

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**

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

...Defendants

HC/S 716/2017)

Between

PASIR RIS-PUNGGOL TOWN COUNCIL
(Singapore UEN No. T06TC0011A)

...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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Dated this the 1st day of March 2019.

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I. Introduction

1. These submissions are in reply to AHTC's Closing Submissions in Suit 668 ("**AHTC's Closing Submissions**") and PRPTC's Closing Submissions in Suit 716 ("**PRPTC's Closing Submissions**") both dated 18 January 2019. AHTC and PRPTC are collectively referred to as the "**Plaintiffs**".
2. The 1st to 5th Defendants, i.e. the Town Councillors, will adopt herein the abbreviations used in their Closing Submissions dated 18 January 2019 ("**D1-D5's Closing Submissions**").

II. The Unrebutted Evidence of the Town Councillors

3. For the Plaintiffs to succeed, they need to prove that the appointments of FMSS and the other third party contractors and the respective payments made to them were improper.¹ They have not done so. The following key evidence of the Town Councillors remains unrebutted:

With respect to the Appointment and Payment of FMSS

- (1) The incumbent MA, CPG requested to be released after WP was elected to Aljunied GRC.
- (2) In appointing and paying FMSS, Ms Sylvia Lim was acting pursuant to the authority delegated to her by the TC to facilitate the handover during the interim period.
- (3) When a tender was called in 2012 for the 2nd MA Contract and 2nd EMSU Contract, there were no bidders other than FMSS.
- (4) The provider of the Town Council Management System ("**TCMS**"), Action Information Management Pte Ltd ("**AIM**") terminated the provision of TCMS in June 2011.
- (5) The incumbent EMSU contractors, CPG and EM Services did not wish to extend their provision of EMSU services after 30 September 2011.

¹ See D1-D5's Closing Submissions at [71] and [72] for KPMG's definition of "improper".

With respect to the Appointment and Payment of FMSS and Third Party Contractors

- (6) FMSS, FMSI and the other third party contractors did carry out the services which they were contracted for.
 - (7) FMSS, FMSI and the other third party contractors were paid in accordance with their respective contracts at rates charged by the previous contractors and/or were considered reasonable by the Town Councillors.
 - (8) The appointments and payments were in accordance with the processes of the TC.
4. Each of the above will be examined in turn below with particular reference to the Plaintiffs' Closing Submissions. Insofar as the Town Councillors have addressed the points raised by the Plaintiffs in their Closing Submissions, they will not be repeated save insofar as they are relevant to the reply submissions herein.
 5. Further, insofar as the Plaintiffs have made submissions on matters that were not pleaded as highlighted in D1-D5's Closing Submissions² and in these submissions, it is submitted that the Honourable Court should disregard such submissions as held by the CA in Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua [2018] 2 SLR 655.³
 6. For the avoidance of doubt, all allegations of wrongdoing against the Town Councillors in the Plaintiffs' Closing Submissions are denied. While the submissions herein are in response to specific matters, the Town Councillors reserve their right to respond to any other aspect of the Plaintiffs' Closing Submissions if deemed necessary by the Honourable Court.
- (1) **CPG requested to be released**
7. 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.⁴

² 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].

³ Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua [2018] 2 SLR 655 at [32] and [48], Tab 61 of PRPTC's BOA.

⁴ See D1-D5's Closing Submissions at [107] to [123].

