

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

HC/S 668/2017 )

Between

**ALJUNIED-HOUGANG TOWN COUNCIL**  
(ID Unknown)

...Plaintiff

And

1. **SYLVIA LIM SWEE LIAN**

2. **LOW THIA KHIANG**

3. **PRITAM SINGH**

4. **CHUA ZHI HON**

5. **KENNETH FOO SECK GUAN**

6. **HOW WENG FAN**

7. **HOW WENG FAN**

(PERSONAL REPRESENTATIVE OF THE ESTATE OF  
DANNY LOH CHONG MENG, DECEASED, IN HIS  
PERSONAL CAPACITY AND TRADING AS FM SOLUTIONS  
& INTEGRATED SERVICES)

8. **FM SOLUTIONS & SERVICES PTE. LTD.**

...Defendants

HC/S 716/2017 )

Between

**PASIR RIS-PUNGGOL TOWN COUNCIL**

...Plaintiff

And

1. **SYLVIA LIM SWEE LIAN**

2. **LOW THIA KHIANG**

3. **PRITAM SINGH**

4. **CHUA ZHI HON**

5. **KENNETH FOO SECK GUAN**

6. **HOW WENG FAN**

7. **THE PERSONAL REPRESENTATIVES OF DANNY LOH  
CHONG MENG, DECEASED**

8. **FM SOLUTIONS & SERVICES PTE. LTD.**

...Defendants

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**SKELETAL SUBMISSIONS OF  
1ST TO 5TH DEFENDANTS**

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(Ref: 4909. SH.17.FM)

Dated this the 5th day of April 2019.

**I. Key Points<sup>1</sup>**

1. The claims in the 2 Suits are not for monies that were misappropriated or are unaccounted for. The claims call into question the manner in which the 1st to 5th Defendants, as Town Councillors, managed AHTC. In particular, the Plaintiffs question the appointment of FMSS as MA, and LST Architects as the consultant for 7 out of 10 projects, and the respective payments made to them. Additionally, PRPTC has questioned certain appointments and payments made to third party contractors.
2. In questioning these appointments and payments, the Plaintiffs rely solely on 2 reports from their respective accountants, KPMG and PwC. While no factual witnesses were called by either Plaintiff, AHTC submitted that its accountant from KPMG was a “factual witness”. PRPTC was less certain of its position and eventually submitted that its accountant from PwC was an “expert witness”.<sup>2</sup>
3. On 9 February 2015, AGO released a report about its findings of several lapses and non-compliances with the TCA/TCFR by AHPETC. Subsequently, KPMG was appointed pursuant to the CA’s order made on 27 November 2015 in CA 114 for purposes of identifying the outstanding non-compliances and to advise AHTC on the steps that had to be taken to remedy them. KPMG was required to produce monthly progress reports until it was reasonably satisfied that AHTC was fully compliant. KPMG did so and produced 23 monthly reports until 14 February 2018 by which date there were no further outstanding non-compliances by AHTC.<sup>3</sup>
4. While the non-compliances were being addressed, KPMG produced its “Report on Improper Payments” on 31 October 2016 in purported compliance with the CA’s order to establish “*whether any past payments made by AHPETC were improper and ought therefore to be recovered*”. PwC, which was appointed on 30 May 2016, produced a supplementary report in the form of its “Past Review Payments Report” on 30 April 2017.<sup>4</sup>
5. KPMG adopted the following definition of an “improper payment”.<sup>5</sup>

*“2.3.2 For the purposes of the KPMG Report, we “considered payments to be improper where they are in breach of [AHTC]’s policies or procedures, the TCA, the TCFR or any other applicable duties imposed on [AHTC] and Town Councillors by law. Our approach has also been to consider payments to be improper when the payment exceeds the sum that [AHTC] is required to pay under a given contract (i.e. an overpayment), or when*

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<sup>1</sup> The submissions herein adopt the abbreviations used in D1-D5’s Closing Submissions dated 18 January 2019.

<sup>2</sup> D1-D5’s Closing Submissions at [70], [90] to [93].

<sup>3</sup> D1-D5’s Closing Submissions at [4] and [88].

<sup>4</sup> D1-D5’s Closing Submissions at [9] to [10], and [70].

<sup>5</sup> D1-D5’s Closing Submissions at [71].

*payment is made for work or services that have not been performed satisfactorily or not sufficiently delivered."*

6. Upon adopting this definition of improper payment, the KPMG Report concludes that the "detectable" improper payments by AHTC to FMSS/FMSI amounts to not more than **\$1,518,286**. Of this \$1,518,286, KPMG concluded that only **\$624,621** is recoverable. KPMG described the remaining sums as "not determinable". The KPMG Report does not define what "determinable" means. At trial, Mr Hawkes explained that "not determinable" applied to payments where it is not possible to determine what part of them could be labelled improper and ought to be recovered.<sup>6</sup> This suggests that for these payments, KPMG could not ascertain whether AHTC had suffered any loss.<sup>7</sup>
7. Further, the bulk of the sum of \$624,621 comprises \$608,911 out of the total \$1,958,091.79 paid as project management fees to FMSS over the 2nd MA Contract.<sup>8</sup> KPMG termed this payment as improper because they did not agree that these should be classified as "project management fees" because the work done was not "serious cyclical repairs and redecorations" and FMSS was not entitled to charge project management fees on "non-cyclical" works. KPMG also did not undertake any investigation on-site to evaluate the nature and scope of the actual works the payment for which is alleged to be improper. KPMG also did not take into account the past practice of ATC which had also classified such services by CPG as project management fees.<sup>9</sup> Excluding this sum of \$608,911 leaves only **\$15,710** as being recoverable on KPMG's own report.<sup>10</sup>
8. Nowhere in the KPMG Report or the PwC Report does it state that all of AHTC's payments to FMSS/FMSI totalling \$33,717,535.17 ("**\$33.7 million**") is improper and therefore ought to be recovered.<sup>11</sup> Despite this and Mr Hawkes' admission that KPMG was not suggesting that there was an obvious shortfall in the MA's delivery of services to the residents,<sup>12</sup> AHTC deemed it fit to claim the entire sum of \$33.7 million. This is an entirely speculative claim given that they do not know whether there was any loss arising from the "Control Failures".<sup>13</sup>
9. Where AHTC's payments to third-parties are concerned, KPMG identified the sum of **\$5,409,123** as an improper payment by AHTC, of which, however, only \$1,965 is

<sup>6</sup> D1-D5's Closing Submissions at [78].

<sup>7</sup> D1-D5's Closing Submissions at [72], [77] to [79].

<sup>8</sup> KPMG Report at [5.3.17], 26CB 19901 and 26CB 19973.

<sup>9</sup> D1-D5's Closing Submissions at [143] to [144].

<sup>10</sup> D1-D5's Closing Submissions at [79].

<sup>11</sup> D1-D5's Closing Submissions at [80] and D1-D5's Reply Closing Submissions at [50].

<sup>12</sup> D1-D5's Closing Submissions at [85].

