 98–106.

134 DRS at para 49.

him.[135] Further, if Dr Goh had actually been unclear as to what the JMs were referring to, one would have reasonably expected him to seek a clarification. The fact that he did not do so suggested that his claim that he and the JMs had been speaking at cross-purposes was a contrived afterthought.

118 Moreover, Dr Goh's explanation required the court to believe that he had used "cargo" in multiple senses including, as Dr Goh himself recognised in his reply submissions, in ways that were "inherently inconsistent" with one another.[136] This was improbable given, in particular, his ability to distinguish between "cargo" *simpliciter* and "ex-wharf cargo".

119 Finally, I was also not convinced by Dr Goh's attempt at explaining his denial of IPP's involvement in cargo trading as a denial of a different mode of cargo trading than that which IPP had been involved in. This distinction made little sense in context. Assuming *arguendo* that Dr Goh had in fact known of IPP's cargo trading business, it was quite bizarre that, when asked by the JMs about cargo trading, his mind somehow gravitated towards a mode of cargo trading other than that which IPP was engaged in: if he had known of the nature of IPP's cargo trading business, why would he set up a straw man of a different type of cargo trading? The most natural inference from Dr Goh's denial of IPP's involvement in cargo trading was simply that he had not known of it.

120 For the reasons above, I agreed with IPP's position that the interview between Dr Goh and the JMs on 27 February 2020 supported the inference that Dr Goh had not been aware of IPP's cargo trading business during his tenure as a director of IPP.

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135 PCS at para 108.

136 DRS at para 49.

(3) The text conversation between Dr Goh and Wallace on 13 November 2019

121 IPP also relied on a text message conversation between Dr Goh and Wallace on 13 November 2019, in which the following exchange occurred:[137]

(a) Dr Goh first asked Wallace for the "management accounts for IPP" as he wanted to "see how things are doing".

(b) Wallace responded that he would "circulate [the accounts] to [Dr Goh] later" but provided some details on IPP's gross profits/losses for May 2018 to September 2018 and a projection of the same for October 2018. He followed up by saying that this was "only bunker profit", and that IPP also had some chartering income.

(c) After this, Dr Goh made further inquiries on "net profit", whether IPP's "operating costs [were] under control", and whether IPP was "still paying for ship repairs and upkeep" or if that had since been "covered by the new owners of the vessels".

(d) After Wallace responded to Dr Goh's inquiries, Dr Goh said that "if not profitable, then unlikely that IPP can be acquired by the HK listco". I understood "HK listco" here to refer to an unidentified listed company based in Hong Kong.

122 Dr Goh conceded in cross-examination that no mention was made of IPP's cargo trading business in this conversation.[138] But when it was then suggested to him that this had been because of his ignorance at the time of IPP's

137 PCS at para 116(a); 27 AB 280.

138 NE (9 May 2023) at p 162 ln 7–10.

cargo trading business, Dr Goh claimed that the cargo trading business had not been relevant as the Hong Kong company had only been interested in IPP's bunkering business.[139]

123 I did not accept this explanation for the following reasons. First, Dr Goh adduced no evidence whatsoever about the details of this supposed acquisition to support his claim that the acquirer had only been interested in IPP's bunkering business. Second, Dr Goh did not explain how Wallace could have known that he (Dr Goh) was only interested in IPP's bunkering business despite Dr Goh having asked for IPP's management accounts, which any reasonable recipient would have understood as a reference to IPP's entire business. Third, Dr Goh's statement that it would be "unlikely that IPP can be acquired" was clearly a reference to IPP *as a whole*, and not only IPP's bunkering business.

124 In fairness to Dr Goh, I was cognisant of the possibility that Wallace was complicit to the ongoing fraud and may have thus deliberately withheld details of IPP's cargo trading business from him. But I did not think that this fact assisted Dr Goh here. Even if that were true, the fact remained that Dr Goh had not himself asked for details on IPP's cargo trading business, which suggested that he had not inquired because he had not known of it. In any event, even if Wallace (and other directors) had been deliberately hiding things from Dr Goh (and succeeded in doing so), this was at most a cause of Dr Goh's ignorance; it did not change the fact that Dr Goh had been ignorant, which was IPP's allegation against him.

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139 NE (9 May 2023) at p 162 ln 7–23.

(4) Dr Goh's communications after the suspension of IPP's Bunker Craft Operator Licence

125 Finally, IPP also relied on Dr Goh's failure to make any mention of IPP's cargo trading business in all his communications with Wallace, the Banks and the MPA during the suspension of IPP's Bunker Craft Operator Licence, a fact which Dr Goh conceded in cross-examination to be true.[140]

126 IPP submitted that the communications showed that Dr Goh had perceived the suspension to pose an existential threat to IPP. Despite this, Dr Goh did not, at any time, refer to IPP's cargo trading business that, logically, should (assuming it had been legitimate) have become a focal point of IPP's strategy in tiding over the crisis in its bunkering business. The fact that Dr Goh seemingly did not apply his mind to the cargo trading business suggested, once more, that he had not been aware of it.

127 I accepted IPP's submission. Although I was willing to give Dr Goh the benefit of the doubt that he had not informed the MPA about IPP's cargo trading business, and may have exaggerated the extent of IPP's financial woes, in order to put pressure on the MPA to lift the suspension,[141] there was no apparent reason why he did not mention the cargo trading business in his communications with the Banks and Wallace.

128 Logically, that IPP's cargo trading business was running smoothly and unaffected by the suspension would have been a major selling point to the Banks in Dr Goh's bid to assuage them that there was no cause for concern to pull their

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140 NE (11 May 2023) at p 29 ln 25–p 30 ln 3.

141 DCS at para 128(b); DRS at para 53(b)(i).

financing.[142] In my view, that Dr Goh did not adopt such an obvious strategy when negotiating with the Banks suggested that it had not occurred to him to do so because he had not known of the cargo trading business.

129 In contrast, Dr Goh's explanation that he had not needed to inform the Banks about the cargo trading business as they had "full visibility" was unconvincing.[143] Even if the Banks had been aware of the status of IPP's cargo trading operations, it did not change the fact that any reasonable director would nonetheless have played it up to convince the Banks to stand by IPP.[144] Moreover, Dr Goh's explanation was internally inconsistent insofar as Maybank was concerned. Given that Maybank had only financed IPP's cargo trading transactions, the fact that they supposedly had "full visibility" over IPP's cargo trading business meant that there would have been no need for Dr Goh to give any sort of assurance to Maybank, since Maybank (unlike SocGen) would, in principle, have been completely unaffected by the suspension. The fact that Dr Goh nevertheless did so corroborated the inference from his interview with the JMs that he had been labouring under a misapprehension that the Maybank Facility financed IPP's bunkering business (see [109] above), a mistake consistent with his lack of knowledge of IPP's cargo trading business.

130 Turning to Wallace, IPP pointed to the following exchange over text message between Dr Goh on Wallace on 23 July 2019:[145]

> Dr Goh: Hi Wallace, there is a financial advisor in the IPP office. I understand the 2018 financials haven't been audited. Is there a problem?

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142 PCS at para 119; PRS at para 149(a).

143 DCS at para 117; NE (11 May 2023) at p 82 ln 14–18.

144 NE (9 May 2023) at p 52 ln 16–25.

145 27 AB 281.

> Wallace: As our license had been temporarily suspend, our auditor got a going concern issue, the auditor still waiting for the result
>
> we have extend the filing date to November, still got sufficient time to have audit
>
> we dont want the audit report state IPG got going concern opinion, bank never accept it

131 In my view, the fact that Dr Goh did not raise IPP's cargo trading business even after Wallace informed him that IPP's auditors had raised a "going concern issue" was plainly inexplicable other than on the basis that Dr Goh had simply not known of the cargo trading business. It bears emphasis that IPP's cargo trading business formed about 50% of IPP's revenue.[146] In these circumstances, any reasonable director in Dr Goh's position who had been informed that his company was facing a "going concern issue" would have inquired on how IPP's cargo trading business was doing amidst the suspension, as the emasculation of IPP's bunkering business meant that the cargo trading business would have been IPP's best chance at staving off liquidation. But Dr Goh did not do so.

(5) Whether Dr Goh's ignorance of IPP's cargo trading business amounted to a breach of duty

132 IPP submitted that Dr Goh's lack of knowledge of IPP's cargo trading business *ipso facto* amounted to a breach of his duty, skill and diligence. The fact that Dr Goh had not known of this line of business meant that he could never have been in a position to discharge his minimum obligation to monitor and supervise it.[147]

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146 DCS at para 141(a).

147 PCS at para 125.

133 I accepted this submission. As I noted above, a director's duty to monitor and supervise his company's affairs contains an *a priori* obligation that a director equip himself with sufficient knowledge of what he is to monitor and supervise (see [86] above).

134 In fairness to Dr Goh, I also considered a point alluded to in his pleadings and evidence, but which was not fully argued. This was his suggestion that his involvement in IPP by nature did not entail involvement in IPP's cargo trading business. For instance, in Dr Goh's Defence, he pleaded that "[he] was never involved in [IPP's] cargo trading business".[148] Leaving aside that this was arguably an implicit admission that he had never monitored or supervised IPP's cargo trading business, Dr Goh's point seemed to be that the happenings of IPP's cargo trading business fell outside of his duty of care. Indeed, this theme was also evident in his interview with the JMs, as he emphasised that his role in IPP was mainly to serve as a liaison between IPP and the MPA:[149]

> Mr Tan: … So internally in a way -- you said that Zoe was the one who did most of the operations?
>
> Dr Goh: Yes.
>
> Mr Tan: (unclear), So on your part, how do you have certain oversight over what she's doing, in terms of all these trades?
>
> Dr Goh: *I have no oversight.* She's mainly in Hong Kong. (unclear) She is not in Singapore, that the trouble. None of these trades she does in Singapore. *I only have some oversight over the physical bunkering operations.* That's what IPP was set up to do. …
>
> So to me, *my oversight is to make sure, like I said, when I meet the regulators I can hold my head high to say,* "Look, MFM installed, I gave you all

148 Defence (Amendment No. 5) at para 8(f) and 21.

149 25 AB 143–25 AB 144.

> the reports, I gave you -- I meet all of your KPIs for volume and all that." …
>
> *So my responsibility, like I said, is purely bunkering operations for IPP.*
>
> [emphasis added]

135 In my judgment, Dr Goh could not escape liability for negligence by saying that he had a "confined area of responsibility" in IPP (see Andrew Keay, *Directors' Duties* (LexisNexis, 4th Ed, 2020) at para 8.149, citing the English High Court decision of *Weavering Capital (UK) Ltd (in liquidation) and others v Peterson and others* [2012] EWHC 1480 (Ch) at [173]). By its nature as a minimum and non-delegable obligation that all directors are subject to, Dr Goh's duty to monitor and supervise IPP's affairs was a default standard that he could not disapply regardless of the actual role that he played in IPP.

136 In effect, Dr Goh's point was that he had delegated most functions relating to IPP's business to IPP's management. But the law is clear that, although there is nothing wrong *per se* in a director delegating some functions (see *Vita Health* at [20]), there comes a point when delegation crosses into dereliction or abdication. Thus, a director must always supervise the discharge of delegated functions, failing which he would have breached his duty of skill, care and diligence (see the High Court decision of *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2017] 3 SLR 839 ("*Prima Bulkship*") at [33]).

137 Hence, even if the cargo trading business was predominantly run by Zoe out of Hong Kong, this did not excuse Dr Goh's failure to obtain a basic level of understanding of it and to maintain some degree of oversight. By failing to do so, Dr Goh breached his duty of skill, care and diligence.

Whether Dr Goh failed to act reasonably in the face of the three red flags

138 Although my finding that Dr Goh had been ignorant of IPP's cargo trading business is dispositive of the issue of whether he had breached his duty of care, as Dr Goh has appealed my decision, I shall nonetheless go on to set out my views on IPP's alternative case that Dr Goh had been negligent by failing to act reasonably in the face of red flags.

139 To recapitulate, the three red flags cited by IPP were (see [25(b)] above):

(a) an audit confirmation request relating to amounts of receivables due to IPP from Mercuria, which Dr Goh signed and was sent to Mercuria on or about 7 February 2018;

(b) the suspension of IPP's Bunker Craft Operator Licence by the MPA on 27 June 2019; and

(c) the three confirmations of indebtedness to Maybank which Dr Goh signed on 17 July and 24 July 2019, shortly before IPP was placed under judicial management.

140 IPP argued that any of these red flags should have led Dr Goh to inquire into IPP's receivables position and the extent of IPP's liabilities, including how much it owed to the Banks; in turn, any such inquiry would have led him to discover not only that IPP had been involved in cargo trading, but also that the bulk of these cargo trading transactions were in fact shams and non-existent.[150]

150 PCS at paras 126–127.

(1) The Mercuria audit confirmation request signed by Dr Goh

141 I start by setting out the contents of the Mercuria audit confirmation request:[151]

> **Dear Sirs**,
>
> **REQUEST FOR CONFIRMATION OF BALANCE**
>
> As part of their normal procedures, our auditors have requested that we ask you to confirm direct to them the balance on your account with us at **31 December 2017**.

Description	**Amount USD**	**Term**
Amount due from you (Trade)	132,336,475.39	60 days

> If the balance agrees with that shown in your records, please complete the confirmation section below and **Fax (65) 6914 1112 this letter and return this letter intact** direct to our auditors, **Ms. Beverley Khoo, OA Assurance PAC, 112 Robinson Road, #03-04, Singapore 068902,** even if the amount has since been settled. If the balance does not agree with your records, please return this letter to our auditors providing details of the items making up the difference.
>
> This request is made for audit purposes only; remittances should be sent to us in the usual way.
>
> Your co-operation on this matter will be greatly appreciated.
>
> Yours faithfully,
>
> [Signature of Dr Goh]
>
> **Inter-Pacific Petroleum Pte Ltd**
>
> [emphasis in original]

142 Although there was some ambiguity as to when Dr Goh actually signed the audit confirmation request, it was stated on the face of the document that it had been "[s]ent out on 2/7/18", that is, 2 February 2018. In any event, Dr Goh did not dispute that he had signed the audit confirmation request.[152]

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151 26 AB 314.

152 NE (10 May 2023) at p 58 ln 25–p 59 ln 8.

143 The first string to IPP's bow was that the amount stated on the audit confirmation request to be due from Mercuria – US$132,336,475 – was by itself an "astounding figure to be due from a single trade debtor by any stretch of the imagination".[153] In this connection, IPP relied on certain statements made by Dr Goh in his interview with IPP's JMs on 27 February 2020, as apparent concessions by Dr Goh that "he would have been concerned if he had known that a debt owed by one customer had been allowed to snowball to US$100m or more, and he would have asked how the debt could be collected from that customer".[154]

144 In response, Dr Goh submitted that the mere fact that over US$132m in receivables may have been outstanding at any given time was, objectively, not alarming given the nature of IPP's business which entailed IPP giving 60-day payment terms to its customers.[155] Dr Goh also submitted that IPP had taken his responses in the 27 February 2020 interview out of context. He had been under the impression that the JMs had been conveying that over US$132m in receivables had been *delinquent*, and that his expression of concern did not relate to the mere fact that over US$132m in receivables had been due to IPP, but to a situation where US$132m was overdue and in arrears.[156]

145 Having considered the relevant extract from the interview, I agreed with Dr Goh that he had understood the JMs as having suggested to him that over

153 PCS at para 129.

154 SOC (Amendment No. 5) at para 39(a)(iv).

155 DCS at para 72 and 78(a).

156 DCS at paras 78(b) and 79.

US$100m in receivables were delinquent debts owed by Mercuria to IPP. For necessary context, I set out the relevant portions of the interview below:[157]

> Mr Tan: Yes. Are you aware that in 2017 year end there was this receivable due from Mercuria, over 100 million?
>
> Dr Goh: No. I didn't see it. Was it in the accounts? I didn't see it.
>
> Mr Tan: It's over 100 mill; 132 million.
>
> Dr Goh: In our numbers? I didn't see it. It didn't affect the P&L, I think, because the balance sheet I know, and I didn't see it. Because balance sheet, I can't tell. In the balance sheet there is always inventory mismatch of time, and even in my own company now I could have $40 million in my bank account, but actually it's offset by inventory and people don't understand it. I have investors and shareholders asking, "Why? You have so much case. How come you still need to borrow?" I'm like, "No, no, no, the cash is a timing difference. We've collected payment, you know, but we haven't paid."
>
> Mr Tan: So you hear this number, 132 million, due from one customer. Would that sound unusual to you?
>
> Dr Goh: It wouldn't sound unusual information insofar as if you have 1B and it's Mercuria, a big company, would it form 10 per cent of your trading volumes? So 100-over, 1B is 10 per cent. Would I trade 10 per cent of volumes with Mercuria? I'll say it's possible, because I have no idea how many counterparties we're allowed to trade with because the banks are the ones who decide who is approved. So the list is very small. …
>
> Mr Tan: Actually, it's more than 10 per cent, because this is outstanding. It's at a point in time.
>
> Dr Goh: Correct. So the alarming thing is not whether or not the amount is huge, it's why are we not able to collect.

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157 25 AB 170–25 AB 174.

Mr Tan: If it's 1B -- if it's about 1-plus B a year.

Dr Goh: Yes.

Mr Tan: So if you just take the straight line, one month you are doing about 100 million.

Dr Goh: Ya lor. So 1 month in arrears lor.

Mr Tan: So this is --

Dr Goh: So maybe they bought – whatever, lah, traded --

Mr Tan: So isn't it worrying that, they're not even 10 per cent. In this one month we are doing only 100 million, this is already 132 million.

Dr Goh: Correct, correct. So it could be 30 mill, 30 per cent, times three, assuming it's 90 days. I don't know, lah, it seems like there is 90 days' credit terms, or 30 days TR receipt, AR. So to me, like I said, the amount itself is large, and yet can be explained by virtue of a 1B volume. *I would be concerned in the sense that why are we not collecting? Why are you allowing it to probably snowball to 100 mill? I would have started chasing if the exposure is 20, 30 million, but not go up to 100 mill. But I don't think -- this is news to me. I'm not aware of Mercuria being the one, 100 mill. If you tell me, "Did you notice that there was AR of 100 mill?" Then I would say, "Yes, I probably saw it, but it probably didn't register that it was significant", because we have AR and AP, it's always balanced because of this nature of trade, whether or not you give 30 days' credit term. So AR is part and parcel. We are always giving credit terms to people.*

Mr Tan: Understand.

Dr Goh: *But if it's to one party and it's Mercuria, I didn't notice that. But if you had asked me specifically, "Look at this AR, Mercuria", I would have asked, "How do you let it snowball? Are you sure we can get it back? Shall I have a word with Estelle", or Estella, or whatever her name is right. But, yes, I would have been concerned that you allowed a debt to snowball. AR days, I'm concerned about the AR days, than the AR itself.*

[emphasis added]

146 In my view, Dr Goh's statement that the mere fact that over US$100m had been due from one customer would not have been "unusual information" to him was consistent with his position that the *size* of the receivables *per se* did not give him cause for concern. This was buttressed by Dr Goh's subsequent statement that "the alarming thing is not whether or not the amount is huge, it's why are we not able to collect" – the fact that Dr Goh had focused on "why are we not able to collect" did suggest that his concern lay in the delinquency of the receivables (due to IPP's inability to collect on them) rather than their mere existence or size *per se*. I thus accepted Dr Goh's explanation that he had not made any concession during the interview that the mere fact of US$132m in receivables having been due to IPP should have put him on inquiry. I also accepted Dr Goh's explanation that it was not unusual for IPP to have large sums of outstanding receivables given the nature and structure of its business.

147 That said, I was nonetheless satisfied that Dr Goh had breached his duty, albeit for a different reason. The second string to IPP's bow was that Dr Goh had breached his duty by failing to make any inquiries, when faced with the audit confirmation request, on the extent of the US$132m in outstanding receivables that had been delinquent. I agreed with IPP that "any reasonable director would have at least enquired on the status of collection of receivables and how much of it could reasonably be expected to be collected in time".[158]

148 The mere fact that a large sum of outstanding receivables was not unusual in IPP's line of business did not mean that Dr Goh did not have to keep an eye on the status of the receivables. A large sum of outstanding receivables could quickly descend into a major crisis for IPP in the event that IPP's customers were to default on payment. Any reasonable director who had his

158 PCS at para 137.

attention brought specifically to considerable outstanding receivables due from a customer (even if not all of them were delinquent) would have taken steps to satisfy himself that IPP was not at any particular risk of facing a large-scale default by its customer on these receivables. However, "even when shown that there was a significant amount due from a single trade debtor, Dr Goh did not even so much as check how much of these receivables were overdue".[159]

149 Indeed, as Dr Goh himself relied on the distinction between outstanding receivables *per se* and delinquent receivables, it was a necessary part of his case that he had not been put on inquiry because "there was no sign or suggestion that the receivables were delinquent" on the face of the audit confirmation request.[160] But, in my view, it was not sufficient for Dr Goh to merely assume from the lack of any explicit mention of delinquency on the face of the audit confirmation request that there was no concern of delinquency. He was required to do more; specifically, he ought reasonably to have inquired as to what amount of the receivables stated in the audit confirmation request was delinquent.

