Official Assignee of the estate of Tay Teng Tiang William, a bankrupt *v* Tay Lee Kiang Liza and others
[2013] SGHC 239

Case Number : Suit No 84 of 2010

Decision Date : 11 November 2013

Tribunal/Court : High Court

Coram : Lionel Yee JC

Counsel Name(s) : Daniel Koh Choon Guan, Johanna G Tan and Fu Xianglin Lesley (Eldan Law LLP) for the plaintiff; Subramanian s/o Ayasamy Pillai, Kaushalya Rajathurai and Tien Chih Hsien Melanie (Colin Ng & Partners LLP) for the defendants.

Parties : Official Assignee of the estate of Tay Teng Tiang William, a bankrupt — Tay Lee Kiang Liza and others

Contract – Misrepresentation – Fraudulent

Tort – Misrepresentation – Fraud and deceit

Tort – Misrepresentation – Negligent misrepresentation

11 November 2013 Judgment reserved.

Lionel Yee JC:

Introduction

1 This case involves allegations of misrepresentation and conspiracy in relation to the sale of a bankrupt person's shares to his siblings and half-siblings in 2004.

2 The Plaintiff is the Official Assignee of the Insolvency and Public Trustee's Office ("IPTO"). Mr Tay Teng Tiang William ("William Tay") was adjudicated a bankrupt on 20 October 2000 and his property vested in the Plaintiff as trustee on the making of the bankruptcy order. This property included 29,167 class "A" shares in SUTL Corporation Pte Ltd ("SUTL Corporation") and 1,125,469 class "B" shares in SUTL Holdings Pte Ltd ("SUTL Holdings"). SUTL Corporation and SUTL Holdings (collectively referred to as "the Companies") were family-owned private companies founded by William Tay's late father, Mr Tay Choon Hye ("Tay Choon Hye"). Until mid-2000, Tay Choon Hye was the controlling shareholder of SUTL Holdings, which in turn was the majority shareholder of SUTL Corporation.

3 Tay Choon Hye had two wives and 11 children; seven children with his first wife and four with his second wife. The 5th Defendant, William Tay, Ms Rosalyn Tay Lee Tin ("Rose Tay"), and Mr Andrew Tay Teng Yew ("Andrew Tay") are the children of the second wife. The remaining six Defendants (that is, the 1st, 2nd, 3rd, 4th, 6th and 7th Defendants) are children of the first wife and half-siblings to William Tay. At all material times, the Defendants were shareholders in the Companies.

4 In early 2004, the Defendants purchased William Tay's shares in the Companies from the Plaintiff. This took place ostensibly without William Tay's knowledge or participation. In fact, William Tay never responded to any of the Plaintiff's letters in 2000 to 2001 regarding his bankruptcy and

only filed his Statement of Affairs on or about 9 May 2008. [note: 1] According to William Tay, he had relocated overseas in about 2000. He was thus unaware of the bankruptcy order at the time it was made as well as the sale of his shares in 2004. William Tay claims that he found out about the sale of his shares to the Defendants only when he returned to Singapore in 2008.

5 On 5 February 2010, the Plaintiff commenced the present suit against the Defendants, alleging that the Defendants had misrepresented the true and fair value of William Tay's shares and alternatively that the Defendants had conspired to injure or defraud William Tay and/or the Plaintiff by diluting William Tay's shareholding in the Companies. The original writ of summons was filed by both the Plaintiff and William Tay against the Defendants as well as Rose Tay and Mr Tay Teng Hong, another half-sibling of William Tay. William Tay, Rose Tay and Tay Teng Hong were removed as parties to the suit by subsequent amendments to the statement of claim. [note: 2]

Background facts

The sale of William Tay's shares

6 After William Tay was adjudicated a bankrupt on 20 October 2000, the Plaintiff wrote to the Companies on 12 April 2001 informing them of the bankruptcy order, requesting a copy of the latest audited accounts of the Companies and also enquiring whether there were any interested buyers for William Tay's shares. [note: 3] Messrs Sam & Wijaya ("Sam & Wijaya"), the solicitors for the Companies at that time, responded, on behalf of only SUTL Holdings however, on 19 June 2001 to request a copy of the list of William Tay's creditors. [note: 4] In a letter dated 1 July 2001 to Sam & Wijaya, the Plaintiff declined this request because SUTL Holdings was not a creditor and asked again for the latest audited accounts and whether there were any interested buyers. [note: 5]

7 No further communication appears to have taken place until 9 April 2003, when the Plaintiff wrote yet again to the Companies to ask for the audited accounts and whether there were any interested buyers for William Tay's shares. [note: 6] A few days later on 15 April 2003, the Plaintiff wrote a further letter to SUTL Holdings in relation to William Tay's shares in the company, this time asking whether any dividends had been declared between 2001 and 2003 and requesting the audited accounts for that period. [note: 7] While no similar document for SUTL Corporation was adduced, it was not disputed that the Plaintiff probably made a similar request to SUTL Corporation as well. [note: 8]

8 Sam & Wijaya responded to the Plaintiff on behalf of the Companies via two letters dated 8 May 2003, which forwarded copies of the latest audited accounts of the Companies as at 31 December 2001 ("the 2001 audited accounts") and stated that dividends of S$1,124,421.90 were declared and payable to William Tay by SUTL Holdings for the financial years up to 31 December 2002 (no dividends having been declared in 2003) and dividends of S$43,750 were declared and payable to William Tay by SUTL Corporation for the financial years up to 31 December 2000 (no dividends having been declared in the years 2001–2003). [note: 9] Further, the letters made offers on behalf of the existing SUTL Holdings and SUTL Corporation shareholders to purchase William Tay's shares in SUTL Holdings and SUTL Corporation respectively. The cash consideration offered was S$744,885 for William Tay's 1,125,469 shares in SUTL Holdings and S$23,895 for his 29,167 shares in SUTL Corporation.

9 A valuation of William Tay's shares was done by IPTO's Insolvency Division on 16 May 2003, which valued the shares at S$1.32368 per share for SUTL Holdings and S$1.63851 per share for SUTL

Corporation. [note: 10] This amounted to S$1,489,760.81 for William Tay's SUTL Holdings shares and S$47,790.42 for his SUTL Corporation shares.

10 The Plaintiff subsequently wrote to Sam & Wijaya on 19 May 2003, requesting the articles of association of the Companies. [note: 11] Some correspondence regarding this request followed, including two letters dated 10 September 2003 and 22 September 2003 from Sam & Wijaya purporting to forward the memorandum and articles of association of the Companies. [note: 12] However, there is some uncertainty as to whether the full contents of the memoranda and articles of association of the Companies were actually sent to or received by the Plaintiff. In particular, the Plaintiff did not admit that it received the notices of resolutions passed in 2000 to amend the memoranda and articles of association by increasing the authorised share capital of the Companies. [note: 13]

11 On 4 October 2003, the Plaintiff made a counter-offer to sell William Tay's shares in SUTL Corporation for S$40,000 and his shares in SUTL Holdings for S$1m. [note: 14] Sam & Wijaya wrote back on 23 December 2003, stating that the existing shareholders of the Companies found the prices proposed by the Plaintiff "too high as the shares are not readily marketable", and counter-proposing S$32,000 and S$800,000 for William Tay's shares in SUTL Corporation and SUTL Holdings respectively. [note: 15] This offer was accepted by the Plaintiff by its letter dated 7 January 2004 [note: 16] and William Tay's shares were duly transferred to the Defendants (who comprised most of the existing shareholders of the Companies then) on 6 February 2004. [note: 17]

Restructuring of the Companies in 2000

12 Another important strand of the story involves the restructuring of the Companies that took place in 2000. Essentially, the restructuring exercise involved the capitalisation of retained earnings as payment for the issuance of new shares to a trust created by Tay Choon Hye, as well as the transfer of most of Tay Choon Hye's majority shareholding in the Companies to the trust.

13 The Triple Five Trust ("the Trust") was established by Tay Choon Hye in February 2000, with Bermuda Trust (Singapore) Limited ("Bermuda Trust") as the trustee. [note: 18] The beneficiaries of the Trust were Tay Teng Hong, Rose Tay, Andrew Tay and the Defendants, but not William Tay. [note: 19]

14 A number of significant changes to the shareholding of the Companies took place shortly after that. On 10 May 2000, circulars were sent to the Companies' shareholders informing them of proposed amendments to the memoranda and articles of association of the Companies and attaching notices of a proposed extraordinary general meeting ("EGM") to be convened on 7 June 2000 for each of the Companies. [note: 20] It is disputed whether William Tay received these documents and whether he was in Singapore at that time.

