Sim Yong Teng and another *v* Singapore Swimming Club [2015] SGHC 82

Case Number	: Originating Summons No 144 of 2014
Decision Date	: 01 April 2015
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Ragbir Singh s/o Ram Singh Bajwa (Bajwa & Co) for the plaintiffs; Chan Man Phing and Ng Shu Ping (WongPartnership LLP) for the defendant.
Parties	: Sim Yong Teng — Goh Eng Eng — Singapore Swimming Club

Administrative Law – Disciplinary Tribunals

Administrative Law – Natural Justice

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 88 of 2015 was allowed by the Court of Appeal on 2 November 2015. See [2016] SGCA 10.]

1 April 2015 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Mr Sim Yong Teng and his wife, Mdm Goh Eng Eng (the first and second plaintiffs respectively), are seeking to set aside the decision made by the Management Committee ("MC") of the defendant, the Singapore Swimming Club ("the Club"), on 8 October 2013 ("the 8 October Decision"), to suspend their membership in the Club. The plaintiffs claim that the decision was made in breach of the rules of natural justice and therefore in breach of the Rules of the Singapore Swimming Club ("the Club Rules").

2 In the alternative, the second plaintiff also seeks to set aside the decision on the basis that her membership in the Club was a separate membership from the first plaintiff's membership and therefore the decision of the MC to suspend her membership was in breach of the Club Rules.

The Factual Matrix

The Ground of Suspension

3 Before delving into the facts, it would be useful to set out the grounds on which the plaintiffs were suspended and the various rules regarding the conduct of MC meetings. The plaintiffs were suspended under rule 15(d) of the Club Rules ("Rule 15(d)") which reads as follows:

> RULE 15 CESSATION OF MEMBERSHIP
>
> …
>
> (d) In the event that a member:-

(i) Has been convicted in a court of law of competent jurisdiction of any offence which involves an element of dishonesty or moral turpitude; and which in the opinion of the Management Committee would if such member were permitted to remain as a member place the Club in disrepute or embarrass the Club in any way;

(ii) Flees the country to escape criminal proceedings; or

(iii) Has become an enemy alien then the membership of such member shall be suspended from the date of the occurrence of such event and the member shall forfeit all rights and claims upon the Club, its property, and funds.

Notwithstanding the foregoing, the member shall have a grace period of 6 months to transfer his membership to a third party pursuant to Rule 7. In the event that the member fails to transfer his membership within the 6 months grace period, his membership shall cease on the expiry of the said period and he shall not be entitled to transfer his membership nor will he have any membership rights.

4 The plaintiffs were suspended specifically under rule 15(d)(i) above. It is not disputed that the proper reading of rule would entail two distinct steps:

(a) a finding that the member has been convicted in a court of law of competent jurisdiction of any offence which involves an element of dishonesty or moral turpitude ("First Requirement"); and

(b) the MC must be of the opinion that if such a member were permitted to remain as a member, it would place the Club in disrepute or embarrass the Club ("Second Requirement").

Once the two requirements are satisfied, the membership of such a member will be suspended from the date of the decision of the MC. This suspension is then subject to the clause allowing the member a six-month grace period to transfer his membership to a third party pursuant to rule 7 of the Club Rules on "transferability" of memberships. It is only when this six-month period elapses that the membership ceases.

5 The quorum requirement for a valid MC meeting is set out in rule 21(c) of the Club Rules which provides that the quorum for an MC meeting shall not be less than one-half the total number of members in the MC. Also, while the MC has the power to co-opt not more than two members into the MC under rule 21(a)(vii) of the Club Rules, the co-opted members have no power to vote on issues to be decided at MC meetings.

6 With this in mind, I now turn to the salient facts.

The Background

7 The first plaintiff joined the Club sometime in 1974 or 1975. He is now a life member of the Club. The second plaintiff is an ordinary member of the Club and joined around the same time as the first plaintiff. Collectively, the plaintiffs have a "Family Membership" which is defined in rule 4(n) of the Club Rules to mean "the joint membership of a Honorary Life, Life or Ordinary Member and his or her spouse who has become a member of the Club".

The Insider Trading Conviction

8 On 12 October 2012, the first plaintiff was convicted after pleading guilty to various offences under the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("the SFA") and the Companies Act (Cap 50, 1994 Rev Ed) ("the CA"). One of these convictions was in respect of an offence of insider trading under s 218(2) of the SFA ("the Insider Trading Conviction"). As the Insider Trading Conviction formed the basis on which the MC decided that Rule 15(d) applied, I will briefly discuss the facts and circumstances surrounding the commission of that offence.

9 In 2006, the first plaintiff was serving as an Executive Chairman and Chief Executive Officer of Sinwa Limited ("Sinwa"). Between May and June 2006, the first plaintiff purchased 849,000 Sinwa shares through Tan Leh Hong ("Hong"), who was at the time his girlfriend and constant companion for about 30 years.

10 Sometime in December 2006, Sinwa entered into negotiations with Phillip Securities Pte Ltd ("PSPL") for a potential placement of Sinwa shares. The first plaintiff was involved in the discussions relating to the placement. Prior to the public announcement that an agreement was reached between Sinwa and PSPL, the first plaintiff was told that the proposed price of the placement would be $0.465 per share. On the day before the public announcement of the placement agreement and its terms, the first plaintiff through Hong, sold the 849,000 shares of Sinwa at an average of $0.515 per share. In the two days following the announcement of the placement however, the share price of Sinwa increased from $0.530 on 18 January 2007 to $0.590 on 19 January 2007.

11 The first plaintiff was subsequently charged and convicted under s 218(2) of the SFA for instructing the sale of Sinwa shares whilst in the possession of information not generally available and which would be expected by a reasonable person to have a material effect on the price of the shares. In the course of pleading guilty to the charge, the first plaintiff admitted to the statement of facts which stated, *inter alia*, that at the time he instructed the sale of these shares on 16 January 2007, he knew that the information he possessed was not generally available and he also knew that if it were generally available, it might have a material effect on the price or value of the company's shares.

12 In mitigation, it was submitted that the offences committed were genuine oversights and not deliberate contraventions. Further, it was submitted that the insider trading offence was not committed with the object of dishonest financial plunder since the share price increased after the placement and the first plaintiff had deprived himself of an even higher profit by selling the shares before the announcement of the placement deal.

13 The global sentence imposed on the first plaintiff was a fine of $153,000. He was also disqualified from being a director of a company for a period of three years.

The 3 April Decision

14 On 3 April 2013, the MC decided to suspend the membership of the first plaintiff under Rule 15(d) ("the 3 April Decision"). As the first plaintiff's membership was a Family Membership, the second plaintiff's rights and privileges were also revoked by the Club.

15 The 3 April Decision arose from a complaint from one of the Club members, Gary Oon. Gary Oon alleged that the first plaintiff's Insider Trading Conviction triggered the application of Rule 15(d). The then General Manager of the Club, Timothy Mark James ("Mark James"), alerted the first plaintiff of the complaint lodged against him. As part of the investigations, the first plaintiff provided Mark James with the charges to which he pleaded guilty, together with the charges taken into consideration for the purposes of sentencing.

16 The first plaintiff was also informed that before the MC made a decision on whether Rule 15(d) applied, he would be given an opportunity to be heard on both the First Requirement and Second Requirement (see [4] above). Through a letter from his solicitors, the first plaintiff explained that his conviction did not involve a finding of dishonesty by the court. As to whether the First Requirement and Second Requirement were satisfied, the first plaintiff said that these were matters for the MC to decide.

17 Nevertheless, the Club was prepared to afford the first plaintiff an opportunity to appear at the next MC meeting. The first plaintiff appeared before the MC on 26 December 2012. He addressed the First Requirement by stating that his Insider Trading Conviction did not involve any moral turpitude since no issues of morality were raised by the court. As for the Second Requirement, the first plaintiff highlighted his long service to the Club through his presence on various sub-committees and even disciplinary committees.