150 In fact, Dr Goh himself stated during the interview that he "would have started chasing if the exposure is 20, 30 million". He affirmed this position in cross-examination.[161] On his own case, his concern was not with the size of the receivables *per se*, but "AR Days" (*ie*, the number of days a receivable is delinquent).[162] To my mind, this begged the question: how could Dr Goh discover that $20m or $30m in receivables were delinquent, or more generally satisfy his self-professed concerns about the delinquency of IPP's receivables

159 PCS at para 138.

160 1st AEIC of GJH at para 79.

161 NE (10 May 2023) at p 69 ln 16–19.

162 DCS at para 78(b).

if, in the first place, he had not made any inquiries to know of these matters?[163] The point was clearly put by IPP its closing submissions:[164]

> … Dr Goh's evidence during cross-examination is that he would chase after delinquent debts of US$20 million and above. But, to do so would first require him to ask the a priori question of what the delinquent debts were to begin with. It would thus be reasonable even on his own evidence, for Dr Goh to have made the simple inquiry at the time of signing the Mercuria ACR … of whether there were any overdue sums from Mercuria.

151 Dr Goh argued in his closing submissions that "[t]here was no reason for [him] to have pro-actively queried if any of the receivables were delinquent". Simply put, because Mercuria was a strong and credible trading counterparty, Dr Goh would have "no reason to worry *unless* there was something to suggest to him that Mercuria was not paying" [emphasis in original]. At the time that he signed the audit confirmation request, neither IPP's management nor IPP's auditors had flagged to him that any part of the receivables stated on the audit confirmation request was delinquent, and so he was entitled to rely on the appearance of normalcy.[165]

152 I rejected this submission. Dr Goh's argument betrayed a fundamental misconception on his part as to his role as a director. Even if Mercuria was a strong trading counterparty, the fact remained that a large sum of receivables could quickly graduate into a major problem for IPP; because of this, even for credible trading counterparties, a reasonable director would have monitored the potential delinquency of their receivables. And to be in a position to monitor, Dr Goh had to first ask. Further, given that a reasonable director would have proactively inquired as to IPP's receivables position, it was no answer for Dr

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163 PRS at para 109(b).

164 PCS at para 183.

165 DCS at para 67–68.

Goh to rely on his subordinates' failure to raise the matter to him. It bears emphasis that, when the audit confirmation request was placed before Dr Goh, he was, in effect, being specifically informed of IPP's receivables position *vis-à-vis* a single customer. Strictly speaking, he did not even have to *proactively* make any inquiry into IPP's receivables position generally. All he had to do was to ask questions in respect of that which had been specifically put before him.

153 Ultimately, I agreed with IPP that Dr Goh had "blindly signed off on the Mercuria [audit confirmation request] without applying his mind to its contents".[166] In my view, this was a clear breach of his duty of skill, care and diligence. In this regard, the English High Court decision in *D'Jan* was instructive. The brief facts were that a director, Mr D'Jan, had signed an insurance proposal completed by another person which he did not read. As a result, the insurers subsequently repudiated liability under the policy on the ground that the proposal (as completed) contained inaccurate information. After the company went into liquidation, the liquidator brought a claim against Mr D'Jan alleging negligence. Hoffmann LJ held that Mr D'Jan had indeed been negligent in signing the proposal without having read it. His Lordship's reasoning is apposite to the present case (see *D'Jan* at 563):

> … I think that in failing even to read the form, Mr D'Jan was negligent. Mr Russen said that the standard of care which directors owe to their companies is not very exacting and signing forms without reading them is something a busy director might reasonably do. I accept that in real life, this often happens. But that does not mean that it is not negligent. People often take risks in circumstances in which it was not necessary or reasonable to do so. If the risk materialises, they may have to pay a penalty. I do not say that a director must always read the whole of every document which he signs. If he signs an agreement running to 60 pages of turgid legal prose on the assurance of his solicitor that it accurately reflects the board's instructions, he may well be excused from reading it all himself.

166 PCS at para 139.

> But this was an extremely simple document asking a few questions which Mr D'Jan was the best person to answer. By signing the form, he accepted that he was the person who should take responsibility for its contents.

The same could be said about Dr Goh's failure to properly follow up on the audit confirmation request. It was indisputable that the audit confirmation request was an "extremely simple document", and quite a way off bearing any complexity akin to Hoffmann LJ's example of "60 pages of turgid legal prose". The audit confirmation request conveyed a single piece of information: that US$132,336,475 in receivables were due from Mercuria to IPP as of 31 December 2017. If Dr Goh signed the audit confirmation request without properly satisfying himself as to its contents, he did so at his own peril, and he had to now pay the price for it.

154 For the reasons above, I accepted IPP's submission that the audit confirmation request was a red flag that should have triggered Dr Goh to investigate IPP's receivables position. Had Dr Goh done so, he would have discovered that some part of the US$132,336,475 in receivables had been delinquent: by IPP's calculations, at least US$45m of this sum was overdue by 31 December 2017; and by the time the audit confirmation request was signed by Dr Goh and sent to Mercuria, some US$82m had become delinquent.[167] As Dr Goh himself stated in the interview, he would have begun chasing Mercuria if the delinquent receivables had snowballed to US$20m or US$30m; and he would have done so by contacting Ms Estelle Shi of Mercuria, from whom he would almost certainly have learnt that IPP had been involved in non-existent cargo trades.[168]

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167 PCS at para 136.

168 PCS at para 140; PRS at para 112.

(2) The suspension of IPP's Bunker Craft Operator Licence

155 The second red flag relied on by IPP was the suspension of its Bunker Craft Operator Licence. IPP's case, in summary, was that the suspension was a significant event that affected IPP's profitability and even its potential survival. In the circumstances, any reasonable director in Dr Goh's position would have been "jolted … into making some queries as to IPP's financial health".[169] Yet, Dr Goh failed to do so.

156 I accepted this submission. I have already accepted IPP's submission above that any reasonable director in Dr Goh's position would have cast his eye towards IPP's cargo trading business in order to ascertain if the cargo trading business could help IPP tide over the temporary crisis in its bunkering business following the suspension (see [128] above). In other words, the suspension should have prompted Dr Goh into making inquiries into IPP's financial position amidst this crisis, especially with regard to IPP's cargo trading business, which would have assumed centre stage given the constraint to IPP's bunkering business.

157 However, Dr Goh did not do so. At the very least, there was no evidence of Dr Goh having made any inquiries as to IPP's financials or any mention of IPP's cargo trading business whatsoever. Indeed, Dr Goh essentially conceded as much as the elaborate timeline that he constructed in his closing submissions "outlining the steps [he] took" following the suspension did not, at any point, contain a statement that he had made any such inquiries.[170] Leaving aside whether this was because he had in fact not known of IPP's cargo trading business at all, I considered that Dr Goh's failure to make any inquiries into

169 PCS at para 148.

170 DCS at paras 121–135.

IPP's financial position, especially as regards IPP's cargo trading business, amounted to a clear breach of duty.

158 In my view, perhaps the most striking example of Dr Goh's inaction was his failure to follow up in any way after Wallace had informed him on 23 July 2019 that IPP's auditors had raised a "going concern issue" with IPP (see [130] above). Despite being told by Wallace – who, it bears emphasis, was none other than IPP's Chief Financial Officer – that IPP was fighting for survival and facing potential liquidation, Dr Goh was seemingly unfazed. Indeed, in cross-examination, Dr Goh conceded that he had not followed up with Wallace, but sought to explain his inaction on the basis that he "wasn't sure … whether [Wallace] was just talking off the cuff", and that he had assumed that Wallace was working with IPP's auditors to resolve the issue.[171] In my view, no reasonable director in Dr Goh's position would have flippantly dismissed a warning from his company's Chief Financial Officer and auditors that the company was facing a "going concern issue" in the same way that Dr Goh did;[172] still less when the "going concern issue" was raised in the midst of the suspension having significantly curtailed one of the company's two lines of business.

159 In his closing submissions, Dr Goh contended that he had responded appropriately to the suspension by, "most importantly, attempting to reverse the Suspension".[173] With respect, this submission was nothing to the point. Put simply, if a person is charged with negligently omitting to do *X* (*ie*, make inquiries into the company's financial position and cargo trading business), it is

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171 NE (10 May 2023) at p 34 ln 21–p 35 ln 10.

172 PRS at para 155.

173 DCS at para 120.

no answer for him to respond by stating that he had done *Y* (*ie*, acting to reverse the suspension), even if he had performed spectacularly in doing *Y*.[174]

160 In his reply submissions, Dr Goh also asserted that he had not needed to make any inquiries as he had "received general information on IPP's finances and assessed that IPP was still in a positive financial position, notwithstanding the Suspension".[175] In my judgment, none of the factors cited by Dr Goh could, either by themselves or even in totality, have sufficed to completely obviate the need to make *any* inquiry into IPP's financial position and its cargo trading business. None of them could have provided such an unequivocal and/or compelling stamp of approval on IPP's financial health such that a reasonable director would have taken them at face value and not make even the most basic level of inquiry. Moreover, as IPP observed, Dr Goh's claims of having "checked IPP's operating account" and being "satisfied that IPP had enough funds to operate through 3 months", as well as having received "real-time information about IPP's overall health by going into the office", were bald assertions by Dr Goh on the stand that were not supported by any other evidence.[176]

161 Finally, I did not accept Dr Goh's explanation that it had not been necessary to inquire into IPP's cargo trading business because it had been unaffected by the suspension.[177] In cross-examination, Dr Goh admitted that he had not checked or received any information on IPP's cargo trading business, but justified this on the basis that "it would not be relevant to the bunker

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174 PRS at paras 159.

175 DRS at para 64.

176 PCS at para 149; PRS at para 158.

177 DCS at paras 141–142; 1st AEIC of GJH at para 108.

suspension"[178] and he had "just assume[d] that the cargo trading would be a stable business".[179] With respect, this explanation missed the point. As I explained above, a reasonable director in Dr Goh's position would have satisfied himself as to the status of IPP's *entire* business, and not adopt a blinkered view of only the bunkering business; indeed, the continued viability of the cargo trading business was especially crucial in the circumstances given that it became IPP's lifeline in getting through the crisis caused by the suspension (see [156] above). It thus made no sense for Dr Goh to seemingly disregard it altogether (assuming he had known of it in the first place), or to be content to make sweeping assumptions on its status without even looking at it.

162 For the reasons above, I was satisfied that the suspension of IPP's Bunker Craft Operator Licence was a red flag that should have prompted Dr Goh to inquire into IPP's financial condition as well as IPP's cargo trading business.

(3) The Maybank confirmations of indebtedness signed by Dr Goh

163 The third flag that IPP cited was the three confirmations of indebtedness to Maybank which Dr Goh signed on 17 July and 24 July 2019.[180]

164 I can deal with this red flag shortly. In my judgment, it followed from my finding above that the suspension of IPP's Bunker Craft Operator Licence itself was a red flag necessitating inquiry on Dr Goh's part that the same conclusion applied *a fortiori* to the three confirmations of indebtedness signed by Dr Goh *during the term of the suspension*.

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178 NE (10 May 2023) at p 31 ln 18–23.

179 NE (10 May 2023) at p 39 ln 4–7.

180 1 AB 522; 1 AB 544; 1 AB 577.

165 It bears emphasising once more that the Maybank Facility only financed IPP's cargo trading business (see [13] above); that being so, the confirmations of indebtedness to Maybank ought to have had the effect of bringing Dr Goh's attention to IPP's cargo trading business *specifically*. Even if Dr Goh had not been jolted into action to inquire into IPP's financial position and the state of its cargo trading business by the advent of the suspension *per se*, he must surely have inquired by the time that the confirmations of indebtedness were placed before him for his signature. Far from Dr Goh's suggestion that IPP was "clutching at straws",[181] the confirmations of indebtedness were "the proverbial straw that broke the camel's back".[182] Yet, it appeared that Dr Goh, once again, had little difficulty in blindly signing whatever was before him without applying his mind to its significance or what it called upon him to do – just as he had done for the audit confirmation request (see [153] above).

166 Seen in this light, the fact that the confirmations of indebtedness were, as Dr Goh submitted, "administrative in nature", in that IPP would have to pay those sums to Maybank even if Dr Goh had refused to sign off on them,[183] was nothing to the point. The point of the matter is that the confirmations of indebtedness should have prompted Dr Goh to inquire into IPP's financial situation. The fact that the signing of the confirmations of indebtedness did not result in IPP incurring new liabilities was beside the point.

167 For a similar reason, Dr Goh's complaint that IPP had changed its pleaded case in respect of the confirmations of indebtedness was

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181 2nd Affidavit of Evidence-in-Chief of Goh Jin Hian dated 28 April 2023 ("2nd AEIC of GJH") at para 16.

182 PCS at para 155.

183 DCS at paras 147–148; DRS at para 68.

unmeritorious.[184] For context, I set out the relevant pleading from IPP's Statement of Claim as follows:

> … whilst the suspension was in place, the Defendant signed off three confirmations of indebtedness to Maybank … The Defendant did so without carrying out such inquiries or investigations, which he ought to have done, especially given the uncertainties to the Plaintiff's financial position as a result of the suspension. Such inquiries or investigations include, but are not limited to, inquiries and investigations to ascertain the financial viability and/or health and true assets and liabilities of the Plaintiff.

Dr Goh construed IPP's case as being that Dr Goh should have refused to sign the confirmations of indebtedness.[185] That missed the point. Based on the passage I have reproduced above, it was clear that IPP's averment was not that Dr Goh should not have signed the confirmations of indebtedness *per se*, but that Dr Goh had failed to make inquiries into IPP's financial position prior to signing.

168 Finally, to the extent that Dr Goh dismissed the significance of the confirmations of indebtedness on the basis that there was no need for him to make any inquiry into IPP's cargo trading business as it was not affected by the suspension,[186] I have already addressed the difficulty with that argument at [161] above.

The green flags relied on by Dr Goh

169 As mentioned above, Dr Goh also submitted that he had relied on certain green flags. To recapitulate, these were (see [33] above):

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184 DRS at para 69.

185 DRS at para 69.

186 DCS at para 150.

(a) Dr Goh's "trip-wire" theory based on IPP's business and financing model; and

(b) the fact that Dr Goh had been provided with financial information showing that IPP was operating "business as usual".

170 In my judgment, neither of these so-called green flags came close to obviating any inquiry on Dr Goh's part based on the three red flags identified by IPP which I have considered above.

(1) Dr Goh's "trip-wire" theory

171 I deal first with Dr Goh's "trip-wire" theory. Essentially, the premise of the trip-wire theory was that, because IPP's ability to repay the Banks for their financing under the Facilities was contingent on its own customer paying it, in the event that IPP's customer defaulted on payment to IPP, IPP would in turn quickly become in default as it would be unable to repay the Banks. Dr Goh could thus rely on the appearance of the Banks continuing to be repaid as a "reasonable proxy" for IPP's continuing good financial health.[187]

172 I had little hesitation in rejecting Dr Goh's submission. In my view, IPP succinctly identified the fundamental difficulty with Dr Goh's trip-wire theory in its statement that it was "akin to Dr Goh saying that the only way to detect cancer is for death to occur".[188] Put simply, the trip-wire would only operate after the event to notify Dr Goh that IPP was in default (indeed, IPP being in default was precisely the trip-wire) – it could provide no indication prior to IPP itself going into default so that Dr Goh could take steps to guard against this

187 DCS at paras 37–38.

188 PCS at para 179.

outcome. A director's duty to make inquiries (under the rubric of his duty of skill, care and diligence) plays a prophylactic role. It is intended to ensure that a director is sufficiently on top of the company's affairs to *prevent* the company from entering into a crisis into the first place. It is thus no substitute for a director's duty to make inquiries for the director to sit back and wait for crisis to occur, and using the onset of the crisis – that was the very thing that his duty required him to foresee and steer away from – as the indicator of when he should take action.

173 Indeed, as IPP also pointed out, the patent absurdity of Dr Goh's trip-wire theory was borne out based on what had transpired. The moment that IPP began to default on its repayments to the Banks under the June–July 2019 Drawdowns, the Banks pulled their financing, and IPP almost immediately went into judicial management and liquidation.[189]

(2) The financial information provided to Dr Goh

174 I turn to Dr Goh's supposed reliance on financial information that had been provided to him, which he claimed gave him the reasonable impression (on which he relied) that IPP was operating "business as usual" with no cause for concern.

175 In making this submission, Dr Goh relied on s 157C of the Companies Act, which provides as follows:

> **Use of information and advice**
>
> 157C.—(1) Subject to subsection (2), a director of a company may, when exercising powers or performing duties as a director, rely on reports, statements, financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

[189] PCS at para 179.

> (*a*) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
>
> (*b*) a professional adviser or an expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
>
> (*c*) any other director or any committee of directors upon which the director did not serve in relation to matters within that other director's or committee's designated authority.
>
> (2) Subsection (1) applies to a director only if the director —
>
> (*a*) acts in good faith;
>
> (*b*) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
>
> (*c*) has no knowledge that such reliance is unwarranted.

176 In my judgment, there was no merit in this submission. Put simply, even if Dr Goh had indeed received periodic financial information from his subordinates, this did not obviate the need for him to make inquiries into IPP's financial health at appropriate junctures. Dr Goh's duty to acquire and maintain a sufficient knowledge and understanding of IPP's affairs was a *continuing* obligation (see *Barings* at 489). The law does not permit a director to get by in a state of somnambulism for the most part, only to be roused on occasion by his subordinates. As V K Rajah JC put the point in *Vita Health*, "[a] director cannot now be viewed as a mere *sentinel* who may occasionally doze off at his post"; on the contrary, "[d]irectors are officers who must remain alert and watchful at the helm" (at [21]).

177 In any event, Dr Goh could only point to a few disparate incidents during which he supposedly received financial information on IPP. These were: (a) the management accounts enclosed in an email from Wallace (in which Dr Goh was

copied) on 16 January 2019;[190] and (b) the text message conversations between Dr Goh and Wallace on 13 November 2018 (see [121] above) and 23 July 2019 (see [130] above).[191] Three points can be made from this.

178 First, this meant that there was no system or regularity in Dr Goh receiving such financial information so that his receipt of such updates could truly replace his duty to make inquiries; once again, Dr Goh was content to kick his feet up and only receive such updates that his employees decided to give him as and when they saw fit.

179 Second, two of the cited instances where Dr Goh had received updates – *viz*, Wallace's email on 16 January 2019 and the text conversation on 13 November 2018 – predated the suspension of IPP's Bunker Craft Operator Licence. Thus, even if they could have obviated any need for inquiry from Dr Goh prior to the suspension (and, to be clear, they did not), they nonetheless could not explain Dr Goh's failure to inquire when a duty to do so clearly arose during the term of the suspension.

180 Third, insofar as Dr Goh relied on the text message from Wallace on 23 July 2019, in which Wallace had informed him that IPP's auditors had raised a "going concern issue", I struggled to see how this actually assisted him. As I noted above, any reasonable director who had been informed by his company's Chief Financial Officer and auditors that the company was facing a "going concern issue" would have been jolted into action to avert what appeared to be a potential liquidation risk to the company. Perplexingly, Dr Goh appeared to take this in the other direction, as his position seemed to be that IPP facing a

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190 DCS at para 153; DRS at paras 78–80.

191 DRS at para 74–77

"going concern issue" was a satisfactory state of affairs that did not require any further follow-up on his part.

181 Tying this back to s 157C of the Companies Act, it was clear to my mind that that provision provided no assistance to Dr Goh. The plain text of the provision makes clear that it does not provide a director with *carte blanche* to take whatever he has at face value, as various constraints are imposed. Among other things, any reliance on his employees or a professional adviser by a director must be "reasonable"; in good faith; and, perhaps most pertinent to the present case, a director must make proper inquiry where such inquiry is necessitated by the circumstances. Given my findings above on Dr Goh's multiple failures to make proper inquiries in circumstances which cried out for him to do so, he did not meet the requirements in s 157C(2).

182 It could not have been a surprising conclusion that s 157C(2) did not assist Dr Goh. The various requirements that have to be met for a director to rely on s 157C make apparent that s 157C does not, in any way, amount to a qualification of the director's duty of skill, care and diligence under the common law or s 157(1). Instead, the requirements of s 157C are a mirror image of the director's duty of care. Thus, a finding that a director has been negligent *ipso facto* disables him from relying on s 157C; and contrariwise, a director who comes within the terms of s 157C is one who is *ex hypothesi* not negligent.

Conclusion on breach of duty of care

183 Given my findings above, I was satisfied that Dr Goh had breached his duty of care, skill and diligence. This was either based on his lack of knowledge of IPP's cargo trading business altogether, or to take reasonable steps – in particular, to make necessary inquiries – when various red flags as to IPP's financial position arose. Further, none of the reasons relied on by Dr Goh as

ostensible justifications for his failure to make inquiries were satisfactory or persuasive.

Whether Dr Goh breached his Creditor Duty

184 I turn to IPP's second claim against Dr Goh, which was its claim that Dr Goh had breached his Creditor Duty by allowing or procuring IPP's entry into the June–July 2019 Drawdowns.