<sup>13</sup> AHTC's Closing Submissions at [8.3.12]. See also 05.10.2018 NE, Pg 26, L 9 to 25, Pg 27, L 1 to 23.

determinable. However, both AHTC and PRPTC have confirmed that they are only claiming the sum of \$2,794,560 (“**\$2.79 million**”) being the alleged additional costs for appointing LST over DM. This is despite KPMG concluding in its report that this amount is not determinable. AHTC and PRPTC have both confirmed that they are not claiming the \$1,965 which KPMG concluded was determinable.<sup>14</sup>

10. And in coming to the \$624,621 figure in the KPMG Report and the payments to the third-party contractors identified in the PwC Report, the accountants were in effect second-guessing the Town Councillors’ decisions on the appointment of specific contractors, the terms of their appointment and the kind of fees they should be paid. But we know that the intention of Parliament was to:<sup>15</sup>

*“... give the Town Councils as much latitude as possible for them to manage their areas...the Town Councils will be given a lot of latitude to employ the kind of people who are necessary, to pay them the kind of fees that are necessary to get the work done...”*

11. The thrust of the Plaintiffs’ claims in the present case requires the Honourable Court to second-guess the TC’s decisions and substitute its decisions for that of the TC. This is contrary to the holding in CA 114. The decisions reached and principles set out are relevant and applicable to our present cases. In CA 114, it was decided that:<sup>16</sup>

- (a) The broad philosophical thrust of the TCA was to emphasize that TCs would enjoy a measure of independence in the manner they discharge their duties. Such latitude is exercised subject to the safeguards that were incorporated within the TCA and TCFR.<sup>17</sup>
- (b) The entire relationship between MND and the TC arises out of the TCA and can only be analysed by reference to the TCA. It is not appropriate to add private law overlays to this statutory relationship.<sup>18</sup>
- (c) The answer to the question of what the Court can do is circumscribed by the terms of Section 21(2) of the TCA which provides that an interested person may apply to the High Court for “an order compelling the Town Council to carry out the requirement or perform the duty”, and Section 21(3) of the TCA which provides that on such application, the High Court may “*make such order as it thinks proper*”.<sup>19</sup>

<sup>14</sup> D1-D5’s Closing Submissions at [75] to [76].

<sup>15</sup> D1-D5’s Closing Submissions at [26], [90] to [96].

<sup>16</sup> D1-D5’s Closing Submissions at [28], [33], [37] to [38], [102], D1-D5’s Reply Closing Submissions at [87] to [88].

<sup>17</sup> CA 114 at [50] to [52], Tab 34 of the D1-D5BOA.

<sup>18</sup> CA 114 at [122] to [123], Tab 34 of the D1-D5BOA.

<sup>19</sup> CA 114 at [85], Tab 34 of the D1-D5BOA.

- (d) It is not for the Court to step into the shoes of the TC or to substitute its own decisions for those of the TC in question as to how the various requirements and duties are to be carried out. The nature of the orders sought in effect extended to the Court taking steps to see to it that the specified duties were carried out in a particular way. It is inconceivable that the Court could be put in such a position in a matter that involved an aspect of local government.<sup>20</sup>
- (e) The nature of a public duty and the remedies of those who seek to challenge the manner in which it is performed differ markedly from the nature of a private duty and the remedies of those who say that the private duty has been breached. If a public duty is breached, there is the remedy of judicial review.<sup>21</sup> Any remedy for any failure to apply any money in accordance with the TCA must rest in the TCA as a matter of public law and be based upon it.<sup>22</sup>
12. Unless the Plaintiffs prove that the Town Councillors had caused the TC to act outside of its proper purposes in exercising its statutory powers and duties, the Court should not second guess the Town Councillors' decisions and actions, even if the Plaintiffs may disagree with certain decisions or actions that were taken. Otherwise, the Court would inadvertently be enabling the Plaintiffs to circumvent the trite position in public law by commencing civil claims to seek private remedies against the Town Councillors instead of seeking public law remedies against the TC.<sup>23</sup>
13. The Honourable Court's attention is drawn to the following:
- (a) The Town Councillors have given evidence of the facts and circumstances then existing and their reasons for making the decisions which they did – both in respect of the appointment of contractors and their payments. This evidence has not been rebutted.<sup>24</sup>
- (b) In second-guessing what the Town Councillors should have done, the Plaintiffs have built their case entirely on their attempts at giving the evidence their own specious interpretation or by subjecting the Defendants to the standards of perfect hindsight using hypothetical scenarios that ignored the actual circumstances that the Town Councillors faced at the time.

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<sup>20</sup> CA 114 at [87], Tab 34 of the D1-D5BOA.

<sup>21</sup> CA 114 at [126], Tab 34 of the D1-D5BOA.

<sup>22</sup> CA 114 at [128], Tab 34 of the D1-D5BOA.

<sup>23</sup> D1-D5's Closing Submissions at [102].

<sup>24</sup> D1-D5's Reply Closing Submissions at [90].

- (c) The Plaintiffs have not shown that the Town Councillors' decisions resulted in actual losses to AHTC/AHPETC. The purported losses which are claimed in the 2 Suits are losses alleged by the Plaintiffs or their accountants on the basis of figures plucked from the documentation. This was done without ascertaining whether these alleged lower cost figures were in reality achievable at the material time.<sup>25</sup>
- (d) Much of the Plaintiffs' cross-examination proceeded on unpleaded matters. These matters relate to material facts which must be pleaded. The Court should therefore disregard the Plaintiffs' submissions based on its unpleaded case. It is for the Plaintiffs to plead the necessary particulars.<sup>26</sup> The instances where the Plaintiffs have proceeded on unpleaded facts have been identified in the Defendants' submissions.<sup>27</sup> These instances include an alleged "conspiracy" to remove CPG and appoint FMSS as the MA in order to advance the interests of the WP and its supporters.<sup>28</sup>

## II. The Contingency Plan

14. The election of the WP MPs to Aljunied GRC in the General Elections held on 7 May 2011 was the first time an opposition party had won a GRC. It was therefore the first time that the management of a Town Council of a GRC was to have to change hands within the statutory period of 90 days.<sup>29</sup>
15. Mr Low had the most experience among the elected WP MPs and had advised them of his experiences in Hougang SMC. The WP MPs agreed with Mr Low's assessment that it was necessary to have a **contingency plan for an alternative MA for the management of the estates and other essential services in case the incumbent MA and other contractors were to pull out.**<sup>30</sup>
16. One of the key commercial realities ignored by the Plaintiffs' accountants is the difficulty opposition wards have in getting established MAs and contractors to contract with them. The Town Councillors' evidence is that Mr Jeffrey Chua informed the TC that the reason CPG did not wish to continue as MA was that CPG also served as MA for Ang Mo Kio TC, which was helmed by the Prime Minister and that it would be bad

<sup>25</sup> D1-D5's Closing Submissions at [241].

<sup>26</sup> *Sheagar s/o T M Veloo v Belfield International (HK) Ltd* [2014] 3 SLR 524, Tab 62 of the D1-D5BOA, and *Burby, Mark v Koo Khin Yong and Others* [2004] SGHC 194, Tab 61 of the D1-D5BOA.

<sup>27</sup> D1-D5's Closing Submissions at [105] to [106], [116], [125], [137] to [140], [158], [171], [183], [217], [226] to [228], [306], [317] to [324], [342] and [350] and D1-D5's Reply Closing Submissions at [5].