18 The MC, as advised by its Legal and Rules Committee, obtained legal advice from the Club's solicitors. The legal opinion from the Club's solicitors was presented to the MC on 27 March 2013. The President of the MC, Chua Hoe Sing, instructed the members to consider the matter in order for a decision to be made at the next MC meeting.

19 At the meeting of 3 April 2013, the MC unanimously decided to suspend the membership of the first plaintiff pursuant to Rule 15(d)(i). As a result, the second plaintiff's rights and privileges were also revoked. The plaintiffs were given a period of six months to transfer their membership in accordance with the Club Rules.

20 Dissatisfied with the decision, the plaintiffs instituted Originating Summons 572 of 2013 ("OS 572 of 2013") for an order that the 3 April Decision be declared null and void for breach of natural justice. The matter came before me on 4 September 2013 and I granted the order.

21 At the time the 3 April Decision was made, there were a total of 11 MC members (including two co-opted members). For ease of reference, I now set out the names of the MC members involved in the 26 December 2012, 27 March 2013 and 3 April 2013 meetings.

Table 1

26 December 2012	**27 March 2013**	**3 April 2013**
Chua Hoe Sing	*Chua Hoe Sing*	*Chua Hoe Sing*
William Lum	*William Lum*	*William Lum*
Jonathan Wang	*Jonathan Wang*	*Jonathan Wang*
Jenny Seow	Soh Kee Hock	Goh Soo Jin
Krishnan Kashyap	*Krishnan Kashyap*	*David Chung* (co-opted)
Soh Kee Hock	*David Chung* (co-opted)	*Philip Chua* (co-opted)
Roland Wong	*Philip Chua* (co-opted)	
Goh Soo Jin		
Phillip Soh		
Philip Chua (co-opted)		
David Chung (co-opted)		

22 After the 3 April Decision but before OS 572 of 2013 was decided, the Club had its Annual General Meeting where a new MC was elected. The names italicised in Table 1 above are members who also formed part of the new MC. Before OS 572 of 2013 was heard, the President of the MC, Chua Hoe Sing, approached some members of the new MC to provide their views on the 3 April Decision. A total of eight members provided their views in letters signed by them and dated 25 July 2013 ("the 25 July Letters"). These MC members were Krishnan Kashyap, Joyce Chan, Samuel Chong, Gerad Loo, Michael Ho, Gope Ramchand, David Chung and Philip Chua. With the exception of Krishnan Kashyap, the 25 July Letters from the rest all stated that each of them had reviewed the relevant documents in the case including the minutes of meeting for the 26 December 2012, 27 March 2013 and 3 April 2013 meetings, the legal opinion from the Club's lawyers, the documents and explanation provided by the first plaintiff. Krishnan Kashyap, who was present at the meeting of 26 December 2012, stated that he had heard the explanation given by the first plaintiff at that meeting and had also reviewed the relevant documents reviewed by the other members. All the eight members of the new MC unanimously supported the 3 April Decision by the previous MC. The 25 July Letters were exhibited in an affidavit by Chua Hoe Sing, affirmed on 26 July 2013, and produced in respect of OS 572 of 2013. As mentioned above, the 3 April Decision was declared null and void.

The 8 October Decision

23 After OS 572 of 2013, the new MC unanimously decided at a meeting on 12 September 2013 ("12 September Meeting") to restart the process under Rule 15(d) against the plaintiffs. The new MC also decided that those previously involved in the 3 April Decision would not be involved in the current decision making process. The constitution of the next meeting was thus confirmed at that meeting. Again for ease of reference, I have set out, in Table 2 below, the members of the new MC at the 12 September Meeting, who determined the composition of the MC for the next MC meeting to deal with the matter concerning the plaintiffs.

Table 2

12 September 2013 (Members of new MC Members to Decide at the next MC meeting present)

Chua Hoe Sing	Michael Ho
William Lum	Gope Ramchand
Jonathan Wang	Samuel Chong
David Chung	Joyce Chan
Philip Chua	Gerad Loo
Michael Ho	Krishan Kashyap
Gope Ramchand	
Samuel Chong	
Joyce Chan	
Gerad Loo	
Krishnan Kashyap	
(The names italicised above are MC members who attended the 3 April 2013 meeting).	

24 The first plaintiff was informed of the decision to restart the process and that both he and the second plaintiff would be given an opportunity to be heard at the MC meeting before the matter was decided. The meeting was finally held on 8 October 2013 ("8 October Meeting"). Only the first plaintiff attended it. In the days prior to the 8 October Meeting, the first plaintiff stated his position, through a letter, that the MC had already decided and prejudged the matter, as evidenced by the 25 July Letters.

25 At the meeting (which was constituted as per the second column in Table 2 above), the Chairman of the meeting, Michael Ho, informed the first plaintiff that there were only 6 members present because the rest of the MC members were intentionally left out. He explained that Gary Oon was the complainant and therefore was in a position of conflict of interest. Chua Hoe Sing, William Lum and Jonathan Wang were the three elected MC members who made the 3 April Decision. They were also left out due to their prior involvement in the 3 April Decision. Finally, David Chung and Philip Chua were co-opted members who participated in the meeting on 3 April 2013. That left only 6 members (out of 12), which was the minimum for a valid quorum to hear the matter.

26 During the meeting, the first plaintiff tendered a letter to the MC which started by reiterating his position that the MC should not hear the matter as it had already prejudged him. After the first plaintiff left the meeting, the MC deliberated on the issue and came to a unanimous decision on the First Requirement. It decided that the Insider Trading Conviction did involve an element of moral turpitude. As for the Second Requirement, the MC decided by a 5-1 majority that by allowing the first plaintiff to remain as a member, it would place the Club in disrepute or embarrass the Club. The plaintiffs were thus suspended and given six months to transfer the membership to a third party (the "8 October Decision").

27 The plaintiffs now seek an order that the 8 October Decision was null and void for being in breach of natural justice. The second plaintiff argues, in the alternative, that the decision to suspend her membership was not in accordance with the Club Rules.

The plaintiffs' case

28 Counsel for the plaintiffs argues that the Insider Trading Conviction does not have an element of dishonesty or moral turpitude. He submits that there was no finding of dishonesty by the court. Further, the first plaintiff was suspended from being a director under s 154(2) and not s 154(1) of the CA. This is of significance because s 154(1) requires the court to find fraud or dishonesty. No such finding was necessary under s 154(2). According to counsel, this is indicative that the Insider Trading Conviction had no element of dishonesty.

29 As for the element of moral turpitude, he argues that moral turpitude should be defined as "conduct that shocks the public conscious [*sic*] as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general". He further argues that because the Insider Trading Conviction was one of strict liability and the first plaintiff's mitigation showed that the Insider Trading Conviction was a genuine oversight and not with the object of dishonest financial plunder, his conduct displayed no evil intent and therefore involved no moral turpitude.

30 Counsel for the plaintiffs also argues that the 8 October Decision was made in breach of the rules of natural justice since the MC had prejudged the matter. Counsel relied on the 25 July Letters produced in OS 572 of 2013 to show that all six members of the MC had prejudged the matter before the 8 October Meeting. Accordingly, they should have disqualified themselves. Counsel also submits that the six members colluded with the previous MC by providing the 25 July Letters for OS 572 of 2013.

31 Finally, and in the alternative, counsel argues that the second plaintiff's membership is separate and distinct from that of the first plaintiff's. He submits that the second plaintiff is an ordinary member in her own right and that there is one family account for administrative purposes but two ordinary memberships. Thus, the MC's decision to suspend the second plaintiff's membership was in breach of the Club Rules.

The defendant's case

32 On the other hand, counsel for the defendant submits that because the relationship between the plaintiffs and the defendant is purely contractual, the court should only review the decision of the MC if it was made in breach of the rules of natural justice, contrary to the Club Rules or not made *bona fide*. As the finding of moral turpitude was one for the MC to make, the court should not in the absence of the limited circumstances mentioned above, interfere with the decision.

