

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

[2024] SGHC 135

Suit No 520 of 2014

Between

- (1) Lim Seong Ong (formerly
known as Lim Jing Jie)
- (2) Lim Thiam Chai

... *Plaintiffs*

And

Panshore Engineering Pte Ltd

... *Defendant*

JUDGMENT

[Contract — Breach — Obligation to provide loan to company]

[Contract — Breach — Assessment of damages]

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**Lim Seong Ong and another
v
Panshore Engineering Pte Ltd**

[2024] SGHC 135

General Division of the High Court — Suit No 520 of 2014
Andre Maniam J
29 February, 1 March, 19 April 2024

24 May 2024

Judgment reserved.

Andre Maniam J:

Introduction

1 The second plaintiff, Lim Thiam Chai (“Roland”) and his brother Lim Seong Ong (“Kenny”, the first plaintiff) were shareholders and directors of Asia Link Marine Industries Pte Ltd (“Asia Link”). Asia Link and the defendant (“Panshore”) entered into a joint venture on 1 March 2011, and Panshore became a shareholder of Asia Link at some point thereafter.

2 On 7 September 2011, Panshore, Roland, and Kenny entered into an agreement (the “7 September 2011 agreement”) which was essentially a shareholders’ agreement between the three shareholders of Asia Link (*ie*, Panshore, Roland, and Kenny) regarding the affairs of Asia Link. An aspect of the 7 September 2011 agreement related to Panshore, Roland, and Kenny providing loans to Asia Link, to be used for the repayment of Asia Link’s “trade

debts”. Panshore was to lend Asia Link \$1,000,000, Roland and Kenny (jointly) were to lend Asia Link \$400,000. In the event, Panshore lent Asia Link the first \$700,000 expected of Panshore, but Roland and Kenny did not lend Asia Link anything.

3 Panshore’s counterclaim in this suit included a claim that Roland had breached the 7 September 2011 agreement by not lending Asia Link \$400,000 as he had promised. I granted Panshore interlocutory judgment on that claim for damages to be assessed, but dismissed Panshore’s other claims against Roland – my judgment on liability is [2023] SGHC 257. The present judgment deals with the assessment of damages.

Background

Joint venture

4 From 1 March 2011, Panshore and Asia Link were in a joint venture whereby Panshore would carry out marine offshore engineering work at Tuas Crescent (the “Premises”, which Asia Link had rented from Jurong Town Corporation (“JTC”)). Panshore and Asia Link were to share in the profits from projects completed at the Premises. Roland and Kenny were Asia Link’s directors and shareholders at the start of the joint venture.

5 Asia Link was wound up on 1 March 2013, and Panshore left the Premises in April 2014.

7 September 2011 agreement

6 Clauses 1 and 2 of the 7 September 2011 agreement provided for Panshore, Roland, and Kenny to make loans to Asia Link:¹

- (a) clause 1 stipulated that Panshore would provide a loan of \$1,000,000 to Asia Link; and
- (b) clause 2 stipulated that Roland and Kenny would provide a loan of \$400,000 to Asia Link.

7 The loans were to be disbursed in three tranches:²

- (a) the first tranche of \$400,000 from Panshore, was said to have been “[a]lready disbursed on 9th June 2011”;
- (b) the second tranche comprised \$300,000 from Panshore, and \$200,000 from Roland and Kenny;
- (c) the third tranche comprised a further \$300,000 from Panshore, and a further \$200,000 from Roland and Kenny.

8 Besides the first tranche payment of \$400,000 (which the parties agreed had been disbursed), Panshore also lent Asia Link the \$300,000 required of Panshore under the second tranche.

¹ Affidavit of Evidence-in-Chief of Kang Wak Chia dated 15 December 2023 (“**Kang’s AEIC**”) at Tab 1 p 32.

² Kang’s AEIC at Tab 1 p 32.

9 However, Roland and Kenny did not lend Asia Link the \$400,000 required of them, and Panshore did not lend Asia Link the \$300,000 required of it under the third tranche.