Applicable legal principles

185 It is apposite to begin with the applicable law. At present, the leading decision on the Creditor Duty is the Court of Appeal's recent decision in *Foo Kian Beng v OP3 International Pte Ltd (in liquidation)* [2024] 1 SLR 361 ("*Foo Kian Beng*"). Although this decision was handed down after I had rendered my decision in this case, the Court of Appeal did not, subject to one potential qualification that I address below, effect any substantive change in the legal position laid down in earlier authorities such as *Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 and *Dynasty Line (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277, which were cited to me by the parties. There is thus no issue in drawing on the analytical framework laid down by the Court of Appeal in *Foo Kian Beng* for the purposes of my analysis in the present case.

186 The following general propositions from *Foo Kian Beng* provide useful context for considering the Creditor Duty.

187 First, the Creditor Duty is a fiduciary duty that is owed by a director *to the company*; it is not a duty that is owed directly to the creditors. This means that creditors therefore have no *locus standi* to enforce a director's apparent

breach of the Creditor Duty, and the proceeds of recovery would inure for the benefit of the company (see *Foo Kian Beng* at [60]).

188 Second, the Creditor Duty is not a freestanding obligation owed by a director to act in the creditors' interests, but best understood as a rule of law that alters the content of a director's fiduciary duty to act *bona fide* in the best interests of the company by modifying how the "company's interests" is understood in this context (see *Foo Kian Beng* at [69]). This was clearly explained by Lord Reed PSC in the landmark UK Supreme Court decision of *BTI 2014 LLC v Sequana SA and others* [2024] AC 211 ("*Sequana*") as follows (at [11]):

> … there is a rule which modifies the ordinary rule whereby, for the purposes of the director's fiduciary duty to act in good faith in the interests of the company, the company's interests are taken to be equivalent to the interests of the members as a whole. … Where the modifying rule applies … the company's interests are taken to include the interests of its creditors as a whole. The duty remains the director's duty to act in good faith in the interests of the company. The effect of the rule is to require the director to consider the interests of creditors along with those of members.

189 Third, the rationale underlying the Creditor Duty is to reflect the reality that there is a shift in the main economic stakeholders of a company, from its shareholders to its creditors, as the company approaches insolvency. Losses suffered by an insolvent company are, as a matter of economic reality, borne by its creditors, and not its shareholders who as mere residual claimants would *ex hypothesi* receive nothing (see *Foo Kian Beng* at [72]). The Creditor Duty is thus facilitative of optimal risk allocation: it ensures that a company is run by its directors with proper regard to the interests of those who are the primary bearers of the risks involved in the company's ongoing trading, as Lord Reed PSC explained in *Sequana* (at [59]):

> The treatment of the company's interests as equivalent to the shareholders' interests can therefore be regarded as justifiable while the company is financially stable, since it results in the directors being under a duty to manage the company in the interests of those who primarily bear the commercial risks which the directors undertake; and … creditors are also protected. But that ceases to be true when the company is insolvent or nearing insolvency. *To treat the company's interests as equivalent to the shareholders' interests in that situation encourages the taking of commercial risks which are borne primarily not by the shareholders but by the creditors, who will recover less in a winding up if the company's assets have been diminished or if it has taken on additional liabilities. In economic terms, treating the company's interests as equivalent to the shareholders' interests in a situation of insolvency or near-insolvency results in the externalisation of risk: losses resulting from risk-taking are borne wholly or mainly by third parties.*
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> [emphasis added]

190 In *Foo Kian Beng*, the Court of Appeal affirmed the traditional two-stage analysis of (a) first ascertaining whether the Creditor Duty has arisen and (b) thereafter considering the issue of breach (at [90]–[93]).

191 At the first stage of the analysis, the court must *objectively* ascertain which of the following three financial stages the company was in at the material time that the transaction was entered into or that was likely to arise as a result of the company entering into the said transaction (see *Foo Kian Beng* at [103] and [105]):

(a) **Category one:** Where all things, including the contemplated transaction, having been considered, the company is solvent and able to discharge its debts.

(b) **Category two:** Where a company is imminently likely to be unable to discharge its debts. This category encompasses cases where a director ought reasonably to apprehend that the contemplated transaction is going to render it imminently likely that the company will

not be able to discharge its debts. It is, in other words, no excuse for a director to claim that he did not appreciate how dire the company's financial state was if he ought reasonably to have done so.

(c) **Category three:** Where corporate insolvency proceedings are inevitable.

192 At the second stage of the analysis, the court should, having regard to which of the three financial stages the company was identified to be in at the material time, examine the subjective intentions of the director and determine whether he acted in what he considered to be the best interests of the company (see *Foo Kian Beng* at [106]):

(a) **Category one:** Where a company is, all things considered, financially solvent, a director typically does not need to do anything more than act in the best interests of the shareholders to comply with his fiduciary duty to act in the best interests of the company. The Creditor Duty does not arise as a discrete consideration in these circumstances.

(b) **Category two:** In this intermediate zone, the court will scrutinise the subjective *bona fides* of the director with reference to the potential benefits and risks that the relevant transaction might bring to the company.

(c) **Category three:** Lastly, where corporate insolvency proceedings are inevitable, there is a clear shift in the economic interests of the company (from the shareholders to the creditors as the main economic stakeholders of the company) because the assets of the company at this stage would be insufficient to satisfy the claims of creditors. The Creditor Duty operates during this interval to prohibit

> directors from authorising corporate transactions that have the exclusive effect of benefitting shareholders or themselves at the expense of the company's creditors.

193 Although the Court of Appeal referred to the "subjective intentions" and "subjective *bona fides*" of the director, and it does appear that the Court of Appeal's finding of no breach of the Creditor Duty in *BIT Baltic* turns on an application of a purely subjective test (at [55]), I do not read the Court of Appeal in *Foo Kian Beng* as having had the intention of laying down a purely subjective test of *bona fides* as the sole determinant of whether the director has complied with his Creditor Duty. To have done so would have entailed a substantial departure from earlier decisions of the Court of Appeal, in which the courts had been clearly alive to the difficulties attendant with a purely subjective standard.

194 For example, in *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 ("*Goh Chan Peng*"), Judith Prakash JA had expressed the director's duty to act *bona fide* in the best interests of the company as being part-subjective and part-objective (at [35]–[36]):

> 35 Indeed, there are both subjective and objective elements in the test. The subjective element lies in the court's consideration as to whether a director had exercised his discretion *bona fide* in what he considered (and not what the court considers) is in the interests of the company: *Re Smith & Fawcett Ltd* [1942] Ch 304 at 306, as accepted by this court in *Cheong Kim Hock v Lin Securities (Pte)* [1992] 1 SLR(R) 497 at [26] and in *Ho Kang Peng v Scintronix Corp Ltd* [2014] 3 SLR 329 ("*Ho Kang Peng*") at [37]. Thus, a court will be slow to interfere with commercial decisions made honestly but which, on hindsight, were financially detrimental to the company.
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> 36 The objective element in the test relates to the court's supervision over directors who claim to have been genuinely acting to promote the company's interests even though, objectively, the transactions were not in the company's interests. ***The subjective belief of the directors cannot determine the issue***: the court has to assess whether an

> intelligent and honest man in the position of a director of the company concerned could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company. This is the test set out in *Charterbridge Corporation Ltd v Lloyds Bank Ltd* [1970] Ch 62 (at 74) and it has been applied here since adopted by this court in *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064 (at [28]). Thus, "where the transaction is not objectively in the company's interests, a judge may very well draw an inference that the directors were not acting honestly": *Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) ("*Walter Woon*") at para 8.36, referred to in *Ho Kang Peng* at [38]. It is thus observed in *Walter Woon* at para 8.36 that in practice the courts often apply a more objective test although the test is theoretically subjective.
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> [emphasis added in bold italics]

195 Although Prakash JA towards the end of [36] did appear to suggest that the test is "theoretically subjective" and that the objective standard is merely an evidential proxy from which the court may draw an inference as to the director's subjective *bona fides*, the statement at the start of [36] that "[t]he subjective belief of the directors cannot determine the issue" appears to be an unequivocal rejection of an entirely subjective standard (see also the recent Court of Appeal decision of *Credit Suisse Trust Limited v Ivanishvili, Bidzina and others* [2024] SGCA(I) 5 at [45]).

196 In this regard, the facts of the Court of Appeal's earlier decision in *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 ("*Ho Kang Peng*") provide a striking example of how a purely subjective test would be underinclusive. In that case, the plaintiff company had made certain payments that were effectively bribes, and subsequently sued the defendant, its chief executive officer and director, for breaches of fiduciary duty. In finding that the defendant had breached his duty to act *bona fide* in the best interests of the company, the Court of Appeal emphasised that the law did not require the court to "refrain from exercising any supervision over directors

as long as they claim to be genuinely acting to promote the company's interests", thus apparently eschewing a wholly subjective test (see *Ho Kang Peng* at [38]). The court then went on to hold that, by allowing the company to pay bribes, the defendant had run the "unjustified risk" of exposing the company to criminal liability, and thus could not be heard to say that he had acted in the company's interests, as this was a risk that no director could honestly have believed was in the company's interests (see *Ho Kang Peng* at [40]).

197 As Vinodh Coomaraswamy J noted in the High Court decision of *Ong Bee Chew v Ong Shu Lin* [2019] 3 SLR 132, the Court of Appeal in *Ho Kang Peng* found that the defendant in that case had "breached his duty to act *bona fide* in the best interests solely by virtue of the objective result of his actions *and not his subjective intentions in acting as he did*" [emphasis added]; and in doing so (at [81]):

> … the Court of Appeal effectively exercised a supervisory jurisdiction over directors by drawing a consequentialist line in the sand. *A director who crosses that line will be held to have breached his duty to the company and will be held responsible for the result or potential result of his act without regard to his subjective intention.* …
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> [emphasis added]

198 Put into the context of the present case, on a wholly subjective test, it is quite arguable for a director like Dr Goh to maintain that he had acted with subjective honesty notwithstanding, or indeed because of, his ignorance. But I do not think that the Court of Appeal in *Foo Kian Beng* could have intended to put a director in a better position by virtue of his complete ignorance of a major line of the company's business (as I have found Dr Goh to have been), as opposed to one who was not so ignorant but, like the director in *Ho Kang Peng*, made a foolish (but subjectively honest) decision that no reasonable director

could have made. It seems to me clear that the former must be an *a fortiori* case of breach of duty relative to the latter.

199 I do note that an argument can be made that a purely subjective standard creates no liability lacuna, or gap in protection, on the basis that the Creditor Duty is merely one of several duties that a director is subject to. So, while a director might not be in breach of his Creditor Duty due to an absence of subjective dishonesty (if that is indeed the touchstone), he might yet be found in breach and held to account for a breach of other duties, such as his duty of skill, care and diligence (see *Foo Kian Beng* at [108]). Although that is true, and a solution from a practical standpoint, it is somewhat conceptually unsatisfactory that a duty that exists for the creditors' protection, by enjoining directors to have due regard for their interests at appropriate junctures in the company's financial life cycle, can be so easily evaded by a director pleading to his complete (subjective) ignorance of the company's affairs. A failure to consider the creditors' interests due to ignorance should be the clearest example of a breach of the Creditor Duty.

200 Finally, I note that there was some *obiter* discussion in *Foo Kian Beng* (at [61]–[68]) of my earlier decision in *Voltas Limited v Ng Theng Swee and another* [2023] SGHC 245 ("*Voltas*"), on the issue of when a claim for breach of the Creditor Duty becomes actionable; more specifically, whether the company's entry into liquidation is a condition precedent for a claim for breach of the Creditor Duty to be brought against an errant director. As *Voltas* is the subject of a pending appeal, it would not be appropriate for me to express any further view on the issue here. In any event, given that IPP is a company in liquidation, the outcome of the appeal in *Voltas* and the landing which the Court of Appeal might come to on that issue, would not, I believe, affect my decision in the present case.

IPP's financial condition at the time of the June–July 2019 Drawdowns

201 I start with the first of the two stages of the analysis set out in *Foo Kian Beng*, where the operative question is to identify IPP's financial condition at the time of the June–July 2019 Drawdowns. This determines whether Dr Goh's Creditor Duty arose at this time.

202 In my judgment, at the material time, IPP was at the very least in "Category two" (*ie*, imminently unable to discharge its debts) or "Category three" (*ie*, corporate insolvency proceedings being an inevitability) of the three financial stages identified by the Court of Appeal in *Foo Kian Beng* (see [191] above).

203 IPP submitted that it was deeply balance sheet insolvent by June 2019. In this regard, IPP relied on adjusted balance sheets generated by its electronic accounting system, Autocount ("the Autocount System"). As Mr Tan explained in his affidavit, the JMs used the Autocount System to generate IPP's balance sheet on a monthly basis for the period of December 2017 to July 2019. The JMs then adjusted IPP's asset position downwards by discounting all sham and non-existent receivables to zero.[192] Having done this, IPP's adjusted net asset position was negative (*ie*, insolvent) at the material times – specifically, as at end-May 2019, IPP's adjusted net asset position was negative US$667,963,350.[193]

204 Dr Goh submitted that IPP had failed to prove that it was insolvent and/or in a financially parlous position at the material time. First, Dr Goh disagreed with IPP's use of the balance sheet test, as he argued that the

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192 AEIC of TWC (Vol 1) at para 77.

193 PCS at para 271.

applicable test was the cash flow test in light of the Court of Appeal's decision in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478.[194] Second, he argued that, even if the balance sheet test were applied, IPP had failed to meet its burden of proof to establish that it had been insolvent during the period of June and July 2019 when the June–July 2019 Drawdowns were procured.[195] Broadly, Dr Goh disputed IPP's methodology in calculating IPP's net asset position based on the balance sheets generated by the Autocount System. Apart from asserting that the Autocount System-generated balance sheets may not be an accurate representation of IPP's financial position as "[t]he accounting records and books of IPP were clearly not in order", Dr Goh also disagreed with the Liquidators' decision to omit removing or discounting certain liabilities on the balance sheet.[196]

205 I accepted IPP's submission that it was balance sheet insolvent at the material time. In my judgment, even making allowance for errors in the Liquidators' methodology, it was reasonably clear that IPP was balance sheet insolvent at the material time. It bears recalling that Dr Goh's own "trip-wire" theory was premised on IPP's ability to repay the Banks' financing having been contingent on it being paid by its customer. This was an incident of the nature of IPP's business and its financing structure. As a matter of logic, the fact that the cargo trading transactions financed by the Banks were shams and non-existent necessarily meant that every drawdown by IPP on the Facilities had a negative effect on IPP's balance sheet, as IPP incurred a liability to repay the Banks' financing, but did not actually receive the benefit of the financing (given that the supply contracts and sale contracts, being shams and non-existent, did

194 DCS at para 164.

195 DCS at para 177.

196 DCS at paras 178–179.

not involve IPP receiving any actual cargo from its putative suppliers or receivables from its putative customers).

206 Indeed, the Court of Appeal in *Foo Kian Beng* specifically eschewed slavish reliance on any technical test of insolvency when determining whether the Creditor Duty had arisen under the first stage of the analysis (at [104]):

> We affirm our holding in *Dynasty Line* that ascertaining the company's solvency at the time a particular transaction was entered into is, in the present context, done with a view to determining whether a director had breached the Creditor Duty. ***The court is not concerned with the question of whether the company was technically insolvent or whether it would have been appropriate to liquidate the company. Hence, whilst the "going concern" test and the "balance sheet" test provide useful indicia of the financial health of the company, a strict and technical application of these tests should be eschewed.*** … Rather, the court should engage in a "broader assessment of the surrounding circumstances", which would include a consideration of all claims, debts, liabilities and obligations of a company …
>
> [emphasis added in bold italics]

207 Following this guidance, it was strictly unnecessary for me to make a finding that IPP was balance sheet insolvent *per se*. Instead, the court should broadly consider, based on the circumstances, which of the three financial stages elucidated in *Foo Kian Beng* the company was in at the material time. For the reason I have explained above – that, on a commonsense analysis, IPP had been incurring liabilities to the Banks without any corresponding increase in its asset position due to the sham nature of the cargo trading transactions – it was clear to my mind that IPP was inevitably on the path to an insolvency proceeding, or at the very least, imminent inability to pay its debts, at the time it entered into the June–July 2019 Drawdowns.

208 Finally, the benefit of hindsight vindicates my view that IPP was irretrievably insolvent at the material time. IPP's inability to repay the June–

July 2019 Drawdowns was the very event that pushed it into judicial management and subsequent liquidation (see [173] above). Logically, this meant that, at the time that it procured these drawdowns for the purposes of sham and non-existent transactions, it had inevitably sealed its demise.

Whether Dr Goh breached his Creditor Duty by allowing or procuring IPP's entry into the June–July 2019 Drawdowns

209 My finding that judicial management and/or liquidation was inevitable at the time that IPP entered into the June–July 2019 Drawdowns means that Dr Goh's Creditor Duty had been squarely engaged and was in full force when these drawdowns were made.

210 In my judgment, it was clear that Dr Goh had breached his Creditor Duty.

211 The position in relation to the June–July 2019 Cargo Trading Drawdowns was straightforward. The only effect of these transactions was to increase IPP's liabilities, since IPP incurred liabilities to repay the Banks without obtaining any actual assets from the supply contracts purportedly financed by the Banks, given that the supply contracts were shams. By any measure, the fact that there was no prospect that IPP could have turned a profit from these transactions meant that Dr Goh could not seriously contend that these were transactions that could have had any prospect of benefitting IPP's creditors by improving IPP's net asset position.

212 In this regard, given my conclusion above that the test is not purely subjective, the fact that Dr Goh did not actually apply his mind to the cargo trading transactions (in light of my finding that he did not actually know of IPP's cargo trading business) could not assist him. Even if Dr Goh had genuinely

believed that IPP's ongoing trading was in its creditors' interests, such a belief would have been based on an entirely erroneous premise. No reasonable director having an awareness of the true state of affairs could have entertained the belief that it was in the interests of IPP's creditors to enter into sham or non-existent cargo trading transactions which resulted in IPP incurring liabilities to repay the Banks' financing.

213 Turning to the June–July 2019 Bunkering Drawdowns, although it was undisputed that these were genuine transactions, I did not think that this fact absolved Dr Goh. As IPP submitted, given that it was deeply insolvent – or, as I have found above, inevitably headed into judicial management or liquidation – at the material time, IPP incurred these liabilities to the Banks at a time when there was no reasonable prospect that the Banks could be repaid.[197] In my judgment, a director who procures the company to take on more loans at a time when the company cannot reasonably repay these loans must necessarily breach his duty to take into account the interests of the company's creditors since, in doing so, the director is effectively compounding the scale of the company's insolvency.

214 Dr Goh submitted that he did not breach his Creditor Duty *vis-à-vis* the June–July 2019 Drawdowns because the Banks only became creditors as a result of these drawdowns.[198] Thus, at the time that IPP entered into these drawdowns, the Banks' interests were not interests that Dr Goh was required to give consideration to. In support of this submission, Dr Goh relied on the High Court decision of *Prima Bulkship*, where the court had reasoned as follows (at [71]):

> The Sellers' interests *cannot* be taken as a creditor's interest which the Defendant Directors were obliged to take into account

197 PCS at para 292.

198 DCS at para 186; DRS at para 95.

> at the time of the entry into the MOAs. It would be circuitous if the creditor whose interests the Defendant Directors ought to have had regard to is the Sellers' because at the material time, the Sellers were not yet creditors of the Companies; it was only *by virtue* of entering into the MOAs with the Companies that the Sellers subsequently became creditors.
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> [emphasis in original]

215 I agreed with Dr Goh that the above extract from *Prima Bulkship* did support the proposition that a director does not have to take into account the interests of persons who would only become creditors as a result of the very transactions that are impugned. However, I respectfully declined to follow this reasoning. In my judgment, it was necessary to bear in mind the purpose of the Creditor Duty. If the purpose of the Creditor Duty is to protect a company's creditors from incurring further losses (beyond that which they would necessarily already make by virtue of the company's insolvency), there is no good reason why this should not include persons who are dragged into the company's insolvency by virtue of the directors procuring the company to enter into transactions with them. But for the directors' actions, these counterparties would not have suffered any loss. Indeed, the following observations of Lord Reed PSC in *Sequana*, where his Lordship eschewed a blinkered approach of only taking into account the interests of the current creditors of the company at the material time, are apposite (at [48]):

> … the interests of the company cannot be confined to the interest of current creditors as at the time of a given decision by the directors, any more than they can be confined to the interests of current shareholders. Since the identities of the company's creditors constantly change so long as debts continue to be incurred and discharged, any consideration of the company's long term interests, where the [Creditor Duty] applies, must include consideration of the interests of its creditors as a class rather than as a fixed group of individuals.

216 Indeed, the difficulty with Dr Goh's position was underscored by his related submission that, because the Banks' interests did not form part of the

interests of creditors that he was required to take account of, the June–July 2019 Drawdowns had actually been beneficial to IPP's current creditors at that time. Dr Goh provided the following illustration to explain the benefit which IPP's creditors supposedly received from IPP entering into these drawdowns with the Banks:[199]

> By way of an illustration: (a) assume a company is insolvent and has assets of $100 and liabilities to creditors of $200; (b) if the company is wound up, the creditors would receive $0.50 per $1 of debt. These are the creditors whose interests directors have to take into account; (c) if the company now borrows an additional $100 – the company would have assets of $200 and liabilities to creditors of $300. If the company is now wound up, creditors would receive $[0].67 per $1 of debt; and (d) thus, in respect of existing creditors, borrowing would be in their interest.