33 In any event, counsel submits that the Insider Trading Conviction involved an element of moral turpitude and moral turpitude refers to conduct falling below the required standards of integrity, probity and trustworthiness. Counsel contends that moral turpitude was present for the Insider Trading Conviction because the first plaintiff had abused his fiduciary position in Sinwa by misusing confidential price-sensitive information.

34 Counsel submits that there was no breach of the rules of natural justice because the 8 October Meeting was specifically constituted to exclude MC members who might have been placed in a conflict of interest. The MC also reheard the case with an open mind. The allegation of collusion between the new MC members and the previous MC members is without merit. The fact that the President of the MC, Chua Hoe Sing, who was involved in the 3 April Decision, had sat on the 12 September Meeting to decide the constitution of the 8 October Meeting is insufficient to show any collusion between the new MC and the previous MC.

35 In any event, counsel for the defendant submits that the 8 October Meeting was constituted

out of necessity. A minimum of six members was required for a quorum. One of the members of the MC, who was co-opted onto the new MC was the complainant while the remaining members had been involved in the 3 April Decision. Therefore, even if the 8 October Decision was made in breach of the rules of natural justice, it should not be declared null and void because the principle of necessity applies.

36 Finally, counsel submits that the suspension of the Family Membership was in accordance with the Club Rules. Counsel points to the following facts to show that the Family Membership is treated as one account:

(a) it has the same account number, but is given a separate extension;

(b) it must be transferred by both spouses jointly, pursuant to rule 7(f) of the Club Rules;

(c) the monthly statement of accounts is addressed to only to one member; and

(d) the account or the minimum spending levy chargeable to the Family Membership cannot be split into two.

37 Since the plaintiffs' membership is in fact a Family Membership, counsel submits that there is no basis to challenge the suspension of the second plaintiff.

Issues

38 The issues which arise are:

(a) whether the MC members involved in making the 8 October Decision should have disqualified themselves in the first place because of the 25 July Letters;

(b) whether the principle of necessity is applicable;

(c) whether the 8 October Decision was made *bona fide* and the rules of natural justice were observed;

(d) whether the court should disturb the finding of the MC that the Insider Trading Conviction involved an element of moral turpitude;

(e) whether the Court should disturb the MC's opinion that permitting the first plaintiff to remain as a member would place the Club in disrepute and embarrass the Club; and

(f) whether the suspension of the first plaintiff's membership affects the second plaintiff's rights and privileges.

The rules of natural justice when social clubs are involved

39 In *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 ("*Kay Swee Pin*"), the Court of Appeal explained the relationship between the social clubs and their members as follows (at [2]):

… The legal relationship between any club and its members lies in contract, and the rights of members are determined by the terms of the contract, which are found in the constitution or the rules of the club. The traditional approach of the courts to social clubs is to leave such clubs to

manage their own affairs. However, where a club expels a member, it may only do so in compliance with the rules of natural justice. …

40 It was also observed in *Khong Kin Hoong Lawrence v Singapore Polo Club* [2014] 3 SLR 241 ("*Lawrence Khong*") (at [23]):

> The rules of natural justice are universal rules that govern the conduct of human behaviour. These rules are widely accepted to be of paramount importance. Contracting parties accept the rules of natural justice as obvious terms which are often not mentioned in their contract. Hence, courts assume that parties must have intended these rules to govern their contractual terms even if the contract is silent as to such rules. Therefore the rules of natural justice are implied terms of the contract between the Plaintiff and the Defendant. The rules of natural justice require the Defendant to act fairly against its members, such as the Plaintiff, especially when the disciplinary proceedings may result in sanctions. …

41 The parties do not dispute that the rules of natural justice are to be adhered to when the MC holds a hearing or an enquiry to deal with the question of suspension and cessation of the membership of a member under Rule 15(d). The rules of natural justice can be recast as a duty to act fairly in all the circumstances of the case. There are two main pillars to the rules of natural justice – *nemo iudex in causa sua* (no man shall be a judge in his own cause), also known as the rule against bias and the *audi alteram partem* rule which requires that no man shall be condemned unheard. In *Kay Swee Pin*, the following observations were made (at [6]–[7]):

> 6 A duty to act in accordance with natural justice is nowadays considered as a duty to act fairly. …
>
> …
>
> 7 A duty to act fairly involves a duty to act impartially. Procedural fairness requires that the decision-maker should not be biased or prejudiced in a way that precludes a genuine and fair consideration being given to the arguments or evidence presented by the parties: *Halsbury's* at para 10.050. It is also a cardinal principle of natural justice that no man shall be condemned unheard. Compliance with the *audi alteram partem* rule requires that the party liable to be directly affected by the outcome of the disciplinary proceedings should be given notice of the allegation against him and should be given a fair opportunity to be heard. Notice includes notice of any evidence put before the tribunal. It is a breach of natural justice for evidence to be received behind the back of the party concerned: *Halsbury's* at para 10.060. It will generally be a denial of justice to fail to disclose to that party specific material relevant to the decision if he is thereby deprived of an opportunity to comment on such material. Similarly, if a tribunal, after the close of the hearing, comes into possession of further evidence, the party affected should be invited to comment upon it: see *Halsbury's* at para 10.061.

42 While the scope of the rules of natural justice is not disputed, the rules of natural justice themselves as a concept, being flexible in its application, may apply with different rigour depending on the particular circumstances of each case. The Court of Appeal in *Kay Swee Pin*, while deciding that a more rigorous application of the rules of natural justice applied in the context of a social club case, observed as follows:

> 6 … Its content varies with the circumstances of the case. Certain factors will increase the likelihood of the principles being applied rigorously, eg, where there is an express duty to decide only after conducting a hearing or an inquiry, or where the exercise of disciplinary powers may

deprive a person of his property rights or impose a penalty on him. All disciplinary bodies have a duty to act fairly as expulsion, suspension or other punishment or the casting of a stigma may be involved: *Halsbury's* at para 10.049. What fairness requires and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue is not one for the discretion of the decision-maker: see *De Smith's* at para 7-009, p 361.

…

10 In the present case, a more rigorous application of the rules of natural justice is called for as the rules of the Club ("the Rules") confer on the GC very general and extensive disciplinary powers over the Club's members. The intention of the founders of the Club can be seen in r 34(a) of the Rules, which deals with the expulsion and suspension of members as well as the imposition of lesser penalties on members. It provides that no appeal shall lie from a decision of the GC to any court of law. Such restrictions that oust the jurisdiction of the courts have been declared by the courts to be null and void as they are contrary to public policy. SICC is, of course, not relying on this provision in the present case, but its presence in the Rules is a reminder of the power which a governing body of a club can have over the club's members under the rules of the club.

43 Similarly it was observed in *Lawrence Khong* (at [24]–[25]):

24 The application of the implied rules of natural justice varies with the factual matrix of each case. In *Kay Swee Pin*, it was held at [10] that the more extensive and coercive the disciplinary powers of the committee in question, the more rigorous the application of the rules of natural justice. The rules of the Singapore Island Country Club in *Kay Swee Pin* provided the general committee with powers of expulsion and suspension as well as the ability to impose lesser penalties on members: *Kay Swee Pin* at [10]. This is exactly the same as the disciplinary powers of the Committee of the Defendant as established by rr 23(a) and 23(b) of the Constitution. Rule 23(a), as laid out above, provides the power of expulsion whereas r 23(b) stipulates that:

> The committee may at the conclusion of such hearing suspend the Member or impose any other lesser penalty.

25 Therefore a more rigorous application of the rules of natural justice, in the form of contractual terms implied by law, should apply in this case. …

44 The case before me differs slightly from *Kay Swee Pin* and *Lawrence Khong*. In *Kay Swee Pin*, the club member was suspended for a period of one year after being charged by the general committee for acting in a manner prejudicial to the interests of the Club and its members by falsely declaring one Ng Kong Yeam as her spouse in her membership application (see *Kay Swee Pin* at [17]–[18]). In *Lawrence Khong*, the club member had been suspended for two months pursuant to a decision by a disciplinary committee after it found that the member had acted in a manner prejudicial to the interests of the Club. Both the general committee in *Kay Swee Pin* and the disciplinary committee in *Lawrence Khong* had wide ranging powers of censure including powers of expulsion and suspension, which was why a more rigorous application of the rules of natural justice was called for.