10 Clause 3 stipulated that Asia Link would undertake to utilise and apply the loan (*ie*, what Panshore was to lend under clause 1, and Roland and Kenny were to lend under clause 2) for the repayment of the company’s “trade debts” in the following order:³

(a)	Immediate	Judgment Debts	S\$611,418.87
(b)	Urgent	Legal Cases	S\$137,625.57
(c)	On-going	Trade creditors	S\$1,557,907.45 (Note 1)
	Total		S\$2,306,951.89

11 Note 1 to clause 3 states, with respect to the “trade creditors” amount of \$1,557,907.45: “This is nett of amount due to Orion Logistics Pte Ltd of S\$828,188.76, and amount due from Orion Logistics Pte Ltd of S\$792,213.90. Lim Seong Ong undertake (sic) to resolve the indebtedness for Orion Logistics Pte Ltd.”⁴

12 Note 2 to clause 3 states: “The loans (sic) does not take into account the fees and charges to lawyers, and the amount in respect of the Yip Holdings case. Such amounts to be resolved by Lim Thiam Chai and Lim Seong Ong.”⁵

³ Kang’s AEIC at Tab 1 p 32.

⁴ Kang’s AEIC at Tab 1 p 32.

⁵ Kang’s AEIC at Tab 1 p 32.

13 The reference in clause 3 to Asia Link’s “trade debts” states that they were “listed in Appendix A attached”, but that Appendix A was not in evidence. Panshore’s witness Mr Kang also said that when he signed the 7 September 2011 agreement, there was no Appendix A attached to it.⁶

Roland’s breach of his contractual obligation to lend Asia Link \$400,000

14 Kenny and Roland never lent Asia Link the sum of \$400,000 (or any sum) pursuant to the 7 September 2011 agreement. I thus found Roland to be in breach of clause 2 of the agreement, and granted Panshore interlocutory judgment accordingly.

Assessment of damages

Damages claimed by Panshore

15 Panshore says that because Roland breached his obligation to lend \$400,000 to Asia Link (which Panshore was in a joint venture with), Panshore suffered loss and damage for which Roland should compensate Panshore.

16 Panshore claims the following heads of damage:

- (a) \$700,000 lent by Panshore to Asia Link;
- (b) \$1,958,993.67 in expenses paid by Panshore on behalf of Asia Link from January 2012 to April 2014; and

⁶ Official Transcript of 29 February 2024 (“NE Day 1”) at p 18 ln 6–28.

- (c) \$422,170.26 as the value of Panshore’s assets left behind at the Premises.⁷

17 Panshore thus claims that because Roland failed to lend Asia Link \$400,000, Panshore suffered losses of over \$3m, for which it sought judgment against Roland.

Basis of Panshore’s claims

18 Panshore’s damages claims are built on the foundation that Roland’s breach caused Asia Link to be wound up.⁸ Panshore then says that because Asia Link was wound up:

- (a) Panshore was not repaid the \$700,000 it lent Asia Link;
- (b) Panshore was not repaid the \$1,958,993.68 in expenses that Panshore had paid on behalf of Asia Link; and
- (c) Panshore left behind \$422,170.26 in assets when Asia Link’s liquidator required Panshore to leave the Premises.

19 Panshore acknowledges that the damages it seeks must be causally connected to Roland’s breach, and must not be too remote: *Out of the Box Pte Ltd v Wanin Industries Pte Ltd* [2013] SGCA 15 at [10], [11], [17], and [47].⁹

⁷ Panshore’s Closing Submissions dated 19 April 2024 (“PCS”) at [32].

⁸ PCS at [4], see also [62]–[115], particularly [70] and [80]–[83].

⁹ PCS at [4], [47]–[50].

20 However, Panshore submits that instead of Panshore having to *prove* that Roland’s breach caused it loss, the burden lies on Roland to *disprove* this.¹⁰

21 I will address, in turn:

- (a) the burden of proof;
- (b) whether Roland’s breach caused Asia Link to be wound up; and if so
- (c) whether Panshore is entitled to the damages it claims.

Burden of proof

22 Panshore argues that it does not need to prove that Roland’s breach caused it loss; instead, it is for Roland to disprove this.¹¹ Panshore argues that:

- (a) Roland’s breach of contract (*ie*, his breach of the 7 September 2011 agreement with Panshore) was also a breach of fiduciary duty owed to Asia Link, Roland being a director of Asia Link; and
- (b) in cases of breach of fiduciary duty, “the principal bears the legal burden of establishing its claim, but the legal burden of proof of showing that the loss would have been sustained by the principal even if the fiduciary had not breached his or her fiduciary duty falls on the fiduciary”: *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] SGCA 35.

¹⁰ PCS at [120]–[125].