<sup>28</sup> PRPTC's Closing Submissions at [1], AHTC's Closing Submissions at [1.2.3].

<sup>29</sup> D1-D5's Closing Submissions at [97].

<sup>30</sup> D1-D5's Closing Submissions at [24(a)-(b)] and [98], D1-D5's Reply Closing Submissions at [18].

for CPG's business to be serving both PAP and opposition-run TCs.<sup>31</sup> No evidence was called by the Plaintiffs to rebut this.<sup>32</sup>

17. It was for purposes of the contingency plan that:

(a) Mr Low suggested to Ms How that she and her husband, Mr Danny Loh could form a new company to manage the TC under the WP's leadership together with the existing key staff of HTC in the event that the existing MA did not wish to continue. Ms How was the then Secretary/General Manager of HTC and Mr Loh was providing EMSU services for HTC.<sup>33</sup>

(b) As the billing and collection of S&CC charges was essential for the running of the TC, Ms How was instructed to send a letter to the respective Secretaries of Aljunied and Marine Parade TCs on 13 May 2011 to request for transfer of relevant documents and data.<sup>34</sup>

18. Once it is seen that, in fact, CPG wanted to be released, the evidence for which has not been rebutted (as stated below), PRPTC's imagined case built on the Town Councillors' alleged improper motives for getting rid of CPG falls apart. Without CPG, the Town Councillors had to find an MA at short notice who could perform the task of not only managing the 5 divisions in AHTC but also to do so when there was every prospect that TCMS support would be withdrawn.<sup>35</sup>

### III. CPG Requested to be Released

19. No evidence was called by the Plaintiffs in support of their case that CPG did not request to be released. The Defendants' evidence that CPG had requested to be released **stands unrebutted**.<sup>36</sup>

(a) The first official confirmation that CPG wanted to be released came on 30 May 2011. **At a meeting between the WP MPs, Ms How and CPG on 30 May 2011**, Mr Jeffrey Chua, the Managing Director of CPG and Secretary/General Manager of ATC, informed the MPs that CPG did not wish to continue as MA of ATC after 31 July 2011 and asked to be released from its MA Contract.<sup>37</sup>

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<sup>31</sup> AEIC of Mr Low at [47], 2 BA 355; AEIC of Ms Sylvia Lim at [46], 2 BA 197; AEIC of Mr Pritam Singh at [13], 2 BA 876.

<sup>32</sup> D1-D5's Closing Submissions at [120] and D1-D5's Reply Closing Submissions at [40].

<sup>33</sup> D1-D5's Closing Submissions at [104] and D1-D5's Reply Closing Submissions at [18].

<sup>34</sup> D1-D5's Closing Submissions at [112] and [162].

<sup>35</sup> D1-D5's Reply Closing Submissions at [15], [17] and [25].

<sup>36</sup> D1-D5's Closing Submissions at [107] to [123] and D1-D5's Reply Closing Submissions at [20(d)], [29] and [40].

<sup>37</sup> D1-D5's Closing Submissions at [120].



- (b) It was CPG which undertook the task of preparing the **legal documentation** for its release from its legal obligations under the MA Contract. CPG's lawyers prepared a "Deed of Mutual Release" which CPG's Mr Seng Joo How (the Deputy General Manager of ATC) sent Ms Sylvia Lim by email on 18 July 2011. It is significant that in this email, Mr Seng said "Thank you for agreeing to release M/S CPG Facilities Management Pte Ltd and Secretary Jeffrey Chua from our obligations under the Managing Agent contract on 1 August 2011".<sup>38</sup>
- (c) The transcripts of the **audio recording** of the 1st AHTC Meeting on 9 June 2011 clearly show that both Mr Jeffrey Chua of CPG and the Town Councillors were proceeding on the mutual understanding that CPG would be released.<sup>39</sup>
- (d) Prior to 30 May 2011, the WP MPs were given to understand that CPG would not be continuing:<sup>40</sup>
- (i) On 10 May 2011, almost immediately after the elections on 7 May 2011, Ms Cynthia Phua, the former chairman of ATC was reported by the media to have expressed her concerns about the staff of ATC being afraid of losing their jobs. At this point in time, the WP MPs have not had any communications with CPG. As such, this concern could only have arisen if Ms Phua had information from CPG that it planned to exit as MA.<sup>41</sup>
- (ii) On 13 May 2011, Mr Low received further confirmation that CPG was intending to withdraw as the MA and that CPG had already begun deploying some of their staff to other departments outside of the TC. This information was contained in an email from Mr Tan Thuan Tong (a WP member) to Mr Low. Mr Low in turn forwarded this email to Ms How who replied that the information "*more or less coincides with what the [Aljunied Town Council] Secretary [i.e. Mr Jeffrey Chua] told [her].*" Ms How testified that she got this understanding from speaking with Mr Jeffrey Chua on 13 May 2011. He had said during this conversation that he might not continue as MA.<sup>42</sup>

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<sup>38</sup> D1-D5's Closing Submissions at [121].

<sup>39</sup> AEIC of Ms Sylvia Lim, "Tab 1" of Exhibit "SL-1", 2 BA 280 to 281 and 2 BA 306 to 307. D1-D5's Reply Closing Submissions at [29].

<sup>40</sup> D1-D5's Closing Submissions at [107] to [123] and D1-D5's Reply Closing Submissions at [20(d)] and [40].

<sup>41</sup> D1-D5's Closing Submissions at [110] to [111].

<sup>42</sup> D1-D5's Closing Submissions at [117].

- (e) On 1 August 2011, Ms Sylvia Lim received several queries from The Straits Times reporter Mr Kor Kian Beng, including the issue of FMSS being appointed the new MA for AHTC and why the new AHTC management decided to appoint a new company as its MA instead of appointing CPG or other experienced industry players. As such, Ms Sylvia Lim sent an e-mail to Mr Jeffrey Chua on 1 August 2011 to inform him of the media query as follows:<sup>43</sup>

*"The media have been asking me questions about why we did not get CPG to continue. It is not my intention to make this an issue. But I will probably have to tell them that CPG requested to be released without saying more. OK?"*

**Mr Jeffrey Chua responded on 1 August 2011 to say "mutually agreed release better."** It is evident that CPG did not dispute that they wished to be released but simply took the position that they did not want this to go on public record.

- (f) On 6 August 2011, Ms Sylvia Lim forwarded a copy of AHTC's media release of 5 August 2011 to Mr Jeffrey Chua and Mr Seng with a comment that the press had reported CPG's name wrongly as "CPF". It was not disputed that Mr Jeffrey Chua's only comment was "Good. Confuse everyone" whilst Mr Seng did not respond. **Neither of them disputed the media statement which stated that there were "discussions initiated by the incumbent MA" following which it was agreed that AHTC would then release CPG from the CPG MA Contract.**<sup>44</sup>
- (g) On 10 August 2011, Ms Sylvia Lim received a further query from The Straits Times as to why AHTC did not retain CPG. **Ms Sylvia Lim produced her text messages** to Mr Jeffrey Chua in which she had informed him that she had to tell The Straits Times **that CPG requested the release**. Again, Mr Jeffrey Chua did not disagree with her. His only response was that the media was attempting to sensationalise the news.<sup>45</sup> The fact that CPG asked to be released from its contract was reported in the Straits Times on 19 August 2011.<sup>46</sup>
- (h) Given that there is a MA contract with 2 years to run, if it was AHTC that wanted to terminate, CPG would not have left without seeking any recourse or compensation. They did not. **Not only was no claim made, CPG thanked the TC for agreeing to release them.**

<sup>43</sup> D1-D5's Closing Submissions at [122(a)].