217 With respect, this was a plainly absurd suggestion. As IPP rightly pointed out, Dr Goh was effectively suggesting that the Creditor Duty requires, or at least encourages, a director to resort to running a Ponzi scheme by using new money to pay off existing liabilities, so as to spread the losses of the company's existing creditors by drawing in new creditors into the company's insolvency. It is antithetical to the *raison d'être* of the Creditor Duty to interpret it as calling on a director to increase the scale and the magnitude of the company's insolvency. Indeed, Dr Goh's suggestion flew in the face of the prohibition against wrongful trading in s 239 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"), which specifically proscribes an insolvent company incurring debts or other liabilities without reasonable prospect of meeting them in full (see s 239(12) of the IRDA).

218 Finally, Dr Goh did not seem to be alive to the fact that his illustration did not even apply to IPP insofar as the June–July 2019 Cargo Trading

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199 DCS at para 189.

Drawdowns were concerned. The point made by Dr Goh's illustration was essentially that IPP's existing creditors benefitted from a cash injection – an increase in IPP's assets – through the Banks' financing. But, as I have noted above, the fact that the cargo trading transactions were shams meant that IPP did not actually experience an increase in its assets corresponding to the incurred liability to repay the Banks' financing (see [211] above). Thus, IPP's existing creditors were made worse off as the increase in liabilities engendered by the June–July 2019 Cargo Trading Drawdowns meant that their already limited distributions out of IPP's assets were further diluted by the Banks' entry into the fray.

219 For the reasons above, I concluded that Dr Goh had breached his Creditor Duty by allowing or procuring IPP's entry into the June–July 2019 Drawdowns.

Whether IPP suffered any loss from Dr Goh's breaches of duty

220 Given my findings that Dr Goh had breached his duties to IPP, I turn to address the issue of the remedies that should be awarded to IPP to remedy Dr Goh's breaches.

221 IPP primarily sought the following remedies against Dr Goh:

(a) First, damages in the sum of US$146,047,099.60, being the aggregate amount of the June–July 2019 Cargo Trading Drawdowns, coupled with the interest due on this sum at the rates set out under the respective Facilities; and

(b) Second, damages in the sum of US$10,508,238.71, being the aggregate amount of the June–July 2019 Bunkering Drawdowns,

coupled with the interest due on this sum at the rates set out in the SocGen Facility.

222 IPP's claim was thus founded on two main heads of loss, each corresponding to its liability to the Banks under each category of the June–July 2019 Drawdowns. In contrast, Dr Goh raised various arguments challenging the existence of these two heads of loss.

The June–July 2019 Bunkering Drawdowns

223 I start with the June–July 2019 Bunkering Drawdowns. Dr Goh argued that there was no evidence that these drawdowns caused any loss to IPP.[200] His reasoning broadly proceeded as follows. As IPP did not contend that the June–July 2019 Bunkering Drawdowns were sham transactions,[201] moneys were paid out by SocGen to IPP's suppliers in respect of real transactions involving real cargo (*ie*, ex-wharf cargo or bunker fuel oil), which were then on-sold by IPP to its customers. Thus, IPP would either have had received the cargo *in specie* or the proceeds from the on-sale of the same to its customers.[202] Given that SocGen's financing to IPP was secured by, *inter alia*, the cargo whose purchases were being financed, repayment by IPP to SocGen was virtually guaranteed. IPP had failed to properly explain why, in these circumstances, SocGen had not been paid.[203]

224 For the reasons below, I accepted Dr Goh's submission that IPP did not suffer loss in relation to the June–July 2019 Bunkering Drawdowns.

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200 DCS at para 196.

201 DCS at para 197.

202 DCS at paras 198 and 199(b).

203 DRS at para 109.

225 First, as a starting point, I agreed with Dr Goh that IPP did not make any real effort at proving its loss in respect of the June–July 2019 Bunkering Drawdowns.[204] For example, even after Dr Goh had raised his objections to this head of loss in his closing submissions, IPP failed to provide any substantial response to Dr Goh's contentions in its reply submissions. Instead, all IPP offered in reply was the following, rather threadbare, assertion:[205]

> IPP's position on Dr Goh's breach is simply that by allowing IPP to continue to make the bunkering drawdowns while it was massively insolvent, Dr Goh was allowing IPP to sink deeper into debt. The losses which resulted from this included all of the US$10,508,238.71 claimed in respect of the June–July 2019 Bunkering Drawdowns.

226 Second, even when IPP did appear to make some attempt at identifying a loss arising from the June–July 2019 Bunkering Drawdowns, it did not exhibit any real conviction in doing so. In the extract above, there was a rather oblique assertion to loss having been suffered because Dr Goh had "allow[ed] IPP to sink deeper into debt". This theme was also present in IPP's closing submissions, as IPP made the following submission:[206]

> … IPP submits that the aggregate sum of US$10,508,238.71 which was drawn down for purchases of bunker fuel continue to remain on the books of IPP, and as a debt that SocGen is claiming for against IPP. While IPP does not dispute that the June–July 2019 Bunkering Drawdowns were legitimate transactions, considering the fact that IPP was deep into insolvency at the time of these drawdowns, there was simply no way SocGen's interest as a creditor could be taken into account for even if transactions were genuine. Put another way, any sales (or profits) sought to be generated by the sale of the fuel purchased by the bunkering drawdowns would have gone back to IPP. And because of the sheer size of the liabilities owed by IPP, there was no reasonable prospect for SocGen to have

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204 DRS at para 108.

205 PRS at para 215.

206 PCS at para 292.

> recovered any meaningful sum from the June–July 2019 Bunkering Drawdowns.

From the above, it seemed to me that IPP's argument was that the loss suffered by SocGen from IPP borrowing moneys from it at a time when "there was no reasonable prospect" of SocGen being repaid by IPP was to be treated as loss suffered by IPP itself.

227 I did not accept this submission. In my judgment, loss suffered by SocGen – or, for that matter, any creditor of IPP – could not be equated with loss suffered by IPP itself.

228 In arriving at this landing, although it was not cited to me by parties, I found the UK Supreme Court decision in *Stanford International Bank Ltd (in liquidation) v HSBC Bank plc* [2023] AC 761 ("*Stanford International Bank*") to be instructive. The facts there were that the claimant, Stanford International Bank ("SIB"), was an insolvent company that had been used as a vehicle of fraud to run a Ponzi scheme. SIB's liquidators brought a claim against SIB's bank, HSBC, alleging that HSBC had breached its duty of care (*viz*, the *Quincecare* duty) by failing to freeze SIB's accounts by a certain point of time when it ought to have been put on notice that SIB was running a fraud. Given the nature of a Ponzi scheme, the payments that HSBC had executed were in the nature of repayments of SIB's debts to its earlier investors out of the investment monies of later investors. SIB's liquidators argued that, had these payments not been made, at least £80m would have been available to pay SIB's creditors in its insolvency.

229 HSBC applied to strike out SIB's claim on the basis that, even if HSBC had been negligent, SIB had suffered no loss because the payments HSBC had executed went towards the discharge of SIB's debts. In other words, because

SIB's net asset position had not changed – due to a simultaneous reduction in its assets and liabilities – SIB did not suffer any loss.

230 By a majority of four to one, the UK Supreme Court held that SIB had not suffered any loss. Lord Leggatt JSC held that "the logic of [HSBC's] argument [was] unassailable" as "[t]here is no way of escaping the simple truth that paying a valid debt does not reduce the payer's wealth" (see *Stanford International Bank* at [40]).

231 *Stanford International Bank* is thus strong authority for the proposition that a company suffers no loss where its net asset position before and after a transaction remains unchanged. In the present case, as it was common ground that the bunkering transactions financed by the June–July 2019 Bunkering Drawdowns had been legitimate transactions, there could have been no dispute that IPP's net asset position remained unchanged by these drawdowns. Although IPP did incur the liability to repay SocGen for the moneys disbursed to its suppliers on IPP's account, IPP received the benefit of the loan moneys in the form of the assets whose purchase SocGen had financed. Indeed, given that the sale contracts between IPP and its customers were also legitimate transactions, IPP must logically have turned a profit from the bunkering transaction as a whole. In these premises, I did not see how IPP could be said to have suffered any loss from the June–July 2019 Bunkering Drawdowns.

232 My conclusion was also supported by the English Court of Appeal decision of *Galoo Ltd (in liquidation) and others v Bright Grahame Murray (a firm) and another* [1994] 1 WLR 1360 ("*Galoo*"). In that case, the court recognised that the acceptance of a loan by a company and the concomitant obligation to repay it could not be said to be a loss causing damage to the company. Gildewell LJ said as follows (see *Galoo* at 1369):

> The first part of this claim is for damages for the loss allegedly incurred by Galoo and Gamine as a result of accepting and continuing to accept the loans from Hillsdown totalling over £30m. …
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> The deputy judge dealt with the matter shortly but clearly. He said:
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> > "As a matter of fact, I do not accept that accepting loans involving an obligation simpliciter to repay them can be described as damage. At the moment of accepting the loan, the company which accepts the loan has available that amount of money and the obligation to repay that amount of money, and I simply fail to see how that can amount to damage. If there is damage, it must consist of parting with those moneys in certain circumstances."
>
> I entirely agree with the deputy judge on this issue. Like him, I do not understand how the acceptance of a loan can, of itself, be described as a loss causing damage. If anything it is a benefit to the borrower. …

The decision in *Galoo* is thus consistent with Lord Leggatt JSC's reasoning in *Stanford International Bank* above: so long as a transaction is balance sheet neutral, a company cannot be considered to have suffered loss. That is so whether the transaction involves an outflow of assets to pay debts (as in *Stanford International Bank*), or an inflow of loan moneys coupled with the obligation to repay the loan (as in *Galoo* and the present case).

233 For completeness, I also considered the reasoning of the dissenting judge in *Stanford International Bank*, Lord Sales JSC. His Lordship's reasoning was, in fact, similar to the argument that IPP appeared to run, as it was founded on viewing SIB as a "vehicle for the protection of [its] general creditors" such that "[t]o harm SIB's general creditors as a class was to harm SIB" itself (see *Stanford International Bank* at [93]). In support of this, Lord Sales JSC drew upon the UK Supreme Court's earlier decision in *Sequana*, which he took to have established that, as a general matter, the interests of an irretrievably insolvent company (as SIB indisputably had been) were those of its creditors

such that loss to the creditors was, in the eyes of the law, equivalent to loss suffered by the company itself (see *Stanford International Bank* at [108] and [112]–[113]).

234 In my judgment, while I acknowledge the normative force in Lord Sales JSC's reasoning, I was not inclined to adopt it as I considered it an encroachment of an unacceptable degree into the doctrine of separate legal personality, which the Court of Appeal has on numerous occasions affirmed to be a "bedrock of company law not just in Singapore but also throughout the common law world" (see *Goh Chan Peng* at [75]; *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd (formerly known as Tian Jian Hua Xia Medical Group Holdings Pte Ltd) (in judicial management) and another* [2022] 1 SLR 884 at [114]). In the present context, the critical corollary of this principle is that, because a director's duties – the Creditor Duty inclusive – are ordinarily owed only to his company, so long as the claim against the director is framed as a breach of duty *qua* director, the law should be slow to have him bear the losses suffered by third parties such as the company's creditors.

235 In this connection, I preferred the reasoning of Lord Leggatt JSC, who also highlighted that Lord Sales JSC's reasoning undermined the doctrine of separate legal personality (see *Stanford International Bank* at [81]–[83]):

> 81 As Lord Sales JSC explains in his judgment, the abstract nature of a company as a separate legal person does not mean that a company is regarded as having interests which are independent of the interests of those who have actual or prospective entitlements to its assets. This does not detract, however, from the fundamental principle of separate corporate personality whereby the rights and obligations, assets and liabilities, and consequently also the losses and gains, of a company are in law distinct from those of the persons who have economic interests in the fortunes of the company, be they shareholders or creditors. While a company is solvent, there is likely to be a correlation between loss suffered by the company and loss suffered by its shareholders. But they are not the same

> loss: see e g *Marex Financial Ltd v Sevilleja* [2021] AC 39. Similarly, ***when a company is insolvent, loss suffered by the company may result in future loss to creditors of the company by affecting the amount that they will be entitled to receive in a subsequent liquidation. But loss suffered by the company and loss suffered by its creditors are different losses and, if the law is to be coherent, it is important not to blur the distinction between them.***
>
> 82 Thus, part of what the *Sequana* case decides is that, whereas in ordinary circumstances the interests of a company are equated with the interests of its present and future members, when a company enters insolvent liquidation it is the interests of its creditors which become paramount. ***This point is critical in determining what the directors' fiduciary duty to act in the interests of the company requires at a given time. It has no bearing, however, on whether a payment which a director causes to be made out of the company's assets in breach of this fiduciary duty gives rise to a loss to the company***.
>
> 83 It would be contrary to first principles to posit that, at some (imprecise) point on a path that leads to a company going into insolvent liquidation, the nature of its legal personality changes, such that, from then on, any disposition of the company's assets is treated as a loss to the company even if it discharges a liability and so leaves the company's net asset position unchanged. There is nothing in the judgments in the *Sequana* case which supports such a view, and I know of no authority which supports it. …
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> [emphasis added in bold italics]

236 In the extract above, Lord Leggatt rightly observes that the identification of an insolvent company's interests as being those of its creditors is legitimate only for limited purposes. Contrary to Lord Sales JSC's understanding, it is not a principle of pervasive or general application. In the context of defining the content of the director's duty to act *bona fide* in the best interests of the company, an equiparation of the company's interests with those of a particular class (or classes) of its economic stakeholders is necessary because a company as a legal abstraction cannot inherently have any independent or freestanding interests of its own. But for the legal technique of identifying the company as its main economic stakeholders, the directors' best interests duty would be

devoid of content. Contrariwise, no such necessity arises where the issue is whether the company has suffered any loss given that the company is able to hold assets and incur liabilities in its own right by virtue of the separate legal personality doctrine.

237 In the present case, the remedy sought by IPP was either damages for negligence (based on Dr Goh's breach of his duty of skill, care and diligence) or equitable compensation for a non-custodial breach of fiduciary duty (based on Dr Goh's breach of his Creditor Duty).[207] The availability of either of these remedies was dependent on IPP having suffered loss.

238 Indeed, as regards IPP's claim in negligence, the fact that IPP did not suffer any loss from the June–July 2019 Bunkering Drawdowns meant that strictly no cause of action had accrued in respect of this head of loss, given that a cause of action in negligence does not accrue until the claimant suffers actionable damage (see, *eg*, the Court of Appeal decision in *Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased, and on behalf of the dependants of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133 at [103]). As Lord Macmillan put it in the celebrated decision of the House of Lords in *Donoghue v Stevenson* [1932] AC 562, "[t]he law takes no cognizance of carelessness in the abstract", as it "concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage" (at 618).

239 On the other hand, as regards IPP's claim for equitable compensation for Dr Goh's breach of his Creditor Duty, the fact that IPP elected to frame its claim as one for equitable compensation for a *non-custodial* breach of fiduciary

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[207] PCS at paras 286–288; PRS at paras 259–260.

duty meant that it had by its own hand instituted a requirement to prove that it suffered loss by reason of Dr Goh's breach. This followed from the fact that equitable compensation for non-custodial breach of fiduciary duty, as clarified by the Court of Appeal in *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 ("*Sim Poh Ping*"), is properly compensatory in nature (at [125]–[126]). Thus, IPP's failure to prove a loss arising from the June–July 2019 Bunkering Drawdowns meant that this head of claim could not sound in any liability on Dr Goh's part to pay equitable compensation.

240 In this regard, the High Court decision of *Hector Finance Group Ltd and another v Chan Chew Keak* [2023] SGHC 127 is on point. In that case, Vinodh Coomaraswamy J dismissed a claim for equitable compensation for non-custodial breach of fiduciary duty on the basis that the plaintiff had neither pleaded nor proven any loss arising from the alleged breach (at [61]–[69]). So too in this case.

241 For the reasons above, I held that IPP had failed to prove any loss arising from the June–July 2019 Bunkering Drawdowns. I thus dismissed IPP's claim for this head of loss amounting to US$10,508,238.71.

The June–July 2019 Cargo Trading Drawdowns

242 I turn to the June–July 2019 Cargo Trading Drawdowns. Given that the position *vis-à-vis* these drawdowns was different, in that the cargo trading transactions financed by these drawdowns were shams, the result in principle was that IPP had incurred a liability to repay the Banks' financing without receiving the benefit of the moneys disbursed by the Banks (in contradistinction to the position *vis-à-vis* the legitimate bunkering transactions financed by the June–July 2019 Bunkering Drawdowns). In these premises, there would have

been an adverse change in IPP's net asset position arising from the June–July 2019 Cargo Trading Drawdowns such that IPP did suffer loss from these transactions.

243 However, this did not stop Dr Goh from raising a myriad of rather technical legal arguments challenging the existence of loss arising from the June–July 2019 Cargo Trading Drawdowns. To recapitulate, Dr Goh's submissions on this point could be summarised as follows (see [34] above):

(a) First, that IPP had suffered no loss from the June–July 2019 Cargo Trading Drawdowns as IPP could avail itself of various defences to the Banks' claims for repayment.[208]

(b) Second, that IPP had suffered no loss from the June–July 2019 Cargo Trading Drawdowns as the Liquidators had yet to adjudicate and more specifically, accept the proofs of debt filed by the Banks in IPP's liquidation claiming repayment for these drawdowns.[209]

(c) Third, that IPP had suffered no loss as it had yet to repay the Banks for the June–July 2019 Cargo Trading Drawdowns. Until IPP repaid the Banks, it was only the Banks that had suffered a loss, and it could not be said that IPP had itself suffered actual loss.[210]

(d) Fourth, that IPP had suffered no loss as the sham transactions involved the "round-tripping" of the moneys disbursed by the Banks under the June–July 2019 Cargo Trading Drawdowns. This meant that the funds paid out by the Banks to IPP's putative suppliers were routed

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208 DCS at paras 302–320.

209 DCS at para 298.

210 DCS at para 297.

back into IPP, such that IPP could not be said to have suffered any loss itself.[211]

244 I will address each of these arguments in turn.

Whether IPP had any defences to the Banks' claims for repayment

245 Dr Goh first contended that IPP had not suffered any loss in the form of a liability to repay the June–July 2019 Cargo Trading Drawdowns to the Banks as IPP could avail itself of legal defences to the Banks' claims for repayment. Dr Goh raised two main defences that he claimed IPP was entitled to raise against the Banks:

(a) First, that insofar as Maybank's financing had been by way of letter of credit, either the fraud or nullity exception were engaged to defeat Maybank's right to reimbursement from IPP as Maybank should not have paid out monies to IPP's putative suppliers in the first place.

(b) Second, that payment had been made out by the Banks in breach of their *Quincecare* duty to IPP.

246 For the reasons that follow, I was not persuaded that IPP had available to it these defences that Dr Goh claimed. Dr Goh's submissions were either flawed at the level of principle or, at the very least, insufficiently substantiated by evidence.

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211 DCS at paras 285–291.

(1) The incidence of the burden of proof

247 Before I turn to the substantive defences raised by Dr Goh, I pause to address an issue as to the burden of proof in relation to these defences. As the question of whether IPP had any defences to the Banks' claims arose in the context of the larger issue as to whether IPP had suffered loss, there was some disagreement between the parties as to who, as between the two of them, bore the burden of proof to establish that IPP had – or did not have – defences to the Banks' claims.

248 On the one hand, IPP argued that, as these defences had been raised by Dr Goh in his bid to deny his liability, it was "beyond contention" that Dr Goh bore the legal burden of proving that IPP had the defences he claimed to the Banks' claims for repayment. IPP principally relied on s 105 of the Evidence Act 1893 (2020 Rev Ed) (the "EA") for the general rule that "[t]he burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence".[212]

249 On the other hand, Dr Goh argued that the burden of proof lay on IPP to disprove the existence of these defences to the Banks' claims against it. Since IPP bore the burden of proof to establish its loss, it had to establish that it did not have defences to the Banks' claims as an incident of establishing its own loss.[213]

250 In my judgment, IPP was correct that the burden of proof lay on Dr Goh. Given that the defences to the Banks' claims were matters that were put into issue by Dr Goh as a defence to his liability to IPP, the effect of s 105 of the EA

212 PCS at paras 198–201.

213 DRS at paras 113–114.

was to place the burden of him to establish their existence. In this connection, IPP referred me to the Court of Appeal decision of *Bintai Kindenko Pte Ltd v Samsung C&T Corp and another* [2019] 2 SLR 295 ("*Bintai Kindenko*"), and placed particular reliance on the court's statements that "the burden of proof fell on the First Respondent [in that case] since the party that asserts the affirmative must prove its case" and that "[t]his position makes practical sense since it would be impracticable for the Appellant [in that case] to prove a negative" (at [51]–[52]).

251 I accepted IPP's reliance on *Bintai Kindenko* as authority supporting the conclusion that the burden of proof lay on Dr Goh in the present case. As it was Dr Goh who had positively asserted that IPP had defences to the Banks' claims, it was incumbent on him to prove that fact; it would have been impracticable to require IPP to prove a negative (*viz*, that it did not have a defence to the Banks' claims).