15 The resolutions for the proposed amendments were duly passed at the EGMs of the Companies held on 7 June 2000 ("the 7 June 2000 EGMs") in William Tay's absence. [note: 21] Prior to the amendments, each of the Companies had only two classes of shares, namely "A" and "B" shares. The amendments increased the authorised capital of the Companies by the creation of three new classes of shares, namely class "C", "D" and "O" shares. In addition, existing class "A" and "B" shares would no longer have voting rights; the balance of the unissued class "A" and "B" shares were reclassified as class "C" shares, which also had no voting rights. Only class "D" and "O" shares would have voting rights, whereas all classes of shares except class "D" shares would be entitled to dividends. On

16 June 2000, shares were allotted as set out below:

	Allottees	**No of Shares**
SUTL Corporation [note: 22]	Bermuda Trust	1,000 class "C" shares
	SUTL Holdings	2 class "O" shares
SUTL Holdings [note: 23]	Bermuda Trust	1,000 class "C" shares
	Tay Choon Hye	10 class "D" shares
	Bermuda Trust	2 class "O" shares

16 On 17 June 2000, the Companies each held an EGM to approve the capitalisation of retained earnings and the distribution of new shares ("the 17 June 2000 EGMs"). At SUTL Corporation's EGM, the 4th Defendant, representing SUTL Holdings which was now the only shareholder with voting rights, voted to adopt a resolution to capitalise the sum of S$95m out of the company's retained earnings and apply it as payment for 95m class "C" shares to be distributed to Bermuda Trust. [note: 24] At SUTL Holdings' EGM on the same day, Tay Choon Hye and Bermuda Trust (represented by the 4th Defendant), who were now the only two shareholders with voting rights, voted to capitalise the sum of S$60m and to apply this sum as payment for 60m class "C" shares to be distributed to Bermuda Trust in its capacity as the existing holders of 1,000 class "C" shares of the company. [note: 25]

17 Prior to the first EGMs held on 7 June 2000, the existing shareholders held a total of only 25,479,167 shares in SUTL Corporation and 26,500,700 shares in SUTL Holdings. [note: 26] Of these, 700,000 SUTL Corporation and 14,120,539 SUTL Holdings shares were held by Tay Choon Hye himself. [note: 27] Therefore the combined effect of the 7 June 2000 and 17 June 2000 EGMs was that Bermuda Trust, as trustees for the Trust, became the majority shareholder in the Companies, while the rest of the existing shareholders, including Tay Choon Hye, the Defendants and William Tay, had their shareholding significantly diluted.

18 On 6 February 2001, Tay Choon Hye entered into agreements to transfer his shares in the Companies to Bermuda Trust for a total consideration of S$16,554,000. [note: 28] This sum was transferred back to the Trust on the same day by Tay Choon Hye. [note: 29]

19 For reasons that will be set out below, the Trust came to an end by early 2002. Tay Choon Hye, despite having indicated in his letter of wishes dated 12 June 2000 that he would like the Trust to be determined *inter alia* ten years after his demise [note: 30], wrote to Bermuda Trust on 27 March 2002 stating that he would like the Trust to be determined as soon as possible and that the shares in the Companies belonging to the Trust were to be distributed to the beneficiaries [note: 31]. Accordingly, a deed of distribution and indemnity was executed on 29 April 2002 to distribute the shares to Tay Teng Hong, Rose Tay, Andrew Tay and the Defendants. As William Tay was not a beneficiary of the Trust, he did not receive any of these shares. Tay Choon Hye subsequently passed away on 27 December 2002.

The Janet Ho and Andrew Tay Transactions

20 Shortly before Tay Choon Hye's death, the Companies commenced a suit on 8 October 2002 to

seek specific performance of an alleged agreement entered into on 10 July 2002 with one Janet Ho. [note: 32] Janet Ho, Tay Choon Hye's companion until his death, was the owner of 979,167 class "B" shares in SUTL Corporation. Under this alleged agreement, Janet Ho was to transfer her shares in SUTL Corporation to SUTL Holdings for a consideration of S$2.7m. The Companies sued Janet Ho after she failed to do so. Janet Ho responded by filing a suit of her own on 22 November 2002 against, *inter alia*, the Companies and the present Defendants, claiming oppressive and prejudicial conduct under s 216 of the Companies Act (Cap 50, 2006 Rev Ed). [note: 33] Both suits were settled after mediation by a deed of settlement made on 13 March 2003, whereby Janet Ho's shares in SUTL Corporation were transferred to SUTL Holdings for a consideration of S$5m (the "Janet Ho Transaction"). [note: 34] This amounted to a payment of about S$5.11 for each SUTL Corporation share that she held.

21 On 9 March 2004, SUTL Investments Pte Ltd ("SUTL Investments"), another subsidiary of SUTL Holdings, entered into an agreement with Andrew Tay, where Andrew Tay's shares in SUTL Corporation were valued at S$1.87 per share (the "Andrew Tay Transaction"). [note: 35] The essence of the Andrew Tay Transaction was that Andrew Tay would acquire a hotel in Cambodia from SUTL Investments in exchange for some of his original shares in SUTL Corporation as well as additional SUTL Corporation shares which he had acquired from Rose Tay and Tay Teng Hong by swapping his original SUTL Holdings shares with them.

The arguments

Plaintiff's case

22 The Plaintiff's first argument is that the Defendants had fraudulently misrepresented the value of William Tay's shares to the Plaintiff with the intention of procuring the transfer of the said shares to themselves at an undervalue. The alleged misrepresentations comprised the following:

(a) Non-disclosure of the fact that resolutions were passed on 7 and 17 June 2000 to capitalise S$95m and S$60m out of the Companies' retained earnings into shares which were allotted to Bermuda Trust, diluting the value of William Tay's shares;

(b) Non-disclosure of the Janet Ho Transaction;

(c) Non-disclosure of the Andrew Tay Transaction; and

(d) The statement in the letter dated 23 December 2003 from Sam & Wijaya to the Plaintiff that the prices proposed by the Plaintiff were "too high" (see [11] above).

The Plaintiff claims that it only found out about the Janet Ho and Andrew Tay Transactions when William Tay returned to Singapore to file his Statement of Affairs in May 2008, and that it only found out about the 7 June 2000 and 17 June 2000 EGMs and the existence of Bermuda Trust around May 2012. According to the Plaintiff, the above non-disclosures (or disclosures, as the case may be) amounted to a false representation that the true and fair value of William Tay's shares could be derived solely from the 2001 audited accounts of the Companies which the Defendants had forwarded to the Plaintiff. It is pertinent to note that the Plaintiff is not alleging that the 2001 audited accounts of the Companies furnished to it in 2003 were false or lacked veracity. [note: 36] Although the statement of claim seemed to cast doubt on the veracity and reliability of the 2001 audited accounts of the Companies that were forwarded to the Plaintiff by the Defendants, the Plaintiff did not allege that this was a misrepresentation in its closing submissions.

23 The Plaintiff's second argument is based on unlawful and, in the alternative, lawful conspiracy. [note: 37] It is alleged that the Defendants had conspired to pass the resolutions at the 7 June 2000 and 17 June 2000 EGMs to allot the bonus shares to Bermuda Trust (of which they were beneficiaries to the exclusion of William Tay), thereby diluting William Tay's percentage shareholding in the Companies. The passing of these resolutions, as well as the eventual distribution of the bonus shares to the beneficiary Defendants, is alleged as having been deliberately concealed from William Tay and/or the Plaintiff.

Defendants' case

24 The Defendants submit that no fraudulent misrepresentations were made to the Plaintiff. The Plaintiff had adequate notice of the restructuring of the Companies that took place in 2000 and the consequent dilution of William Tay's shares because the Defendants had duly disclosed the 2001 audited accounts of the Companies and the notices of resolutions pertaining to the changes in the shareholding of the Companies. The Defendants had no duty to disclose the Janet Ho and Andrew Tay Transactions to the Plaintiff. As for the statement in the letter dated 23 December 2003 from Sam & Wijaya that the prices proposed by the Plaintiff were "too high", this was simply a bargaining tool used by one party in an arm's length transaction. In any case, the Defendants say that there was no reliance by the Plaintiff on any of these statements or non-disclosures.

25 The Defendants also deny that they were involved in any conspiracy to cause injury or loss to William Tay. First, the Defendants argue that the Plaintiff had not pleaded an unlawful conspiracy or that there was a conspiracy to injure William Tay by excluding him as a beneficiary under the Trust. [note: 38] In any case, there was no unlawful act to support any allegation of an unlawful conspiracy as the 7 and 17 June 2000 resolutions had been properly passed. There was also no predominant purpose to injure the Plaintiff or William Tay by diluting the value of William Tay's shares because the restructuring of the Companies in June 2000 was carried out by Tay Choon Hye on the advice of professionals for the purposes of estate and succession planning. [note: 39] Moreover, there had been an equal dilution of each of the Defendant's shareholdings in the Companies in June 2000 and the dismantling of the Trust had been necessitated by law due to objections by the Land Dealings Unit of the Singapore Land Authority to the Trust holding shares in the Companies which in turn held Singapore residential property.

26 The Defendants finally contend that the Plaintiff's causes of action based on misrepresentation and conspiracy are time-barred pursuant to the Limitation Act (Cap 163, 1996 Rev Ed). Their argument is that the Plaintiff's claims accrued on or about 7 January 2004, which was when the Plaintiff accepted the Defendants' offer to purchase William Tay's shares. The present suit was commenced on 5 February 2010, more than 6 years after 7 January 2004, and is thus time-barred under s 6(1)(*a*) of the Limitation Act. They further argue that ss 29(1)(*a*)–(*b*) of the same, which provide for a postponement of the limitation period in cases where the cause of action is based on or concealed by fraud of the defendant, does not assist the Plaintiff because the latter could have with reasonable diligence discovered the alleged fraud by the time William Tay's shares were sold. Contrary to the Plaintiff's assertion, the Defendants say that notices of the resolutions passed in June 2000 were sent by their solicitors to the Plaintiff in September 2003. [note: 40] These documents, together with the 2001 audited accounts and the searches with the Accounting and Corporate Regulatory Authority ("ACRA") conducted by the Plaintiff itself in 2001 and 2003, would have given the Plaintiff ample notice of the restructuring of the Companies in June 2000 and the dilution of William Tay's shares.

Issues

27 There are now three main issues to be determined, namely:

(a) whether there was any fraudulent misrepresentation on the part of the Defendants in relation to the true and fair value of William Tay's shares;

(b) whether the Defendants had conspired to injure the Plaintiff by diluting William Tay's shares and allotting bonus shares to Bermuda Trust of which they were beneficiaries; and

(c) whether the Plaintiff's causes of action for misrepresentation and/or conspiracy are time-barred under the Limitation Act.

The evidence

For the Plaintiff

28 There were a total of nine witnesses for the Plaintiff, comprising present or former officers from IPTO, members of the Tay family and one expert witness, Mr Leow Quek Shiong ("Leow"), whose testimony I shall deal with later.