<sup>44</sup> D1-D5's Closing Submissions at [122(b)].

<sup>45</sup> D1-D5's Closing Submissions at [122(c)].

<sup>46</sup> Straits Times article dated 19 August 2011 titled "Baptism of Fire for WP in Aljunied", 27 CB 20886.

**IV. Authority was Delegated to Ms Sylvia Lim**

20. It is not disputed that the Town Councillors had delegated the authority to Ms Sylvia Lim to exercise the powers, functions and duties of the TC in the name and on behalf of the TC during the interim period to better facilitate the handover.<sup>47</sup> This gave her the authority to decide whether a tender should be waived and for the appointment of FMSS as MA during the interim period when the takeover of the TC from PAP was to be completed and to approve payments due to FMSS for its management of Hougang SMC during this interim period. There was no question that FMSS had incurred expenses for Hougang and it therefore had to be reimbursed whether it was appointed as MA or not of AHTC.<sup>48</sup>
21. Even though authority had been delegated to Ms Sylvia Lim during the interim period, in abundance of caution, she consulted with the WP MPs on her decision to appoint FMSS in early July 2011<sup>49</sup> and this decision was placed before all the Town Councillors at the 2nd AHTC Meeting on 4 August 2011 where all the Town Councillors present agreed to the decisions made. There is no basis for the Plaintiffs to allege that material information was withheld from the Town Councillors at this meeting given the unrebutted evidence from the Defence that all the Town Councillors knew that Mr Danny Loh and Ms How were the directors and owners of FMSS and were aware of the contents of the Letter of Intent for the appointment of FMSS contained in the Report of 3 August 2011 produced at the 2nd AHTC Meeting, and that CPG had requested to be released.<sup>50</sup>

**V. No Bidders for the Public Tender for the 2nd MA Contract and 2nd EMSU Contract other than FMSS**

22. It is an undisputed fact that an open tender was called for the 2nd MA and 2nd EMSU Contracts in April 2012 where 3 MA companies collected the tender documents but only FMSS was the sole tenderer.<sup>51</sup>
23. Notwithstanding FMSS being the sole tenderer, a special Committee was appointed to evaluate its tenders for the 2nd MA and 2nd EMSU Contracts.<sup>52</sup>

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<sup>47</sup> 18 CB 13176.

<sup>48</sup> D1-D5's Reply Closing Submissions at [28].

<sup>49</sup> D1-D5's Closing Submissions at [137], AEIC of PS at [18].

<sup>50</sup> D1-D5's Closing Submissions at [124] to [125], and [178] and D1-D5's Reply Closing Submissions at [34].

<sup>51</sup> D1-D5's Closing Submissions at [218].

<sup>52</sup> D1-D5's Closing Submissions at [221] to [225].

24. The fact that there were no bidders other than FMSS shows that the decision of the Town Councillors to appoint FMSS for an interim period of 1 year for the 1st MA Contract was a reasonable one.<sup>53</sup>

#### VI. AIM Terminated the TCMS

25. The Town Councillors' evidence that it was AIM that terminated the provision of TCMS **stands un rebutted**. On 22 June 2011, AIM issued a termination notice pursuant to a termination clause in the contract which gave AIM the sole right and absolute discretion to terminate the contract should there be "*material changes to the membership of the Town Council.*"<sup>54</sup>
26. The Plaintiffs ran the unpleaded case that it was the WP MPs who had initiated the termination of the contract with TCMS. These allegations are without evidence and do not stand to reason, especially given that the WP MPs had no alternative equivalent software at hand and did not have the capacity to produce an alternative to the TCMS. AIM's conduct in agreeing to the extensions requested by the TC to show that AIM would not have terminated the TCMS does not in any way diminish the un rebutted evidence that it was AIM that issued the notice of termination for the provision of TCMS.<sup>55</sup> If AIM had not terminated, there would have been no need for extensions to be granted.

#### VII. CPG and EM Services did not wish to extend their Contracts for provision of EMSU Services

27. PRPTC's case that the Town Councillors somehow deliberately planned to not call a tender and appoint FMSS as the EMSU service provider is yet another imagined scenario. The undisputed evidence is that CPG and EM Services had been requested to continue to provide EMSU services and it is CPG and EM Services that had declined to do so.<sup>56</sup> It is also undisputed that CPG only sent its letter declining to continue providing EMSU services on 14 September 2011, just 2 weeks before the expiry of its contract on 30 September 2011 when, on the contemporaneous evidence of Ms Sylvia Lim's e-mail of 18 September 2011, CPG had previously indicated its interest to continue.<sup>57</sup>

<sup>53</sup> D1-D5's Reply Closing Submissions at [39].

<sup>54</sup> D1-D5's Closing Submissions at [168].

<sup>55</sup> D1-D5's Closing Submissions at [158], and D1-D5's Reply Closing Submissions at [44].

<sup>56</sup> PRPTC's Closing Submissions at [275] and [279]. See Ms Sylvia Lim's e-mail of 18 September 2011 at 8 CB 5571 – 5572.

<sup>57</sup> D1-D5's Closing Submissions at [214] to [215] and D1-D5's Reply Closing Submissions at [47].

**VIII. FMSS, FMSI and the other Third Party Contractors carried out the services for which they were contracted for**

28. Despite AHTC's blanket claim for all the fees of \$33.7 million paid to FMSS/FMSI in Suit 668, it is not AHTC's case that FMSS did not carry out the services for which it had been contracted for. Neither of the Plaintiffs' accountants said that the services were not provided by FMSS/FMSI. Their reports do not support the Plaintiffs' claim for \$33.7 million.<sup>58</sup> The Town Councillors' evidence that there was a system in place to monitor the work of the MA is unrebutted.<sup>59</sup>
29. With respect to the third-party contractors, including LST, it is not part of the Plaintiffs' case that they did not perform the services for which they were contracted.<sup>60</sup>

**IX. Payments to FMSS, FMSI and the Third Party Contractors were at the Same Rates as Previous Contractors and/or were Reasonable**

30. The Town Councillors' evidence is that in most of these cases, the rates were based on what was paid by the previous management of ATC or they were based on prices obtained after a tender was held.<sup>61</sup> Where the prices paid were higher, particularly for the third-party contractors, the Town Councillors have provided explanations therefor.<sup>62</sup>

**Alleged Cost Difference Between CPG and FMSS under the 1st and 2nd MA Contracts**

31. The Plaintiffs maintain their case on the purported cost comparisons between what KPMG thought would have been the achievable costs of CPG's MA services if CPG was held to its contract and the cost of FMSS's MA services. On this unsubstantiated and clearly unmaintainable premise, the KPMG Report concludes that FMSS was \$515,773 more expensive than CPG under the 1st MA Contract and \$746,000 more expensive under the 2nd MA Contract.<sup>63</sup>
32. KPMG's computation of the aforesaid sums is based on the incorrect assumption that CPG would have been willing to take over Hougang SMC at the same rates that were charged for Aljunied GRC. AHTC claims that CPG could have been compelled to extend its services to Hougang at the same rate.<sup>64</sup> This is not correct. CPG was not obliged to take over Hougang at the same rate as Aljunied. The inclusion of Hougang SMC will result in an addition of 8,881 dwelling units to the 48,886 dwelling units

<sup>58</sup> D1-D5's Reply Closing Submissions at [49] to [50].