252 The facts of *Bintai Kindenko* are illustrative. The first respondent and the appellant there were, respectively, a contractor and sub-contractor appointed in respect of a construction project. The second respondent was a bank that had provided a banker's guarantee in relation to the appellant's obligations to the first respondent, which included a liability to pay liquidated damages in the event of delays attributable to the appellant's default. After a dispute arose between the appellant and the first respondent over certain alleged delays on the appellant's part, the first respondent sought to enforce the second respondent's guarantee. The appellant applied for an injunction restraining the first respondent's call on the second respondent's guarantee on the ground that the call was unconscionable. The first respondent argued that the appellant was precluded by the contract from invoking the unconscionability exception. The Court of Appeal held that the burden of proof lay on the first respondent to

establish that the appellant was not entitled to rely on the unconscionability exception as it had asserted the fact of disentitlement.

253 In my judgment, the import of *Bintai Kindenko* is that the crucial question is whether the defendant's pleaded defence goes beyond a bare denial of the claimant's case; if it does, then the defendant would bear the burden of proving any fact(s) that it positively asserts (see the Court of Appeal decision of *Cooperatieve Centrale Raiffeisen-Borelenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [31] and [34]). So, if a defendant resists a claim in debt on the basis that he has already discharged his indebtedness to the claimant in the past, it is uncontroversial that he bears the burden of proof to establish the fact of repayment as he claims (see the High Court decision of *Wee Yue Chew v Su Sh-Hysu* [2008] 3 SLR(R) 212 at [3]–[6]). On the other hand, if the defendant merely makes a bare denial as to the claimant's case on causation of loss, he would bear no burden of proof as to any fact(s). But, if the defendant goes further to allege a positive counter-factual account of events averring that the claimant would have suffered the same loss even if the defendant had not breached his duty to the claimant, the defendant must plead and prove the asserted counter-factual (see *McGregor on Damages* (James Edelman, Jason Varuhas & Simon Colton gen eds) (Sweet & Maxwell, 21st Ed, 2020) at para 51-053, citing the English High Court decision of *Gruber and another v AIG Management France, SA and another* [2019] EWHC 1676 (Comm) at [21]–[23]).

254 Seen from this perspective, although it was true that Dr Goh's case did entail a denial of an element of IPP's case (*viz*, the loss IPP claimed to have suffered), his defence went far beyond a bare denial of IPP's loss. Dr Goh raised a hypothesis as to why IPP had not suffered loss; it was clear that he bore the burden to prove his hypothesis.

(2) Did the fraud or nullity exceptions apply to Maybank's financing?

255 As the June–July 2019 Cargo Trading Drawdowns on the Maybank Facility were by way of letter of credit, Dr Goh submitted that the fraud or nullity exception had applied by reason of a defect on the face of the bills of lading submitted to Maybank by IPP's putative suppliers, so as to relieve Maybank of its obligation to make payment to IPP's putative suppliers under the letter of credit.[214] Specifically, Dr Goh pointed to a lack of a "Notify Party" box in the bills of lading, which he said should have put Maybank on notice that the bills of lading were "on-their-face fraudulent".[215] As Maybank had paid out in circumstances where it ought not to have, IPP did not have any obligation to reimburse Maybank for the disbursed sums.

256 In response, IPP contended that neither the fraud nor nullity exceptions applied.[216] Dr Goh's characterisation of the bills of lading as "on-their-face-fraudulent" was a considerable overstatement of the degree of irregularity (if any) in the bills of lading.[217] Although the bills of lading might have been somewhat suspicious on their face, they were nowhere close to suspicious enough to attract the application of either the fraud or nullity exceptions.

(A) APPLICABLE LEGAL PRINCIPLES

257 The autonomy of a letter of credit is a cornerstone principle of trade finance. Given that security in the performance of parties' payment obligations is critical, the autonomy principle provides for the separation of the bank's

214 DCS at para 314.

215 DCS at paras 311 and 313.

216 PRS at para 291.

217 PRS at paras 292–295.

obligation to pay the beneficiary of the credit from the underlying contract between the beneficiary and the applicant. As the learned authors of Peter Ellinger & Dora Neo, *The Law and Practice of Documentary Letters of Credit* (Hart Publishing, 2010) ("*Ellinger & Neo*") explain (at pp 138–139):

> The rationale for the principle of autonomy stems from the fact that the system of documentary credits in international trade was developed to give to a seller the assurance that as long as he presented conforming documents, he would be paid before he parted with control of the goods, regardless of any dispute that he might have with the buyer regarding the performance of the sale contract. … The established understanding between the parties in such transactions is that where there is a dispute in the underlying contract, the applicant would seek redress against the beneficiary by bringing a separate action and not by withholding all or part of the credit or guarantee amount, ie, he has to pay first and sue later.

258 In the instant case, *The Uniform Customs and Practice for Documentary Credits* (2007 Revision) (ICC Publication No 600) ("UCP 600") was incorporated by reference into the letters of credit issued by Maybank. The autonomy principle finds expression in Arts 4(a) and 5 of the UCP 600:

> **Credits v. Contracts**
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> a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationship with the issuing bank or the beneficiary.
>
> …
>
> **Documents v. Goods, Services or Performance**
>
> Banks deal with documents and not with goods, services or performances to which the documents may relate.

259 However, a bank's payment obligation under a letter of credit is not absolute. Although the UCP 600 itself makes no prescription for any particular

exception, the laws of different jurisdictions have developed to recognise certain situations in which a bank is entitled to resist a call for payment (see Ali Malek QC & David Quest, *Jack: Documentary Credits* (Tottel Publishing, 4th Ed, 2009) ("*Jack: Documentary Credits*") at para 9.3). Under Singapore law, two exceptions that have been established in the authorities are: (a) the fraud exception; and (b) the nullity exception.

260 The fraud exception, which is also known as the fraudulent presentation rule, exempts the issuing bank from making payment where the beneficiary of the credit, for the purpose of drawing on the credit, fraudulently presents to the issuing bank documents that contain expressly or by implication, material representations of fact that to his knowledge are untrue (see the Court of Appeal decision of *UniCredit Bank AG v Glencore Singapore Pte Ltd* [2023] 2 SLR 587 at [44]).

261 For the purposes of the fraud exception, it is well-settled that it is only fraud in the presentation of the documents, and not fraud in the underlying transaction, that is relevant (and would suffice) to make out the exception (see *Ellinger & Neo* at pp 142–143; and the Court of Appeal decision of *Brody, White and Co Inc v Chemet Handel Trading (S) Pte Ltd* [1992] 3 SLR(R) 146 at [21]).

262 It is also well-established that the fraud exception can apply in various contexts. Four applications of the fraud exception can be summarised as follows (see *Jack: Documentary Credits* at para 9.31; *Ellinger & Neo* at p 144):

(a) First, the fraud exception provides a bank with a ground for refusing to pay the beneficiary of the credit, as well as a defence from

claims by the beneficiary or other parties (*eg*, the applicant) arising from the bank's refusal to pay.

(b) Second, if the bank has paid the beneficiary, the fraud exception may be invoked by the applicant to resist its obligation to reimburse the bank on the basis that the bank should have invoked the fraud exception to refuse payment to the beneficiary.

(c) Third, assuming that it remains possible to recover the money from a fraudulent beneficiary (*ie*, the beneficiary has not absconded or become insolvent), the fraud exception entitles the bank to recover the payment from the fraudulent beneficiary.

(d) Fourth, there is some suggestion that, prior to the bank making payment, the fraud exception is a ground on which the applicant can obtain an injunction enjoining the bank from making payment to the beneficiary.

263 The present case fell within the second of the above four situations. Dr Goh's argument was that because Maybank should have disallowed the June–July 2019 Cargo Trading Drawdowns on the basis that the fraud exception had been engaged, it had acted beyond its mandate by making payment such that IPP had no obligation to reimburse Maybank for the June–July 2019 Cargo Trading Drawdowns.

264 The nullity exception, on the other hand, contemplates that a bank is entitled to withhold payment "in the face of a forged null and void document" (see the Court of Appeal decision of *Beam Technology (Mfg) Pte Ltd v Standard Chartered Bank* [2003] 1 SLR(R) 597 ("*Beam Technology*") at [33]). In this context, a document is a nullity if it is forged or fraudulent in such a way that

its essence is destroyed and it is of zero commercial value (see *Jack: Documentary Credit* at para 9.21). The ambit of the exception was expressed in the following terms by the Court of Appeal in *Beam Technology* (at [36]):

> It is our opinion that the negotiating/confirming bank is not obliged to pay if it has established within the seven-day period that a material document required under the credit is forged and null and void and notice of it is given within that period. While we recognise that there could be difficulties in determining under what circumstances a document would be considered material or a nullity, such a question can only be answered on the facts of each case. One cannot generalise. It is not possible to define when a document is a nullity. But it is really not that much more difficult to answer such questions than to determine what is reasonable, an exercise which the courts are all too familiar with.

(B) APPLICATION TO THE FACTS

265 In considering whether the fraud or nullity exception applied in this case, I found the following two-stage analysis proposed by the learned authors of *Paget's Law of Banking* (John Odgers KC & Ian Wilson gen eds) (LexisNexis, 16th Ed, 2023) ("*Paget*") to be helpful (at para 35.12):

> (a) First, the court should consider whether there is fraud on the part of the beneficiary (in the case of the fraud exception), or whether the document is a nullity (in the case of the nullity exception); and
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> (b) Second, the court should consider whether the circumstances were such that the bank should be treated as knowing of the beneficiary's fraud (in the case of the fraud exception), or that the document had been a nullity (in the case of the nullity exception).

266 Under the first stage of the analysis, I was content to assume in Dr Goh's favour that there was fraud on the part of the beneficiaries of the Maybank letters

of credit (*ie*, the putative suppliers under the sham sale contracts), and that the bills of lading and other documents presented to Maybank had been nullities.

267 However, I considered that there was ultimately no room for the fraud or nullity exceptions to apply as Dr Goh had failed to establish that the circumstances were such as to have put Maybank on notice as to the fraudulent nature of the documents presented to it.

268 As a preliminary point, the relevant time for assessing whether Maybank had been put on notice as to the fraudulent nature of the bills of lading was the time that the documents had been presented to it for payment under the letters of credit. As Ackner LJ, giving the judgment of the English Court of Appeal, said in *United Trading Corporation SA and Murray Clayton Ltd v Allied Arab Bank Ltd and others* [1985] 2 Lloyd's Rep 554 (at 560):

> It seems to us clear that, where payment has in fact been made, the bank's knowledge that the demand made by the beneficiary … was fraudulent must exist prior to the actual payment to the beneficiary and that its knowledge at that date must be proved. Accordingly, if all a plaintiff can establish is such knowledge *after* payment, then he has failed to establish his cause of action. The bank would not have been in breach of any duty in making the payment without the requisite knowledge. We doubt that this is really open to contest.
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> [emphasis in original]

Thus, so long as Maybank had not known of the fraudulent nature of the bills of lading (and other documents) at the time that it made payment, it would be entitled to reimbursement from IPP. Even if it did subsequently discover that the presented documents were fraudulent, this would not defeat Maybank's right to reimbursement from IPP (see the Privy Council decision of *Gian Singh & Co Ltd v Banque de L'Indochine* [1974-1976] SLR(R) 83 at [11]).

269 As I noted above, Dr Goh's case on the fraud and nullity exceptions hinged on his claim that the absence of a "Notify Party" box on the bills of lading rendered the bills *ex facie* fraudulent. Indeed, this was the only suspicious circumstance relating to the presented documents that Dr Goh actually identified in his closing and reply submissions.

270 In my judgment, the absence of a "Notify Party" box by itself was not such a strikingly suspicious circumstance to be capable of putting IPP on notice as to the fraudulent nature of the bills of lading.

271 Dr Goh relied heavily on the testimony of Mr Bernard Yee ("Mr Yee"), an experienced solicitor in shipping and international trade. For context, as the fraud began to unravel, Maybank had written *via* its solicitors to various shipping counterparties who were the controllers of the vessels that had been stated on the bills of lading to have been carrying the cargo that was the subject of the sham cargo trading transactions.[218] Mr Yee gave evidence as the representative of one such shipping counterparty – *viz*, GSW Fabulous Pte Ltd – who was the owner of the vessel "GS FABULOUS". The GS FABULOUS had been stated on one of the bills of lading as carrying cargo that had been the subject of a (sham) sale contract between Legend Six and IPP.

272 After Maybank had written to Mr Yee's client,[219] Mr Yee responded on his client's behalf. In his email response dated 3 October 2019,[220] Mr Yee informed Maybank that the relevant bill of lading was a "fraudulent document" that had never been issued by the Master of the GS FABULOUS or his client.

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218 AEIC of Moses Lin at paras 7–9.

219 42 AB 248–42 AB 249.

220 42 AB 252.

In addition, Mr Yee also highlighted the following discrepancies on the face of the relevant bill of lading to Maybank:[221]

(a) First, that the registered address of the shipper, Legend Six, had been misspelled on the bill of lading as "Level 13, 68 Yee **Wo** Street, Causeway Bay, Hong Kong", as opposed to "Level 13, 68 Yee **Woo** Street, Causeway Bay, Hong Kong" [emphasis in original].

(b) Second, that the Master of the GS FABULOUS had been misstated on the bill of lading as one "Pawan Yadav" when it was, at the material time, someone else instead (*viz*, one Captain Lalit Kumar Sharma). Indeed, assuming that "Pawan Yadav" existed, no such person had ever been in the employ of GSW Fabulous Pte Ltd.

(c) Third, that the bill of lading contained a "vessel" rubber stamp of a kind that the GS FABULOUS had never used.

(d) Fourth, that the form of the bill of lading was "very different from the form of the bills of lading normally issued by [GSW Fabulous Pte Ltd]", and that GSW Fabulous Pte Ltd had never issued or authorised the issuance of any bill of lading in that form. In particular, the bill of lading did not contain a "Notify Party" box. Mr Yee also added that Maybank should have "immediately noticed the unusual format" of the bill of lading and "made enquiries as to its genuineness/authenticity".

273 In cross-examination, Dr Goh's counsel pressed Mr Yee on the significance of the fourth discrepancy above (*ie*, the absence of a "Notify Party" box on the bill of lading). The dispute between the parties centred around what

[221] 42 AB 252–42 AB 253.

was to be made of the following exchange between Dr Goh's counsel and Mr Yee:[222]

> Q And if you don't see a notify party box, your paragraph [in Mr Yee's email] suggests that if you don't see a notify party box on a to order bill, one would be a little suspicious as to whether his bill of lading was genuine or authentic; right?
>
> A That is the position.
>
> Q I mean, that was your position; correct?
>
> A Yes, that is my client's position, correct.
>
> Q But again, as a shipping lawyer, that would be something -- you're not going to put a nonsensical position to the other side, right, it must be something that you genuinely feel you can put on paper; right?
>
> A As far as -- if you ask me for my personal opinion, yes.

274 In my view, Mr Yee's testimony could not bear the weight that Dr Goh placed on it. It could not be said that Mr Yee had taken the strong or firm position that the absence of a "Notify Party" box was, in and of itself, an irrefutably suspicious circumstance that must have put Maybank on notice that the bill of lading was fraudulent.

275 First, as IPP observed, Dr Goh's counsel had not actually put the question of whether the absence of a "Notify Party" box was clear evidence that the bill of lading had been fraudulent. Rather, what had been put to Mr Yee was the comparatively more conservative suggestion that this circumstance rendered the bill of lading "a little suspicious". I thus agreed with IPP that there was a "vast chasm" between "a little suspicious" (the concession made by Mr Yee)

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222 NE (4 April 2023) at p 77 ln 14–p 78 ln 78 ln 1.

and Dr Goh's submission that the bills of lading were "on-their-face-fraudulent" in light of the absence of a "Notify Party" box *per se*.[223]

276 It bears noting that the threshold for establishing the fraud exception is a high one. In *Edward Owen (Engineering) Ltd v Barclays Bank International Ltd and another* [1978] 1 QB 159, the members of the English Court of Appeal used various expressions to convey the high evidentiary onus required:

(a) Lord Denning MR spoke of "established or obvious fraud to the knowledge of the bank" (at 169);

(b) Browne LJ said that it was "certainly not enough to allege fraud; it must be "established", and in such circumstances I should say very clearly established" (at 173); and

(c) Geoffrey Lane LJ observed that the mere fact that something was "suspicious" or "may indicate the possibility of sharp practice" did not suffice, as proof of fraud required "true evidence of fraud or anything which makes fraud obvious or clear to the bank" (at 175).

277 These statements make clear that an element of unequivocalness in the strength of the inference is necessary. Indeed, the learned authors of *Paget* frame the standard at the high watermark that "the evidence … must be such that fraud is the *only realistic inference*", and that as long as "[t]he facts before the bank are consistent with honesty, then the bank must pay notwithstanding that they are also consistent with fraud" [emphasis added] (at para 35.15). The concession by Mr Yee that the bills of lading were "a little suspicious" clearly did not come close to what had been contemplated in these authorities.

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223 PRS at para 293.

278 Second, Mr Yee's observation in his email that the absence of a "Notify Party" box in the bills of lading cast doubt on the genuineness or authenticity of the bills of lading was not intended as a general statement as to the form of bills of lading at large. Rather, read in context, all that Mr Yee was conveying was the considerably narrow point that the form of the bill of lading was unusual relative to the usual form of bills of lading issued and used *by his client*. I reproduce the relevant statement in Mr Yee's email for reference:

> The form of the purported Bill of Lading is very *different from the form of the bills of lading normally issued by our clients and our clients have never issued or authorized the issuance of any bill of lading in the form of the purported Bill of Lading*. … The purported Bill of Lading purports to be an "order" bill, but contains no notify party identified on the Bill of Lading to whom the owners would be required to give notice of arrival of the vessel/the cargo. As a bank in the business of financing trade, our clients would expect your clients to have immediately noticed the unusual format of the purported Bill of Lading and made enquiries as to its genuineness/authenticity.
>
> [emphasis added]

279 Indeed, this interpretation of Mr Yee's email was shared by Mr Moses Lin ("Mr Lin"), who had written to Mr Yee's client and received Mr Yee's response as Maybank's solicitor. This was apparent from the following exchange between Dr Goh's counsel and Mr Lin in the latter's cross-examination:[224]

> Q Mr Yee says that the fact that there is no notify party on the bill of lading is unusual and puts you on notice of its -- and may require you to make enquiries as to its genuineness or authenticity. Would you agree with that statement?
>
> A You mean based on what he said in his email?
>
> Q Yeah. I just read -- I read the email to you. Would you agree with that statement? Is that fair? Is that a fair statement?

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224 NE (4 April 2023) at p 63 ln 1–p 64 ln 2.

> A No. I don't think that's what he's saying.
>
> …
>
> Q [Reads from Mr Yee's email] So do you agree that the format of the purported -- the format of that bill of lading that I just showed you is unusual?
>
> A Not necessarily. *Because what he's saying here is his client's view -- I mean, that's basically what he's stating, he's stating his client's view that this format is unusual, but that seems to be premised on the fact that his clients have never issued or authorised the issuance of any BL, even the form of this purported –*
>
> [emphasis added]

280 Third, even if Mr Yee's evidence could have been construed as an unequivocal or unqualified statement that the absence of a "Notify Party" box in bills of lading was a manifestly suspicious circumstance to have *ipso facto* put any bank on notice of the fraudulent nature of the bills of lading, he would at most have put up one interpretation that was contradicted by Mr Lin. Although Mr Lin had less experience in terms of years in practice than Mr Yee, it was not disputed that he was also an experienced solicitor specialising in shipping and international trade law.[225] In this regard, Mr Lin was unequivocal in stating his view that the absence of a "Notify Party" box was not a sufficiently suspicious feature to necessarily put a bank on notice as to the authenticity of the bills of lading.

281 In circumstances where there are two diametrically opposed views from two reasonable and qualified experts in particular subject-matter, the court would generally be slow to find that one view is clearly correct and the other clearly wrong. Thus, even if Mr Yee's evidence could have been construed as an unequivocal statement that the bills of lading had been fraudulent on their

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225 NE (4 April 2023) at p 21 ln 13–p 22 ln 4.

face, it could not be said that his view represented the "only realistic inference" to attract the application of the fraud or nullity exceptions.

282 For the reasons above, I held that, even if the documents presented to Maybank were fraudulent and/or nullities, the fraud and nullity exception nonetheless did not apply as the circumstances were not such as to be capable of affixing Maybank with the requisite notice of their fraudulent nature. I thus rejected Dr Goh's argument that IPP suffered no loss on the basis that it could rely on the fraud or nullity exceptions to Maybank's claim for reimbursement under the letters of credit.

(3) Did the Banks breach their *Quincecare* duties to IPP?

283 I turn to Dr Goh's second submission, which was that the Banks had breached their respective *Quincecare* duties to IPP in making payment to IPP's putative suppliers in respect of the sham cargo trading transactions.

(A) APPLICABLE LEGAL PRINCIPLES

284 It is apposite to start with a discussion on the applicable legal principles, as it appears that, apart from the Court of Appeal decision of *Hsu Ann Mei Amy (personal representative of the estate of Hwang Chen Tsu Hsu, deceased) v Oversea-Chinese Banking Corp Ltd* [2011] 2 SLR 178 ("*Hsu Ann Mei*"), the *Quincecare* duty has not been given any substantial consideration by the local courts. Further, there has, after the *Hsu Ann Mei* case, been a recent proliferation in litigation surrounding the *Quincecare* duty in the English courts, which has led to the apex English court, the UK Supreme Court, having had occasion to consider fundamental questions as to the scope of the duty. Some of these English decisions were relied on by both parties in their submissions. The

present case thus offers an opportune time to consider the legal position on a doctrine that has hitherto found little travel before our courts.