8. AHTC's submissions on the e-mail of 14 May 2011 from Mr Low to the WP MPs and Ms Sylvia Lim's e-mail of 29 May 2011 to the WP MPs is a misrepresentation of the emails.⁵ Firstly, both these e-mails have been read out-of-context. The e-mails were sent in the context of the contingency plan that the WP MPs were discussing at that time i.e. the need for another MA given there was every prospect of CPG not wishing to continue to serve an opposition ward – which Mr Low believed would happen from his experience at Hougang SMC.
9. Furthermore, Mr Low's statement in his e-mail of 14 May 2011 that "*we will not extend the managing agent agreement*" simply expresses his view that the MA agreement with CPG should not be extended beyond its current term.⁶ It certainly did not mean that the current MA agreement with CPG will be terminated. This statement should also be looked at in the context of the entire e-mail. The fact that there was no decision made on CPG is apparent from Mr Low's next line in the e-mail, "*it is better to wait till we look at the agreement before saying anything*".⁷
10. Secondly, these e-mails simply express the views of certain Town Councillors at that time and do not reflect a decision made by the TC. The 1st TC Meeting was held only on 9 June 2011. 10 days before the TC Meeting, at a meeting on 30 May 2011 between CPG and the WP MPs, CPG had made it clear that it did not wish to continue as MA and asked to be released.⁸ As it would be wholly unsatisfactory to have an unwilling MA in the saddle, the Town Councillors decided at the 1st AHTC Meeting that it was in the interests of the residents to agree to CPG's request to be released as MA.⁹ The decision to release CPG was communicated to CPG (through Mr Jeffrey Chua).¹⁰ This evidence that CPG did not wish to continue as MA and asked to be released stands un rebutted.
11. Furthermore, having acknowledged that it was entirely within the TC's discretion of when and how CPG should be released,¹¹ the Plaintiffs' questioning of the decision of the Town Councillors to release CPG and implement the contingency plan is nothing more than second-guessing their decisions in this matter.¹²

⁵ AHTC's Closing Submissions at [4.5.3] to [4.5.5].

⁶ D1-D5's Closing Submission at [119].

⁷ 8 CB 5068.

⁸ D1-D5's Closing Submissions at [120].

⁹ AEIC of Ms Sylvia Lim at [53], 2 BA 200; AEIC of Mr Low at [53], 2 BA 358; and AEIC of Mr Pritam Singh at [17], 2 BA 878.

¹⁰ See [27] below.

¹¹ AHTC's Closing Submissions at [4.5.14].

¹² AHTC's Closing Submissions at [4.5.7] to [4.5.24].

12. As CPG had indicated on 30 May its unwillingness to continue, Mr Low/Ms Sylvia Lim/Mr Faisal met with Ms How and Mr Danny Loh on 2 June 2011 to listen to FMSS's proposal for appointment as MA.¹³ Pursuant to the authority delegated to her at the 1st AHTC Meeting on 9 June 2011, Ms Sylvia Lim instructed FMSS on or around 15 June 2011 to go ahead and provide MA services.¹⁴
13. At the 2nd AHTC Meeting on 4 August 2011, the TC confirmed FMSS's appointment noting that Mr Low felt that the TC was extremely fortunate to have FMSS to manage the transition.¹⁵ It was agreed that this would be for a limited 1 year term, until such a time that it was appropriate to call a tender. If the overriding reason was to benefit FMSS and the Hougang staff as alleged, FMSS's appointment would not have been for just a 1 year transition.¹⁶ There is nothing to suggest that the tender process that was called for the 2nd MA Contract after the 1 year transition was in any way carried out improperly so that only FMSS could secure the tender. The undisputed fact is that no other MAs put in their bid in the public tender.¹⁷ Any advantage or disadvantage that FMSS may have as an incumbent MA would be no different from any other incumbent contractor when a tender is called.
14. PRPTC relies on the following matters to try to build a case that the Town Councillors "*got rid of CPG*". Where the evidence concerns documents, PRPTC relies on a narrow interpretation of selected words:
- (a) The words "*will appoint*" in Mr Low's email of 9 May 2011 sent to the WP MPs;¹⁸
 - (b) The Straits Times news report of 10 May 2011 where Mr Low reportedly used the words "*new management*";¹⁹
 - (c) Mr Low's request to Ms How to set up a new company to manage AHTC with the existing key staff of HTC.²⁰

¹³ D1-D5's Closing Submission at [126].

¹⁴ D1-D5's Closing Submissions at [128].

¹⁵ D1-D5's Closing Submissions at [177].

¹⁶ In fact, Mr Pritam Singh was questioned by PRPTC's counsel as to why the Town Councillors did not appoint FMSS for a longer term. See 25.10.2018 NE, Pg 65, L 6 to 16.

¹⁷ This is elaborated at [39] to [41] below.

¹⁸ PRPTC's Closing Submissions at [72] to [73].

¹⁹ PRPTC's Closing Submissions at [78].

²⁰ PRPTC's Closing Submissions at [83].