<sup>59</sup> D1-D5's Closing Submissions at [200] to [201], AEIC of Mr Low at [109] to [116].

<sup>60</sup> D1-D5's Reply Closing Submissions at [51].

<sup>61</sup> D1-D5's Closing Submissions at [52] and generally, Issues (II), (III) and (IV).

<sup>62</sup> D1-D5's Closing Submissions at [52].

<sup>63</sup> D1-D5's Closing Submissions at [229].

<sup>64</sup> AHTC's Closing Submissions at [6.4].

managed by ATC – an increase of 18%. Even on KPMG's computation, the additional cost of \$687,660 that CPG would have charged to manage Hougang is more than 10% of the original contract sum of \$4,225,176. Under Clause 10.5 of the CPG MA Contract, any variation in the scope of works above 10% is subject to mutual agreement.<sup>65</sup> CPG could have negotiated for a significantly higher contract sum if they had to take over managing Hougang SMC in addition to Aljunied.<sup>66</sup>

#### FMSS's rates under the 2nd MA Contract and 2nd EMSU Contract

33. The Plaintiffs' case appears to be that the Town Councillors are somehow responsible for the 300% increase in profit earned by FMSS under the 2nd MA Contract between Financial Years 2012/2013 and 2013/2014 when AHTC incurred an increased operating deficit. These allegations are without merit. The jump in FMSS's revenue arose from the by-election in 2013 through which PE came under AHTC's management which in turn resulted in an increase in the MA fees paid by AHPETC. As the amount of MA fees payable depend on the number of EDUs managed by the MA, the inclusion of PE under FMSS's management naturally resulted in an increase in the MA fees paid by AHPETC. This was something that neither AHTC nor FMSS could have anticipated or planned for at the time when FMSS submitted its tender bid for the 2nd MA Contract in 2012. In any case, the T&C Committee had considered the FMSS's reasons for the rates tendered under the 2nd MA Contract and found them to be reasonable.<sup>67</sup>
34. Where the 2nd EMSU Contract is concerned, the T&C Committee considered the 8.5% increase in FMSS's tender price over the 1st EMSU Contract, its justifications for the same, and eventually decided that the increase was reasonable.<sup>68</sup>

#### X. Appointments and Payments were in Accordance with the Processes of ATC and the TCA/TCFR

35. The Plaintiffs did not challenge the Town Councillors' position that in a number of cases, the practices that were being impugned in the 2 Suits were the **very same practices carried out by ATC** and which had not been called into question before. Some key points are highlighted below.<sup>69</sup>
36. The appointment of an MA is effectively an "outsourcing" of the management of the TC. It was therefore a necessary aspect of the appointment of an MA that key

<sup>65</sup> 09.10.2018 NE, Pg 113 to Pg 120.

<sup>66</sup> D1-D5's Closing Submissions at [230] and D1-D5's Reply Closing Submissions at [55] and [63].

<sup>67</sup> D1-D5's Closing Submissions at [222], D1-D5's Reply Closing Submissions at [58] to [61].

<sup>68</sup> D1-D5's Reply Closing Submissions at [62].

<sup>69</sup> The full list is set out at D1-D5's Reply Closing Submissions at [65].

personnel of the MA will hold key roles in the TC.<sup>70</sup> CPG's Managing Director, Mr Jeffrey Chua held the appointments of General Manager and Secretary of ATC. He was also a shareholder of CPG through its parent company.<sup>71</sup>

37. Alleged Conflict of Interest: Section 15 of the TCA<sup>72</sup> deals with the need for disclosure by Town Councillors **of their own interest** in a transaction or project of the TC. The TCA (in force at the material time) did not prescribe any duty on the Town Councillors to disclose whether the TC staff had any interest in the MA.<sup>73</sup>
38. Payment Approval Process: The payment approval process was subject to the safeguard of the standing instruction where all payments to FMSS had to be approved by the Chairman or the Vice-Chairman, i.e. the MA does not approve its own payments. There is no basis to suggest that Ms How and Mr Danny Loh could "*enrich themselves at will*" through their involvement in the payment approval process.<sup>74</sup>
39. The Plaintiffs have not shown that FMSS/FMSI was paid in excess of the sums that were due to it under its contract. The sums paid to FMSS/FMSI comprised monthly MA fees at fixed rates, EMSU fees and project management fees which were calculated on the basis of a fixed percentage of 3.5% of the project fees charged by third party contractors.<sup>75</sup> The total amount of these 3 sets of fees paid to FMSS/FMSI amounted to \$34,345,348.94 (i.e. \$27,048,149.26 + \$5,330,728.50 + \$1,966,471.18). This sum plus other expenses less an unpaid sum of \$764,478.98 results in the \$33.7 million claimed.<sup>76</sup>
40. No Written Contract: While there was no formal written contract for the 1st EMSU Contract, the applicable specifications under the 1st EMSU Contract were set out in Ms Sylvia Lim's 2 e-mails of 18 September 2011 to the Town Councillors which Ms Sylvia Lim forwarded to FMSS on 20 September 2011 to inform them that the TC had unanimously approved both resolutions in the e-mails.<sup>77</sup>
41. Rule 81(6) of the TCFR states that "*there shall be a written agreement before the works or supply of services begin*". PRPTC alleged that this was breached as the written agreements for the 2nd MA Contract and 2nd EMSU Contract were only issued after FMSS had commenced providing services. This is again an unpleaded allegation

<sup>70</sup> D1-D5's Reply Closing Submissions at [67].

<sup>71</sup> D1-D5's Reply Closing Submissions at [65(a)].

<sup>72</sup> Section 15 of the TCA (Cap 329A, 2000 Rev Ed), Tab 4 of D1-D5BOA.

<sup>73</sup> D1-D5's Closing Submissions at [183] to [184] and D1-D5's Reply Closing Submissions at [66] to [68].

<sup>74</sup> D1-D5's Closing Submissions at [196] to [202], D1-D5's Reply Closing Submissions at [69] to [70].

<sup>75</sup> D1-D5's Closing Submissions at [196] to [202], [207] to [209], D1-D5's Reply Closing Submissions at [69] to [70].

<sup>76</sup> 26 CB 19973.