285 The *Quincecare* duty takes its name from the English High Court decision of *Barclays Bank plc v Quincecare Ltd and another* [1992] 4 All ER 363 ("*Quincecare*"). The facts of the case were that the claimant bank, Barclays, had agreed to loan some £400,000 to the defendant company, Quincecare. Subsequently, Quincecare's chairman misappropriated funds from the company by drawing down some £340,000 from Barclays' loan facility which he then applied to his own dishonest purposes. When Barclays sued Quincecare for repayment of the misappropriated sum, Quincecare brought a counterclaim alleging that Barclays owed and had breached its duty of care in allowing the chairman's withdrawal of funds.

286 Steyn J held that Barclays did owe such a duty of care. He reasoned that a bank, as an agent of its customer, owed a duty to "observe reasonable skill and care in and about executing the customer's orders" (see *Quincecare* at 376). This duty was, in Steyn J's view, a limited qualification on the bank's primary duty to execute its customer's instructions in accordance with its mandate. His Lordship considered that the right balance was struck between these two conflicting obligations in the following formulation (see *Quincecare* at 376):

> In my judgment the sensible compromise, which strikes a fair balance between competing considerations, is simply to say that a banker must refrain from executing an order if and for as long as the banker is 'put on inquiry' in the sense that he has reasonable grounds (although not necessarily proof) for believing that the order is an attempt to misappropriate the funds of the company … And, the external standard of the likely perception of an ordinary prudent banker is the governing one. That in my judgment is not too high a standard.

287 The *Quincecare* case involved fraud perpetrated by an agent of the bank's customer. Subsequently, in the recent decision of the UK Supreme Court

in *Philipp v Barclays Bank UK plc* [2024] AC 346 ("*Philipp*"), the court had occasion to reconsider the juridical basis of the *Quincecare* duty, and to determine whether the *Quincecare* duty was confined to this context. This issue arose because, unlike in *Quincecare* where the chairman of Quincecare had been interposed between the bank (Barclays) and customer (Quincecare), the customer in *Philipp* had herself personally given payment instructions to the bank, rather than through an agent.

288 The material facts were that the claimant, Mrs Philipp, had been unfortunately duped by fraudsters to issue instructions to her bank to transfer money from her account into an account controlled by the fraudsters, a species of fraud that is termed "authorised push payment" fraud (see *Philipp* at [8]). Mrs Philipp brought a claim against her bank, Barclays (coincidentally, the same bank in the *Quincecare* case), alleging that in executing her instructions the bank owed and breached its *Quincecare* duty.

289 The UK Supreme Court held that the *Quincecare* duty could not be extended into the context where the customer herself issues instructions to their bank. Lord Leggatt JSC, delivering the sole judgment of the court, considered that Steyn J in the *Quincecare* case had erroneously perceived a conflict between the bank's primary duty to execute its customer's instructions on the one hand and the *Quincecare* duty on the other (see [287] above), because the reasoning in the *Quincecare* case had "proceeded from a false premise" that a dishonest agent of the customer retained actual authority to give instructions on his principal's behalf, such that in disregarding the agent's instruction, the bank was declining to execute its customer's instruction (see *Philipp* at [68]–[69]). An agent acting dishonesty *vis-à-vis* his principal, like the chairman in the *Quincecare* case, would have his actual authority nullified by his dishonesty (see *Philipp* at [73]). However, a dishonest agent may nonetheless retain

apparent authority that the bank could rely on to estop its customer from denying that the agent's instruction was its own (see *Philipp* at [74] and [76]). In this regard, the *Quincecare* duty was not a duty of care at large, but a more limited duty on the part of a bank, when it is given instructions by an agent of its customer, to take reasonable steps to ensure that the agent is acting with authority, such that the bank may rely on the agent's apparent authority notwithstanding that the agent's actual authority may have been nullified by his dishonesty (see *Philipp* at [90]):

> The authority conferred on an agent by a customer of the bank to sign cheques or give other payment instructions on behalf of the customer does not include authority to act dishonestly in pursuit of the agent's own interests and in fraud of the customer. An agent acting in this way will therefore lack actual authority to give the instruction on behalf of the customer. The agent will still in general have apparent authority to do so by virtue of the customer's representation to the bank that the agent is authorised to give payment instructions on its behalf. But not if there are circumstances suggestive of dishonesty apparent to the bank which would cause a reasonable banker before executing an instruction to make inquiries to verify the agent's authority. In such circumstances the bank's duty to exercise reasonable skill and care in and about exercising the customer's instructions requires the bank to make inquiries to ascertain whether the instruction given is one actually authorised by the customer. If the bank executes the payment instruction without making such inquiries, the bank will therefore be acting in breach of duty. Furthermore, the instruction will not bind the customer, as the dishonest agent will lack apparent as well as actual authority to give it on behalf of the customer.

290 Thus, the *Quincecare* duty as recast by the UK Supreme Court in *Philipp* is explicable entirely on orthodox agency law principles on the agent's actual and apparent authority. More specifically, the UK Supreme Court's conceptualisation of the duty recognises a "parallel in the respective substances of the assessment into whether the *Quincecare* duty has been breached on the one hand and whether the dishonest agent issuing instructions to the bank had apparent authority on the other" (see Chua Rui Yuan, "The Quincecare Duty:

An Unnecessary Gloss?" [2023] JBL 161 at 169). So, on the facts of *Philipp* where no agent was involved in the delivery of Mrs Philipp's instructions to Barclays, there could have been no doubt that the instruction received by Barclays was, in fact, Mrs Philipp's instruction. Barclays was therefore entitled – and indeed, obligated – to execute it without making any further inquiry (see *Philipp* at [100]).

291 Having set out the recently established position under English law, I turn to consider the Court of Appeal's decision in *Hsu Ann Mei*. The dispute there arose out of the refusal of the defendant bank, OCBC, to comply with several instructions purportedly emanating from its private banking client, one Mdm Hwang. In short, during various visits to OCBC's premises by Mdm Hwang, who was accompanied by her daughter Amy, Mdm Hwang had issued instructions (through Amy) to OCBC to (a) open a joint account in Mdm Hwang's and Amy's joint names, as well as to transfer all Mdm Hwang's deposits with OCBC to this joint account; and (b) after OCBC failed to open the joint account, close Mdm Hwang's accounts with OCBC. OCBC failed to act on Mdm Hwang's instructions as it harboured concerns on Mdm Hwang's mental capacity, and also doubted that the instructions it had received were in fact emanating from Mdm Hwang (at [12]). In particular, Amy had turned aggressive whenever OCBC's officers had sought to clarify Mdm Hwang's intentions, and OCBC's officers observed that Mdm Hwang did not appear to understand what she was doing. Before her death, Mdm Hwang issued proceedings against OCBC alleging that OCBC had breached its duties as her banker by refusing to carry out her instructions (at [16]). Before the case went for trial, Mdm Hwang was found to have advanced dementia, and Amy was appointed as her litigation representative in the proceedings (at [20]).

292 The Court of Appeal dismissed Mdm Hwang's claim. It found that the circumstances were such that OCBC had been placed on notice that "the instructions conveyed by Amy might not have reflected Mdm Hwang's real intentions, or that Mdm Hwang might not have sufficient cognitive ability to understand the consequences" of the instructions she had issued to OCBC (at [31]). Thus, it was reasonable for OCBC to hold off on executing Mdm Hwang's instructions while it made further inquiries to satisfy itself that Mdm Hwang understood the implications of the instructions received by OCBC and intended OCBC to comply with them (at [32]). In arriving at its decision, the Court of Appeal set out its understanding of the *Quincecare* duty as follows (at [23]):

> It is trite law that a bank has a duty to comply with the customer's mandate. However, this duty is subject to the bank's duty to take reasonable care in all circumstances: see *Yogambikai Nagarajah v Indian Overseas Bank* [1996] 2 SLR(R) 774 ("*Yogambikai*"), citing *Selangor United Rubber Estates Ltd v Cradock (No 3)* [1968] 2 Lloyd's Rep 289 and *Lipkin Gorman v Karpnale Ltd* [1989] 1 WLR 1340 ("*Lipkin Gorman*"). Accordingly, ***where a bank has good reason to believe or suspect that a customer's mandate may not be genuine or may not represent his or her true intention, the bank is entitled to refuse to comply with the mandate***. Conversely, if a bank fails to comply with its client's instructions under circumstances where a reasonably prudent bank would *not* have been put on notice, then the bank may be acting in breach of its duty to comply with the client's instructions.
>
> [emphasis added in bold italics]

293 At first blush, the decision in *Hsu Ann Mei*, and the Court of Appeal's formulation of the *Quincecare* duty above, may appear to be inconsistent with the UK Supreme Court's rationalisation of the duty in *Philipp*. Specifically, the Court of Appeal's formulation appears to be broader insofar as it envisions that the *Quincecare* duty can operate even if there is no agent of the customer in the picture. Put differently, the Court of Appeal appears to understand the *Quincecare* duty as a full-blown duty of care in the literal sense – *viz*, a "duty to take reasonable care *in all the circumstances*" [emphasis added] (see [292]

above) – as opposed to in an attenuated sense as the UK Supreme Court did in *Philipp* (see [289] above, citing *Philipp* at [90]). Further, if *Hsu Ann Mei* is to be understood as a non-agency case, the UK Supreme Court's decision in *Philipp* would suggest that the *Quincecare* duty ought to have been of no application.

294 Nevertheless, on closer inspection, I see no inconsistency between *Hsu Ann Mei* and *Philipp*. This is for two reasons. First, it seems to me that *Hsu Ann Mei* was, in fact, a case involving the interposition of an agent (Amy) between the customer (Mdm Hwang) and the bank (OCBC). The facts disclose that, although Mdm Hwang did visit OCBC's premises personally, it was Amy, rather than Mdm Hwang, who gave instructions to OCBC's officers. This is apparent from the Court of Appeal's statements that: (a) "Amy gave instructions for the opening of the Joint Account" (at [9]); and (b) that when Amy and Mdm Hwang returned to close Mdm Hwang's accounts, Amy became agitated "when [OCBC's officer] requested that any instructions to close Mdm Hwang's accounts should be given by Mdm Hwang personally", the necessary implication from this being that instructions had earlier been given by Amy, and not Mdm Hwang (at [12]). Moreover, the Court of Appeal also spoke in terms of OCBC "[taking] certain steps to satisfy itself that *Amy's instruction* reflected Mdm Hwang's real intention" [emphasis added] (at [2]).

295 Given these indications, *Hsu Ann Mei* was a case involving a customer (Mdm Hwang) giving instructions to the bank (OCBC) through an agent (Amy), such that there was scope for the *Quincecare* duty to be engaged. By contrast, in *Philipp*, Mrs Philipp had gone to Barclays' offices personally (with her husband) and had herself communicated the payment instruction to Barclays' officers (see *Philipp* at [12]). The fact that the instruction had indisputably come

from Mrs Philipp herself was what rendered the *Quincecare* duty inapplicable (see *Philipp* at [100]).

296 Second, even if I am wrong that *Hsu Ann Mei* can be considered an agency case due to the pivotal role played by Amy, I consider that it is nevertheless distinguishable from *Philipp*. A case involving a customer who may lack mental capacity is self-evidently different from a case where no such doubt exists. The same doubt as to whether an instruction received by the bank is really the customer's instruction that engages the *Quincecare* duty in a case where the bank receives instructions from a person purporting to act as the customer's agent also exists in a case where, despite receiving instructions from the customer himself, the bank has reasonable cause for concern as to the customer's mental capacity, since it is well-settled that if a customer is mentally incapacitated such that the customer does not know what he is doing, he can give no mandate and the banker cannot act on the same (see *Paget* at para 6.44). Thus, an instruction from a mentally incapacitated customer is strictly not the customer's instruction if the bank is put on notice of the customer's mental incapacity, thus giving rise to the need to confirm the customer's capacity to give the instruction received.

297 Indeed, any doubt as to the consistency between *Philipp* and *Hsu Ann Mei* was put to rest by Lord Leggatt JSC in *Philipp* itself. His Lordship commented, expressly citing *Hsu Ann Mei*, that "[s]imilar reasoning [as to the *Quincecare* duty] would also apply where a bank is on notice, in the sense of having reasonable grounds for believing, that the customer lacks mental capacity to operate a bank account or manage her financial affairs" (see *Philipp* at [99]).

298 I was thus satisfied that the principles stated by the UK Supreme Court in *Philipp* on the *Quincecare* duty were applicable to Singapore law.

(B) APPLICATION TO THE FACTS

299 I turn to consider the application of the above principles to the present case. Dr Goh relied on the same facts as those upon which he had built his submission on the fraud and nullity exceptions for his submission that the Banks had breached their *Quincecare* duties in making payment to IPP's putative suppliers. In short, therefore, his case was that it had been apparent on the face of the documents submitted to the Banks that the payment to IPP's putative suppliers were attempts to defraud IPP.[226]

300 IPP submitted that the Banks had not owed or breached their *Quincecare* duties to IPP as "there was no reason for the Banks to look behind the Cargo Supporting Documents to examine the underlying cargo transactions".[227] In this regard, IPP pointed to three factors:

(a) First, that the supporting documents submitted to the Banks were not so discrepant as to put the Banks on notice that they were part of a fraudulent scheme.[228]

(b) Second, that the analysis had to be undertaken in the context of the fundamental principle in trade finance that banks deal in documents, and not the underlying contract.[229]

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226 DCS at para 315 and 320; DRS at para 119–120.

227 PCS at para 208.

228 PCS at para 211.

229 PCS at para 212–213.

(c) Third, that the contract between IPP and the Banks contained representations and warranties given by IPP to the Banks that the sham cargo trading transactions were genuine and *bona fide*.[230]

301 In its reply submissions which were filed after the decision in *Philipp* had been handed down by the UK Supreme Court, IPP additionally relied on the agency-based rationalisation of the *Quincecare* duty in *Philipp* as a further reason as to why the Banks had not breached their *Quincecare* duties, as there had been no suggestion by Dr Goh that IPP had not authorised the sham transactions and the payment instructions received by the Banks.[231]

302 In my judgment, Dr Goh did not establish that the Banks had made payment to IPP's putative suppliers in breach of their *Quincecare* duties.

303 First, to the extent that Dr Goh's case on the alleged breach of the *Quincecare* duty by the Banks rested on the same substance as his case on the fraud and/or nullity exceptions, I have already found above that these submissions were unconvincing. Thus, just as the evidence Dr Goh relied on to establish the fraud and nullity exceptions were tenuous there, it also did not come close to proving that the circumstances in which the Banks had received IPP's payment instructions were so suspicious that they ought to have been put on notice that the cargo trading transactions that they were financing were shams.

304 Second, the effect of Dr Goh duplicating his submissions on the fraud and nullity exceptions for his argument that the Banks had breached their *Quincecare* duty meant that he did not, in either his closing or reply

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230 PCS at para 214.

231 PRS at para 299.

submissions, respond to IPP's reliance on the agency-based rationalisation of the *Quincecare* duty in *Philipp* (which, as I have explained above, is not inconsistent and indeed implicit in the Court of Appeal's decision in *Hsu Ann Mei*). Thus, no argument was advanced by Dr Goh as to the identity of the relevant agents of IPP who had issued payment instructions to the Banks on IPP's behalf, or on the crucial issue as to whether these agents had been clothed with actual or apparent authority in their issuance of instructions to the Banks. As noted above, the conception of the *Quincecare* duty adopted by the UK Supreme Court in the *Philipp* case turns on whether the relevant agents of IPP had authority to give instructions to the Banks such that their instructions could be identified, in law, as IPP's own instructions (see [290] above).

305 In fairness to Dr Goh, the decision in *Philipp* was handed down in the interim period between his closing and reply submissions, such that it was not unexpected that Dr Goh's counsel might not have picked up on this development. Thus, out of fairness to Dr Goh, despite his omission to frame arguments responsive to IPP's reliance on *Philipp*, I considered whether, on the evidence, an argument could have been made that the Banks had breached their *Quincecare* duties.

306 The starting point had to be the identification of the relevant agents of IPP. In this regard, Mr Tan gave evidence in cross-examination that there had been three signatories on IPP's application forms for drawdowns on the Facilities, being IPP's three directors: Dr Goh, Zoe and Sara.[232] Dr Goh did not appear to dispute this, as he stated in his affidavit that he had "signed some application forms when Zoe and Sara were not available".[233] Given this, for the

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232 NE (4 May 2023) at p 161 ln 4–12.

233 1st AEIC of GJH at para 58(b) (as amended by the Errata Sheet S/N 4).

purposes of the *Quincecare* duty analysis, the relevant agents of IPP who had issued payment instructions to the Banks were Dr Goh, Zoe and Sara.

307 The next question, then, was whether the relevant agents of IPP had been clothed with authority when issuing payment instructions to the Banks such that their instructions would be attributed to IPP.

308 In this regard, I considered that the answer was in the affirmative. In my judgment, Dr Goh, Zoe and Sara were clothed with (at least) ostensible authority at the time that they issued the payment instructions to the Banks through the application forms for the drawdowns on the Facilities.

309 It is well-established that the appointment of an agent to a particular position by his principal can amount to a representation that the agent has the usual authority of a person holding such a position (see the English Court of Appeal decisions of *Hely-Hutchinson v Brayhead Ltd and another* [1968] 1 QB 549 at 583 and *Freeman & Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd and another* [1964] 2 QB 480 at 503). By way of illustration of this principle, in the Hong Kong Court of Final Appeal decision of *Akai Holdings (in liq) v Kasikornbank PCL* [2011] 1 HKC 357, the court observed that an agent who was the executive chairman and chief executive officer of the company "would have had a large measure of apparent authority" that included entering the company into the transactions in question (at [81]). In the present case, by virtue of their appointment as IPP's directors and authorised signatories for the Facilities, it was clear to my mind that IPP had to be taken as having represented to the Banks that Dr Goh, Zoe and Sara had the authority to procure drawdowns on the Facilities by IPP through their signing of a duly completed application form.

310 The upshot of this was that the Banks were generally entitled to rely on the appearance of authority that the signatories who had signed off on the application forms for the June–July 2019 Cargo Trading Drawdowns possessed by virtue of their position as directors of IPP. Given that Dr Goh could not point to any evidence as to any circumstances that would have raised the Banks' suspicion that the signatories were acting without authority (other than the discrepancies on the bills of lading, which I have already found above did not give any real cause for concern in themselves), it could not be said that the Banks were put on inquiry in the sense of having reasonable grounds for believing that the payment instructions they had received (in the form of completed and signed application forms) constituted attempts to defraud IPP (see *Philipp* at [97]).

311 For these reasons, I concluded that, both on Dr Goh's own case on the *Quincecare* duty (which mirrored his case on the fraud and/or nullity exception), and the juridical basis of the *Quincecare* duty as identified by the UK Supreme Court in *Philipp* (which was relied on by IPP), it could not be said that the Banks had acted in breach of their *Quincecare* duties to IPP.

Whether IPP did not suffer loss as it had not yet repaid the Banks

312 Dr Goh submitted that the fact that IPP had not yet repaid the Banks meant that only the Banks, and not IPP, had suffered loss. IPP would only incur loss if and when it repaid the Banks for the June–July 2019 Cargo Trading Drawdowns.[234]

313 In contrast, IPP submitted that the existence of its liability to the Banks was a loss in and of itself, even if repayment had not been made. For this, IPP

[234] DCS at para 297; DRS at para 112.

relied on the High Court decision of *Motor Insurers' Bureau of Singapore and another v AM General Insurance Bhd (formerly known as Kumia Insurans (Malaysia) Bhd) (Liew Voon Fah, third party)* [2018] 4 SLR 882 ("*Motor Insurers' Bureau*") as authority for the proposition that "a liability to pay can constitute a substantial loss even if the amount which is the subject of the liability is not yet paid".[235]

314 I did not accept Dr Goh's submission. I considered IPP's statement of the legal position to be accurate. IPP's liability to the Banks was, by itself, a legally cognisable loss, and whether IPP had discharged its liabilities to the Banks was irrelevant.

315 There is a long line of authority confirming that a claimant who has incurred a liability to a third party suffers legally cognisable loss even if the liability remains undischarged. This principle is neatly stated as follows by the learned author of *The Law of Damages* (Andrew Tettenborn gen ed) (LexisNexis, 2nd Ed, 2010) (at para 3.56):

> Since loss embraces the necessity for expenditure as much as expenditure itself, it follows that where A, as a result of B's wrongful act, incurs a legal liability to C, this of itself may amount to a loss compensable in damages.

316 The learned author cites (at para 3.57) the old English case of *Randall v Raper* (1858) EB & E 84 ("*Randall*") as authority for this proposition. In *Randall*, the defendant had sold seed barley to the plaintiff who on-sold it to a third-party sub-buyer. The seed barley turned out to be of an inferior quality than that which the defendant had warranted to the plaintiff and the plaintiff, in turn, had warranted to his sub-buyer. The sub-buyer sought compensation from

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235 PRS at para 280.

the plaintiff (a liability which the plaintiff conceded), and the plaintiff sought compensation from the defendant. At the time that the plaintiff brought the action, it had not yet paid compensation to the sub-buyer although it had agreed to do so. The defendant contended, *inter alia*, that he was not liable to compensate the plaintiff until the plaintiff had discharged his liability to the sub-buyer.