45 While the Club in this case does have such wide-ranging powers of expulsion and suspension, it must be noted that those powers are exercisable under rule 13 of the Club Rules and only after a three or five member disciplinary committee has been convened to hear the matter. If disciplinary powers in this case were indeed exercised under rule 13 of the Club Rules, it would be incontrovertible that the principles of natural justice would apply in their full rigour. However, the MC in this case is not sitting as a disciplinary committee under rule 13. The facts involving the Insider Trading

Conviction have already been ascertained and the only questions are whether the conviction carries an element of moral turpitude and secondly, whether in the opinion of the MC, allowing the member to remain a member would place the Club in disrepute or embarrass it. These are inferences to be drawn from known or decided facts rather than fact finding *per se*. The MC does not have to find whether the first plaintiff had in fact engaged in any insider trading contrary to s 218(2) of the SFA. In *Kay Swee Pin* and *Lawrence Khong*, the members had to answer charges preferred against them. There is no charge preferred here against either of the plaintiffs to which the MC has to make findings of fact in relation thereto nor was there a need to under Rule 15(d). Furthermore, when the MC makes a positive determination under Rule 15(d) that the First Requirement and the Second Requirement are made out (see [4] above), the membership of the member has to be suspended pending the sale of the membership to a third party within a six-month period. The MC has no discretion to decide on the kind of disciplinary action to be taken against a member under Rule 15(d) as the course of action to be taken is fixed and prescribed in Rule 15(d) itself. In relation to the factors mentioned in *Kay Swee Pin* (at [6]) which affect the likelihood of the principles of natural justice being applied more rigorously, there is no express duty here on the MC to conduct a hearing. As for the fact that the decision affects property rights, it must be noted that what essentially happens on the application of Rule 15(d) is the forced sale of the Club membership.

46 In Kay Swee Pin, it was further observed (at [4]):

> We, however, pointed out to counsel that this case did not involve simply the suspension of a member from the Club. It was pertinent that membership of the Club was transferable. Membership of SICC is highly sought after for its social cachet as well as for the recreational, social and sports facilities (especially golf facilities) which the Club offers. Membership of SICC is regarded as a symbol of social success by many. For these reasons, membership of SICC comes at a high price. In the present case, the appellant paid $190,000 in 1992 to purchase her transferable membership. Hence, a transferable membership has not only a social value but also an economic value.

47 In this case, the member was given six months to sell the membership. I do not think that it is an unreasonable time frame or one which would result in a severe reduction in the economic value of the membership as a result of the member being hamstrung to sell. As a result of the application of Rule 15(d), the member only suffers a loss of social value that the membership brings and damage to his or her reputation. Therefore, while the rules of natural justice are applicable to a determination made under Rule 15(d), for the reasons I have stated, they are not to be applied with the same rigour as they were in *Kay Swee Pin* and *Lawrence Khong*.

48 With these general principles in mind, I now turn to the specific issues. As issues (a) and (b) set out in [38] are related, I will deal with them together.

Whether the MC members should have disqualified themselves and whether the principle of necessity applies?

49 The principle of necessity was discussed in *Lawrence Khong* as follows:

> 42 The principle of necessity in administrative law is described in *Halsbury's Laws of Singapore* vol 1 (LexisNexis Singapore, 2012) at para 10.056:
>
> > A person subject to disqualification at common law may be required to decide the matter if there is no competent alternative forum to hear the matter or if a quorum cannot be formed without him. Thus, if all members of the only tribunal competent to determine a matter are

subject to disqualification, they may be authorised and obliged to hear and determine the matter by virtue of necessity.

43 The rule of necessity was considered in *Anwar Siraj v Tang I Fang* [1981-1982] SLR(R) 391. It was unsuccessfully invoked because the relevant legislation provided for an alternative individual to act in the place of the disqualified arbiter. A P Rajah J had, in that case, impliedly accepted that the rule applied in Singapore. However, that case seems to indicate that the rule of necessity is more applicable to public bodies rather than private disciplinary tribunals. In *Laws* ([38] supra), Mason CJ and Brennan J described the underlying rationale of the rule of necessity at 89 as such:

> ... The rule of necessity gives expression to the principle that the rules of natural justice cannot be invoked to frustrate the intended operation of a statute which sets up a tribunal and requires it to perform the statutory functions entrusted to it. Or, to put the matter another way, the statutory requirement that the tribunal perform the functions assigned to it must prevail over and displace the application of the rules of natural justice. ...

50 The principle of necessity was held to be inapplicable in *Lawrence Khong* for a number of reasons. Firstly, no adequate explanation was given as to why the only two members who were not disqualified from sitting on the tribunal did not in fact sit on the tribunal. The court was of the view that having a quorum with two untainted members and three tainted members was preferable to having a quorum with five tainted members in order to minimise doubts as to impartiality. Furthermore, one more neutral member could have been co-opted onto the committee to sit with the two untainted members to ensure that the majority of the committee was untainted. Finally, the court reasoned that nothing in the rules of the club prohibited a sub-committee with delegated powers to conduct disciplinary hearings from being appointed. The court observed as follows (at [51]):

> The Defendant had sought to rely on a particular interpretation of the Constitution that would have allowed for the rule of necessity to displace the rules of natural justice. There must be clear and unambiguous language in the Constitution to indicate that the power to conduct disciplinary hearing rests solely with the Committee and that this could not be delegated. Unless all other interpretations are absurd, this Court should be slow to find that a particular term of a contract permits any breach of natural justice to occur via the application of the rule of necessity.

51 In *Chiam See Tong v Singapore Democratic Party* [1993] 3 SLR(R) 774 ("*Chiam See Tong*"), Warren L H Khoo J applied the principle of necessity to determine that the Singapore Democratic Party's central executive committee, in spite of allegations of bias, could sit as a disciplinary committee in judgment of the plaintiff. The claim by the plaintiff was allowed on grounds that a fair hearing was not given (at [52]). But in relation to the allegations of bias and the applicability of the principle of necessity, the court observed as follows:

> 57 It seems to me that the plaintiff has formidable difficulties on this issue of bias. Defence counsel, in an able and well-researched submission, rightly reminds me that the relationship between the plaintiff and the defendants was based on contract. The plaintiff was bound by the constitution. The constitution clearly designates the CEC as the body responsible for disciplining members of the party. There is no alternative tribunal. The plaintiff, by being a member of the party, had agreed that the members of the CEC should act in an adjudicative capacity under cl IV(d) of the constitution.
>
> …

61 In the absence of an alternative tribunal, it seems to me that out of necessity the CEC had to sit in judgment of the plaintiff, as otherwise the defendants would be powerless to act against the alleged infractions of discipline. I am much encouraged in taking this view by the following statement (citing authorities) in *De Smith's Judicial Review of Administrative Action* (4th Ed, 1980) p 276:

> An adjudicator who is subject to disqualification at common law may be required to sit if there is no other competent tribunal or if a quorum cannot be formed without him. Here the doctrine of necessity is applied to prevent a failure of justice. So, if proceedings were brought against all the superior judges, they would have to sit as judges in their own cause. Similarly, a judge may be obliged to hear a case in which he has a pecuniary interest. The judges of Saskatchewan were held to be required ex necessitate to pass upon the constitutionality of legislation rendering them liable to pay income tax on their salaries.

52 From the preceding discussion, I see no reason why the principle of necessity should only be confined to bodies exercising statutory functions. It must certainly be implied in the Club Rules that the rules of natural justice should not be used to frustrate or stifle the decision-making powers of the MC and render it powerless to act as required by the Club Rules themselves. What is clear is that the threshold to invoke the principle of necessity is high. The court must consider all the circumstances of the case and decide whether all practical alternatives are not in fact available. *Lawrence Khong* also shows that the decision-making body must do all that is within its power to reduce any bias or reasonable suspicion or apprehension of bias before the court would hold that the principle of necessity applies.