<sup>77</sup> D1-D5's Closing Submissions at [214] to [217].

which the Court should disregard. In any case, AHTC suffered no prejudice as no payments were due to the contractor until the contracts and rates had been approved by the Council at its quarterly meeting on 2 August 2012.<sup>78</sup>

42. No Tender: PRPTC alleged that the TCFR was breached as no tender was called for FMSS's provision of MA services from 15 July 2012 to 2 August 2012<sup>79</sup> (a period of 2 weeks) and of EMSU services from 1 July 2012 to 2 August 2012 (a period of 1 month).<sup>80</sup> The TC did not have to call a tender for the interim period between the expiry of the earlier contracts and the entry of the new contracts because the TC operated on the basis of an extension under the 1st MA and 1st EMSU Contracts during this interim period.<sup>81</sup>
43. Appointment of LST for 7 Projects: The TCFR was complied with as LST was appointed to a panel of consultants following a tender. LST was appointed for the specific projects pursuant to its existing contractual obligation under its Appointment Agreements. LST was only more expensive than DM for 7 out of the 10 projects. The Town Councillors agreed with the MA's decision to appoint LST given the recommendation of the MA's professional projects team, as it was the better consultant.<sup>82</sup>
44. Appointment and Payments to Third Party Contractors: It was well within the powers of the Town Councillors to call a tender instead of extending the existing contracts. There is no requirement for such decisions to be documented.<sup>83</sup> Where tenders were called, contractors with the lowest bid were appointed save for cases where the Town Councillors were of the view that the more expensive contractor was better. All payments were made only after the Heads of Department (or their equivalent) had certified on the Voucher Journal Reports and the Finance Department had checked the relevant documents. The Plaintiffs have adduced no evidence that payments were made for work not done or were in excess of the contractual sums due.

## **XI. Specific Legal Issues**

### **Town Councillors' liability is under the TCA/TCFR and not the Common Law**

45. The duties and obligations of the Town Councillors are based on the TCA/TCFR. Given that the Town Councillors can be held personally liable under the TCA/TCFR for

<sup>78</sup> D1-D5's Reply Closing Submissions at [76].

<sup>79</sup> PRPTC's Closing Submissions at [334] to [337].

<sup>80</sup> AHTC's Closing Submissions at [6.2.1].

<sup>81</sup> D1-D5's Closing Submissions at [228] and D1-D5's Reply Closing Submissions at [77] to [79].

<sup>82</sup> D1-D5's Closing Submissions at [234] to [246] and D1-D5's Reply Closing Submissions at [81] to [83].

<sup>83</sup> D1-D5's Reply Closing Submissions at [86].



breach of statutory duties and they are also subject to the provisions of the Penal Code and other criminal law enactments for any criminal breaches, there is no need to resort to the common law.<sup>84</sup>

### **Alleged Breach of Fiduciary Duties**

46. The Town Councillors are not fiduciaries and have not breached any fiduciary duties. Each of the Plaintiffs' alleged basis for imposing fiduciary duties has been addressed in the submissions:
- (a) Statutory Duties as an Alleged Basis: The mere existence of a statutory duty does not, by itself, give rise to a private right of action.<sup>85</sup> Further, the statutory duties owed by the Town Councillors do not make them fiduciaries of the TC.<sup>86</sup>
  - (b) Custodial Fiduciaries and/or Trustees as an Alleged Basis: The Town Councillors cannot be said to have charge or custody of AHTC's funds only because they are the authorised bank signatories.<sup>87</sup> Any analogy drawn between Town Councillors and directors is flawed.<sup>88</sup> Town Councillors are also not custodial fiduciaries simply because they described themselves as "custodians" or "guardians" of public funds.<sup>89</sup> In performing their functions as Town Councillors, they were performing governmental obligations which did not give rise to a "true trust" under the TCA.<sup>90</sup> The TCA/TCFR also does not support the finding of a statutory trust.<sup>91</sup>
  - (c) Agency as an Alleged Basis: The Town Councillors are not agents of the TC. Their acts represent the acts of the TC such that no question of agency and therefore fiduciary duties arise.<sup>92</sup>
  - (d) Provisions in the TCA as an Alleged Basis: The provisions in the TCA which the Plaintiffs refer to cannot be interpreted to find a fiduciary relationship between the Town Councillors and the TC.<sup>93</sup>
47. Further, it is submitted that the 4th and 5th Defendants, the Appointed Town Councillors who are resident volunteers, ought not to be saddled with fiduciary duties.<sup>94</sup>

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<sup>84</sup> D1-D5's Closing Submissions at [31] to [40] and D1-D5's Reply Closing Submissions at [95] to [98].

<sup>85</sup> D1-D5's Reply Closing Submissions at [99].

<sup>86</sup> D1-D5's Closing Submissions at [43] to [44].

<sup>87</sup> D1-D5's Closing Submissions at [45].

<sup>88</sup> D1-D5's Reply Closing Submissions at [106] to [108].

<sup>89</sup> D1-D5's Closing Submissions at [47].

<sup>90</sup> D1-D5's Closing Submissions at [48] to [58].

<sup>91</sup> D1-D5's Reply Closing Submissions at [101].

<sup>92</sup> D1-D5's Closing Submissions at [59] and D1-D5's Reply Closing Submissions at [103].

<sup>93</sup> D1-D5's Closing Submissions at [60] to [63].

<sup>94</sup> D1-D5's Closing Submissions at [67] to [69].

**Section 52 Defence of “Good Faith”**

48. Section 52 of the TCA provides for protection against personal liability for, inter alia, Town Councillors if they had acted in good faith in execution or purported execution of the TCA.<sup>95</sup>
49. The courts have generally interpreted “good faith” provisions to be where the individuals have acted honestly and reasonably for the proper purposes of the Act.<sup>96</sup>
50. Applicability of the “Good Faith” Defence in the present case:
- (a) Section 52 of the TCA applies to claims by any party. It would be inconsistent with the protection afforded by the provision for it to be only applicable to claims by third parties.<sup>97</sup>
  - (b) There are good policy reasons why town councillors should be afforded a general immunity. Individuals would be unwilling to undertake the responsibility of being a town councillor if they can be held personally liable even where they acted honestly, reasonably and with no knowledge that the acts in question were not authorised by law.<sup>98</sup>
  - (c) Decisions made by the Town Councillors are policy decisions involving the exercise of their discretion as to what would be in the residents’ best interests. As admitted by AHTC, the requirement to select the lowest tenderer is only the “starting point”.<sup>99</sup>
  - (d) The Plaintiffs have not pleaded and discharged their burden of proof to show that the Town Councillors have acted dishonestly and for improper purposes.<sup>100</sup>

**Limitation**

51. A time bar of 6 years applies under Sections 6 and 22(2) of the Limitation Act. The Defendants should not be vexed by stale claims.<sup>101</sup>
52. The claims that are time-barred are essentially those that arise before either 21 July 2011 (for AHTC) or 3 August 2011 (for PRPTC).<sup>102</sup>

<sup>95</sup> D1-D5’s Closing Submissions at [289].

<sup>96</sup> D1-D5’s Closing Submissions at [289] to [305].

<sup>97</sup> D1-D5’s Closing Submissions at [306] to [313] and D1-D5’s Reply Closing Submissions at [109] to [111].

<sup>98</sup> D1-D5’s Closing Submissions at [295], [297] and [298].

<sup>99</sup> D1-D5’s Closing Submissions at [314] to [316].

<sup>100</sup> D1-D5’s Closing Submissions at [317] to [324].

<sup>101</sup> D1-D5’s Closing Submissions at [325] to [328].

<sup>102</sup> D1-D5’s Reply Closing Submissions at [112].