29 There were five witnesses from IPTO. The main and first witness for the Plaintiff was Mr Lim Yew Jin ("Lim"), an assistant official assignee and public trustee of IPTO, who had taken over William Tay's case in July 2012. The other witnesses were: Ms Diane Goh ("Diane"), the case officer in charge of William Tay's estate in bankruptcy from December 2009 to the present; Mr Lum Weng Sun ("Lum"), the shares realisation officer who performed the valuation of William Tay's shares in May 2003; Mr Jonathan Chua Beng Beng ("Jonathan"), the senior officer in charge of William Tay's case from October 2000 to sometime in 2002; and Mr Sunari Kateni ("Sunari"), an assistant official receiver in IPTO who had oversight of William Tay's case during the period when William Tay's shares were sold to the Defendants. While I found all the witnesses from IPTO to be credible, their testimonies were limited to their respective scope of work and the period of time during which each of them was involved in the administration of William Tay's bankruptcy.

30 There were three witnesses from the Tay family, namely William Tay himself and his two siblings, Andrew Tay and Rose Tay. William Tay's evidence primarily related to whether and when he came to know about his bankruptcy and the resolutions of the Companies passed in June 2000. The reliability of his testimony was, however, doubtful. In relation to the assertion that he was overseas when the 7 and 17 June 2000 EGMs of the Companies were held and when the bankruptcy order was made against him in October that year, while he had stated in his affidavit of evidence-in-chief ("AEIC") that he had left Singapore and relocated to Thailand and then Cambodia around 1999 or early 2000, [note: 41] he subsequently claimed at various points during cross-examination that he had left Singapore in March 2000, in May 2000 and finally December 2000. [note: 42] William Tay also claimed not to know about a judgment entered against him in February 1999 by Standard Chartered Bank in relation to an overdraft facility taken by his company, Indobest International Pte Ltd, even though the judgment was a consent judgment. [note: 43]

31 I also had difficulties with the reliability of Rose Tay's testimony. While she testified quite definitively that she never received the circular dated 10 May 2000 containing a notice of the EGM to be held on 7 June 2000 for SUTL Corporation and that she did not attend the EGM, [note: 44] she exhibited the said circular and notice of the EGM as well as the minutes of the EGM on 7 June 2000 in her own affidavit [note: 45] and had in fact signed the attendance sheets for both of the 7 June 2000

EGMs. [note: 46] Her insistence during cross-examination that she knew nothing about the EGMs and that she had blindly signed the attendance sheets was also inconsistent with her account in her AEIC that she simply could not *recall* either receiving the circular dated 10 May 2000 or attending the meeting. [note: 47] Rose Tay also claimed that she did not know that William Tay had commenced the present proceedings until she was recently asked to be a witness. [note: 48] But this could not have been the case since she was a defendant in the proceedings until 7 July 2010 and appearance had been entered by her solicitors on her behalf on 11 June 2010. On the other hand, Andrew Tay appeared to me to be a credible witness, although he could not recollect certain events due to the lapse of time.

For the Defendants

32 There were six witnesses for the Defendants, including the 4th Defendant, Mr Arthur Tay Teng Guan ("Arthur Tay"), and the 7th Defendant, Mr Tay Teng Joo. I found Arthur Tay and Tay Teng Joo to be fairly credible witnesses. While counsel for the Plaintiff highlighted in written submissions a number of inconsistencies in their evidence, these were not in relation to very significant matters.

33 The other four witnesses for the Defendants were a representative from HSBC Trustees (formerly known as Bermuda Trust) who produced certain documents to the Court, two tax advisors to the late Tay Choon Hye, Ms Juliana Lee Lay Eng ("Juliana") and Mr Choo Eng Chuan ("Choo"), as well as Mr Wijaya R Sivanathan ("Wijaya"), the partner of Sam & Wijaya who handled the sale of William Tay's shares. Juliana was the tax director from Arthur Andersen who had advised Tay Choon Hye from 1999 to around early 2001 on estate and succession planning and the setting up of the Trust. Choo was also a tax director from Arthur Andersen, and was the tax advisor for the Tay family and the Companies since 1997. He was the one who introduced Juliana to Tay Choon Hye in 1999 to advise him on estate and succession planning. While Choo was not actively involved in the setting up of the Trust in 2000, he subsequently became acquainted with the restructuring exercise around July 2001 when objections were raised by the Singapore Land Authority in relation to the Trust.

Non-appearance of some of the Defendants

34 The Plaintiff submits that an adverse inference should be drawn against the Defendants as they had not, with the exception of Arthur Tay and Tay Teng Joo, attended Court as witnesses to defend the action against them, the adverse inference being that the absent Defendants had intended to injure or defraud William Tay and/or the Plaintiff. [note: 49] In support of this argument, the Plaintiff relies on O 35 r 1(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) as well as s 116 of the Evidence Act (Cap 97, 1997 Rev Ed). [note: 50] This reliance is misplaced. Order 35 r 1(2) of the Rules of Court deals with the power of the court to proceed with the trial or give judgment in cases where one party fails to appear. Failure to "appear" in that context does not refer to a failure to call a particular party as a witness. Rather, it refers to a failure to generally participate in proceedings: see, *eg*, *Ching Chew Weng Paul, deceased, and others v Ching Pui Sim and others* [2011] 3 SLR 869 at [15]–[20]. As for adverse inferences to be drawn under s 116 of the Evidence Act, it should be borne in mind that the Plaintiff bears the burden of proving its allegations of misrepresentation and conspiracy on the part of the Defendants. The burden cannot be on the Defendants to call witnesses to refute a claim brought by the Plaintiff. It was open to the Plaintiff to issue a subpoena to any of the Defendants to testify at the trial if their testimony was regarded as material to the Plaintiff's case.

My findings

Issue 1: Was there fraudulent misrepresentation on the part of the Defendants?

35 While the Plaintiff pleaded both fraudulent and negligent misrepresentation in the statement of claim, it advanced arguments based only on fraudulent misrepresentation in its closing and reply submissions. [note: 51]

36 An action based on fraudulent misrepresentation consists of "the wilful making of a false statement with the intent that the plaintiff shall act in reliance upon it and with the result that he does so act and suffers damage in consequence": see *Kea Holdings Pte Ltd and another v Gan Boon Hock* [2000] 2 SLR(R) 333 at [37]. Therefore, before a fraudulent misrepresentation can be established, the following elements must be satisfied: (1) that there was a representation of fact made by the defendant by words or conduct; (2) that the representation was made with the intention that it should be acted upon by the plaintiff; (3) that the plaintiff acted upon the representation; (4) that the plaintiff suffered damage by so doing; and (5) that the representation was made with the knowledge that it was false, or at least, in the absence of any genuine belief that it was true: see *Tjong Very Sumito and others v Chan Sing En and others* [2012] 3 SLR 953; see also *Trans-World (Aluminium) Ltd v Cornelder China (Singapore)* [2003] 3 SLR(R) 501 ("*Trans-World*") at [29]. The last element applies to cases concerning allegations of fraud, where although the standard of proof remains the civil standard of proof on a balance of probabilities, cogent evidence is required before a court will be satisfied that the allegations of fraud are established: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [158]–[160]. It bears emphasising that dishonesty is the touchstone that distinguishes fraudulent misrepresentation from other forms of misrepresentation; thus negligence, however gross, is not fraud: see *Raiffeisen Zentralbank Osterreich AG v Archer Daniels Midland Co and others* [2007] 1 SLR(R) 196 at [40] and [43], cited with approval by the Court of Appeal in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [35].

37 The following paragraphs will discuss three elements of a claim for fraudulent misrepresentation, namely: (1) whether there was a false representation on the part of the Defendants; (2) whether there was reliance by the Plaintiff on the alleged misrepresentations; and (3) whether there was fraud on the part of the Defendants in making the alleged misrepresentations.

No false representation made by the Defendants

38 The Plaintiff relies primarily on a number of non-disclosures on the part of the Defendants to establish its claim of fraudulent misrepresentation. It cites the case of *Briess and others v Woolley and others* [1954] 1 AC 333 ("*Briess*") in support of the proposition that while the Defendants did not make express representations that the 2001 audited accounts reflected the true position of the Companies, they concealed relevant events which would have shown that the said accounts did not correctly reflect the Companies' financial position. [note: 52] In *Briess*, a director of a company failed to disclose in negotiations with potential purchasers of the company's shares that the company's accounts were based on dishonest trading. It was held, *inter alia*, that the director was guilty of fraudulent misrepresentation as he had effectively represented that the profits of the company had been made by lawful trading. As in *Briess*, it is not the Plaintiff's position that the figures in the 2001 audited accounts are themselves untrue or inaccurate (see [22] above). [note: 53] Rather, the issue is whether the omission to inform the Defendants of the dilution of William Tay's shares and of the Janet Ho and Andrew Tay Transactions renders what was stated by the Plaintiff to be false.

39 In ascertaining whether there has been misrepresentation by silence, I find the following statements by Belinda Ang J in *Trans-World* at [66]–[68] to be a useful guide:

66 Misrepresentation by silence entails more than mere silence. A mere silence could not, of itself, constitute wilful conduct designed to deceive or mislead. *The misrepresentation of statements comes from a wilful suppression of material and important facts thereby rendering the statements untrue.*

67 In an action in deceit, the plaintiffs have to prove, to use the language of Lord Cairns in *Peek v Gurney* [1861-73] All ER Rep 116 at 129:

> … some active misstatement of fact, or, at all events, such a partial and fragmentary statement of fact that the withholding of that which is not stated makes that which is stated absolutely false.

The statement made must be either in terms, or by such an omission in the sense stated by Lord Cairns, an untrue statement.

68 When silence … or a failure to speak is alleged to constitute misleading conduct or deception, *the proper approach to take is to assess silence as a circumstance like any other act or statement and in the context in which it occurs.* Hence, it is necessary to examine the silence with reference to the charge that is made against the defendants.