53 I find that the defendant may avail itself of the principle of necessity in the circumstances of the present case. Unlike *Lawrence Khong*, co-opting members onto the MC is not a viable alternative because the co-opted members do not have the power to vote at MC meetings under rule 21(a)(vii). More importantly, the power of the MC under Rule 15(d) is non-delegable. Rule 15(d) expressly refers to "the opinion of the Management Committee". Although rule 22 of the Club Rules allows for delegation to an "Ad-Hoc Committee" with such terms of reference as the MC may from time to time determine, I am of the view that the power exercisable under Rule 15(d) is for the MC alone to exercise. Therefore, unlike the situation in *Lawrence Khong*, the MC here could not delegate its power under Rule 15(d) to any other committee.

54 Finally, I am also of the view that the MC had done everything in its power to reduce, as much as was practicably possible, any bias including any suspicion or apprehension of bias when it decided on the MC members to make up the MC to hear and decide the matter. The MC specifically decided at the 12 September Meeting to exclude members who were part of the 3 April Decision and to exclude the complainant, Gary Oon. The six members that were left were necessary to form a valid quorum. Although they had written the 25 July Letters, these six members were the least susceptible to allegations of bias, real or apparent. The MC had thus gone down the route which can be said to be the least of all evils in the circumstances of the case.

55 If all these six remaining MC members were also required to disqualify themselves, there will be no available MC with the necessary quorum to deal with the matter. This will frustrate the Club's ability under the Club Rules (which all the members have agreed to at the point of joining the Club) to ensure that its members do not cause embarrassment or bring disrepute to the Club in any way, and should they do so by reason of having been convicted of an offence in a court of law involving dishonesty or moral turpitude, to remove them as members under the Club Rules in order to safeguard and preserve the reputation of the Club. For the purpose of constituting the MC to enable it to deal with such an important matter concerning the reputation of the Club, the doctrine of necessity must

prevail over and displace the rules of natural justice to the extent necessary for this purpose to be achieved (see *Laws v Australian Broadcasting Tribunal* [1990] 170 CLR 70 at 96).

56 Taking the plaintiffs' case at its highest and assuming that the only fact that was before me was the presence of the 25 July Letters which expressed the individual views of the MC members in regard to the correctness of the 3 April Decision, I am prepared to accept that there could be some form of apparent bias. It must be stressed that this is solely on the basis of the 25 July Letters while disregarding all other facts from the 12 September Meeting (where the constitution of the 8 October Meeting was decided) leading up to the 8 October Decision. Even on this basis, I hold that the principle of necessity as an exception to the disqualifying effect of the rule against apparent bias applies. Not to allow the operation of the principle of necessity would be detrimental to the interest of the Club in safeguarding its reputation in accordance with the Club Rules. Accordingly, the members of the MC did not have to disqualify themselves in the particular circumstances of this case.

57 However, the finding that the MC was constituted out of necessity does not mean that the MC could thereafter act or decide in a manner that would be in breach of any of the rules of natural justice. As was observed above (see [51] above), in *Chiam See Tong*, Warren Khoo J set aside a decision by the central executive committee of the Singapore Democratic Party on grounds that a fair hearing was not given despite finding that the rule of necessity applied in the circumstances of the case. I am inclined to think that I will have to scrutinise even more closely whether the MC, constituted out of necessity, had in fact allowed its previous views to dictate or predetermine the eventual outcome of the 8 October Decision or whether it kept an open mind and considered all the materials afresh including any new materials which may have become available. I will also examine all the factual circumstances including the conduct of the MC members in the course of the hearing, the manner in which the hearing was conducted and the procedures adopted, in so far as they are relevant to the question whether any breach of the rules of natural justice is made out on the particular facts of the case. In other words, I will have to scrutinise closely whether there is any breach of the rules of natural justice (including both bias and predetermination, actual or apparent) bearing in mind that the ultimate question is whether the MC, in making the 8 October Decision, has fulfilled its duty to act fairly in all the circumstances of the case.

Whether the 8 October Decision was made *bona fide* and in breach of the rules of natural justice?

58 The burden is on the plaintiffs to prove the predetermination or prejudgment that would amount to a breach of the rules of natural justice. The plaintiffs merely assert that there was prejudgment on the part of the MC which tainted its eventual decision without clearly detailing any specific facts (apart from their exclusive reliance on the 25 July Letters) on how (a) the 8 October Decision was not made *bona fide* and had been prejudged; or (b) the MC had been overly dictated by their prior views (articulated in the 25 July Letters more than two months before the 8 October Decision) such that the MC had not considered afresh or with an open mind, all the relevant materials and the submissions by the plaintiffs.

59 The defendant, on the other hand, alludes to the following facts to show that the MC had acted fairly and submits that apparent bias is not made out on the totality of the facts:

(a) Members who were or might be potentially in a position of conflict of interest were excluded.

(b) The MC rescheduled the hearing in order to accommodate the first plaintiff's schedule so that he would be given the full opportunity to be heard.

(c) At the 8 October Meeting, the MC heard the first plaintiff's explanation for an hour, during which they engaged him on the issues in question.

(d) The MC also requested for further documents, and took into account the new documents tendered by the first plaintiff after his oral explanation at the 8 October Meeting.

(e) The MC took about half an hour to deliberate after the conclusion of the hearing before deciding on the matter.

(f) The MC did not consider itself bound by the 25 July Letters. In fact, one of the MC members changed his mind, and voted against the finding that it would bring disrepute to the Club if the first plaintiff were allowed to remain as a member.

60 The above facts cannot be seriously disputed as they are reflected in the documents and minutes of the 8 October Meeting. As shall be observed (see [69]), these are some of the relevant facts that have to be taken into account when the court determines whether the 8 October Decision was made in breach of the rules of natural justice. In finally determining whether the decision of the MC constituted out of necessity should be set aside on the ground that the decision was not made fairly or that the rules of natural justice have been breached, all these facts raised by the defendant have to be weighed against the 25 July Letters where the MC members had previously expressed certain personal views adverse to the first plaintiff on the very matter that they were required to decide at the 8 October Meeting.

61 At the outset, I must state that there is insufficient evidence to support the plaintiffs' allegation that the new MC had colluded with the former MC. The fact that the members sitting on the new MC hearing the matter had shown support for the 3 April Decision through the 25 July Letters is insufficient proof of a serious allegation of collusion.

62 Counsel for the plaintiffs claims that the 25 July Letters written by all six MC members who made the 8 October Decision show that the MC members had prejudged the first plaintiff. This he claims is a breach of the rules of natural justice.

63 In *Regina (Lewis) v Redcar and Cleveland Borough Council* [2009] 1 WLR 83, Longmore LJ commented as follows:

> 106 It is clear from the authorities that the fact that members of a local planning authority are "predisposed" towards a particular outcome is not objectionable: see e.g. *R v Amber Valley District Council* [1985] 1 WLR 298. That is because it would not be at all surprising that members of a planning authority in controversial and long-running cases will have a preliminary view as to a desirable outcome. That will be all the more so if there is an element of political controversy about any particular application, since planning authority members elected on a particular ticket would, other things being equal, be naturally predisposed to follow the party line. None of this is remotely objectionable.
>
> 107 What is objectionable, however, is "predetermination" in the sense I have already stated, namely, that a relevant decision-maker made up his or her mind finally at too early a stage. That is not to say that some arguments cannot be regarded by any individual member of the planning authority as closed before (perhaps well before) the day of decision, provided that such arguments have been properly considered. But it is important that the minds of members be open to any new argument at all times up to the moment of decision.

108 If that is the right meaning to give to that species of bias known as predetermination, it is an undesirable and indeed unjudicial attribute. I would not think it right to say, if the fair-minded and well-informed observer considered that there was a real risk that one or more members of the planning authority had refused even to consider a relevant argument or would refuse to consider a new argument, that the decision should stand. Nor do I think that any of the authorities to which Mr Drabble referred us go that far.