¹¹ PCS at [120]–[125].

23 I do not agree that Panshore can reverse the burden of proving that Roland’s breach caused Panshore’s loss:

- (a) the claim for which damages are being assessed is a claim for breach of contract (owed to Panshore), not a claim for breach of fiduciary duty (owed to Asia Link); and
- (b) the breach of Roland’s contractual obligation (owed to Panshore) to lend Asia Link \$400,000 was *not* also a breach of fiduciary duty Roland owed to Asia Link – as a director and fiduciary of Asia Link, Roland was not obliged to lend \$400,000 (or any sum) to Asia Link; that obligation arose only because Roland contracted with Panshore to do so.

24 The burden thus rests on Panshore to prove that Roland’s breach caused its loss. In any event, for the reasons set out below, even if the burden had rested on Roland to *disprove* a causal link between his breach and Panshore’s losses, the result would have been the same.

Did Roland’s breach cause Asia Link to be wound up?

25 Asia Link was wound up on 1 March 2013 in Companies Winding Up 23 of 2013.¹² The winding-up application was filed on 7 February 2013 by the Comptroller of Goods and Services Tax (“GST”) and the Comptroller of Income Tax (“the Comptrollers”). The debts on which Asia Link was wound up totalled \$808,585.21, comprising:

¹² ORC 1594/2013.

(a) \$121,307.43 for GST and penalties for non-payment and late submission (of which \$97,038.43 was for GST and the balance was for penalties); and

(b) \$687,277.78 for income tax and penalties for non-payment (of which \$629,520.13 was for income tax and the balance was for penalties).¹³

26 A statutory demand was served on 11 December 2012 but Asia Link did not pay or satisfy the demanded sum; nor did it respond to the winding-up application.¹⁴

27 Panshore submits that of the \$700,000 which it lent Asia Link, the first loan of \$400,000 was made “for the purposes of paying off Asia Link’s creditors, including [the Comptrollers] who filed for the liquidation of Asia Link.”¹⁵ Panshore further submits that Roland failed “to abide by his contractual obligations to furnish the share of \$400,000 to the pool to pay Asia Link’s outstanding taxes and penalties imposed by [the Comptrollers]”;¹⁶ and that this caused Asia Link to be unable to pay its liabilities, which led to its winding up.

28 Panshore’s submissions are contradicted by the terms of the 7 September 2011 agreement.

¹³ Affidavit of Chia-Tan Hai Geok for CWU 23/2013 dated 5 February 2013 (“**CWU 23 Affidavit**”) at [8].

¹⁴ CWU 23 Affidavit at [10].

¹⁵ PCS at [6].

¹⁶ PCS at [81].

29 Clause 3 of the 7 September 2011 agreement stated that Asia Link was to use the loans (totalling \$1,400,000: \$1,000,000 from Panshore, \$400,000 from Roland and Kenny) for the repayment of Asia Link's trade debts totalling \$2,306,951.89 in a prescribed order: first to pay \$611,418.87 in judgment debts, then \$137,625.57 for legal cases, and finally \$1,557,907.45 in respect of trade creditors (see: [10] above).

30 Based on the clause 3 framework, the \$400,000 that Panshore lent to Asia Link was to be paid towards the \$611,418.87 in judgment debts; it could not be used (as Panshore now suggests) for the purposes of paying off Asia Link's creditors *generally*, including the Comptrollers.

31 Applying Panshore's \$400,000 loan towards Asia Link's judgment debts as required under the 7 September 2011 agreement would still leave a balance of \$211,418.87 in judgment debts. That was to be cleared when the \$500,000 second tranche of loans came in: \$300,000 from Panshore, and \$200,000 from Roland and Kenny.

32 After the judgment debts had been paid off, there would still be a balance of \$288,581.13 from the \$500,000 second tranche loans, which would be sufficient to clear the \$137,625.57 for legal cases. That would then leave \$150,955.56 in funds to be paid towards the \$1,557,907.45 in respect of trade creditors, reducing the amount owing to trade creditors to \$1,406,951.89.

33 When the \$500,000 third tranche of loans came in (another \$300,000 from Panshore, and another \$200,000 from Roland and Kenny), that would be paid towards the remaining \$1,406,951.89 owing to trade creditors, reducing those debts to \$906,951.89.