- (d) The letter dated 13 May 2011 from Ms How sent on behalf of HTC to Mr Jeffrey Chua as Secretary of ATC (“**the 13 May Letter**”).²¹
- (e) Mr Low’s e-mail to Ms How sent on 19 May 2011 and Mr Low’s e-mail sent on 26 May 2011 to the WP MPs.²²
15. Once it is seen that, in fact, CPG wanted to be released, the evidence for which has not been rebutted, PRPTC’s imaginative 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 but also to do so when there was every prospect that TCMS support would be withdrawn. Mr Jeffrey Chua had informed Ms Sylvia Lim/Ms How that AIM would be terminating the TCMS contract with the TC. As highlighted during the trial and in the Closing Submissions, the MA is not required to provide the TCMS.²³ FMSS was prepared to undertake and did undertake the task of coming up with an alternative to the TCMS.²⁴ It is also no secret that the Town Councillors trusted Mr Danny Loh and Ms How, the people behind FMSS, to get them through this critical transitional period when both the incumbent MA and the TCMS system provider were withdrawing their services.
16. With respect to Mr Low’s email of 9 May 2011, PRPTC’s reliance on the words “*will appoint*” is a gross misrepresentation of the e-mail which in fact states, “*We will appoint managing agent to manage the town instead of self management*”.²⁵ The issue was not about appointing FMSS but about having an MA instead of self-management in the event of the contingency taking place.²⁶
17. The Plaintiffs allege that Mr Low wished to get rid of CPG and appoint FMSS instead so that he could benefit his political supporters.²⁷ On 10 May 2011, Ms Cynthia Phua, the former chairman of ATC was reported by the media to have expressed her concerns about the employees of ATC being afraid of losing their jobs to which Mr Low had responded by saying that priority for the new

²¹ PRPTC’s Closing Submissions at [93].

²² PRPTC’s Closing Submissions at [109] to [111].

²³ D1-D5’s Closing Submissions at [230].

²⁴ AEIC of Ms How at [93], 4 BA 1347; at [109] to [111], 4 BA 1352 to 1353; AEIC of Mr Yeo Soon Fei at [34], 4 BA 1437; at [38], 4 BA 1439; AEIC of Ms Serene Loi at [3] to [11], 4 BA 1453 to 1455.

²⁵ 8 CB 5017.

²⁶ AEIC of Ms Sylvia Lim, at [35], 2 BA 194; AEIC of Mr Low, at [45], 2 BA 355; AEIC of Mr Pritam Singh, at [13], 2 BA 876; 16.10.2018 NE, Pg 52 L 5 to 25, Pg 53 L 1 to 11; 19.10.2018 NE, Pg 17 L 22 to 25, Pg 18 L 1 to 4.

²⁷ PRPTC’s Closing Submissions at [79] and [82].

- management of AHTC “will go to those who are already working with Aljunied Town Council”²⁸ i.e. the old staff under the previous management of ATC under PAP. On the Plaintiffs’ reasoning, these staff would be PAP supporters and there would be no reason for Mr Low to offer to hire them.
18. Mr Low spoke to Ms How to see if she and Mr Danny Loh would be willing to set up a company to provide MA services.²⁹ This was entirely consistent with his contingency plan for what to do if CPG was to pull out.³⁰ The setting up of FMSS was part of the contingency plan. Whether this plan would have to be activated or not would only have to be decided if CPG was to pull out. There was therefore never any assurance that FMSS will be appointed as MA and there is no evidence to such effect.³¹ The evidence of Ms How supports the foregoing.³²
19. The Plaintiffs claim, which is wholly without any evidential support, is that CPG left as MA when asked to do so by the WP MPs.³³ Given that there is a contract with 2 years to run, CPG would not have left without seeking any recourse or compensation, which they did not. Not only was no claim made, CPG thanked the TC for agreeing to release them.³⁴
20. The 13 May Letter³⁵ has been addressed in D1-D5’s Closing Submissions at [112] to [116]. PRPTC relies on the sentence, “*we have been instructed by the Elected Members of Parliament for Aljunied GRC and Hougang SMC to arrange for the taking over of the management of Aljunied Town Council and Kaki Bukit Precinct*”. PRPTC’s case at trial that this gives notice to CPG that the team at HTC would be taking over from CPG is without any basis:
- (a) The letter is not addressed to CPG but to the Secretary of Aljunied Town Council who was Mr Jeffrey Chua at that time.
 - (b) The letter read as a whole deals with the transfer of data and documents of residents. This was for purposes of the TC’s functions, such as collecting S&CC charges.