[emphasis added]

40 In the present case, the Defendants forwarded the 2001 audited accounts of the Companies to the Plaintiff on 8 May 2003. They did so in response to various letters from the Plaintiff since April 2001 requesting copies of the latest audited accounts of the Companies and enquiring whether there were any interested buyers for William Tay's shares. The purpose of the requests for the audited accounts was not in fact expressly stated in the Plaintiff's letters although it would be reasonable to infer that the audited accounts were to be used by the Plaintiff for valuing William Tay's shares. However, the Plaintiff did not state in its requests that the audited accounts were to be used as the *sole* basis for valuing William Tay's shares; nor could an obvious inference to that effect be drawn from its letters. The Plaintiff also did not specifically ask the Companies or the Defendants whether there were any other recent or impending transactions involving the Companies' shares or, more generally, what the fair valuation of them would be. In the circumstances, it cannot be said that there was any representation on the part of the Defendants, when they responded by providing the 2001 audited accounts, that these could be used as the sole basis for ascertaining the true and fair value of William Tay's shares.

41 In so far as the alleged misrepresentation involved the non-disclosure of the dilution of William Tay's shares, it appears that there was, in any event, sufficient disclosure of the events resulting in that dilution. It is not disputed that the Plaintiff knew of the allotment of the bonus shares to Bermuda Trust in 2000. [note: 54] The Plaintiff had the 2001 audited accounts of the Companies, which showed that there was a "[b]onus issue of shares" of S$70m for SUTL Holdings and that there was a "[b]onus issue of shares via capitalisation of revenue reserves" of S$95m for SUTL Corporation. [note: 55] The Plaintiff had also conducted its own ACRA searches in 2001 and 2003, which identified Bermuda Trust as the owner of these bonus shares. [note: 56] The only controversy is in relation to whether notices of the resolutions passed in 2000 to capitalise the Companies' retained earnings into shares were sent to the Plaintiff by way of Sam & Wijaya's letters dated 10 September and 22 September 2003 (see [10] above), but resolution of this issue is not critical given that the Plaintiff already concedes that it had information on the allotment of the bonus shares to Bermuda Trust at

the relevant time. In any event, the Plaintiff bears the burden of proving that it did not receive the notices of the resolutions since it is alleging misrepresentation by non-disclosure on the part of the Defendants. It has not discharged that burden on a balance of probabilities. Wijaya testified that he had personally made sure that the notices of the resolutions were incorporated in the letters sent to the Plaintiff, especially in his letter dated 22 September 2003 after he was informed by IPTO's officers first through a letter dated 27 August 2003 [note: 57] and then through a telephone call between 10 and 22 September 2003 [note: 58] that two earlier letters sent by his firm failed to include the relevant attachments. He was able to recount in detail the circumstances in which these documents were sent out. [note: 59] On the other hand, the Plaintiff could only make a general assertion that these documents were not in its case files and none of the Plaintiff's witnesses had personal knowledge as to what was actually received by the Plaintiff in September 2003. [note: 60] Nor was there evidence adduced of how the Plaintiff handled documents at the material time to show that if the documents could not be found in the Plaintiff's case files, they were not likely to have been received by the Plaintiff.

42 The Plaintiff however argues that this information was not sufficient to alert the Plaintiff to the fact that the Trust held the bonus shares for the benefit of the Defendants to the exclusion of William Tay. [note: 61] In my judgment, there is nothing to this point because the identity of the beneficiaries of the Trust has little bearing on the issue of whether the Defendants misrepresented the value of William Tay's shares to the Plaintiff. The Plaintiff did know how many shares William Tay had in relation to the total issued share capital of the Companies prior to and after the 2000 bonus issue as well as the rights that each class of shares was entitled to. The fact that the Defendants' shareholding was eventually increased through Bermuda Trust raises a separate issue from the dilution of William Tay's shareholding through the issuance of bonus shares by the Companies to Bermuda Trust.

43 As for the Janet Ho and Andrew Tay Transactions, I am not satisfied that there was an obligation to disclose these transactions such that non-disclosure of the same would render what was represented by the Defendants misleading or false.

44 In the first place, there is no general obligation at law on a purchaser of a company's shares to inform the vendor during negotiations of other similar transactions entered into by that purchaser. There is also no statutory obligation on the Defendants to disclose such transactions to the Plaintiff unless an application is made under s 83(1)(*b*) of the Bankruptcy Act (Cap 20, 2009 Rev Ed) to summon them to be examined on oath on this matter before the court, which was not done in this case.

45 Second, from the evidence, it is doubtful if these transactions should even be used as a benchmark of the value of William Tay's shares. Lum, the Plaintiff's officer who performed the valuation of William Tay's shares at the material time, testified that in valuing the shares of a bankrupt in a private company, he would only consider the company's audited accounts. [note: 62] Leow, the Plaintiff's expert witness, testified that in valuing William Tay's shares, he relied solely on the net tangible asset method and did not consider the Janet Ho and Andrew Tay Transactions even though they had been brought to his attention. [note: 63] Leow further stated that whether previous transactions involving shares in a private company would be taken into account depended on the circumstances of those previous transactions; in this case, the circumstances of the Janet Ho and Andrew Tay Transactions differed from those relating to the sale of William Tay's shares because the Andrew Tay Transaction involved a share swap whereas the Janet Ho Transaction arose out of litigation. [note: 64] Moreover, I note that the Andrew Tay Transaction only took place in March 2004, which was after the Plaintiff had accepted the Defendants' offer to purchase William Tay's shares on

7 January 2004 and executed the instruments of transfer of the shares on 6 February 2004. As of 7 January 2004, negotiations relating to the Andrew Tay Transaction were still on-going. [note: 65]

46 Third, it is not even clear that the use of other transactions as a benchmark would have affected the price at which the Plaintiff would sell the shares. Andrew Tay's sale of his SUTL Corporation shares was linked to an earlier agreement with Rose Tay dated 9 December 2003 (*ie*, two weeks before Sam & Wijaya conveyed the Defendants' counter-offer to the Plaintiff which the Plaintiff accepted) pursuant to which Andrew Tay swapped his SUTL Holdings shares for Rose Tay's SUTL Corporation shares at a price of S$1.87 per SUTL Corporation share and S$1.295 per SUTL Holdings share and if these prices were applied to William Tay's shares, the total valuation would have been S$25,494.20 *lower* than the Plaintiff's internal valuation. [note: 66]

47 Finally, in respect of the Janet Ho Transaction, there was a confidentiality clause (clause 5.2) in the deed of settlement between the Companies and Janet Ho. [note: 67] While this deed of settlement binds only the Companies, Lim conceded in cross-examination that in view of the confidentiality clause, the Defendants were probably bound to maintain the confidentiality of the Janet Ho Transaction as they were directors of the Companies at the material time. [note: 68]

48 I turn next to the letter dated 23 December 2003 from Sam & Wijaya to the Plaintiff stating that the prices proposed by the Plaintiff were "too high". This letter does not, in my view, constitute a false representation on the part of the Defendants. The Plaintiff argues that this representation was false and untrue as the prices proposed by the Plaintiff certainly cannot have been said to be "too high". [note: 69] However, this statement is a statement of opinion, not fact. In any case, given that the sale and purchase of William Tay's shares was an arms' length transaction (which is not disputed by the Plaintiff), [note: 70] this statement appears to me to be nothing more than a bargaining or negotiating tool, which cannot give rise to any misrepresentation. [note: 71]

No reliance on the alleged misrepresentations

49 In any case, I also find that there was no reliance by the Plaintiff on the alleged misrepresentations. The letter dated 23 December 2003 from Sam & Wijaya which stated that the prices proposed by the Plaintiff were "too high" can be disposed of summarily. On 3 January 2004, the Plaintiff's Sunari had instructed Jonathan in an internal memo to accept the Defendants' revised offer of S$832,000 in total for William Tay's shares. [note: 72] In the course of cross-examination, Sunari accepted that he had no knowledge of the letter from Sam & Wijaya dated 23 December 2003 when he gave instructions to accept the Defendants' offer and thus he could not have relied on it to enter into the transaction. [note: 73]

50 As for the alleged non-disclosures of the dilution of William Tay's shares and the Janet Ho and Andrew Tay Transactions, the burden of proof is on the Plaintiff to show that it would have insisted on and sold William Tay's shares for a higher price had it known of the prior dilution of the said shares and the Janet Ho and Andrew Tay Transactions. I was not satisfied, on a balance of probabilities, that the Plaintiff would have sold William Tay's shares at a significantly higher price had it been apprised of these events.

51 As regards the dilution of his shares, I have indicated earlier that the Plaintiff was provided with and did have sufficient information about this and that this did not factor in any way in the Plaintiff's decision to sell the shares at the price counter-offered by the Defendants. So my analysis on reliance is in fact one which is premised on a hypothetical situation where no such disclosure was made. In

this regard, while Lim maintained that with the dilution of the said shares (and the Janet Ho and Andrew Tay Transactions), the consideration paid for William Tay's shares ought to have been higher than what the Plaintiff sold them for, [note: 74] Lum, the Plaintiff's valuation officer whose internal valuation formed the basis of the Plaintiff's key decisions on the sale of the shares, testified that in valuing the shares of a bankrupt person in a private company, he would only consider the audited accounts of a company and would not look at any other documents or transactions (see [45] above).