1 0 9 *Conversely, however, the test of apparent bias relating to predetermination is an extremely difficult test to satisfy.* This case in my judgment comes nowhere near satisfying this test for the reasons which Pill and Rix LJJ have given.

[emphasis added]

64 The time for determining whether there has been a breach of natural justice should be the conclusion of the entire hearing at the 8 October Meeting since all the factual circumstances leading up to the 8 October Decision and the decision making process can then be examined. On the present facts, there is insufficient evidence to conclude that the MC or any members of the MC had *in fact* "closed their mind" during the hearing which continued to the time the 8 October Decision was made or that they were in fact separately biased towards the plaintiffs in some way.

65 In fact, much of the evidence placed before me appears to indicate the contrary (see [59] above). However, this does not rule out the possibility that the 25 July Letters (the sole fact relied on by the plaintiffs to allege a breach of natural justice by the MC) may in fact show that the 8 October Decision was tainted with apparent bias or predetermination or both. It must be noted that I had accepted the possibility of apparent bias being made out on the basis that the only fact before me was the 25 July Letters (see above at [56]). On that assumption, I found that necessity applied such that the MC members did not have to disqualify themselves. I will now proceed to determine if apparent bias is indeed made out having regard to all the circumstances of the case. H W R Wade & C F Forsyth, *Administrative Law* (Oxford University Press, 11th Ed, 2014) at page 394 contains the following instructive passage on the distinction between appearance of bias and predetermination, which has to be borne in mind:

The appearance of bias and predetermination are distinct concepts. Predetermination consists in 'the surrender by a decision-making body of its judgment', for instance, by failing to apply his mind properly to the task at hand or by adopting an over-rigid policy. The decision is unlawful but not because it may appear biased (although in many cases it will). On the other hand, a decision-maker may apply his mind properly to the matter for decision and make a decision that is exemplary save that, because of some prior involvement or connection with the matter, the fair minded observer would apprehend bias. The decision is once more unlawful but for a completely different reason. Only in rare cases will the distinction between these two concepts be significant.

66 I turn now to the law on apparent bias. The test for apparent bias was discussed at length in *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Shankar*"). The law, as it stands, is neatly summarised in *Lawrence Khong*:

28 Sundaresh Menon JC (as he then was) in *Shankar* undertook a very thorough analysis of local and English jurisprudence before arriving at the test for apparent bias. He concluded that the two most common tests are based on a "reasonable suspicion of bias" and a "reasonable likelihood of bias". In *Tang Kin Hwa v Traditional Chinese Medicine Practitioners Board* [2005] 4 SLR(R) 604 ("*Tang Kin Hwa*"), Andrew Phang Boon Leong JC (as he then was) also dealt with

these two tests. He came to the conclusion that there is "no difference in substance" in *Tang Kin Hwa* at [45]. However, Menon JC in *Shankar* explained that there are important differences at [74]-[75]:

> I would therefore, with some reluctance, differ from the view taken by Phang JC in *Tang Kin Hwa* that there is no practical difference between the two tests. In my judgment, there are indeed some important difference between them the most important of which are the reference point of the inquiry or the perspective or view point from which it is undertaken, namely whether it is from the view point of the court or that of a reasonable member of the public; and the substance of the inquiry, namely, whether it is concerned with the degree of possibility that there was bias even if it was unconscious, or whether it is concerned with how it appears to the relevant observer and whether that observer could reasonably entertain a suspicion or apprehension of bias even if the court was satisfied that there was no possibility of bias in fact. These two aspects are closely related and go towards addressing different concerns. The 'real danger' or 'real likelihood' test is met as long as a court is satisfied that there is sufficient degree of possibility of bias. As noted by Deane J in *Webb* this is plainly a lower standard of proof than that on a balance of probabilities. But that lower test is in truth directed at mitigating the sheer difficulty of proving actual bias especially given its insidious and often subconscious nature.
>
> The 'reasonable suspicion' test however is met if the court is satisfied that a reasonable number of the public could harbour a reasonable suspicion of bias even though the court itself thought there was no real danger of this on the facts. The driver behind this test is the strong public interest in ensuring public confidence in the administration of justice.

29 After explaining the differences in the two tests, Menon JC in *Shankar* said at [76] that "[i]t is settled law in Singapore having regard to several pronouncements of the Court of Appeal that the 'reasonable suspicion' test is the law in Singapore". In applying this test the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew* [1997] 3 SLR(R) 576 gave some guidance at [46]:

> The test to be applied in determining whether there is any apparent bias on the part of the tribunal hearing the case or matter in question has been settled by this court in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [79]-[83], and it is this: would a reasonable and fair-minded person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the litigant concerned is not possible.

30 The test is an objective one. This principle has been adequately described in *R v West Midlands and North West Mental Health Review Tribunal* [2004] EWCA Civ 311 at [6], cited with approval by Philip Pillai J in *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [54], as follows:

> Public perception of a possibility of unconscious bias is the key ... The need for a Tribunal to be impartial and independent means that 'it must also be impartial from an objective viewpoint, that is it must offer sufficient guarantees to exclude any legitimate doubt in this respect' ...

67 In *Gillies v Secretary of State for Work and Pensions* [2006] 1 All ER 731, Lord Hope of Craighead provided the following helpful elaboration of the reasonable and fair minded person (at [17]):

> … The fair-minded and informed observer can be assumed to have access to all the facts that

are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed, as Kirby J put it in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53, that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant, and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant.

68 In *Lawrence Khong*, which involved a social club, the court framed the inquiry in this manner:

> 32 The most important issue in this case is not whether there was actual bias or whether the Disciplinary Meeting treated the Plaintiff fairly. The issue is whether a reasonable and fair-minded person *knowing the facts and circumstances of this case* would opine that there is a reasonable suspicion of bias on the part of the five 2013 Committee members present at the Disciplinary Meeting. In other words, justice must be seen to be done in that "the appearance of the matter is just as important as the reality": *R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No 2)* [2000] 1 AC 119 ("*Pinochet (No 2)*") at 139.
>
> [emphasis added]

69 The court did not seem to be concerned with the nature of the information (*ie* whether it was public or private) before imputing the reasonable and fair minded person with the knowledge of *the circumstances of the case*. It must be noted that the reasonable suspicion or apprehension of bias test is deliberately crafted from the standpoint of the member of the public so that justice is not only done but also perceived by the public to be done. It is imperative to guard against "inappropriate reliance on special knowledge, the minutiae of court procedure or other matters outside the ken of the ordinary reasonably well informed member of the public" (see *Locabail (UK) Ltd v Bayfield Properties* [2000] QB 451 at 477). It must also be borne in mind that the 8 October Meeting was not a public matter but one done in private. I am of the opinion that in the context of social club cases, imputing the reasonable and fair minded person with all the relevant information, whether private or public, does not derogate from the ideal that justice must also be perceived by the public to be done. However, the information imputed to the reasonable and fair minded person must be objectively ascertainable and must exclude special expertise mentioned above or the subjective state of mind of the decision-maker which is only relevant for actual bias. This conclusion was similarly reached in *De Souza Lionel Jerome v Attorney-General* [1992] 3 SLR(R) 552 at [40]–[41]:

> 40 There remain the questions firstly, through whose eyes is reasonable suspicion of bias seen, and secondly, what knowledge is he to have? When I asked counsel the first question, both agreed he should be the ever reliable "reasonable person". …
>
> 41 In *Metropolitan Properties Co (FGC) Ltd v Lannon* ([22] *supra*), Danckwerts LJ said at 602: "A person subsequently hearing of these matters might reasonably feel doubts ...". I would think such a person would hear of all matters which have come to light. *I would attribute to the reasonable person knowledge of all matters in evidence before the court where the decision of the tribunal is challenged other than that there was no actual bias or that the decision was in any case right (if either be in fact the case) both of which are quite irrelevant in considering whether there was a reasonable suspicion of bias.*
>
> [emphasis added]

70 Like *Lawrence Khong*, the relevant facts imputed to the reasonable and fair minded person in this case would include all the circumstances of the case, including the correspondence between the Club and the first plaintiff, the documents laid before the MC, the matters presented and discussed at the 12 September Meeting and even the exchanges between the MC and the first plaintiff at the hearing itself.