²⁸ See Trial Exhibit marked as “1D3”.

²⁹ D1-D5’s Closing Submissions at [104].

³⁰ D1-D5’s Closing Submissions at [104].

³¹ PRPTC’s Closing Submissions at [86].

³² AEIC of Ms How at [48] to [54], 4 BA 1336 to 1338.

³³ PRPTC’s Closing Submissions at [93] to [107], [123], and [192].

³⁴ D1-D5’s Closing Submissions at [121].

³⁵ PRPTC’s Closing Submissions at [93] to [107]. Unlike PRPTC, AHTC does not run the case that the 13 May 2011 letter is evidence of the elected MPs informing CPG that it was going to be replaced.

- (c) The timing and contents of this letter are consistent with it being part of the contingency plan. Based on Mr Low's past experiences, he was concerned that if CPG were to leave, the Town Councillors would be left without the necessary information that they require to collect S&CC charges which are critical for the functioning of the TC.³⁶
- (d) Just 3 days before on 10 May 2011, Ms Cynthia Phua, the former chairman of ATC was reported by the media to have expressed her concerns about the employees of ATC being afraid of losing their jobs. This concern could only have arisen if Ms Phua had been informed that CPG was exiting as the MA.³⁷
- (e) It was in response to Ms Phua's concerns (as set out in [17] above) that Ms How requested on behalf of HTC for the particulars and contact numbers of the staff at ATC as per the last paragraph of the 13 May Letter.³⁸

PRPTC's interpretation of the evidence is without basis and should be rejected by this Honourable Court.

21. As for Mr Low's e-mail sent on 19 May 2011, he had explained this in his AEIC as follows:

*"... The above e-mail was sent before it was confirmed that CPG wished to be released from the MA contract. As such, when I said that Ms How's company will be appointed as MA, I was referring to the contingency of appointing her company in the event that CPG did not wish to continue. It was my belief at that time that this would come to pass."*³⁹

22. Under cross-examination, Mr Low's evidence remained that his e-mail of 19 May 2011 was "*all [written] in the context of when CPG is out.*"⁴⁰ In any event, the appointment of FMSS as MA was not a decision for Mr Low to make.

23. With respect to Mr Low's e-mail sent on 26 May 2011 at 11.46pm, it must be pointed out that this email was not put to Mr Low during cross-examination. PRPTC has mischaracterised the wording in Mr Low's e-mail as "*further evidence*" of the decision to replace CPG.⁴¹ The wording in Mr Low's e-mail which PRPTC has highlighted is a reproduction of the wording used by Ms How in her e-mail

³⁶ 18.10.2018 NE, Pg 54 L 9 to 25, Pg 55 L 1 to 3, Pg 60 L 6 to 15.

³⁷ D1-D5's Closing Submissions at [110] to [111].

³⁸ 18.10.2018 NE, Pg 57 L 13 to 25, Pg 58 L 1 to 11.

³⁹ AEIC of Mr Low, at [58(a)], 2 BA 360.

⁴⁰ 16.10.2018 NE, Pg 115, L 14 to 15.

⁴¹ PRPTC's Closing Submissions at [111].

sent on 26 May 2011 at 4.09pm to Mr Low, Ms Sylvia Lim and Mr Yaw Shin Leong as Chairman/Vice-Chairmen.⁴² Mr Low was simply updating all the MPs of Ms How's message to confirm the meeting on 30 May 2011 which was the first official meeting between CPG and the incoming WP MPs.⁴³ It is pertinent to note that CPG had not yet officially announced its intention to withdraw as MA at this point. As such, Mr Low stated that "*this meeting is more an introductory meeting to acquaint ourselves with the Town Council, to have a look around the office and to set some understanding on how the current MA will work with the new administration until handover.*"⁴⁴ Read in context, it is clear that "*the new administration*" refers to the incoming WP MPs and the "*handover*" refers to outgoing PAP MPs handing over the administration of the TC to the new administration. Mr Low was informing the elected MPs that one of the intended outcomes of the 30 May 2011 meeting was that parties should reach an understanding of how CPG will have to work with both the incoming MPs and the outgoing MPs in the interim period.