52 Lum's testimony above also indicates that the Plaintiff was unlikely to have acted differently even if the Janet Ho and Andrew Tay Transactions were disclosed. Several other aspects of the evidence before me support such a conclusion. First, as far as the Andrew Tay Transaction is concerned, the Plaintiff can hardly have relied on this since it took place *after* the Plaintiff accepted the Defendants' offer to purchase William Tay's shares (see [45] above). Second, as I observed earlier, Leow, the Plaintiff's valuation expert who testified at the trial, said that he did not consider these transactions in arriving at his valuation of the Plaintiff's shares even though they had been brought to his attention. Third, the Plaintiff was likely to have applied a substantial discount to the valuation of William Tay's shares in making or accepting an offer for the sale of the said shares. The Plaintiff's internal valuation for William Tay's shares in SUTL Corporation and SUTL Holdings based on the 2001 audited accounts was S$47,790.42 and S$1,489,760.81 respectively, [note: 75] but on 4 October 2003, pursuant to Sunari's instructions on 2 October 2003, the Plaintiff made a counter-offer to sell William Tay's shares in SUTL Corporation and SUTL Holdings for S$40,000 and S$1m respectively.,. [note: 76] This was a "discount" of S$497,551.23 or almost half a million dollars. [note: 77] Sunari gave evidence that his decision on the quantum of the Plaintiff's counter-offer was possibly based on a mid-point between the Defendants' initial offer (of S$23,895 for William Tay's shares in SUTL Corporation and S$744,885 for his shares in SUTL Holdings) and the Plaintiff's internal valuation; he did not make an offer equivalent to the Plaintiff's valuation because the bankrupt, William Tay, had absconded and the concern was to raise some funds for the bankruptcy estate. [note: 78] Sunari also testified that one of the probable reasons why, on 3 January 2004, he instructed Jonathan to accept the Defendants' revised offer of S$32,000 and S$800,000 for William Tay's shares in SUTL Corporation and SUTL Holdings respectively was because he felt that this sum would be sufficient to make a reasonable offer to William Tay's creditors in order to discharge his bankruptcy. [note: 79]

No fraud on the part of the Defendants

53 There was also insufficient evidence to show any fraudulent intent on the part of the Defendants in making the alleged non-disclosures or representations. The Plaintiff highlights the following e-mail dated 9 January 2004 sent by Tay Teng Joo to the rest of the Defendants and Chan Kum Tao (the chief financial officer of the Companies): [note: 80]

> We can all essentially buy into both William's corp and holdings shares, regardless of whether it is big or small amount. But if we wish to make things simple, then Arthur buys the Corp shares only while the rest of us buys his Holdings.
>
> From an investment perspective, *it makes sense for all to buy both his shares as it is sold at a discount to book value.*
>
> The other thing we need to consider is his dividend and proof of claims which we submitted to OA and hope they accept. If they accept, then good for us so we need not pay out so much since we are also considered a creditor. *On the dividend, we are going to keep quiet about it for now and see if they are sharp enough to raise this.*

[emphasis added]

The Plaintiff argues that this e-mail from Tay Teng Joo shows the Defendants' deliberate concealment of the dividends payable to William Tay, which reflects their collective intention to conceal the Janet Ho and Andrew Tay Transactions and the dilution of William Tay's shares from the Plaintiff. [note: 81] However, I agree with the Defendants that the issue of non-payment of the dividends due to William Tay from the Companies is not the subject of the Plaintiff's claim in these proceedings [note: 82] and thus sheds little light on whether or not the Defendants dishonestly concealed the dilution of William Tay's shares as well as the Janet Ho and Andrew Tay Transactions from the Plaintiff. In any event, the Defendants could not have intended to conceal the dividends from the Plaintiff because Sam & Wijaya had already written on 8 May 2003 to inform the Plaintiff of the dividends declared and due to William Tay by the Companies (see [8] above). As for the statement that William Tay's shares were sold at a discount to book value, nothing turns on this because even the Plaintiff's counter-offer of 4 October 2003 was already significantly lower than the valuation of the shares based on the 2001 audited accounts (see [52] above).

54 Moreover, the Defendants' internal communications indicate that in determining the positions they would take *vis-à-vis* the Plaintiff, they valued William Tay's shares in a similar fashion as the Plaintiff. In the wake of the Plaintiff's counter-offer dated 4 October 2003 of a total of S$1,040,000 for the shares of both Companies, Chan Kum Tao sent an e-mail dated 18 December 2003 to Tay Teng Joo, copied to Arthur Tay, stating as follows: [note: 83]

> I spoke to Arthur at lunch.
>
> As agreed, Arthur will buy over [William Tay]'s 29,167 SUTL Corp shares (***OA offered S$40,000 vs book valuation of S$54,548***)
>
> Arthur is also interested in buying over [William Tay]'s SUTL Holding shares. (He can later convert the Holding shares for Global shares as part of the restructuring.) I understand you have asked the other shareholders if they wish to buy back [William Tay's] shares. To expedite this, I would suggest that you send an eMail to ALL shareholders to get their written response within a week. Details are as follows:
>
> Number of SUTL Holding shares owned by [William Tay]: 1,125,469
>
> ***Book valuation as at 31 Dec 2002: S$1,457,487***
>
> Offer made by OA: ***S$1,000,000***
>
> We propose counter offer to OA ***S$800,000***
>
> ***The final price would range from S$800,000 to S$1,000,000***
>
> …
>
> [emphasis added in bold italics]

From the above e-mail, it can be seen that as far as the internal bargaining position of the Defendants was concerned, the Defendants had priced their offers in a similar fashion as the Plaintiff, *ie*, based solely on the book value of the shares. While Chan Kum Tao had based his valuation on the

book value of the shares as at 31 December 2002 rather than the 2001 audited accounts, his benchmarks of S$54,548 for the SUTL Corporation shares and S$1,457,487 for the SUTL Holding shares were similar to (and, in the aggregate, *lower* than) the Plaintiff's own valuation of S$47,790.42 for the SUTL Corporation shares and S$1,489,760.81 for the SUTL Holdings shares. There is thus no evidence that the Defendants had *intentionally* misrepresented the value of William Tay's shares to the Plaintiff by concealing the dilution of William Tay's shares or the Janet Ho and Andrew Tay Transactions.

Issue 2: Did the Defendants conspire to injure the Plaintiff and/or William Tay?

55 The tort of conspiracy comprises two types of conspiracy: (i) conspiracy by unlawful means and (ii) conspiracy by lawful means. Conspiracy by unlawful means is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the Plaintiff, and the act is carried out and the intention achieved: see *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 ("*Quah*") at [45]. In a conspiracy by lawful means, there need not be an unlawful act committed, but there must be a "predominant purpose" by all the conspirators to cause injury or damage to the plaintiff, and the act must be carried out and the intention achieved. In other words, for conspiracy by unlawful means, an intention (whether it is a predominant or subsidiary intention) will suffice, but for conspiracy by lawful means, the intention to injure must be a predominant intention: see *Beckkett Pte Ltd v Deutsche Bank AG and another* [2008] 2 SLR(R) 189 at [115].

56 The essence of conspiracy is an agreement and a high degree of proof is required to show the existence of an agreement in a conspiracy to defraud: see *Seagate Technology Pte Ltd and another v Goh Han Kim* [1994] 3 SLR(R) 836 at [15]. However, such an agreement need not be express but can be inferred from the acts of the alleged conspirators. As Belinda Ang J stated in *The "Dolphina"* [2012] 1 SLR 992 at [264] (cited with approval by the Court of Appeal in *Visionhealthone Corp Pte Ltd v HD Holdings Pte Ltd and others and another appeal* [2013] SGCA 47 at [46]), in practice direct evidence of a combination is unlikely to be forthcoming and therefore proof of the agreement or combination is usually gathered from the unlawful acts committed, for such acts are often sufficient (when taken with any relevant surrounding circumstances) to justify the inference that their commission was the product of concert between the alleged conspirators.

The Plaintiff's pleaded case on conspiracy

57 As mentioned above, the Plaintiff bases its arguments on unlawful and lawful conspiracy in the alternative. The Plaintiff states that this has been pleaded in its statement of claim (at paras 23 and 39) as follows: [note: 84]

> 23. In or around May 2012, the Plaintiff also discovered facts which show that ***the 1st to 7th Defendants had conspired and combined together wrongfully and with the sole or predominant intention of injuring and/or defrauding the Bankrupt and/or the Plaintiff, by diluting the Bankrupt's (and consequently the Plaintiff's) shareholding in SUTL Corporation.*** In April 2013, the 1st to 7th Defendants provided discovery of documents that showed that ***the 1st and 7th Defendants had, in a similar fashion, diluted the Bankrupt (and consequently the Plaintiff's) shareholding in SUTL Holdings.*** The value of the Bankrupt's shares would have been much higher if not for the 1st to 7th Defendants' actions, which were pursuant to and in furtherance of the said conspiracy.
>
> …

Conspiracy to Injure/Defraud

39. ***The Plaintiff repeats paragraphs 23 to 35 above.*** Further and in the alternative, as a result of ***the 1st to 7th Defendants' conspiracy to injure and/or defraud the Bankrupt and/or the Plaintiff*** , the Bankrupt and/or the Plaintiff has suffered loss and damage.

[emphasis added in bold italics]

The "paragraphs 23 to 35" in the Plaintiff's statement of claim referred to above describe the dilution of William Tay's shares as well as the subsequent dismantling of the Trust and the distribution of the bonus shares to the Defendants. However, the Defendants argue that the Plaintiff's pleaded case only covers a conspiracy by lawful means to injure the Plaintiff or William Tay; the Plaintiff has not pleaded a conspiracy by unlawful means. [note: 85] Moreover, the Defendants say that the Plaintiff's pleaded case as far as allegations of conspiracy are concerned only extends to the dilution of William Tay's shares; the Plaintiff has not pleaded that the Defendants had conspired to injure William Tay by excluding him as a beneficiary under the Trust. [note: 86]

58 In my judgment, the Plaintiff has adequately pleaded an unlawful conspiracy as an alternative to lawful conspiracy, but this only extends to the dilution of William Tay's shares. In reaching this conclusion, I had regard to the fundamental principle that each party has to state precisely what its case is in order to notify the court and the other party of the issues in dispute and avoid the element of surprise at trial: see *Banner Investments Pte Ltd v Hoe Seng Metal Fabrication & Engineers (S) Pte Ltd* [1996] 3 SLR(R) 244 at [8]. As seen above (at [57]), the statement of claim alleges that the Defendants had conspired and combined together "wrongfully" to "defraud" William Tay and/or the Plaintiff. It is thus clear that fraud was the unlawful means alleged by the Plaintiff, despite the fact that the phrase "sole or predominant intention" is also found in that part of the pleadings.