71 In sum, the test is whether a reasonable and fair minded person sitting in court and knowing all the relevant facts would have a reasonable suspicion or apprehension that a fair trial is not possible. In the context of the present case, which is not a trial, and having regard to the nature of the particular allegations made by the plaintiffs to impugn the 8 October Decision of the MC, the relevant inquiry is whether a reasonable and fair minded person observing the proceedings during the MC meeting and having all the relevant facts would entertain a reasonable suspicion or apprehension that the MC was biased or the that MC's decision of 8 October was a predetermined one or both. It is an objective test from the perspective of a reasonable member of the public and not the court (*Shankar* at [82]). Here, the relevant facts that the reasonable person would be apprised of would be all the circumstances of the case (see [59] and [70] above) including the correspondence between the first plaintiff and the MC and even the context in which the 25 July Letters were made. The further gloss added to this is that "the test of apparent bias relating to predetermination is an extremely difficult test to satisfy" (see emphasis above in [63]). This, in addition to the fact that the rules of natural justice are not to be applied in their full rigour in the present case, would make the hurdle of establishing apparent bias in the form of apparent predetermination not so easily jumped over.

72 As mentioned above at [56], I am prepared to accept that a reasonable suspicion or apprehension would be aroused in the mind of a reasonable and fair minded person reading the 25 July Letters and who was then later told of the fact that the MC members who wrote those letters would be deciding the very matter that they gave their views on. There are good reasons for this suspicion or apprehension. Firstly, it is part of human nature that a person would be slow to change their prior views in the absence of anything new. The integrity of the decision maker would depend on consistency with prior decisions and for this purpose it is generally more difficult to change one's view than to maintain it when the facts and circumstances have not changed. It may thus lead to a refusal to re-examine the matter afresh with an open mind. This, however, is not an immutable rule of human behaviour since accepting that one's prior view was wrong is also seen as a virtue. Secondly, suspicion or apprehension would also be aroused since the 25 July Letters were given in support of a decision made by the former MC, of which some members are on the current MC and thus colleagues of those who made the 8 October Decision. This is not to say that there was in fact collusion, but the mere presence of the possibility would arouse suspicion or apprehension in the reasonable and fair minded person that the MC could be biased against the first plaintiff.

73 Having said that, I am of the view that there are other relevant facts that the reasonable and fair minded person would take into account. These are, firstly, the context in which the 25 July Letters were written. The MC members did not initiate the writing of the 25 July Letters. They were approached by the former MC to provide their views. Furthermore, these views were given even before the 3 April Decision was declared to be null and void. They were given without any inkling that they would have to decide the matter again. The allegation made here is in respect of the 8 October Decision. When the 25 July Letters were written, the 8 October Decision was not contemplated by any of the MC members. The suspicion or apprehension of a potential predetermination or bias would be much stronger if the MC members had volunteered to give their views knowing they would have to sit and decide the matter again. Another relevant fact for the reasonable and fair minded person to take into account is that these six MC members were selected out of necessity to form the MC to hear the matter. If other options were in fact available, they would not have sat on the MC to determine the first plaintiff's case.

74 Additionally, the conduct of the MC members showing the objective circumstances prior to and during the hearing and deliberations at the 8 October Meeting eventually leading to the 8 October Decision would be a relevant consideration that the reasonable and fair minded person would take into account. Firstly, the MC decided at the 12 September Meeting to specifically exclude members who were so obviously in a position of conflict of interest. There were thus left with six members, who to them were untainted or the least tainted. This was also the minimum required for a valid quorum. Furthermore, the MC was accommodating towards the first plaintiff. As mentioned above, there is no express requirement in Rule 15(d) to hold a hearing yet the MC was more than willing to hear the first plaintiff out. The MC first scheduled the meeting between the MC and the first plaintiff on 30 September 2013. However, the first plaintiff was unavailable. The MC thus decided to reschedule the meeting to 8 October 2013 to accommodate the first plaintiff. Finally, even when the first plaintiff made allegations of prejudgment, the MC was prepared to explain to the first plaintiff that they would keep an open mind and consider the matter afresh. In addressing the concerns of prejudgment, a letter from the Club provided the following:

> 4. … [P]lease note that the MC hearing your matter at the upcoming MC meeting will exclude members who are in a position of conflict, either real or apparent. They will not be participating in any part of the discussion or decision-making of this matter. This should allay your concerns that the MC has previously decided and pre-judged this matter. This MC will be reviewing the merits of your matter on the basis of documents and information listed in our previous letter of 17 September 2013, and any additional documents and/or information that you may wish to provide, as well as your explanation of the upcoming meeting.

The reply from the Club also shows that the MC was aware of the need to apply their minds afresh on the matter. I believe that these MC members would have rather recused themselves but they had to decide the matter as no alternatives were available.

75 At the hearing itself, the MC chairman Michael Ho specifically informed the first plaintiff that they had come to the hearing with an open mind and were giving him an opportunity to state his case. He also said that the MC members had read all the documentation pertaining to the case. The MC heard the first plaintiff's explanation for about an hour and had engaged him on the two main issues in question (*ie* whether the Insider Trading Conviction involves an element of moral turpitude and if so, whether his presence in the Club would bring disrepute and embarrassment to the Club (see [4] above)). The MC also took into account the new document tendered by the first plaintiff after his oral explanation. The first plaintiff had also thanked the MC for the opportunity to address these points and stated that his wife, the second plaintiff, was not present as he saw no need to put her through more agony. At the conclusion of the hearing, the MC took about 30 minutes to deliberate before making its decision on the matter. Furthermore, the MC did not view itself to be bound by what was stated in the 25 July Letters. One of the MC members had in fact changed his mind, and voted against the finding that allowing the first plaintiff to remain as a member would bring disrepute to the Club.

76 Although none of these facts are determinative in and of themselves, the reasonable and fair minded person would take them into account when considering whether or not there remains a reasonable suspicion or apprehension of either bias or predetermination in relation to the 8 October Decision. In light of the context in which the 25 July Letters were written and the entire factual circumstances surrounding and leading up to the 8 October Decision weighed against the nature of the contents of the 25 July Letters, I find that the reasonable and fair minded person would not harbour a reasonable suspicion or apprehension that the 8 October Decision would be tainted by any predetermination or bias on the part of the MC.

77 Accordingly, I hold that there is no apparent predetermination or apparent bias occasioning a breach of the rules of natural justice in this case. I am on the whole satisfied that the MC had acted fairly, *bona fide* and without any bias or predetermination, real or apparent, when making its decision on 8 October.

Should the court disturb the MC's opinion on whether the Insider Trading Conviction involved an element of moral turpitude?

78 The court will be slow to disturb findings made by the MC. The question of whether the Insider Trading Conviction involved an element of moral turpitude was one for the MC to decide. In *Kay Swee Pin*, the court of appeal observed the following (at [2]):

> … In the court below, the Judge, after referring to *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 and the decision of this court in *Singapore Amateur Athletics Association v Haron bin Mundir* [1993] 3 SLR(R) 407, stated the established principles in his grounds of decision ([2007] SGHC 166) at [30]:
>
> > In matters relating to disciplinary tribunals of clubs which are essentially social in nature, such as SICC, the court does not sit on appeal from their decisions. The court's role is to ensure that the rules of natural justice have been complied with and that the disciplinary procedure set out in the club's rules has been observed.

79 The court will not embark on a minute scrutiny of the correctness of the decision of the MC but will only consider whether the decision was intra vires and *bona fide* (see *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2012] 1 SLR 506 at [51]). The rules of natural justice require that where the MC makes findings of law or fact, it must do so based on evidence having probative value (see *Kay Swee Pin* at [8]). The findings have to be based on some material or evidence which logically shows the existence of the facts consistent with the finding (see *Kay Swee Pin* at [8] and *Peter Thomas Mohan v Air New Zealand Ltd* [1984] AC 808 at 821).