24. It would be apparent from the above, and which is a common theme in these proceedings, that PRPTC's case is built on giving the evidence its own specious interpretation without calling any factual witnesses to support its assertions. In fact, it is submitted that an adverse inference should be drawn against the Plaintiffs for not calling Mr Jeffrey Chua to testify if the Plaintiffs wished to rebut the evidence of the 5 Town Councillors that CPG wished to be released.
25. The Plaintiffs alleged during the trial that no tender was held due to the overriding importance placed by Mr Low in retaining the Hougang staff.⁴⁵ The Plaintiffs' case was that an alternative party, other than FMSS, would not have been agreeable to employing the Hougang staff. Mr Low disagreed and explained that a tender could still have been called with a condition for the Hougang staff to be employed if that were the case.⁴⁶ AHTC has misrepresented this evidence of Mr Low in its submissions.⁴⁷ Again, it bears highlighting that it was not Mr Low's decision on whether to call a tender or not, or on what terms, nor did he ever purport to do so. The Plaintiffs' case on why a tender was not called is entirely speculative and unsupported by any evidence. The reasons for not calling a tender have been

⁴² 8 CB 5123.

⁴³ AEIC of Mr Low at [47], 2 BA 355, 18.10.2018 NE, Pg 110 L 5 to 9.

⁴⁴ 8 CB 5122.

⁴⁵ 17.10.2018 NE, Pg 26 L 4 to 14.

⁴⁶ 17.10.2018 NE, Pg 26 L 4 to 14.

⁴⁷ AHTC's Closing Submissions at [4.2.6].

- spelt out and documented in the 2nd AHTC Meeting on 4 August 2011. Even if the Plaintiffs do not agree with these reasons, that cannot support an allegation of impropriety.
26. The Plaintiffs referred to approaches made from 2 facilities management companies to Mr Low.⁴⁸ Mr Low had given evidence that these companies would not be able to manage a HDB town as their experience was in facilities management and property management which are very different from managing a HDB town.⁴⁹ It is not disputed that both these companies had no MA experience.⁵⁰ In Mr Low's mind, if FMSS were to be appointed as MA, it must be on the condition⁵¹ that FMSS takes over all the staff of HTC which had 20 years' experience in HDB township management⁵² through its management of Hougang SMC.
27. AHTC has misrepresented the evidence in stating that none of the elected Town Councillors had inspected the CPG Contract even as of 12 June 2011.⁵³ Ms Sylvia Lim had confirmed on cross-examination that whilst she is unsure of when exactly she first inspected the CPG Contract, it was likely this took place sometime in early June or by the second week of June 2011 at the latest.⁵⁴ The elected MPs had not made the knee-jerk reaction to accept CPG's request for release on the 30 May 2011 meeting itself. Ms Sylvia Lim testified that she had called for a copy of the CPG Contract which she reviewed and was therefore aware of AHTC's contractual position under the CPG Contract.⁵⁵ This issue of CPG's release was discussed further in early June 2011⁵⁶ and the decision to accept CPG's request for release was only made and communicated to Mr Jeffrey Chua at the 1st AHTC Meeting on 9 June 2011.⁵⁷ This Honourable Court's attention is drawn to the transcripts of the recording of the meeting by Ms How which show that both Mr Jeffrey Chua of CPG and the Town Councillors were proceeding on the mutual understanding that CPG would be released.⁵⁸ Significantly, the Plaintiffs have been silent about this audio-recording in their submissions.

⁴⁸ AHTC's Closing Submissions at [4.2.7]. PRPTC's Closing Submissions at [250].

⁴⁹ 16.10.2018 NE, Pg 118 L 2 to 7.

⁵⁰ 12 CB 8390; 12 CB 8396

⁵¹ 17.10.2018 NE, Pg 7 L 12 to 15.