59 However, with regard to the Plaintiff's assertion that its pleaded case on conspiracy extends to the Defendants' deliberate exclusion of William Tay as a beneficiary of the Trust and the distribution of the bonus shares by the Trust to the Defendants, I am unable to accept that this was adequately pleaded. Significantly, para 23 of the statement of claim (quoted above at [57]) only articulates a conspiracy by diluting William Tay's (and consequently the Plaintiff's) shareholding in the Companies. The fact that the first sentence of para 39 of the statement of claim "repeats paragraphs 23 to 35 above" does not assist the Plaintiff because all that is contained in those paragraphs is a descriptive account of the establishment and dismantling of the Trust between 2000 and 2002. While the next sentence of para 39 refers to "the 1st to 7th Defendants' conspiracy to injure and/or defraud the Bankrupt and/or the Plaintiff", this is only a general allusion and it is not apparent that it refers to anything more than the conspiracy to injure or defraud by diluting William Tay's shares which was pleaded earlier in para 23. In any event, that reference would appear to be made for the purposes of pleading the loss and damage suffered by the Plaintiff as a consequence of the said conspiracy.

No fraudulent concealment or unlawful act

60 Having considered the parties' arguments and the evidence before me, I am unable to find that the Defendants had concealed, let alone fraudulently concealed, the dilution of William Tay's shares from William Tay and/or the Plaintiff. The circulars dated 10 May 2000 in respect of the 7 June 2000 EGMs set out the proposed amendments to increase the authorised capital of the Companies and to remove the voting rights of existing class "A" and "B" shares (see [14] above). These circulars as well as the notices of EGM were sent to William Tay by registered post at his stated address in the register of members of each of the Companies at that time, which was 24 Jalan Seaview. [note: 87]

William Tay, however, maintained that he never received these documents; in fact, he said that he had not seen them until he was cross-examined on them. [note: 88]

61 A search conducted by the Plaintiff in the Registry of Companies and Businesses a few months later on 24 November 2000 showed that William Tay's address was "453 Upper East Coast Road" and that this change had been effected on 28 January 2000, *ie*, several months before the EGM circulars and notices were sent out. [note: 89] The Plaintiff thus submitted that the Defendants had made calculated efforts to prevent the circulars and notices of EGM from being received by William Tay, and also that the Companies had breached their respective memorandum and articles of association by not sending the circulars and notices to William Tay's "registered address", [note: 90] as required by article 110 of the articles of association of both Companies.

62 I was not persuaded by these arguments. In the first place, there was no evidence that the Defendants knew that William Tay's address recorded in the registers of members of the Companies was incorrect. Second, Juliana, who had been in charge of sending out the circulars and notices of EGM to the shareholders, testified that the proper procedure was for the circulars and notices to be sent to the address stated on the register of members and that the corporate secretarial agent would not be responsible to look for the updated addresses of all shareholders in the records of the Registry of Companies and Businesses. [note: 91] I am, in any event, of the view that the sending of the notices by the Companies was in compliance with art 110 of their respective articles of association [note: 92]. The "registered address" of a member in art 110 is likely to refer to that recorded in the register of members which each company is required to maintain under s 190(1) of the Companies Act and which must contain *inter alia* the names and addresses of the members. I also note that while the memoranda and articles of association of the Companies did not specifically state whether "registered address" referred to the address found in the register of members or the Registry of Companies and Businesses, the articles of association of SUTL Corporation defined "the register" as the register of members to be kept pursuant to s 158 (since repealed and now found as s 190) of the Companies Act. [note: 93] William Tay's evidence was that he never gave notice to the Companies of his change of address from 24 Jalan Seaview in their registers of members. [note: 94] I should add that even if art 110 referred to the address recorded in the Registry of Companies and Businesses, there is no evidence that the Companies and/or the Defendants had made anything more than a genuine mistake in this regard.

63 I also note that there was a significant period of about four weeks between the time the circulars and notices were sent out on 10 May 2000 and the 7 June 2000 EGMs. It was not as though the Defendants had rushed through the resolutions in a surreptitious manner.

64 Even if I consider events beyond the dilution of William Tay's shares, *ie*, the non-disclosure of the beneficiaries of the Trust (although this has not been adequately pleaded as part of the conspiracy), there is also no evidence the Defendants had fraudulently concealed the existence of the Trust or the identity of its beneficiaries. The circulars dated 10 May 2000 openly referred to "[t]he Trust set up by Mr Tay Choon Hye" and also highlighted the importance of the 7 June 2000 EGMs. [note: 95] Juliana also briefed the attendees at the 7 June 2000 EGMs about the setting-up of the Trust and the consequential effect of the resolutions on the shareholders, [note: 96] and her briefing appeared to cover who the beneficiaries of the Trust were. [note: 97] The attendees at the EGMs included non-beneficiaries such as Janet Ho who could have asked for details of the Trust. Moreover, as far as the Plaintiff is concerned, Lim accepted in cross-examination that the Plaintiff could have obtained the notices of resolutions passed at the 7 June and 17 June 2000 EGMs from the

Accounting and Corporate Regulatory Authority. [note: 98]

65 The Plaintiff's argument that the unlawful means was constituted by the Defendants' oppression of William Tay's minority interest in breach of s 216 of the Companies Act is untenable. The Plaintiff contended in its closing and reply submissions that counsel for the Defendants had "conceded that William Tay would have had a more than sustainable claim in minority oppression" during the cross-examination of Lim, citing the following exchange: [note: 99]

> Q Mr Lim, what you are suggesting to me doesn't sound to me like a conspiracy. You know what it---
>
> A No, it is a conspiracy.
>
> Q Let me finish, please. One person at a time. What you are suggesting to me doesn't like a---sound like a conspiracy. ***What you are suggesting to me sounds like a case, right, or a claim for minority oppression.*** Right? Because William Tay was excluded, William Tay was not involved by the father, what you seem to be suggesting is a case for minority oppression of a shareholder, not a conspiracy, because all the shareholders agreed with the---agreed to do what the father asked them to do.
>
> A No, it could also amount to a conspiracy to injure.
>
> [emphasis added in bold italics]

However, I do not think that counsel for the Defendants was conceding that William Tay had a sustainable claim for minority oppression against the Defendants. In fact, the subsequent line of questioning revealed that counsel for the Defendants was simply trying to establish that before the present suit was filed by the Plaintiff and (initially) William Tay, William Tay's position, as communicated through his previous solicitors, was *not* that there was a conspiracy against him:

> Q Do you see anywhere in this very early document, right, that TSMP Law Corporation on behalf of William Tay alleging a conspiracy? No, do you see it? Yes or no?
>
> A It's not stated in this letter, yes.
>
> …
>
> Q Okay. Now, do you agree that what TSMP was proposing or asking for a sanction in 2008, right, was for a section 216 minority oppression action to be brought? That's why they were seeking a sanction.
>
> …
>
> Q But what I'm trying to establish here is that firstly---
>
> …
>
> Q Firstly, right, until this action, right, the previous position taken by William Tay to his solicitors was not that there was a conspiracy. Am I right?

More importantly, the Plaintiff cannot now rely on the Defendants' alleged breach of s 216 of the

Companies Act to establish an unlawful act for the purposes of an unlawful conspiracy when they have not pleaded this at all.

66 There being no evidence of any fraudulent concealment or unlawful act perpetrated by the Defendants, the Plaintiff's case on conspiracy by unlawful means fails.

No predominant purpose to injure the Plaintiff and/or William Tay

67 I turn next to whether there was a predominant purpose on the part of the Defendants to cause injury to the Plaintiff and/or William Tay by diluting William Tay's shares. The requirement of a "predominant purpose" is necessary to establish a conspiracy by lawful means and must be distinguished from the concept of "intention". The following analogy was used to illuminate this distinction in the Court of Appeal decision of *Quah* (see [55] above) at [49]:

> … To use an analogy, if a thief breaks a window to enter a room, the *predominant purpose*, which is also synonymous with the *motive* or *object*, is to steal. His predominant purpose, however, is not to break the window, although he must have *intended* to break it so as to achieve his main purpose. Thus, a predominant purpose is not the same as intention … [emphasis in original]

68 In *Quah*, the plaintiff had obtained an interim injunction against a debtor restraining him from disposing or dealing with his assets. The debtor subsequently transferred certain shares to the defendant, his father, and the plaintiff sued the defendant for damages or alternatively for an order that the share transfer be avoided. The Court of Appeal held that the claim for a conspiracy by lawful means could not succeed because the purpose of the share transfer was really to preserve the integrity of the family company or to protect the debtor's assets, rather than to injure the plaintiff financially: see *Quah* at [50]. Although one of the ramifications of the debtor's actions was to deprive the plaintiff of its recovery of the debt, and the debtor and the defendant must have intended that, such an intention was not the same as a predominant purpose to injure the plaintiff: see *ibid*.

69 Similarly, in this case, I find that the predominant purpose of the restructuring of the Companies in 2000 was succession and tax planning and not to injure the Plaintiff. The restructuring exercise was planned and driven by Tay Choon Hye, on the advice of tax professionals from Arthur Andersen such as Juliana and Choo. Juliana testified as follows: [note: 100]

> The objective [of the restructuring] was, er, the late Mr Tay's concern regarding succession planning and estate duty, erm, and his concern was that should the shares be distributed upon his, er, demise, er, the---his business … would not be able to continue. Erm, and therefore my strategy was to move the ownership, er, the---the beneficial interest, the ownership, of the shareholders or … of the family members up to become beneficiaries of a trust.