34 Based on the order stipulated in the 7 September 2011 agreement, if Roland had duly made the \$400,000 loan, that would have gone towards Asia Link’s trade debts: judgment debts, legal cases, and amounts owing to trade creditors. No part of the \$400,000 loan would have gone towards GST, income tax, and penalties, which is what Asia Link was wound up for not paying.

35 GST, income tax, and penalties were not “trade debts” within the 7 September 2011 agreement:

- (a) they were not judgment debts;
- (b) they were not in respect of legal cases; and
- (c) the Comptrollers were not trade creditors.

36 Moreover, some of the GST, income tax, and penalties that were the subject of the winding-up application only arose after the 7 September 2011 Agreement (which purported to list – in the missing “Appendix A” – the “trade debts” in question): those “trade debts” were present debts, not future debts.

37 The loans from Panshore, Roland, and Kenny were never meant for future debts, they were expressly meant for debts that Asia Link was already owing, and even so the amounts loaned were not in themselves sufficient to pay off those debts: the \$1,400,000 in loans under clauses 1 and 2 would not have been sufficient to meet the full amount listed in clause 3 in respect of trade debts: there would remain over \$900,000 owing to trade creditors.

38 There is moreover no evidence that because Roland failed to lend Asia Link \$400,000 as required under clause 2, Asia Link paid the corresponding amount (or part thereof) towards its trade debts from other funds (which

otherwise would have been used to pay Asia Link’s other expenses such as GST, income tax, and penalties). Indeed, there is no evidence that Asia Link paid anything towards its trade debts referred to in clause 3.

39 Panshore has thus failed to prove that Roland’s breach in not lending Asia Link \$400,000 caused Asia Link to be wound up. This is fatal to all of Panshore’s damages claims.

40 I go on to consider if Panshore’s claims would also fail for other reasons.

Panshore’s claim for \$700,000 that Panshore had lent Asia Link

41 Even if Roland’s breach had caused Asia Link to be wound up, it would not necessarily follow that that breach caused Panshore to lose the \$700,000 that it had lent Asia Link. That would depend on whether, with the \$400,000 loan from Roland, not only would Asia Link have avoided being wound up, but Asia Link would also have been able to repay Panshore the \$700,000 that Panshore had lent. Panshore assumes this to be the case, but the evidence is that Asia Link was in serious financial difficulties. Mr Kang himself says:

(a) “Without any meaningful number of foreign workers, Asia Link’s business came to a grinding halt by 2010. Asia Link was unable to complete its existing projects nor take on any new projects. Asia Link was in rapid operational and financial decline.”¹⁷

¹⁷ Affidavit of Evidence-in-Chief of Kang Wai Chia dated 26 January 2023 (“**Kang’s Liability AEIC**”) at [37].

(b) “...by 2009 and 2010, Asia Link was clearly in financial decline and had no projects.”¹⁸

(c) “By early 2011, Asia Link was in dire financial straits. Asia Link had amassed significant debts and had several creditors on its tail.”¹⁹

(d) Asia Link’s balance sheet as at 30 June 2010 shows that it owed its trade creditors \$4,532,945.41. That balance sheet shows that the \$4,532,945.41 owed to trade creditors formed part of Asia Link’s current liabilities of \$6,383,903.62, which exceeded its current assets of \$5,038,686.45.²⁰

42 Even if Panshore could prove that Roland’s breach had caused Asia Link to be wound up, Panshore would still need to show that Asia Link would then have been able to repay Panshore’s loan of \$700,000, notwithstanding Asia Link being in “dire financial straits”. Panshore’s submissions did not focus on this, and on the evidence I find that Panshore has not proved this.

Panshore’s claim for \$1,958,993.67 in expenses paid on behalf of Asia Link

43 The point above applies with even greater force (because of the larger sum involved) to Panshore’s claim for expenses paid on behalf of Asia Link. Panshore assumes that if Asia Link avoided being wound up, Asia Link would have been able to repay it the \$1,958,993.67 which Panshore had paid as expenses on behalf of Asia Link. I find that Panshore has not proved this, given Asia Link’s “dire financial straits”.

¹⁸ Kang’s Liability AEIC at [60].

¹⁹ Kang’s Liability AEIC at [38].

²⁰ Kang’s Liability AEIC at [72], see also Tab 27 at pp 174–175.

44 Panshore’s payment of Asia Link’s other expenses from January 2012 to April 2014 also goes beyond the period of the joint venture, and into Asia Link’s liquidation.