⁵² 16.10.2018 NE, Pg 118 L 10 to 12.

⁵³ AHTC's Closing Submissions at [4.5.6].

⁵⁴ 19.10.2018 NE, Pg 2 L 6 to 7, L 18 to 25, Pg 3 L 1 to 9.

⁵⁵ 19.10.2018 NE, Pg 49 L 23 to 25, Pg 50 L 1 to 20.

⁵⁶ AEIC of Ms Sylvia Lim at [53] to [54], 2 BA 200.

⁵⁷ AEIC of Ms Sylvia Lim at [56], 2 BA 200 to 201.

⁵⁸ AEIC of Ms Sylvia Lim, "Tab 1" of Exhibit "SL-1", 2 BA 280 to 281 and 2 BA 306 to 307.

(2) Authority was delegated to Ms Sylvia Lim

28. It is not disputed that the Town Councillors had delegated the authority to Ms Sylvia Lim who therefore had the authority to decide that 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. Further, Ms Sylvia Lim had the requisite authority to approve payments to FMSS for its management of Hougang SMC which was now part of AHTC. 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.⁵⁹
29. During the trial, the Plaintiffs' cross-examination proceeded on the basis that the elected Town Councillors deliberately concealed material facts from the appointed Town Councillors by not including them in some of the email exchanges and meetings.⁶⁰ This is not true. All Town Councillors, elected and appointed, would meet at the regular TC Meetings where key matters were discussed and agreed. In between these TC Meetings, the elected Town Councillors would either meet or discuss via email about issues pertaining to the TC.⁶¹ The elected Town Councillors operated on the understanding that they, as elected MPs, were ultimately responsible and accountable to the residents. The role of the appointed Town Councillors was to assist them. It is in this context that the appointed Town Councillors were not included in some of the email exchanges and meetings where the elected Town Councillors were involved.
30. The above understanding of the elected Town Councillors is consistent with the parliamentary intention in the setting-up of TCs. As stated by then-Minister for National Development Mr S. Dhanabalan, it is intended that TCs be given as much latitude as possible for them to manage their areas and that "*the whole idea of this exercise is for people to be careful in the choice of their MPs as well as in the choice of the Councillors, in the sense that if the MP is good, he could choose good, honest, competent Councillors to help him*".⁶² This was echoed by the then Senior Minister of State for National Development, Ms Grace Fu, during the

⁵⁹ D1-D5's Closing Submissions at [134].

⁶⁰ 19.10.2018 NE, Pg 69 L 8 to Pg 76 L 10, Pg 96 L 3 to Pg 97 L 13 Pg 129 L 17 to 142 L 7; 22.10.2018 NE Pg 133 L 10 to Pg 147 L 24; 25.10.2018 Pg 51 L 9 to Pg 57 L 4, Pg 74 L 1 to Pg 82 L 1, Pg 175 L 8 to 22; 29.10.2018 NE Pg 10 L 5 to Pg 11 L 7, Pg 79 L 2 to Pg 81 L 12, Pg 106 L 19 to Pg 108 L 20

⁶¹ Annex 1 of the Minutes of the 2nd AHTC Meeting records that "*Chairman indicated that she had consulted the elected members and signed a letter of intent in June 2011 to facilitate preparation works*", see 18 CB 13207. See also 25.10.2018 NE, Pg 37 L 23 to 24, Pg 39 L 5 to 7, Pg 54 L 2 to 6, Pg 75 L 8 to 9, Pg 185 L 20 to 25, Pg 186 L 1 to 5, Pg 190 L 10 to 13, Pg 193 L 24 to 25, Pg 194 L 1 to 13.

⁶² CA 114 at [46], Tab 34 of the D1-D5BOA. See also MND Report at [4], 24 CB 18530 to 18531.