With regard to tax planning, Juliana explained that the objective was to minimise the amount of estate duty payable upon Tay Choon Hye's death by divesting Tay Choon Hye of his beneficial interest in the Companies in two steps: first, Tay Choon Hye's shares in the Companies would be diluted and second, his shares (with the exception of the class "D" shares which constituted an insignificant shareholding and were not entitled to dividends) would be transferred by way of gift to the Trust, in which he held neither a legal nor beneficial interest. [note: 101] This plan also required Tay Choon Hye to survive for 5 years after the establishment of the Trust, according to the law on estate duty at that time. As for the objective of succession planning, Tay Choon Hye's concern was to retain control over the Companies and ensure proper management of the Companies' affairs. Before the restructuring, Tay Choon Hye's children were already shareholders in the Companies and had

shareholder rights. Juliana thus explained that the purpose of the restructuring of the Companies in 2000 was to separate ownership of the shares from management by removing voting rights from most classes of shares in the Companies and "moving" ownership of a majority of the Companies' shares to the Trust. [note: 102] At the end of the restructuring, SUTL Holdings would be the only shareholder with voting rights in SUTL Corporation, whereas Tay Choon Hye would retain the majority of voting rights in SUTL Holdings through his ten class "D" shares (see [15] above). [note: 103] Those class "D" shares would presumably be transferred or bequeathed to the person or persons who were his chosen successors to run the Companies.

70 Juliana's testimony above was not challenged by the Plaintiff. In fact, the Plaintiff does not dispute that the purpose of the restructuring exercise was estate and succession planning, or that Tay Choon Hye and the Defendants acted under the advice of professionals. [note: 104] Nor is it disputed that the resolutions passed at the 7 June 2000 and 17 June 2000 EGMs had the effect of diluting the shareholdings of all the existing shareholders, including the Defendants. [note: 105]

71 While the Plaintiff has alleged that Tay Choon Hye suffered from poor health and mental capacity when the restructuring exercise took place, [note: 106] I am unable to find, on a balance of probabilities, that the relevant decisions he made were affected by any form of physical or mental impairment. First, there were no medical reports or any documents to that effect. Second, the evidence, even from William Tay and Rose Tay, was that Tay Choon Hye was not in good health and not that he did not have the mental faculties to make the decisions which he did. Third, and in any event, this was contradicted by the evidence of more reliable witnesses such as Tay Choon Hye's tax advisor, Choo. [note: 107] The Plaintiff has also not challenged the validity of Tay Choon Hye's last will dated 20 September 1997 under which William Tay was excluded as a beneficiary. [note: 108] The significance of Tay Choon Hye's last will is that the beneficiaries of the Trust were derived from the beneficiaries in the will, as Juliana stated in cross-examination: [note: 109]

> … [Tay Choon Hye] instructed me … in developing the trust, in---in creating the trust. He wanted to follow the beneficiaries under his will and he gave me a copy of his will and I just followed it, er, exactly as provided in the will. …

72 However, the Plaintiff's position is that the fact that the restructuring exercise was initiated by Tay Choon Hye for the purposes of estate and succession planning is not relevant to the Plaintiff's case. [note: 110] This is because it does not detract from the fact that "the Defendants had agreed to execute the restructuring exercise, knowing full well the circumstances and consequences of the restructuring exercise on William Tay's shareholding" and "[t]herefore, the Defendants' assertions that they had acted under the late Mr Tay's instructions cannot prevent the Court from finding an agreement to injure and/or defraud William Tay". [note: 111]

73 As regards the allegation that there was an agreement to defraud William Tay, I have found earlier that the Defendants did not fraudulently conceal the circulars dated 10 May 2000, the notices of EGM of the Companies, or the identity of the beneficiaries of the Trust. As for the alleged agreement to injure him, I have noted earlier at [67] that the Court of Appeal in *Quah* drew a distinction between intent and purpose. The fact that the Defendants knew that William Tay's shareholding would be diluted by their actions and intended that such dilution take place is insufficient to found a claim of lawful conspiracy to injure him unless it can be said that this was done with the predominant purpose of injuring him. Such a finding is not borne out by the evidence in this case.

74 First, there is no evidence that the Defendants voted in favour of resolution for reasons other to give effect to the restructuring of the Companies proposed by Tay Choon Hye, which in turn was for estate and succession planning purposes.

75 Second, most of the witnesses who personally knew Tay Choon Hye, including William Tay and Andrew Tay, testified that he was strong-willed and demanded undivided loyalty and obedience from his children. Juliana's account of the EGMs, in which she recalled Tay Choon Hye admonishing all the shareholders and the latter keeping silent and avoiding his gaze, was not challenged or contradicted. [note: 112] In these circumstances, it is likely that the Defendants would have gone along with the restructuring exercise out of obedience to the family's patriarch. In any event, before the 7 June 2000 and 17 June 2000 EGMs, Tay Choon Hye was, in effect, the majority shareholder of the Companies and could have passed the resolutions at the EGMs even if the Defendants had objected.

76 Third, it is unlikely that the Defendants can be said to have conspired to dilute William Tay's shareholding relative to their own shareholding. The evidence indicates that the earliest point in time when *all* the Defendants were informed of the identity of the beneficiaries was at the 7 June 2000 EGMs. [note: 113] There is no evidence that before 7 June 2000, the common knowledge of all the Defendants extended beyond the fact that each of their shareholdings in the Companies would, just like William Tay's, be significantly diluted by the proposed resolutions. In any event, the trustees of the Trust, which was a discretionary trust, had powers of addition and removal of beneficiaries and it was thus possible for the Trust to subsequently include or exclude any particular beneficiary, including the Defendants, on the wishes of Tay Choon Hye. [note: 114]

77 I am therefore unable to find that the Defendants, in voting in favour of the resolutions at the 7 June 2000 EGMs, had done so with the predominant purpose of injuring William Tay. While the Plaintiff made an issue out of Tay Teng Joo's e-mail to *inter alia* the Defendants dated 12 January 2004 which stated that "[i]f we can solve and get [Janet Ho], [Andrew Tay] and [William Tay] out of the group, this will be a big accomplishment into this new year", [note: 115] this e-mail was sent in 2004 and is thus of limited probative value in so far as it is relied upon to show the motives of the Defendants in June 2000. Moreover, as explained by Tay Teng Joo in his affidavit, when he wrote this e-mail in 2004, Janet Ho, Andrew Tay and William Tay (through the Plaintiff) had already indicated their intention to sell their shares in the Companies. [note: 116] In fact, this was nearly a year after the deed of settlement of the law suits involving Janet Ho was signed and the transfer of her shares was agreed upon.

78 Even if I consider the subsequent dismantling of the Trust and the distribution of the shares to the Defendants in 2002 as part of the Plaintiff's pleaded case on conspiracy, these events do not reveal any predominant purpose on the part of the Defendants to injure William Tay and/or the Plaintiff. It is not disputed that the dismantling of the Trust was triggered by objections from the Singapore Land Authority in 2001 to Bermuda Trust, a foreign company, holding shares in the Companies which in turn held residential property in Singapore that were subject to foreign ownership restrictions. In a letter dated 11 July 2001, the Singapore Land Authority informed the Companies that they had contravened a condition in the clearance certificates issued to the Companies under the Residential Property Act, which stipulated that all shareholders had to be Singapore citizens and/or certified Singapore companies granted clearance under s 10 of the said legislation. [note: 117] Arthur Andersen, on behalf of the Companies, responded with a number of proposals to resolve the matter, including a proposal to appoint another approved Singapore registered trust company to take over trusteeship of the shares in the Companies from Bermuda Trust. [note: 118] The Singapore Land Authority replied to Arthur Andersen, stating that it had no objections to this proposal, provided that

the new trust company was a cleared "Singapore company" pursuant to s 10 of the legislation and that the new trust company must comply with s 10 "in that the company must amend its Memorandum and Articles of Association to provide that only Singapore citizens and cleared Singapore companies shall be directors and/or members of the company". [note: 119] Eventually, this proposal was not carried out and the Trust was dismantled. Choo testified that this was probably because Juliana and her team, who were handling this problem, had difficulty finding an approved Singapore trust company that fulfilled all of the Singapore Land Authority's requirements; Choo also said that he was not aware of any such company that would have been able to administer the Trust at that time. [note: 120] Choo's evidence, which was not challenged in cross-examination, was that he was the one who had broached the option of dismantling the Trust with Tay Choon Hye in about late 2001. [note: 121] According to Choo, Tay Choon Hye later approved the plan to dismantle the Trust and restructure the Companies again. [note: 122]

79 The Plaintiff argues that the Defendants were the ones in control of the allotment of the class "C" bonus shares in the Companies to Bermuda Trust and the direction to distribute the bonus shares to themselves, as seen from the deed of distribution dated 29 April 2002 and the fact that the proportion of shares distributed differed from that stated in Tay Choon Hye's letter of wishes dated 27 March 2002. However, there is nothing to this point. In the first place, as at 7 June 2000, Tay Choon Hye was, in effect, the majority shareholder in the Companies and could have passed the resolutions restructuring the various classes of shares, altering their voting rights and allotting shares to Bermuda Trust at the 7 June 2000 EGMs even if the Defendants had objected. The Defendants were also not in control of the allotment of the class "C" bonus shares to Bermuda Trust at the 17 June 2000 EGMs since they no longer had any voting rights in the Companies after the 7 June 2000 EGMs. Secondly, preambular paragraph (F) of the deed of distribution and indemnity that was executed on 29 April 2002 shows that after Bermuda Trust as Trustee had resolved to exercise its powers under the Trust to distribute the property, all the beneficiaries agreed that the property should instead be distributed among themselves in different proportions from that set out by Tay Choon Hye in his letter of wishes. [note: 123] In my judgment, they were entitled to do so and I am unable to see how their actions had anything to do with injuring William Tay. In any event, the eventual distribution did not vary significantly from the proportions stated in the letter of wishes. [note: 124]