45 Clause 10 of the joint venture agreement²¹ provided that “This agreement, unless otherwise terminated, will be for a duration of 2 years, and renewable for further terms of 2 years each.” That first two-year period of the joint venture ran from 1 March 2011 to 28 February 2013. Mr Kang confirmed that nothing was done to renew the joint venture, and agreed that the joint venture had ended by 1 March 2013.²² 1 March 2013 was also the day that Asia Link was wound up.

46 To the extent that Panshore’s claim is for expenses paid in the period of 1 March 2013 to April 2014, by then the joint venture had ended. Having taken no steps to extend the joint venture, Panshore should have made arranged to vacate the Premises at the end of the joint venture, rather than to continue using the Premises thereafter (and concomitantly incur expenses in doing so).

47 Panshore’s decision to continuing paying Asia Link’s expenses even after the joint venture had ended (but Panshore was still using the Premises) is a break in the chain of causation, such that Roland should not be held liable for Panshore failing to recover such “post joint venture” payments from Asia Link. This claim is moreover too remote: it was not in the reasonable contemplation of the parties to the 7 September 2011 agreement, that if Roland failed to lend Asia Link \$400,000, Panshore would continue paying for Asia Link’s expenses

²¹ Bundle of Documents of Plaintiff in Counterclaim Volume 2 dated 14 March 2023 (“**2-BD**”) at p 1065.

²² NE Day 1 at p 20 ln 9–24.

even beyond the end of the joint venture and seek to recover that from Roland thereafter.

48 Panshore says it was only in 2014 that it found out that Asia Link had been wound up.²³ This does not however justify Panshore continuing to use the Premises, and continuing to pay expenses, after the end of the joint venture.

49 In its closing submissions, Panshore says that the joint venture agreement “could not be renewed due to Asia Link’s liquidation”.²⁴ However, Asia Link was only wound up the day after the joint venture had ended (see [45] above). If the parties had wanted to renew the joint venture, they could have done so while the venture was still ongoing, but that did not happen. In any event, Panshore cannot blame the non-renewal of the joint venture on Asia Link’s winding-up, when Panshore’s own position is that it did not know about the winding-up until 2014 – on that premise, Panshore continued to use the Premises from March to December 2013, when it knew the joint venture had ended, but did nothing to extend it; Panshore then came to know about Asia Link’s winding-up in 2014.

50 Even after Panshore came to know about Asia Link’s winding-up, Panshore continued to pay expenses on behalf of Asia Link (until April 2014), which it now includes in its claim against Roland. As with payments made after the expiry of the joint venture, payments made after Panshore knew of Asia Link’s winding up would be a break in the chain of causation, and would also be too remote to be recovered from Roland.

²³ Kang’s AEIC at [44]; Kang’s Liability AEIC at [113].

²⁴ PCS at [16].

51 As to when exactly in 2014 Panshore became aware of Asia Link’s liquidation, there is an email dated 29 December 2013 from one Mr David Soh (on behalf of Kenny) to one Mr Ng Joo Kheong requesting an urgent meeting to discuss and resolve outstanding issues and affairs of Asia Link (by then renamed “Ensafe Offshore Marine Pte Ltd”), in which Mr Soh mentions “the liquidator” pressing for the statement of affairs.²⁵ There is a further email dated 1 January 2014 in similar vein where Mr Soh mentions reporting to the liquidator, Grant Thornton.²⁶

52 Mr Soh was a witness in these assessment proceedings. He was appointed by the liquidator as a security officer for the Premises (as confirmed in the liquidator’s letter of 9 January 2014);²⁷ Mr Soh also referred to this in his email of 11 January 2014.²⁸ Mr Ng was for an earlier period of time a director of Asia Link (alongside Roland and Kenny), and Mr Kang says that Mr Ng was appointed Panshore’s representative to deal with Mr Soh.²⁹ Mr Soh’s email of 11 January 2014 was addressed to Roland, Mr Ng, and another representative of Panshore.³⁰ On the evidence, I consider Panshore would have known of Asia Link’s liquidation by the start of 2014.

53 In the circumstances, besides the whole of Panshore’s expenses claim failing because Roland’s breach did not cause Asia Link to be wound up, the claim for the period from March to December 2013 fails because the joint

²⁵ 2-BD at p 850.

²⁶ 2-BD at p 851.