317 The members of the court generally gave short shrift to this argument. Lord Campbell CJ held that he "[could not] lay down a rule that the mere liability cannot be the foundation of damages" (see *Randall* at 89). In a similar vein, Erle J opined that "the true rule is, that a liability to loss is sufficient to give the party liable a title to recover" (see *Randall* at 90), while Crompton J dismissed the defendant's argument in slightly more emphatic terms (see *Randall* at 90):

> It is said, however, that the plaintiffs have here only incurred a liability, and have made no payment. But I entirely deny that payment is necessary to entitle a party to recover. Liability alone is sufficient.

318 The modern correctness of the decision in *Randall* was confirmed in the subsequent English High Court decision of *Total Liban SA v Vitol Energy SA* [2001] QB 643 ("*Total Liban*"). In that case, Peter Gross QC, sitting as a deputy High Court Judge, articulated the proposition to be derived from *Randall* as follows (see *Total Liban* at 664):

> A legal liability owed by B to C, consequent upon and not too remote from A's breach of its contract with B, is capable of constituting recoverable loss entitling B to substantial damages from A. There is no rule of law, requiring B first to have paid C. *Randall v Raper*, EB & E 84 so holds and is good law.

319 Locally, both *Randall* and *Total Liban* were cited with approval in the High Court decision of *Motor Insurers' Bureau* which IPP relied upon (see

[123]–[125]). I note, also, that the proposition that "an unpaid liability can constitute a loss for the purposes of awarding damages" – and the decision in *Total Liban* – was recently affirmed as "well-established" by Foxton J in the English High Court decision in *Palmali Shipping SA v Litasco SA* [2020] EWHC 2581 (Comm) (at [31]).

320 Apart from authority, I was also satisfied that there were good reasons in principle militating against a strict rule that a claimant must discharge its liability to a third party before such liability can be considered legally cognisable loss. For instance, it would not be uncommon that a claimant can only discharge his liability to the third party out of his recoveries from the defendant; in other words, the claimant's ability to satisfy his own liability is contingent on recovery from the defendant. If there were a rule that a claimant had to discharge his own liability to the third party before being able to seek recourse against the defendant, there would be a real possibility that, if the claimant were unable to do so, the defendant would effectively get away scot-free (see *Total Liban* at 651).

321 Indeed, taking the point further, the existence of such a rule would create a perverse incentive on the part of the defendant to obtain *de facto* immunity for himself by taking steps to ensure that the claimant's liability to the third party is of such a magnitude that the claimant cannot meet it out of its own pocket. In fact, that was precisely the situation in this case – on Dr Goh's case, if such a rule of law existed, the fact that IPP was insolvent and therefore unable to repay the June–July 2019 Cargo Trading Drawdowns meant that it could not seek recourse against him (or for that matter, any of its other directors) for causing it to incur these liabilities. That would be a manifestly unjust outcome that I had no doubt could not be the law.

322 For the foregoing reasons, it was clear, both in terms of authority and principle, that there was no merit in Dr Goh's submission that IPP could not suffer any loss from the June–July 2019 Cargo Trading Drawdowns until it had first repaid these sums to the Banks.

Whether IPP did not suffer loss as the Liquidators had not adjudicated on the Banks' proofs of debt

323 Dr Goh submitted that IPP had not suffered any loss as its Liquidators had yet to adjudicate and accept the proofs of debt filed by the Banks in IPP's liquidation in respect of the June–July 2019 Cargo Trading Drawdowns.

324 I did not accept this submission. The logical corollary, or underlying premise, of this argument was that a positive adjudication by the Liquidators on the Banks' proofs of debt was a necessary condition for IPP's liability to repay the June–July 2019 Cargo Trading Drawdowns to arise. With respect, this submission was premised on a misconception as to the nature and effect of the proof of debt mechanism. As IPP submitted, relying on the Australian case of *The Duke Group Ltd (in liq) v Arthur Young (Reg) and another* (1991) 3 ACSR 759, "the existence, acceptance or rejection of a proof of debt has no bearing on the existence of the underlying debt".[236]

325 The proof of debt mechanism in liquidation is procedural in nature. It is a mode of collective enforcement of admitted claims against a company in insolvent liquidation (see the Court of Appeal decision of *Kyen Resources Pte Ltd (in compulsory liquidation) v Feima International (Hongkong) Ltd (in liquidation) and another matter* [2024] 1 SLR 266 at [32]). Given that proof of debt involves *enforcement* of claims, it has no bearing on the logically anterior

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236 PRS at para 282.

issue of the *existence* of claims against, or liabilities of, the company. Thus, the fact that a liquidator has not yet accepted a proof of debt does not mean that the underlying debt or liability that is the subject of that proof does not exist; and indeed, the fact that a liquidator has rejected a proof is not *per se* determinative of the existence of the underlying debt or liability.

326 That the proof of debt mechanism is purely procedural in nature was clearly elucidated in the following statement of Lord Hoffmann in the Privy Council decision of *Wight and others v Eckhardt Marine GmbH* [2004] 1 AC 147 (at [27]):

> The winding up leaves the debts of the creditors untouched. It only affects the way in which they can be enforced. When the order is made, ordinary proceedings against the company are stayed … The creditors are confined to a collective enforcement procedure that results in pari passu distribution of the company's assets. *The winding up does not either create new substantive rights or destroy the old ones. Their debts, if they are owing, remain debts throughout.* They are discharged by the winding up only to the extent that they are paid out of dividends. …
>
> [emphasis added]

327 It is a necessary implication of his Lordship's statement that "[t]he winding up does not either create new substantive rights or destroy the old ones" that the proof of debt mechanism – being the "collective enforcement procedure" he refers to – has no bearing on the existence of a claim against, or liability of, an insolvent company.

328 Moreover, the proposition advanced by Dr Goh as to the effect of the proof of debt mechanism was both contrary to principle and the statutory insolvency scheme. The insolvency legislation recognises that there is no axiomatic link between the acceptance of a proof of debt and the existence of the debt or liability that is the subject of the proof. Thus, the mere fact that a

claim against the company is non-provable in its liquidation – for example, because it does not satisfy the requirements of a provable debt as set out in s 218 of the IRDA – does not mean that it does not exist (see the High Court decision of *Park Hotel CQ Pte Ltd (in liquidation) and others v Law Ching Hung and another suit* [2024] SGHC 105 at [62]); and in the event that there are surplus assets following the satisfaction of all provable claims, non-provable claims would be paid out of any such surplus in priority to any residual distributions to the company's shareholders (see *Goode on Principles of Corporate Insolvency Law* (Kristin van Zwieten gen ed) (Sweet & Maxwell, 5th Ed, 2018) at para 8-54; see, *eg*, the UK Supreme Court decisions of *In re Nortel GmbH (in administration) and related companies* [2014] AC 209 at [39] and *In re Lehman Brothers International (Europe) (in administration) (No 4)* [2018] AC 465 at [59]–[61], [136] and [193]). This consequence makes clear that the proof of debt mechanism, and the result of the adjudication of a proof of debt, is strictly irrelevant to whether a claim against, or liability of, an insolvent company exists. Were the position to be otherwise, the rejection of a proof of debt or non-provability of a claim would be decisive of its non-existence, such that the logical consequence would be that non-provable claims would not be paid *at all*, rather than in subordination to all provable claims and in priority to shareholders.

329 For these reasons, Dr Goh's submission that no loss had been incurred by IPP in respect of the June–July 2019 Cargo Trading Drawdowns due to non-adjudication of the proofs of debt filed by the Banks was misconceived.

Dr Goh's "round-tripping" theory

330 The last string to Dr Goh's legal bow on the issue of existence of loss was his "round-tripping" theory. Essentially, this theory posited that, after the

Banks had paid out the moneys to IPP's putative suppliers, the moneys were channelled back into IPP one way or another, such as by the suppliers paying the moneys to a third party who would, in turn, pay the moneys back to IPP.[237] Dr Goh submitted that this meant that IPP had not suffered any loss as the funds disbursed by the Banks had found their way back to IPP.[238]

331 I did not accept Dr Goh's round-tripping theory as Dr Goh's case on this point was bereft of supporting evidence.

332 The only piece of evidence that Dr Goh drew the court's attention to in support of the round-tripping theory was an affidavit of SocGen's Managing Director of Trade and Commodity Finance, one Mr Damien Marie Alain De La Gorgue De Rosny ("Mr De Rosny"), from proceedings commenced by SocGen before the Hong Kong courts against multiple parties including IPP and Zoe.[239] In his affidavit, Mr De Rosny stated that he had been present at a call between certain SocGen employees and Zoe on 27 August 2019, in which Zoe had "effectively admitted to the fraud committed against [SocGen]", including the fact that round-tripping had occurred.[240]

333 In my judgment, Mr De Rosny's assertions were unable to bear the weight that Dr Goh placed on them. First, the contents of Mr De Rosny's affidavit were generally hearsay, being out-of-court assertions of fact relied on by Dr Goh as truth of the facts asserted (see the Court of Appeal decision of *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 at [26]). Mr De Rosny was not called as a witness in the present suit. Second, insofar as Dr Goh relied

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237 1st AEIC of GJH at para 130.

238 1st AEIC of GJH at para 130.

239 1st AEIC of GJH at pp 799–831 (GJH-34).

240 1st AIEC of GJH at pp 812–813, para 33 (GJH-34).

specifically on Mr De Rosny's recount of the call between SocGen's officers and Zoe, this was not only hearsay but multiple hearsay.

334 It is axiomatic that, even if a court opts not to exclude hearsay evidence from consideration altogether, it would generally be slow to place substantial weight on it. The need for such caution is *a fortiori* where, in the present case, the hearsay evidence relates to a crucial point in a party's case. IPP was clearly prejudiced by an inability to cross-examine either Zoe, or at the very least, Mr De Rosny, on the alleged round-tripping. In these premises, it would clearly be inappropriate and unfair to make a finding on Dr Goh's round-tripping theory based solely on the averments in Mr De Rosny's affidavit.

335 Although I did accept Dr Goh's submission that the fact that payments had been made to IPP by a company, Oriental Everise, was consistent with Zoe's statement (as recounted by Mr De Rosny) that Oriental Everise had been involved in the round-tripping of funds back into IPP,[241] this did not carry him very far. At most, IPP's bank statements confirming that such payments had been made only supported Dr Goh's round-tripping theory as a matter of possibility. They did not go further to establish its truth on the balance of probabilities.

336 Moreover, given that the round-tripping theory was an integral part of Dr Goh's defence, it was incumbent on him to plead and prove the particulars as to the fraud run by IPP, including more granular details as to how the round-tripping had been carried out. For instance, one would have expected Dr Goh to identify which inflows into IPP formed part of the round-tripping, what parties had been involved in, and who had been in control of the intermediate payees

241 DCS at para 289.

in the round-tripping. However, nothing of the sort was found in Dr Goh's Defence. This might have been because Dr Goh had, in fact, previously taken out an application to expunge his pleadings and particulars on the round-tripping theory from his Defence. Even if Dr Goh was not procedurally barred by this from raising the round-tripping theory (as IPP submitted he should be),[242] at the very least, the fact that such expungement had occurred meant that Dr Goh could not prove his case on the round-tripping theory.

337 Finally, it was not entirely clear to me how the round-tripping theory could have negated the existence of loss arising from the June–July 2019 Cargo Trading Drawdowns. Dr Goh submitted that the alleged round-tripping of funds explained how the Banks continued to be repaid despite IPP having been involved in sham cargo trades prior to June 2019.[243] Even if the round-tripping meant that no loss had been suffered by IPP prior to June 2019, the fact remained that the round-tripping evidently ceased when it came to the June–July 2019 Cargo Trading Drawdowns, given IPP's inability to repay these sums to the Banks. Thus, even if Dr Goh's round-tripping theory were accepted, it did not mean that no loss arose from the June–July 2019 Cargo Trading Drawdowns.

Whether IPP's loss was caused by Dr Goh's breaches of duty

338 Dr Goh contended that, even if he had been in breach of duty, his breaches had not caused IPP's loss as IPP would have suffered the same losses in any event.

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242 PRS at paras 61–65.

243 DCS at paras 287–289.

Dr Goh's pleading objection

339 Dr Goh first complained that IPP's case on causation was insufficiently particularised, as IPP had not provided any particulars on what Dr Goh should have done, or how the taking of such steps would have obviated the loss suffered by IPP.[244] Instead, IPP's pleadings contained bald and sweeping assertions that Dr Goh's breaches caused IPP to suffer loss and damage, or that Dr Goh would have discovered the truth and avoided the loss caused to IPP if he had not breached his duties.[245]

340 I rejected Dr Goh's objection for two reasons.

341 First, IPP brought two claims against Dr Goh, one in negligence and one for breach of his Creditor Duty. Both claims covered the same field of losses (*viz*, IPP's liabilities to the Banks in relation to the June–July 2019 Drawdowns). Even if I accepted Dr Goh's claim that IPP's pleadings on causation were insufficiently particularised, such failure in particularisation would only plague IPP's claim in negligence, and not its claim based on Dr Goh's breach of the Creditor Duty.

342 This was because, being a claim for a non-custodial breach of fiduciary duty, upon IPP proving Dr Goh's breach of his Creditor Duty and the fact of loss, there was a rebuttable presumption that Dr Goh's breach caused IPP's loss, and the legal burden lay on Dr Goh to rebut the presumption by showing that IPP would have suffered the same loss even if he had not breached his Creditor Duty (see *Sim Poh Ping* at [254]). Indeed, Dr Goh did not dispute the principles in *Sim Poh Ping* (nor could it have been open for him to do so), but proceeded

244 DCS at para 219.

245 DCS at para 218.

on the basis that IPP's Creditor Duty claim was a claim for a custodial breach of fiduciary duty.[246] I did not agree with this characterisation. In *Sim Poh Ping*, Andrew Phang JA defined a custodial breach of fiduciary duty as one involving the "misapplication of the principal's funds" (at [106]). IPP's alleged breach – *viz*, procuring or allowing IPP to enter into the June–July 2019 Drawdowns – did not involve any disposition of IPP's assets. Given this, IPP's Creditor Duty claim was decidedly one of non-custodial breach, and the burden of pleading and proving (lack of) causation thus lay on Dr Goh.

343 Second, even if IPP's case on causation was insufficiently particularised in its pleadings, this would not have defeated its case entirely. In the recent decision of the Appellate Division of the High Court in *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd and another* [2024] SGHC(A) 13 ("*TG Master*"), the court reversed the lower court's decision to dismiss a claim on the sole basis that it had been insufficiently particularised. In this regard, Woo Bih Li JAD stated that "[a]n insufficiency in *particularisation*, as opposed to a complete failure to plead, was not a basis to summarily dismiss a claim after trial" [emphasis in original] (at [121]). This observation dovetailed with the High Court's observation in *ABN Amro Bank NV, Singapore Branch v CWT Commodities (SEA) Pte Ltd* [2011] 2 SLR 891 that a party who considers himself prejudiced by a lack of particularisation may raise objections and file for further and better particulars, and if he fails to do so and comes all the way to trial without any objection, he cannot be heard at the end of trial to complain about the lack of particularisation (at [123]).[247]

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246 DCS at paras 210–214.

247 PCS at para 223.

344 In any event, the critical question was not so much the adequacy of the pleading and particularisation *per se*, but whether the underlying evil of inadequate pleading of averting prejudice to the other party had arisen in this case. The following observations by Woo JAD in *TG Master* are apposite (at [122]):

> The rationale for disallowing an insufficiently pleaded claim is to prevent injustice to an opposing party who is *unable to respond* to the claim due to the failure to plead: *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*") at [18]. The overarching enquiry therefore concerns irremediable prejudice, rather than inflexible technicalities. A party may show that no prejudice was occasioned to the opposing side by, for instance, establishing that the issue was raised in evidence, that it was clearly appreciated by the other party, and if no reasonable objections were taken at the trial to such evidence being led and the point in question being put into issue: *How Weng Fan* at [29(b)]. Indeed, evidence given at trial can, in appropriate circumstances, overcome defects in pleading: *How Weng Fan* at [20].
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> [emphasis in original]

345 In this case, even if IPP's case on causation had not been set out in its Defence, it was clear that no prejudice was occasioned to Dr Goh by this. Dr Goh clearly appreciated the case that he had to meet. I agreed with IPP that it had set out the steps that Dr Goh ought to have taken, and how these would have led him to discover the sham cargo transactions, in Mr Tan's affidavit evidence.[248] Furthermore, Dr Goh's counsel had the opportunity to test Mr Tan's evidence on causation in cross-examination. That Dr Goh's counsel had such opportunity was apparent from an exchange between him and Mr Tan in which the latter suggested to Mr Tan that his case on what Dr Goh ought to have done was Mr Tan's opinion, and that Mr Tan was not qualified to give evidence on

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248 PRS at para 224; AEIC of TWC at paras 122–136.

counterfactuals as he was not an expert.[249] And to put the point beyond doubt, Dr Goh's counsel then went on to expressly inform the court that "[his] last set of questions [to Mr Tan] pertain purely to causation",[250] before he subsequently went into his questions on this issue,[251] and closed off by stating that he "can live with … those answers".[252] Given that Dr Goh's counsel had acknowledged that he had received Mr Tan's answers and was content to live with what he had gotten, there was no basis for Dr Goh to do an about turn in submissions and opportunistically contend then that he was unaware of IPP's case.

The quantum of IPP's loss caused by Dr Goh's breach

346 Turning to the substantive question, I was satisfied on the evidence that Dr Goh's breaches had caused IPP's loss, and indeed, the full extent of losses claimed by IPP.

347 There were two reasons why the full extent of losses claimed by IPP should be allowed.

348 First, insofar as one of Dr Goh's breaches of duty involved his lack of knowledge of IPP's cargo trading business, as a matter of common sense, the losses suffered by IPP out of this line of business (*ie*, its liabilities arising from the June–July 2019 Cargo Trading Drawdowns) would not have occurred but for Dr Goh's ignorance. The fraudsters were only able to run amok in IPP's cargo trading business because Dr Goh had known nothing of it. In the first place, the cargo trading business could never have been used as the *situs* of fraud

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249 NE (5 May 2023) at p 171 ln 22–p 174 ln–6.

250 NE (5 May 2023) at p 182 ln 22–23.

251 NE (8 May 2023) at p 1 ln 17–p 10 ln 14.

252 NE (8 May 2023) at p 10 ln 15–16.

if Dr Goh had been aware of it and kept tabs as he should have. If no fraud had ever occurred in IPP's cargo trading business, no loss would ever have occurred. Indeed, in the entirety of his written submissions, Dr Goh had no answer as to how IPP could have suffered the same losses even if he had been aware of the cargo trading business.

349 Second, even if Dr Goh had not been ignorant of IPP's cargo trading business, his breach of duty in failing to act in relation to the Mercuria audit confirmation request in February 2018 meant that, but for this breach of duty, IPP would never have entered into the June–July 2019 Cargo Trading Drawdowns. In this event, IPP would also not have suffered the entirety of the losses arising from these drawdowns.

Would Zoe or Wallace have prevented Dr Goh from discovering the truth?

350 The thrust of Dr Goh's case on causation was really that he could not have discovered the fraud even if he had made the inquiries that IPP claimed he should have.[253] To be clear, this did not respond to IPP's primary case, which was Dr Goh's ignorance of IPP's cargo trading business; as I noted above, the fraud could not have occurred in the first place if Dr Goh had been aware of, and supervised, the cargo trading business (see [348] above). At best, Dr Goh's case of causation was only responsive to IPP's alternative case that Dr Goh should have made inquiries in the face of the three red flags. Nevertheless, I address Dr Goh's arguments for completeness.

351 Essentially, Dr Goh's case was that he could not have discovered the fraud as his efforts at making inquiries and subsequent investigations would have been stonewalled or obfuscated by the other directors and officers of IPP

253 DCS at paras 216 and 228.

who were perpetrating or complicit in the fraud. Any inquiry by Dr Goh would have inevitably led him to Zoe and/or Wallace.[254] It was also reasonable for Dr Goh to do so, as IPP's books and records were directly managed out of its Hong Kong office by Zoe and Wallace,[255] and Dr Goh had no reason at that time to distrust Zoe, Wallace or any other officer of IPP.[256] However, being the fraudsters themselves or at least complicit to the fraud, Zoe and Wallace would have fed him untruths,[257] so as to throw Dr Goh off the trail. Indeed, there was evidence that Zoe and Wallace had fed untruths to Dr Goh during the pendency of the fraud.[258] Since Dr Goh had no reason to suspect Zoe or Wallace at the time, there would have been no reason for him to be put on guard against their explanations,[259] and he would have been satisfied by their pretence and not make any further inquiries.

352 I did not accept Dr Goh's hypothesis.

353 First, Dr Goh's case on causation was primarily based on conjecture and speculation by him as to what would have transpired, including how Zoe and Wallace would have reacted.[260]

354 Second, although Dr Goh could point to evidence of him having been given misinformation during the pendency of the fraud (such as Wallace providing him with accounts that did not represent the true state of affairs), I did

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254 DCS at para 235.