- (a) For claims made by AHTC: The alleged breaches of fiduciary duties and/or duties of care by Ms Sylvia Lim and Mr Low arising from the appointment of FMSS for the 1st MA Contract and payments to FMSI under the FMSI EMSU Contract.
- (a) For claims made by PRPTC: The alleged breaches of fiduciary duties and/or the dishonest assistance thereof and/or statutory duties under and/or arising from the TCA and/or the TCFR and/or duties of care and skill in tort by the Town Councillors, arising from:
- (i) The payment of Invoices FMSS/0601 and FMSS/0701 (insofar as PRPTC alleges that the latter payment arises from the appointment of FMSS);
  - (ii) Causing and/or procuring and/or authorising and/or permitting AHTC to waive and/or fail to invite tenders in respect of the 1st MA Contract; and,
  - (iii) Payments to FMSS pursuant to the 1st MA Contract insofar as they arise between 15 July 2011 to 2 August 2011.
53. The Plaintiffs cannot avail themselves of Section 22(1) of the Limitation Act such that no time-bar applies:
- (a) Section 22(1)(a): The Plaintiffs are not a beneficiary under a trust. They have also not pleaded and proved that there was fraud or a fraudulent breach of trust to which the trustee was privy to under Section 22(1)(a). They must show that the Town Councillors have acted dishonestly and with an intention to pursue a course of action knowing that it is contrary to the interests of the beneficiaries, or where the trustee is recklessly indifferent to the beneficiaries' interests.<sup>103</sup>
- (b) Section 22(1)(b): There are no trust property or proceeds that were in the possession of the Town Councillors, or that were previously received by them and converted to their use. Such property must be identifiable without taking an account.<sup>104</sup>
54. The Plaintiffs cannot avail themselves of Section 24A(3)(b) of the Limitation Act on the basis that they have 3 years from the date of the KPMG Report to bring the action:<sup>105</sup>

<sup>103</sup> D1-D5's Closing Submissions at [337] to [342], [349] to [350]; D1-D5's Reply Closing Submissions at [116] to [118].

<sup>104</sup> D1-D5's Closing Submissions at [351] to [352].

<sup>105</sup> D1-D5's Closing Submissions at [331] to [336], [353] to [355]; D1-D5's Reply Closing Submissions at [113] to [115].

- (a) The claimant need not know the details of what went wrong as long he knew or might reasonably have known of the factual essence of his complaint: Lian Kok Hong v Ow Wah Foong and another [2008] 4 SLR(R) 186.<sup>106</sup>
- (b) The Plaintiffs have always taken the position that the appointment of FMSS was ‘a *fait accompli*’ from as early as 15 June 2011 and there were serious flaws in the system of governance. If the nature of these breaches of duties were so serious, the Plaintiffs should have invoked the court process at the material time.<sup>107</sup>

55. PRPTC’s submission that there is a “revival” of their causes of action every day until the alleged breaches are rectified is contrary to the principle of limitation of actions and is without basis.<sup>108</sup>

### **Plaintiffs Are Not Entitled to Equitable Compensation**

56. The principles governing equitable compensation is summarised in Tongbao (Singapore) Shipping Pte Ltd and another v Woon Swee Huat and others [2018] SGHC 165 (“Tongbao”):<sup>109</sup>

*“(a) Equitable compensation, like common law damages, is assessed by reference to the amount of money necessary to restore the victim of a breach of fiduciary duty to the position the victim would have been in if not for the breach (at [41]).*

*(b) The deterrent function of equitable compensation means that the common law rules of causation, foreseeability and remoteness do not readily apply to equitable wrongdoers (at [42]).*

*(c) None of the common law limiting principles, including mitigation and comparative fault, ought to apply in a claim to recover equitable compensation as equity “deems by a fiction that it is decreeing performance of a primary obligation, ie, the defaulting fiduciary’s obligation to pay an equitable debt” (at [50]).*

*(d) In the usual case, the legal burden of proving but-for causation would remain on the plaintiff throughout. The plaintiff has to show that the loss would not have occurred but for the breach, or that there was an adequate or sufficient connection between the equitable compensation claimed and the breach of fiduciary duty. This amount was to be assessed with the full benefit of hindsight and is quantified as at the date of recoupment, not as at the date of the breach of duty (at [60]).*

*(e) But when a case concerns (a) a fiduciary who is in one of the well-established categories of fiduciary relationships; (b) who commits a culpable breach; (c) who breaches an obligation which stands at the very core of the fiduciary relationship, several plaintiff-friendly consequences follow. Once the plaintiff adduces some evidence to connect the breach to the loss, equity will readily shift the evidential burden on causation to the breaching fiduciary (at [56] and [61]).”*

(emphasis added)

<sup>106</sup> D1-D5’s Closing Submissions at [332].

<sup>107</sup> D1-D5’s Closing Submissions at [343] to [346].

<sup>108</sup> D1-D5’s Closing Submissions at [356] to [357].

<sup>109</sup> D1-D5’s Closing Submissions at [360].

57. AHTC in this case has confused this shift in evidential burden to submit that their claim for equitable compensation is “subject to” Ms Sylvia Lim and Mr Low showing an account and inquiry. There is no legal basis for such a claim.
58. Both Plaintiffs have submitted that the *Brickenden* rule on causation ought to apply to their claims for equitable compensation. Under the *Brickenden* rule, a claim for equitable compensation arising from a breach of fiduciary duty will succeed so long as the wronged party can show that fiduciary’s breach of duty is in some way connected to the loss, even if it was simply to set the occasion for the loss rather than by being the cause of the loss in any legal sense of the word. There is a shift in the evidentiary burden to the fiduciary to prove that the loss would still have occurred.<sup>110</sup>
59. In *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631 at [43], and *Then Khek Khoon and anor v Arjun Permanand Samtani* [2014] 1 SLR 245 (“*Then Khek Khoon*”) at [108(b)], the *Brickenden* rule was held only to apply to: (a) a fiduciary who is in one of the well-established categories of fiduciary relationships; (b) who commits a culpable breach; and (c) who breaches an obligation which stands at the very core of the fiduciary relationship.<sup>111</sup>
60. It is submitted that there is no shift in the evidentiary burden in the present case as the Town Councillors, even if they are fiduciaries (which is denied), are not in one of the well-established categories. The legal and evidentiary burden of proving but-for causation remains on the Plaintiffs.<sup>112</sup>
61. Assuming there is a shift in evidentiary burden, PRPTC submits that the Defendants have not discharged their burden to show that the losses would have occurred even if they had not breached their duties. However, there is no loss to begin with. The alleged losses are the payments made to the contractors for goods and services provided. PRPTC has termed these as “losses” because they do not agree that these payments should be made on its view of how the TC should have been managed.<sup>113</sup>
62. Further, AHTC submits that even if Ms Sylvia Lim and Mr Low are not in a well-established category of fiduciaries or that their breaches were innocent, AHTC’s evidence ought to be judged “benevolently” and that this Honourable Court may presume the highest loss against them. This cannot be correct. AHTC bears the burden of proving that they had suffered the losses alleged and that there are improper

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<sup>110</sup> D1-D5’s Reply Closing Submissions at [121] and [122].

<sup>111</sup> D1-D5’s Reply Closing Submissions at [121].