80 Contrary to the Plaintiff's assertions, this was also not a case where "the loss caused to William Tay was the 'obverse side of the coin' from the gain enjoyed by the Defendants" where the purpose of the Defendants to profit themselves by increasing their percentage shareholdings in the Companies was just as much a predominant purpose to injure William Tay and/or the Plaintiff: see *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [63]. [note: 125] It has already been established that the Plaintiff's pleaded case only extends to the dilution of William Tay's shares. In any case, the circumstances indicated that the predominant purposes of the restructuring exercise in 2000 were succession planning and to minimise the amount of estate duty payable in the event of Tay Choon Hye's death. There was no evidence of any intention at that time to dismantle the Trust and distribute the proceeds to the Defendants to the exclusion of William Tay. First, the dismantling of the Trust was brought about by unforeseen circumstances which had nothing to do with either enriching themselves or injuring William Tay. Second, injury to William Tay in the form of the dilution of his percentage shareholding in the Companies is not necessarily linked to the increase in the Defendants' shareholding, which came about because of the distribution of shares by the Trust to its beneficiaries. Prior to its being dismantled, the Trust was a discretionary trust to which beneficiaries could be added or removed on the wishes of the settlor. None of the Defendants had a right to be or remain a beneficiary of the Trust and conversely, William Tay could also have

been added as a beneficiary on Tay Choon Hye's wishes.

Conclusion

81 In the light of the above analysis, the Plaintiff's claims based on fraudulent misrepresentation and conspiracy fail *in limine*. It is thus unnecessary to consider the Defendants' argument that the Plaintiff's causes of action for misrepresentation and conspiracy are time-barred under the Limitation Act. The Plaintiff's claim is dismissed and the parties are to agree on costs within seven days failing which I will hear them on costs.

[note: 1] 6ABD 1616.

[note: 2] SDB 30.

[note: 3] 2ABD 604, 605.

[note: 4] 2ABD 629.

[note: 5] 2ABD 630.

[note: 6] 4ABD 1113, 1114.

[note: 7] 4ABD 1117.

[note: 8] Transcript dated 5 July 2013, p 46.

[note: 9] 4ABD 1118, 1119.

[note: 10] 4ABD 1120.

[note: 11] 4ABD 1122.

[note: 12] 4ABD 1134, 1135.

[note: 13] PBD 319–322.

[note: 14] 4ABD 1224.

[note: 15] 5ABD 1258.

[note: 16] 5ABD 1330.

[note: 17] 5ABD 1341–1354.

[note: 18] 2ABD 329.

[note: 19] 2ABD 360.

[note: 20] 2ABD 362–375, 376–387.

[note: 21] 2ABD 394–402, 412–416.

[note: 22] 2ABD 458.

[note: 23] 2ABD 460.

[note: 24] 2ABD 466–468.

[note: 25] 2ABD 471–477.

[note: 26] 2ABD 365, 379.

[note: 27] 1ABD 241, 249.

[note: 28] 2ABD 591, 598.

[note: 29] 2ABD 603.

[note: 30] 2DBD 1.

[note: 31] 2DBD 56.

[note: 32] 3ABD 889–895.

[note: 33] 3ABD 896–902.

[note: 34] 4ABD 1086–1092.

[note: 35] 5ABD 1356–1367 .

[note: 36] Transcript dated 3 July 2013 at pp 71–72.

[note: 37] Plaintiff's Closing Submissions at para 83.

[note: 38] Defendants' Closing Submissions at paras 169 and 248.

[note: 39] Defendants' Closing Submissions at para 190.

[note: 40] Defendants' Closing Submissions at paras 24–25.

[note: 41] PW3 AEIC at para 23.

[note: 42] Transcript dated 10 July 2013 at pp 32–41, 105.

[note: 43] D6 at p 50; Transcript dated 10 July 2013 at pp 54–57.

[note: 44] Transcript dated 16 July 2013 at pp 106–107.

[note: 45] PW8 AEIC at pp 12–26, 28–36.

[note: 46] PW8 AEIC at p 35; 2ABD 401; 2ABD 418.

[note: 47] Transcript dated 16 July 2013 at pp 107–110; PW8 AEIC at paras 14–15.

[note: 48] Transcript dated 17 July 2013 at pp 17, 30.

[note: 49] Plaintiff's Closing Submissions at paras 146–152; Plaintiff's Reply Submissions at para 27.

[note: 50] Plaintiff's Closing Submissions at paras 142–143.

[note: 51] Plaintiff's Closing Submissions at para 60.

[note: 52] Plaintiff's Closing Submissions at para 34.

[note: 53] Transcript dated 3 July 2013 at p 63.

[note: 54] Plaintiff's Reply Submissions at para 44.

[note: 55] 3ABD 652, 697.

[note: 56] P1.

[note: 57] 4ABD 1133.

[note: 58] Transcript dated 25 July 2013 at pp 24–25.

[note: 59] Transcript dated 25 July 2013 at pp 24, 27.

[note: 60] Transcript dated 12 July 2013 at p 54.

[note: 61] Plaintiff's Reply Submissions at para 46.

[note: 62] Transcript dated 12 July 2013 at 67–68.

[note: 63] Transcript dated 17 July 2013 at p 35.

[note: 64] Transcript dated 17 July 2013 at pp 103–105.

[note: 65] Transcript dated 3 July 2013 at p 122.

[note: 66] Transcript dated 12 July 2013 at pp 101–106.

[note: 67] 4ABD 1090.

[note: 68] Transcript dated 4 July 2013 at pp 30, 32, 33.

[note: 69] Plaintiff's Closing Submissions at para 56.

[note: 70] Plaintiff's Reply Submissions at para 63.

[note: 71] Defendants' Reply Submissions at para 29.

[note: 72] 4ABD 1223; Transcript dated 16 July 2013 at p 13.

[note: 73] Transcript dated 16 July 2013 at pp 14–15.

[note: 74] Transcript dated 3 July 2013 at pp 78, 120; Transcript dated 4 July 2013 at p 48.

[note: 75] 4ABD 1223.

[note: 76] 4ABD 1223–1224.

[note: 77] Transcript dated 16 July 2013 at p 10.

[note: 78] Transcript dated 16 July 2013 at pp 6–8.

[note: 79] Transcript dated 16 July at pp 17–18.

[note: 80] 5ABD 1332; Transcript dated 24 July 2013 at pp 94, 155; Transcript dated 25 July 2013 at p 89.

[note: 81] Plaintiff's Closing Submissions at paras 53–54.

[note: 82] Defendants' Reply Submissions at para 27.

[note: 83] 5ABD 1251.

[note: 84] Setting Down Bundle at pp 39, 49; Plaintiff's Closing Submissions at para 83.

[note: 85] Defendants' Closing Submissions at para 248.

[note: 86] Defendants' Closing Submissions at para 169.

[note: 87] 1ABD 157–158; Transcript dated 23 July 2013 at p 53.

[note: 88] Transcript dated 10 July 2013 at p 48.

[note: 89] P1 at p 3.

[note: 90] Plaintiff's Closing Submissions at paras 108, 112, 115; 1ABD 87, 129.

[note: 91] Transcript dated 23 July 2013 at pp 47–48.

[note: 92] 4ABD 1188, 1219.

[note: 93] 1ABD 73.

[note: 94] Transcript dated 10 July 2013 at p 47.

[note: 95] 2ABD 363–364.

[note: 96] Transcript dated 23 July 2013 at p 41.

[note: 97] Transcript dated 25 July 2013 at pp 77, 102.

[note: 98] Transcript dated 4 July 2013 at pp 50–54.

[note: 99] Transcript dated 4 July 2013 at p 124.

[note: 100] Transcript dated 23 July 2013 at p 66.

[note: 101] Transcript dated 23 July 2013 at p 72.

[note: 102] Transcript dated 23 July 2013 at p 73.

[note: 103] Transcript dated 23 July 2013 at pp 73–74.

[note: 104] Plaintiff's Reply Submissions at paras 91–92.

[note: 105] Plaintiff's Reply Submissions at para 131.

[note: 106] Plaintiff's Reply Submissions at paras 183–186.

[note: 107] Transcript dated 25 July 2013 at p 108.

[note: 108] Defendants' Closing Submissions at para 212; Plaintiff's Reply Submissions at para 98; 1DBD 13.

[note: 109] Transcript dated 23 July 2013 at p 29.

[note: 110] Plaintiff's Reply Submissions at paras 114, 124.

[note: 111] Plaintiff's Reply Submissions at para 93.

[note: 112] DW2 AEIC at para 25.

[note: 113] Transcript dated 25 July 2013 at pp 73, 102.

[note: 114] Transcript dated 23 July 2013 at p 57.

[note: 115] 5ABD 1335; Plaintiff's Reply Submissions at paras 94(f), 97.

[note: 116] DW5 AEIC at para 15.

[note: 117] 3ABD 631–632.

[note: 118] 3ABD 634.

[note: 119] 3ABD 635–636.

[note: 120] Transcript dated 25 July 2013 at pp 110, 115.

[note: 121] DW6 AEIC at para 18.

[note: 122] Transcript dated 25 July 2013 at pp 113, 118

[note: 123] 3ABD 722.

[note: 124] Plaintiff's Reply Submissions at para 96(c); 3ABD 721; 2DBD 56.

[note: 125] Plaintiff's Reply Submissions at para 117.