²⁷ Kang’s Liability AEIC at [114], see also Tab 33 at p 200.

²⁸ 2-BD at pp 870–871.

²⁹ Kang’s Liability AEIC at [115].

³⁰ 2-BD at p 870.

venture had ended at the end of February 2013; and the claim for the period from January to April 2014 fails because the joint venture had ended, and also because Asia Link was in liquidation (and Panshore knew this).

Panshore's claim for \$422,170.26 as the value of Panshore's assets left behind at the Premises.

54 Panshore says it was compelled to leave behind \$422,170.26 of assets at the Premises when it left in April 2014, because Asia Link's liquidator, in breach of his duties as liquidator, refused to allow Panshore to remove those assets.

55 First, as noted above (at [46], with the expiry of the joint venture at the end of February 2013, Panshore should have vacated the Premises by then. Had Panshore done so, its complaints about the liquidator requiring it to leave the Premises (and to leave assets behind) in March–April 2014 would not have happened. Indeed, if Panshore had vacated the Premises and removed its assets by the end of February 2013, Asia Link's liquidator would not even have been appointed yet. Panshore's conduct in continuing to use the Premises for more than a year after the joint venture had ended, is a break in the chain of causation, and renders too remote its claim for assets left behind at the Premises in April 2014.

56 Further, if Panshore were right in saying that it lost those assets because of the liquidator's wrongful conduct, that too would have been a break in the chain of causation, and it would moreover be too remote to recover this loss from Roland.

57 Panshore did not merely allege wrongful conduct on the part of the liquidator, it in fact sued the liquidator in Suit 127 of 2016 (“Suit 127”) for him allegedly refusing to allow Panshore to remove its assets, in breach of his duties as liquidator. These allegations were denied by the liquidator. In the event, Panshore and the liquidator reached a settlement, and Suit 127 was discontinued.

58 Notably, in Panshore’s statement of claim in Suit 127, the value of its assets left behind at the Premises was said to be \$835,698.41,³¹ whereas in the present suit Panshore says it is \$422,170.26.

59 It is also worth noting that the liquidator’s position was that he had not refused to allow Panshore to remove its assets when Panshore left the Premises. In an affidavit dated 13 April 2016 in Asia Link’s winding up (which was refiled in Suit 127), the liquidator referred to a meeting he had with Mr Ng and one Mr David Tan on 2 April 2014 where they agreed that in consideration for Panshore being allowed to remove all of the items belonging to Panshore from the Premises, Panshore would pay Asia Link \$150,000.³² In the afternoon of 2 April 2014, Mr Ng sent the liquidator a list of items that Panshore wished to remove from the Premises, and the liquidator replied to say that he was agreeable to that, if Panshore paid Asia Link \$150,000. Panshore made that payment, and removed the items.³³ Thereafter, Panshore never requested the removal of any other items from the Premises, nor did Panshore allege that the liquidator had withheld any such items belonging to it, until 5 February 2016 when Panshore

³¹ Statement of Claim for HC/S 127/2016 at [13].

³² 2nd Affidavit of Aw Eng Hai dated 13 April 2016 (“**Liquidator’s Affidavit**”) at [16].

³³ Liquidator’s Affidavit at [17]–[18]

commenced Suit 127, filed its statement of claim, and filed an affidavit from Mr Kang making such an allegation.³⁴ By then, the Premises had been returned to JTC.

60 Neither the liquidator, nor Mr Ng, nor Mr Tan, were witnesses in these assessment proceedings. Panshore’s sole witness was Mr Kang, who had no personal knowledge of the liquidator’s meetings or discussions with Mr Ng and/or Mr Tan, which Mr Kang was not a party to. Panshore thus relied on the contemporaneous emails to prove its allegation that the liquidator had wrongfully refused to allow Panshore to remove its assets from the Premises.

61 The email evidence in Mr Kang’s AEIC shows the following.

(a) On 19 March 2014 the liquidator’s firm, Foo Kon Tan Grant Thornton LLP (“FKT”) sent Mr Ng an email saying that Panshore was not allowed access to the Premises with effect from that day.³⁵

(b) Panshore had discussions with the liquidator and agreed to place a deposit of \$150,000 in order to remove items from the Premises. Mr Kang exhibits emails exchanged with the liquidator from 26 March to 2 April 2014, with details as follows.³⁶

(i) Mr Ng wrote an email on behalf of Panshore to the liquidator on 26 March 2014. Mr Ng referred to earlier emails of 21 March 2014 requesting the removal of Panshore’s items, the liquidator’s email response the same day, and their telephone

³⁴ Liquidator’s Affidavit at [20].