<sup>112</sup> D1-D5’s Reply Closing Submissions at [122] and D1-D5’s Closing Submissions at [362].

<sup>113</sup> D1-D5’s Reply Closing Submissions at [123] and D1-D5’s Closing Submissions at [367].

payments which ought to be recovered. It cannot seek to discharge its burden by asserting that it has been prevented from ascertaining the true extent of its loss because of “*the nature of the System and the various control failures which proliferated thereunder*”. Both KPMG and PwC had in total spent 14 months reviewing all the records of AHTC and interviewing or speaking to various personnel. If they cannot ascertain the loss in fulfilment of the CA’s mandate in CA 114, the only conclusion that should be drawn is that there is no loss.<sup>114</sup>

63. The necessity of ordering a bifurcation of PRPTC’s claims should be reconsidered.<sup>115</sup>
64. The decision of *Then Khek Khoon* and its reliance on *Brickenden* must now be considered in light of *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2015] AC 1503 (“*AIB Group*”), a case which was highlighted by the CA in *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 as relevant jurisprudence for future consideration in respect of the causation test:<sup>116</sup>
- (a) In *AIB Group*, the UK Supreme Court analysed the cases on equitable compensation, in particular, the House of Lords’ decision in *Target Holdings Ltd v Redferns* [1996] AC 421 (“*Target Holdings*”). It reaffirmed the principle in *Target Holdings* that the equitable obligation arising from a breach of trust affecting the trust fund is to restore the fund to the position it would have been in but for the breach, and that the measure of compensation, whether it is payable into the trust fund or directly to a beneficiary, should be assessed on that basis. *AIB Group* therefore reaffirms the “but-for” test for causation. for equitable compensation and is a move away from the *Brickenden* rule.
- (b) PRPTC has sought to distinguish *AIB Group* by restricting its applicability to breaches of trust in a commercial setting. PRPTC’s submissions are self-serving given that it has on all other occasions assessed the Town Councillors’ actions on a commercial basis. In fact, it is AHTC’s case that the actions of the Town Councillors are, *inter alia*, “commercially unacceptable”.
- (c) In the recent Singapore High Court case of *Winsta Holding Pte Ltd v Sim Poh Ping* [2018] SGHC 239 (“*Winsta*”), the Court held that *Brickenden* should not be followed and agreed with *AIB Group*. It held that:

“... It should not matter whether a fiduciary belongs to a well-established category of fiduciaries or not, or whether the breach is of a core duty or is

<sup>114</sup> D1-D5’s Reply Closing Submissions at [125].

<sup>115</sup> D1-D5’s Closing Submissions at [376] to [379].

<sup>116</sup> D1-D5’s Reply Closing Submissions at [126] to [133].

*innocent...there is also no reason in principle why the evidential burden on causation should shift to the fiduciary on the mere ground that the principal proves that the breach "is in some way connected" to the loss...".*

- (d) Without further explanation, PRPTC has submitted that the approach in Winsta is incorrect. It has now rejected the case of Bank of New Zealand v New Zealand Guardian Trust Co Ltd [1991] 1 NZLR 664 despite relying heavily on the case during its bifurcation application.<sup>117</sup> This is presumably because the case sets out a but-for causation test for breaches leading directly to damage to or loss of the trust property and requires the plaintiff to show that the loss would have occurred in any event for breaches involving an element of infidelity or disloyalty which engage the conscience of the fiduciary.

#### **Plaintiffs Are Not Entitled to an Account and Inquiry**

65. No order for an account and inquiry should be made as the Plaintiffs are already in possession of all relevant accounts. Given the extensive audits that AHTC has already undergone with KPMG and PwC, the Plaintiffs have no reason to seek any further account from the Town Councillors. The facts as to what was paid out of AHTC's funds, to whom and why have been fully set out in these proceedings.<sup>118</sup>

#### **Plaintiffs Are Not Entitled to an Account of Profits**

66. The Plaintiffs' claim for an account of profits also ought to be dismissed given that it is not their case that the Town Councillors have gained any personal profits. No such evidence was adduced during the trial.<sup>119</sup>

#### **Plaintiffs Are Not Entitled to Damages for Alleged Breaches of Duties of Care**

67. Even if this Honourable Court finds that concomitant duties of care are owed under common law (which is denied), the Town Councillors have not breached their duties of care and should not be made personally liable as they have acted in good faith.
68. Nonetheless, assuming that the Town Councillors have breached their duties of care, which is denied, the burden remains on the Plaintiffs to prove that, subject to the doctrines of foreseeability, causation and remoteness, AHTC/AHPETC has suffered loss and damages from the appointments and payments of FMSS/FMSI and the third-party contractors. This they have not done.<sup>120</sup>

<sup>117</sup> SUM 3482 of 2018.

<sup>118</sup> D1-D5's Closing Submissions at [369] to [371] and D1-D5's Reply Closing Submissions at [134] and [135].

<sup>119</sup> D1-D5's Closing Submissions at [372] and [373].

<sup>120</sup> D1-D5's Closing Submissions at [374] and [375].

**PRPTC is Not Entitled to Claim for a Share of the Improper Payments**

69. PRPTC has also claimed that it is entitled to the “surplus of AHTC”, to the extent that the improper payments made by AHTC before PE became a part of AHPETC has a bearing on PE’s and accordingly PRPTC’s financial affairs. The KPMG Report did not address this and the PwC Report did not explain the basis of this claim.<sup>121</sup>
70. Firstly, it is submitted that PE cannot be entitled to any “surplus” constituting alleged improper payments that were paid before it was part of AHPETC on 22 February 2013. These heads of claims are set out at [381] of D1-D5’s Closing Submissions.
71. Secondly, even if there was any merit for bringing such a claim for “surplus”, which is denied, the proper party to bring a claim for such payments against the Town Councillors is AHTC and not PRPTC. The alleged losses suffered by AHTC before PE was amalgamated to form AHPETC from 22 February 2013 are not losses that PE would have been entitled to claim, but that of AHPETC. PE’s entitlement to any of the “surplus” had the losses not been suffered, is an issue that ought to be settled between PE and AHTC and is not claimable directly by PE against the Town Councillors.

**Town Councillors’ Decisions Are Not Void in Public Law**

72. The FMSS Contracts and the payments made pursuant to these contracts are not void in public law:<sup>122</sup>
- (a) For the Plaintiffs to establish that the contracts are void in public law, they accept that they need to establish that the decisions were beyond the powers of the statute, that the decisions were illegal in that the Town Councillors had acted dishonestly and in bad faith, and/or the Town Councillors failed to take into account relevant considerations, and that the decisions were irrational in that the Town Councillors’ decisions were “*outrageous in its defiance of logic or of accepted moral standards*”. The Plaintiffs have not established any of these matters.
- (b) Further, even if the contracts are held to be void in public law, this does not give rise to personal liability on the Town Councillors for the payments made under these contracts.

Dated this the 5th day of April 2019.



**Messrs Tan Rajah & Cheah**  
**Solicitors for the 1st to 5th Defendants**

<sup>121</sup> D1-D5’s Closing Submissions at [380] to [382].

<sup>122</sup> D1-D5’s Reply Closing Submissions at [137] and [138].