80 In finding that the Insider Trading Conviction had an element of moral turpitude, the MC relied, *inter alia*, on the following materials:

(a) the schedule of offences tendered by the prosecution at the first plaintiff's mention;

(b) all the charges faced by the first plaintiff;

(c) the statement of facts tendered by the prosecution at the first plaintiff's mention; and

(d) the notes of evidence of the hearing.

81 The new MC would also have had the benefit of legal advice from the legal opinion obtained by the former MC in respect of the 3 April Decision. The materials relied on by the MC would adequately show the circumstances surrounding the Insider Trading Conviction. There is no reason to doubt the veracity of the information as these were the very materials that were before the judge who convicted the first plaintiff. Not only do the materials have probative value, it logically relates to the finding of moral turpitude. The statement of facts clearly stated, *inter alia*, that at the time the first plaintiff instructed the sale of Sinwa shares, he *knew* that the information he possessed was not generally available and he also *knew* that if it were generally available, it might have a material effect on the price or value of the shares. Despite this, the first plaintiff instructed those shares to be sold. The MC had formed a reasoned opinion logically supported by the information gleaned from the

materials above, and had taken into account the explanation provided by the first plaintiff at the 8 October Meeting. Accordingly, I see no basis whatsoever on which to disturb the MC's unanimous finding that the Insider Trading Conviction did involve an element of moral turpitude.

Should the Court disturb the MC's opinion that permitting the first plaintiff to remain as a member would place the Club in disrepute and embarrass the Club?

82 It is for the MC to form its own subjective opinion as to whether allowing a member convicted of an offence involving moral turpitude to remain as one would place the Club in disrepute or embarrass it. The Club Rules themselves require the MC to make such a determination. In any event, the MC is in a much better position than the court to determine this particular question as the MC is better situated to determine the standing and reputation of the Club and to set expectations of the conduct of its members. I also note that the plaintiffs have rightly not raised any argument along the lines of unreasonableness or irrationality in relation to this aspect of the 8 October Decision.

83 Given that there is also no evidence of bias or a lack of *bona fides* on the part of the MC which made the 8 October Decision, the court will not step in to interfere with the opinion of the MC.

The Family Membership Issue

84 The final issue that remains is whether the plaintiffs' Family Membership is in essence one membership such that a suspension of the first plaintiff's membership, affects the rights and privileges of the second plaintiff. This is purely a matter of construction of the Club Rules.

85 The relevant provisions are as follows:

> RULE 4 INTERPRETATION
>
> In these Rules and Bye-Laws made hereunder, unless the context otherwise requires:
>
> …
>
> (n) The words "Family Membership" shall mean the joint membership of a Honorary Life, Life or Ordinary Member and his or her spouse who has become a member of the Club, as set out in Rule 15(f).
>
> …
>
> RULE 15 CESSATION OF MEMBERSHIP
>
> (f) In the event that a Honorary Life, Life or Ordinary Member is married to another Honorary Life, Life or Ordinary Member, the joint membership of both members shall be deemed to be a Family Membership. …

86 Under rule 5(f)(i) of the Club Rules, a member other than a Junior, Visiting Member or Individual Term Member shall be obliged to take one of two steps within six months of marriage to a non-member. He must either apply for his spouse to be a member (and pay the prevailing fee for the type of membership applied for) or apply for the spouse to be an Invitee of the Club.

87 These provisions show that where a husband and wife are both members of the Club, there is but one membership — the Family Membership. Even if either the husband or wife is an Honorary Life, Life or Ordinary member, and his or her spouse becomes a member, their membership will be deemed

to be a Family Membership under rule 15(f) of the Club Rules. There is thus one membership with the Club under which both the husband and wife are members. If a member other than a Junior, Visiting Member or Individual Term Member is married to a non-member, he or she may utilise one of the steps mentioned in the preceding paragraph to apply for his or her spouse to become a member. Once the spouse becomes a member, rule 15(f) again deems it to be one membership.

88 The fact that there is but one membership is further supported when issues of transfer are considered. Under rule 7(f) of the Club Rules, when a family wishes to transfer, "both spouses must jointly apply to transfer their membership to the same Proposed Transferee and his spouse (if any)." Further, if the Proposed Transferee is a single person, when he or she marries he must apply for his or her spouse to be a member. Again when this happens, rule 15(f) of the Club Rules deems the membership of the Proposed Transferee and his or her new spouse to be a Family Membership. This allows for the continuation of the Family Membership. Also, as stated in the Affidavit of Evidence-in-Chief of Poon Keng Hoi Alfred dated 13 December 2013, who is the current General Manager of the Club, it is no longer possible for persons above 21 to purchase single memberships save for Term Memberships. Therefore, if one wishes to purchase a membership, he or she must either purchase a Term Membership or a Family Membership.

89 The situation is also clear if a divorce occurs. According to the Circular distributed on 5 May 1998 by the Club, when a divorce occurs, the membership shall be transferred to either one of the spouses. The Circular makes clear that in no event will each spouse retain one membership. This again is indicative that there is but one membership, which will vest in one of the parties as ordered by a court in the event of a divorce.

90 The second plaintiff claims to be an ordinary member since 1974. Therefore, counsel for the second plaintiff claims that because the second plaintiff's membership is separate from that of the first plaintiff's, the Club has no power to suspend the second plaintiff. He relies on the fact that she has been entitled to all rights and privileges including the right to vote. He further attempts to justify that there are two memberships by the example of the husband being suspended for slapping his wife after the wife lodges a complaint against him with the Club. He claims that on the defendant's position, that there is one membership, the wife would also be suspended. This, he claims, is ridiculous.

91 I think this argument is misconceived. It stems from a failure to distinguish between "membership" and "the rights and privileges afforded by a membership". As mentioned above, under the "Family Membership" there are two members *ie* two individuals who enjoy the rights and privileges of the membership but the rights and privileges stem in essence from one membership with the Club —"the Family Membership". Therefore under a Family Membership both spouses may vote in an Annual General Meeting since both of them derive rights from the Family Membership, which include the right to vote.

92 Since there is one membership with two persons enjoying the rights and privileges thereunder, it becomes crucial to appreciate what is being suspended. Under Rule 15(d), it is the "membership of such member" that is suspended. This should be contrasted with rule 13(g)(iv) of the Club Rules which provides for the disciplinary powers of the Disciplinary Committee. There, the Disciplinary Committee has the power to "suspend all or any of the privileges/membership rights of such member". Therefore, if *arguendo* I accept the example of counsel for the plaintiff, since the husband would be suspended under rule 13(g)(iv), his privileges and membership rights would be suspended, not his membership. Therefore, while the husband would be for all intents and purposes suspended, his wife will be entitled to all her rights and privileges.

93 In the present case, the first plaintiff is suspended under Rule 15(d) which provides for his membership to be suspended pending the transfer of the membership within a six-month period. As his membership is a Family Membership, the suspension of the first plaintiff's membership necessarily results in the suspension of the second plaintiff's rights and privileges as a member.

Conclusion

94 In conclusion, I dismiss the plaintiffs' application in its entirety. Firstly, I see no basis on which to disturb (a) the finding of the MC that the Insider Trading Conviction did involve an element of moral turpitude; or (b) the opinion of the MC that by remaining as a member of the Club, the first plaintiff would place the Club in disrepute or embarrass the Club. Secondly, I find that the principle of necessity applies to allow the MC to decide the matter. Thirdly, having regard to all the factual circumstances surrounding and leading up to the 8 October Decision by the MC, I am of the view that there is no breach of natural justice merely as a result of the 25 July Letters written more than two months earlier by each member of the MC. Finally, I find that on a matter of construction, the plaintiffs' Family Membership with the Club is in essence one membership. Therefore, the suspension of the first plaintiff's membership necessarily results in the suspension of the second plaintiff's rights and privileges as a member and I hold that the revocation of the second plaintiff's rights and privileges is not in breach of the Club Rules.

95 Accordingly, the entire application is dismissed. I will hear the parties on costs separately if no agreement can be reached on costs.