255 DCS at para 234.

256 DCS at para 232.

257 DCS at para 236.

258 DCS at paras 237–238.

259 DCS at para 242.

260 PRS at para 241 and 255.

not think that it necessarily followed, nor could it be assumed, that Zoe and Wallace would not have revealed the truth to him if he had investigated further. Indeed, there was somewhat of an internal inconsistency in Dr Goh's case on this point *vis-à-vis* his round-tripping theory: on the one hand, Dr Goh relied exclusively on Zoe's apparent confession to SocGen about the fraud in order to support his round-tripping theory; but on the other, he maintained that Zoe and Wallace would have lied to him to the bitter end.[261] In these circumstances, I considered that, on Dr Goh's own case that Zoe had confessed to the fraud to SocGen, it was at the very least not a foregone conclusion that, if confronted by Dr Goh after he had exercised reasonable diligence in making inquiries, Zoe could well have thought that the game was up and revealed the truth to Dr Goh.[262] It bears recalling, in this regard, that to the extent that IPP's Creditor Duty claim was concerned, Dr Goh had the onus of proving on the balance of probabilities that Zoe or Wallace would never have confessed if he had confronted them. Given the dearth of evidence, especially the absence of direct evidence from Zoe, Wallace or other officers of IPP, it was difficult for Dr Goh to discharge his burden of proof.

355 Third, although I did not disagree with Dr Goh that it would not have been unreasonable for him to approach Zoe and Wallace, it was speculative that Zoe or Wallace would necessarily have been able to hoodwink him on every occasion if he had made all the inquiries that he should have throughout his time as a director.

356 Indeed, I did not consider it likely that Zoe and Wallace would have been able to stave off Dr Goh had he discharged his duties. Dr Goh was

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261 NE (11 May 2023) at p 37 ln 17–p 38 ln 2.

262 PCS at para 260.

indisputably an intelligent person who had substantial experience helming companies. He accepted in cross-examination that his role as a director was to "provid[e] corporate governance".[263] And during his interview with IPP's JMs, Dr Goh went even further to assert that, when he had gotten involved with Zoe in starting up IPP, the MPA had specifically demanded that he be a shareholder and director of IPP to supervise IPP's affairs and ensure that it was run properly:[264]

> Dr Goh: … But I'm the regulator-facing because they quote unquote, gave me the licence after I told them that we should not be regulating competition, regulating standards. Then they said, "Okay, since you want to talk so much, we give it to you, subject to you becoming a shareholder and director, to make sure that if you tell them -- you know, if you commit to regulate the standards, then you will take responsibility for it. All right? So this is how it all started.
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> …

Not only that, Dr Goh went on to explain that he had initially intended to exit IPP around 2015, but the MPA had insisted that he stay on to provide corporate governance and ensure IPP was "clean":[265]

> Dr Goh: So I said, "Never mind, in 2015 I will -- I will "tong" until 2017, I get an MFM up and running, it's going to be a legitimate business, and then we should be able to run it properly, try to clean it up or whatever, if it has to be cleaned up, and then hopefully it trades and I exit or I actually get somebody in", so on and so forth. So my timeline was 2017, all right? And I had actually explained this to MPA as well, telling them that -- asking them for permission to exit as a shareholder and director, you know. By the time

263 NE (10 May 2023) at p 80 ln 12.

264 25 AB 88.

265 25 AB 90–25 AB 91.

> a larger corporate animal came in, or listing event took place -- I don't know how to list a company, but I basically said, "If I manage to list the company, there would be corporate governance and you can be sure of transparency. Therefore, you do not need me to "jaga" this anymore. *Because MPA's standpoint of insisting on the shareholder was that they wanted me to jaga the company. They basically said, "You will take care of the company and make sure it's clean."*
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> So, you know, I said, "What is the replacement for an individual to take over that role? I presume the corporate structure, which was listed, would be one way of convincing MPA that the governance was there. So this was what we were working -- at least I myself was hoping to work towards by 2017.

357 Given Dr Goh's intellect, experience, and that his very function in IPP – insofar as the MPA was concerned (and which he was aware was their expectation of him) – was to ensure that something like the fraud in the cargo trading business would not happen, it was inherently unlikely that Zoe and Wallace would have been able to put up a flawless *façade* that perfectly averted his suspicion every time it was raised. Indeed, the speed at which the entire fraud unravelled at the end of IPP's life plainly demonstrated that the fraud had not been of the level of sophistication as Dr Goh intended the court to believe.[266]

358 Fourth, Dr Goh's theory hinged upon the court accepting that making inquiries to Zoe and Wallace was the *only* reasonable course of action, and it also presupposed that Zoe and Wallace presented the only possible avenues by which he could have discovered the truth.

359 The evidence did not support either of these assumptions. There were other opportunities through which Dr Goh could have reasonably discovered

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266 PRS at para 243.

the fraud. As Dr Goh himself acknowledged during the interview with IPP's JMs, he would have begun chasing Mercuria if he had been aware that the delinquent receivables owing by Mercuria to IPP had snowballed to US$20m or US$30m; and he would have done so by contacting Ms Estelle Shi from Mercuria. By IPP's calculations, at least US$45m in purported receivables were overdue by 31 December 2017, and the sum would have increased substantially by the time the audit confirmation request was signed by Dr Goh around 7 February 2018 (see [154] above). Just as how Mercuria swiftly confirmed that it had essentially no dealings at all with IPP when called upon to do so by IPP's JMs, had Dr Goh made the inquiries that he said he would have, Ms Estelle Shi would almost certainly have informed Dr Goh of the same. Indeed, in cross-examination, Dr Goh essentially conceded this sequence of events, before going on to confirm that he would have then reported the matter to the Police:[267]

> Q And if it had been allowed to snowball, then you would have a word with Estelle or Estella, the customer. You would have a word with the customer. Correct or not correct?
>
> A The head of commodity trading.
>
> Q Well, you would have a word with the customer; you agree or disagree? If it is an AR that you have allowed to snowball?
>
> A I agree, I agree.
>
> Q Then the purpose of having this word "with the customer" is to see if the debt could be collected. Right? You said here: to be sure whether you can get it back. Correct?
>
> A Yes, to demand payment of the delinquent debt.
>
> Q And, of course, if you had made those enquiries and the customer had told you that, "Well, we don't have such a debt on record", okay, we don't even have such a transaction on record, that certainly would have set you

[267] NE (10 May 2023) at p 78 ln 12–p 79 ln 18.

> into a series of motions to stop all further financing. Correct?
>
> …
>
> A Yes, of course.
>
> Q But you would be sure to get to the bottom of it, right?
>
> A Yes, I would have to investigate why the customer denied such a debt.
>
> Q And as you said, especially where there is fraud involved, you would have possibly even gone to the police. Right?
>
> A I would have definitely gone to the police.
>
> Q Oh, yes. In the manner that you did on 22 August.
>
> A That is correct, your Honour.

360 I thus did not accept Dr Goh's submission that Zoe and Wallace would have rendered it impossible for him to discover the truth even if he had made the inquiries that he should have.

Dr Goh's round-tripping theory

361 Dr Goh also relied on his round-tripping theory as a means for denying causation. According to Dr Goh, if round-tripping had indeed occurred, had the fraud been discovered at an earlier time, the fraudsters would have siphoned off monies for the payments due to be repaid to the Banks.[268] As IPP would then be unable to repay the outstanding loans from the Banks at that time, it would inevitably have suffered loss upon its default.[269]

362 I have already rejected Dr Goh's round-tripping theory as unproven on the evidence (see [330]–[336] above). But, even assuming that it were accepted

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268 DCS at para 287.

269 DCS at para 290.

as true, it did not respond to IPP's primary case which was premised on the fact that the fraud – and therefore the round-tripping – would never have occurred in the first place if Dr Goh had not been ignorant of IPP's cargo trading business. At most, Dr Goh's round-tripping theory might have reduced the quantum of IPP's loss depending on the outstanding amount that was owing to the Banks at any given time when the fraud unravelled.

Whether Dr Goh should be granted relief under s 391 of the Companies Act

363 Finally, Dr Goh submitted that, in the event that he had been found to be in breach of either his duty of skill, care and diligence or his Creditor Duty, he should nonetheless be granted relief from liability under s 391 of the Companies Act.[270]

364 Section 391 of the Companies Act provides that a court may relief a person (including a director such as Dr Goh) from liability "in any proceedings for negligence, default, breach of duty or breach of trust" if three requirements are met: (a) first, the person seeking relief must have acted honestly; (b) second, that person must have acted reasonably; and (c) third, it must be fair having regard to all the circumstances of the case for that person to be excused for his negligence, default or breach (see *Company Directors* at para 19.88; and the High Court decision of *Nordic International Ltd v Morten Innhaug* [2017] 3 SLR 957 at [86]).

365 I did not consider this to be an appropriate case for the court to exercise its discretion under s 391 of the Companies Act, given the egregiousness of Dr Goh's breaches of duty, chief among which was his ignorance as to IPP's cargo

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270 DCS at para 321.

trading business. Dr Goh's breach entailed an extent of carelessness or imprudence that struck at the very heart of his duty of skill, care and diligence, and it would emasculate the duty of its purpose and content if the court were to grant him relief despite making the findings that it had (see the High Court decision of *Long Say Ting Daniel v Merukh Nunik Elizabeth (personal representative of the estate of Merukh Jusuf, deceased) (Motor-Way Credit Pte Ltd, intervener)* [2013] 1 SLR 1428 ("*Long Say Ting Daniel*") at [60], citing the Federal Court of Australia decision of *Australian Securities and Investments Commission v Healey (No 2)* (2011) 196 FCR 430 at [87]–[88]).

366 Dr Goh submitted that he ought to be excused as he had not been a party to the fraud perpetrated on IPP. Liability ought to be visited on the other directors and officers of IPP that had been engaged in the fraud, and not him. I did not accept this submission. The mere fact that Dr Goh had not been a perpetrator of the fraud did not mean that he was not responsible for its disastrous consequences on IPP. It was through his combination of misfeasance and nonfeasance, in failing to even be aware of IPP's cargo trading business, that the fraudsters were able to use IPP's cargo trading business as a vehicle of fraud in the first place.

367 Dr Goh relied on a statement in *Long Say Ting Daniel* that "nothing could be more unfortunate than that provisions designed for checking or punishing dishonesty or gross negligence should be turned into an engine of oppression for honest and prudent men" (at [36]).[271] Given my findings on Dr Goh's various breaches of duty, this statement clearly did not apply to him: Dr Goh had not been "prudent" in the discharge of his duties, and as he could

[271] DCS at para 333.

readily be described as having been guilty of "gross negligence", the element of misfortune he sought to invoke here was not extant.

368 Nor was the fact that there were other wrongdoers in the picture such as the fraudsters and IPP's auditors (who may well have also been negligent themselves) particularly material. At the most, this meant that multiple persons, including Dr Goh, were liable for the same loss suffered by IPP. In this regard, Dr Goh was, and indeed remains, at liberty to seek a contribution from these other persons if he considers that they should share in the responsibility for compensating IPP's losses.

369 In saying this, I was cognisant of the Court of Appeal's caution in *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 ("*JSI Shipping*") that courts should eschew a dogmatic approach of declining relief under s 391 on the basis that there were other wrongdoers at fault and leaving the defendant fully liable subject to a right of seeking contribution from the other wrongdoers (at [173]–[174]). However, the Court of Appeal qualified this by saying that, in all events, a threshold condition for the court to begin considering the exercise of its discretion was that the mandatory statutory prerequisites in s 391 had to be met (at [172]). Given my finding above that these prerequisites were not met, *JSI Shipping* did not assist Dr Goh.

Conclusion

370 For all the reasons above, I found that IPP's claim against Dr Goh was substantially made out. Save for its claim for loss suffered from the June–July 2019 Bunkering Drawdowns, which I found to have not been established, I allowed IPP's claim against Dr Goh in the sum of US$146,047,099.60 along with the relevant interest payable on this sum at the rates set out in the Facilities.

371 As a parting observation, I wish to emphasise that none of my findings in this case encroach, to any degree, on the well-established "business judgment rule", that serves as a salutary reminder to the courts that they should be slow to second-guess *bona fide* commercial decisions. In *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064, the Court of Appeal commended the following statement of the business judgment rule by Lord Wilberforce in the Privy Council decision of *Howard Smith Ltd v Ampol Petroleum Ltd and others* [1974] AC 821 (at 832) as "most apposite" (at [30]):

> … it would be wrong for the court to substitute its opinion for that of the management, or indeed to question the correctness of the management decision on such a question, if *bona fide* arrived at. *There is no appeal on the merits from management decisions to courts of law: nor will courts assume to act as a kind of supervisory board over decisions within the powers of management honestly arrived at.*
>
> [emphasis added]

372 In this connection, Rajah JC in *Vita Health* noted that the "sanctity of business judgment is underpinned by strong policy considerations". The learned judge's comments on this issue are also worth referring to (see *Vita Health* at [17]):

> It is the role of the marketplace and not the function of the court to punish and censure directors who have in good faith, made incorrect commercial decisions. Directors should not be coerced into exercising defensive commercial judgment, motivated largely by anxiety over legal accountability and consequences. *Bona fide* entrepreneurs and honest commercial men should not fear that business failure entails legal liability. A company provides a vehicle for limited liability and facilitates the assumption and distribution of commercial risk. Undue legal interference will dampen, if not stifle, the appetite for commercial risk and entrepreneurship.

373 The business judgment rule was of no assistance to Dr Goh in the present case given the nature of his alleged breaches. A rule that emphasises sanctity of business judgment is self-evidently inapplicable when the allegation against the

director is that he has, because of flagrant indolence, either exercised no judgment at all or exercised his judgment while labouring under a colossal misconception as to his company's affairs.

374 Ultimately, while the courts are certainly inclined to give directors a great berth or latitude in relation to the commercial risks that they undertake, such general respect would provide no refuge for a director who misapprehends – whether wilfully or negligently – his role to be a sinecure or an honorary function.[272]

Costs

375 Turning to the issue of costs, having considered the parties' cost submissions, I made the following costs orders in favour of IPP:

(a) costs of S$332,545 and disbursements of $94,301.70 to IPP for the main suit;

(b) costs of S$1,000 and disbursements of S$420.80 for HC/SUM 1925/2021; and

(c) costs of S$2,000 and disbursements of S$1088.80 for HC/SUM 940/2023.

376 It is trite that the general rule is that costs should follow the event, as the successful party in the litigation should be entitled to recover its costs from the unsuccessful party (see the High Court decision of *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2022] 5 SLR 525 at [25]–[26]). It was indisputable that IPP had the event, given that it had succeeded on all key

[272] Brief Remarks dated 24 January 2024 at para 3.

issues other than in its failure to prove loss arising from the June–July 2019 Bunkering Drawdowns.

Standard costs

377 For pre-trial work, IPP sought costs on a standard basis of S$85,000. This was a departure from the costs guidelines in Appendix G of the Supreme Court Practice Directions 2013 ("Cost Guidelines"), which prescribes a range of S$25,000 to S$70,000 for "commercial" matters. While there was certainly a degree of complexity in the factual and legal issues in this case, I did not consider that the pre-trial work element was sufficiently complex to warrant a departure, let alone a considerable uplift of S$15,000, from the Cost Guidelines.

378 As the Costs Guidelines serve an important signposting purpose on the quantum of costs that sets expectations as to party and party, the court should not depart from the Cost Guidelines too readily (see the High Court decision of *Kotagaralahalli Peddappaiah Nagaraja v Moussa Salem and others* [2023] SGHC 68 ("*Kotagaralahalli*") at [45]–[51]). IPP submitted that there was extensive fact-finding pre-trial, culminating in a total of 46 bundles of documents at trial. Although the documents were no doubt voluminous, I agreed with Dr Goh that a large portion of the documents (*eg*, documents evidencing IPP's transactions) were not extensively examined at trial and were included mainly for completeness and for context. I also did not think that the factors cited by IPP justified costs thrown away.

379 In my view, a fair and reasonable sum reflective of the pre-trial work undertaken by IPP was S$60,000, which was on the upper end of the prescription in the Costs Guidelines.

380 For trial work, IPP sought costs on a standard basis of S$153,000, based on a daily tariff of S$18,000 for 8.5 days of trial. This was also a departure from the Costs Guidelines, which suggest a daily tariff of S$6,000 to S$16,000 for commercial matters. IPP pointed to the following factors: (a) the large quantum of IPP's claim; (b) the trial having run to 8.5 full days; and (c) the involvement of senior counsel representing both sides.[273] I accepted that the confluence of these factors justified a slight uplift from the Cost Guidelines and found a daily tariff of S$17,000 to be appropriate. Taking a daily tariff of S$17,000 multiplied by 8.5 days of trial, I arrived at a global figure of S$144,500 in standard costs for trial work.

381 For post-trial work, IPP sought a sum of S$50,000 on a standard basis.[274] I found this figure to be fair and reasonable. Although this was a significant uplift from the Costs Guidelines' suggested limit of up to S$30,000, I considered that the post-trial work was extensive. The parties' closing and reply submissions came up to just under a total of 700 pages and covered a gamut of factual and legal issues. The factual issues called for a granular analysis of evidence, and the legal issues included novel and technical points, such as Dr Goh's various arguments on the existence of IPP's loss.

Indemnity uplift

382 It was not disputed that O 22A r 9(1) of the Rules of Court (2014 Rev Ed) applied in this case.[275] IPP had served on Dr Goh an offer to settle ("OTS")

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273 Plaintiff's Costs Submissions dated 23 February 2024 ("PCS (Costs)") at para 11.

274 PCS (Costs) at para 13.

275 Defendant's Costs Submissions dated 23 February 2024 ("DCS (Costs)") at para 24.

which was not accepted, and the terms of the judgment it obtained at the conclusion of trial were no less favourable than the terms of the OTS.[276]

383 In general, costs on the indemnity basis would usually be assessed on the basis of a one-third uplift on the costs which would have been given on a standard basis (see the High Court decision of *The Wave Studio Pte Ltd and others v General Hotel Management (Singapore) Pte Ltd and another* [2022] SGHC 142 at [236], citing the Court of Appeal decision of *Lin Jian Wei and another v Lim Eng Hock Peter* [2011] 3 SLR 1052 at [83]). It bears emphasis that the proposed settlement of US$75m in IPP's OTS was just under 50% of the judgment sum that IPP obtained after trial. Given the stark disparity, I saw no good reason to depart from the usual one-third uplift.[277]

384 I also found IPP's proposed apportionment of pre-OTS and post-OTS pre-trial costs at 30% and 70% respectively to be reasonable.[278]

385 Applying the indemnity uplift, the costs came up to S$332,545, comprising of: (a) pre-OTS pre-trial work (without indemnity uplift) of S$18,000; (b) post-OTS pre-trial work (with indemnity uplift) of S$55,860; (c) Trial work (with indemnity uplift) of S$192,185; and (d) post-trial work (with indemnity uplift) of S$66,500.

Disbursements

386 I considered IPP's claimed disbursements to be reasonable and allowed them in full, save for the sum of S$2,375.60 arising from the filing of a

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276 PCS (Costs) at para 8.

277 Defendant's Reply Costs Submissions dated 1 March 2024 ("DRS (Costs)") at para 9.

278 PCS (Costs) at para 14(c).

solicitor's affidavit enclosing an unsigned affidavit of one of IPP's witnesses. I agreed with Dr Goh that it made little sense for IPP to double-count the same filing.[279] The total sum of disbursements came up to S$94,301.70.

Interlocutory matters with pending costs orders

387 Finally, there were pending costs orders in the following interlocutory matters: (a) HC/SUM 1925/2021; (b) HC/SUM 940/2023; (c) HC/SUM 4407/2022; (d) HC/SUM 8/2023; and (e) HC/SUM 717/2023.

388 HC/SUM 4407/2022, HC/SUM 8/2023 and HC/SUM 717/2023 were applications by the parties for dispensation of affidavits-of-evidence-in-chief. In my view, it was fair that each party bear their own costs for these applications, and so I made no order as to costs on these matters.

389 HC/SUM 1925/2021 was a summons for directions by IPP. Given that the application was uncontested and not complex, I found S$1,000 (the minimum in the Cost Guidelines' prescribed range of S$1,000 to S$5,000), and disbursements of S$420.80 payable to IPP to be appropriate.

390 HC/SUM 940/2023 was an application by IPP at the start of trial to amend its pleadings. I granted all of the proposed amendments, save for one point on a claim for loss of chance. Although the application was contested, the proposed amendments were relatively simple. Moreover, acknowledging that the application had been brought late in the day by IPP, I considered its claim for S$3,500 in costs to be excessive. In the circumstances, I found a lower sum of S$2,000 and S$1088.80 in disbursements to be fair.

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279 DRS (Costs) at para 11(d).

Aedit Abdullah
Judge of the High Court

Lok Vi Ming SC, Chan Kia Pheng, Chan Junhao Justin, Yong Walter, Joshua Ho Jun Ling and Ivan Khoo Yi (LVM Law Chambers LLC) for the plaintiff;
Thio Shen Yi SC, Nanthini d/o Vijayakumar, Goh Enchi Jeanne and Kumar Lingesh (TSMP Law Corporation) for the defendant.