³⁵ Kang’s AEIC at [46], see also Tab 4 at p 39.

³⁶ Kang’s AEIC at [47], see also Tab 5 at p 41–54.

discussion later that day. Mr Ng attached a list of the assets, equipment, machinery, material, furniture, and other assets belonging to Panshore that was retained by the liquidator at the Premises. Mr Ng asked to know “when we can remove *all* of our items” [emphasis added] from the Premises.³⁷

(ii) On 2 April 2014, Mr Ng sent a further email to the liquidator, attaching “the list of items we would like to take out”.³⁸

(iii) Later on 2 April 2014, the liquidator replied to Mr Ng to say, “[w]e are agreeable to you removing the items in the attached files from the Company’s premises subject to you paying us a sum of \$150,000. Please prepare a cheque for the sum made payable to “Official Receiver”. We will use the sum to apply towards the payment of outstanding rental that we will be claiming against Panshore.” The liquidator concluded, “Once we receive your cheque, we will give instructions for the release of the items to you.”³⁹

62 The emails above show that Panshore told the liquidator it wished to remove *all* of its items, Panshore listed what it wished to remove, and the liquidator agreed to the removal of whichever of its items Panshore said it wished to remove from the Premises. The emails do not bear out Panshore’s

³⁷ Kang’s AEIC at Tab 5, pp 41–46.

³⁸ Kang’s AEIC at Tab 5, pp 47–52.

³⁹ Kang’s AEIC at Tab 5, p 53.

allegation that, in breach of his duties as liquidator, the liquidator had wrongfully refused to allow Panshore to remove its assets from the Premises.

63 Furthermore, if in April 2014 Panshore considered that it stood to lose hundreds of thousands of dollars in assets because of the liquidator's wrongful conduct, why did it not promptly raise this with the liquidator, while the Premises were still under the liquidator's control? Panshore left the Premises in April 2014, the JTC lease would expire at the end of 2015, yet Panshore only brought a claim against the liquidator for the supposed detention of its assets at the Premises on 5 February 2016, after the Premises had been returned to JTC. This is unreasonable conduct on Panshore's part which breaks the chain of causation; moreover this makes any loss from Panshore not being able to retrieve its assets too remote to be recovered from Roland.

64 In the circumstances, Panshore's claim for the value of its assets left behind at the Premises fails not only because Roland's breach did not cause Asia Link to be wound up, but also because:

- (a) Panshore should have vacated the Premises and removed all its assets by the end of February 2013;
- (b) if Panshore were right that the liquidator had wrongfully prevented it from removing its assets, that would be a break in the chain of causation, and such loss would be too remote to recover from Roland;
- (c) Panshore has failed to prove that the liquidator prevented it from removing its assets; and
- (d) Panshore failed to take reasonable steps to retrieve its assets before the Premises were returned to JTC.

Conclusion

65 For the above reasons, I find that Panshore has failed to prove any loss that (a) was caused by Roland’s breach, and (b) is not too remote. It follows that Panshore is not entitled to substantial damages against Roland. I thus only award Panshore nominal damages of \$10.

66 In my judgment on liability, I reserved costs to this assessment stage. I had then observed that although Panshore had succeeded on liability for one of its claims (breach of contract by Roland), Panshore had failed on its other claim; moreover, it had yet to be determined whether Panshore would be awarded substantial or nominal damages. In the event, Panshore has only obtained nominal damages.

67 The parties are to file their submissions on costs, limited to ten pages (excluding any schedule of disbursements), within 21 days. Panshore is represented by lawyers and could seek legal costs. Roland is now self-represented, but he was represented by lawyers earlier in these proceedings – he could seek legal costs for the period that he was represented by lawyers, and for the period that he has been self-represented he could seek compensatory costs pursuant to O 59 r 18A of the Rules of Court 2014, *ie*, such costs as would reasonably compensate him for the time expended by him, together with all expenses reasonably incurred.

Andre Maniam
Judge of the High Court

The second plaintiff in person;
Low Peter Cuthbert, Low Ying Ning Elaine (Liu Yingning) and
Nelson Chee (Peter Low Chambers LLC) for the defendant.