Parliamentary sitting on 17 November 2008 in response to a question on whether TCs should invest in risky and complex financial products after certain TCs had suffered losses of \$12 million from such investments:

*“... if you go back to the objective of setting up Town Councils some 20 years ago, the idea was really to **devolve estate management functions to the local MP** and, with that, it comes along the responsibility and accountability for all the decisions relating to that, including decisions like what are the charges that you should impose, how do you intend to run the Town Council functions, how you should provide for the sinking fund needs over the long run. **We cannot cut out one part for the other because if you do that, it will be making the Town Councils impossible to operate.**”⁶³*

(emphasis added)

31. The provisions of the TCA also reflect the greater responsibilities placed on the elected members, including their choice of whom to appoint as councillors to assist them. For instance, Section 11 of the TCA provides for the Chairman of the TC to have a casting vote at any meeting of a TC if the votes are equal (this is significant as it allows the elected Town Councillors to have the final say on how the TC should be run), while Section 14 of the TCA provides that the Chairman may determine the conditions of the tenure of office of appointed Town Councillors and may revoke their appointment at any time without assigning any reason.
32. Even though authority had been delegated to Ms Sylvia Lim during the interim period, in abundance of caution, her decisions were 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. This inconvenient fact for the Plaintiffs has given them cause to run an unpleaded case that there was non-disclosure of matters relating to FMSS at the 1st AHTC Meeting on 9 June 2011 prior to the delegation of authority.⁶⁴
33. Firstly, the suggestion that there was non-disclosure is based on the assumption that there was a requirement to disclose certain facts. The Plaintiffs have not provided any basis for this allegation. Secondly, the alleged matters that were not disclosed at the 9 June AHTC Meeting were disclosed by the time of the 4 August AHTC Meeting when Ms Sylvia Lim’s decisions with respect to FMSS were confirmed by the Town Councillors at the meeting.⁶⁵

⁶³ Parliamentary Debates, Official Report (17 November 2008) vol 85, sitting no. 5, Tab 60 of the D1-D5BOA.

⁶⁴ AHTC’s Closing Submissions at [4.6.1] to [4.6.6], PRPTC’s Closing Submissions at [128] to [130].

⁶⁵ 18 CB 13174 to 13181, 8 CB 5435 to 5437, and 18 CB 13201 to 13211.

34. AHTC continues to claim that there was “*material information withheld from the Town Councillors*” at the 2nd AHTC Meeting on 4 August 2011 but the following evidence **has not been rebutted** by the Plaintiffs:

- (a) That the Town Councillors knew that Mr Danny Loh and Ms How were the directors and owners of FMSS.⁶⁶
- (b) Ms Sylvia Lim had explained that whilst a copy of the Letter of Intent was not physically annexed to her Report of 3 August 2011 which was considered at the 4 August TC Meeting, the contents of the letter save for its annexure were reproduced in the Report.⁶⁷ Further, it is an undeniable fact that FMSS had incurred expenses for Hougang SMC and it had to be paid for these expenses.⁶⁸
- (c) CPG had requested to be released.⁶⁹
- (d) AIM terminated the TCMS.⁷⁰
- (e) There was urgency:⁷¹ (i) In what was an unprecedented takeover of a GRC from the PAP, the WP MPs had to take over the township management for 5 divisions under Aljunied GRC and one SMC under Hougang in less than 3 months, by 31 July 2011; (ii) the incumbent MA, CPG only confirmed that it wanted to be released at a meeting on 30 May 2011; and (iii) AIM made known of its intention to terminate the TCMS, through Mr Jeffrey Chua in early June 2011, which was a software system critical to the proper administrative functioning of the TC. Significantly, following a review that it undertook, MND had itself acknowledged that the timelines for handovers were insufficient especially where the shortness of time is brought about by the termination of existing services initiated by contractors or key appointment holders of the TC due to a change in leadership.⁷² In this regard, PRPTC has no basis to allege that rule 74(18) of the TCFR was breached as the waiver was fully justified.⁷³

⁶⁶ AHTC’s Closing Submissions at [4.8.2] to [4.8.9]. See D1-D5’s Closing Submissions at [179(a)].

⁶⁷ 22.10.2018 NE, Pg 130 L 18 to 25, Pg 131 L 1 to 4.

⁶⁸ AHTC’s Closing Submissions at [4.8.10(b) and (c)]. See D1-D5’s Closing Submissions at [128] to [136].

⁶⁹ AHTC’s Closing Submissions at [4.10]. See [7] to [27] above.

⁷⁰ AHTC’s Closing Submissions at [4.11]. The unrebutted evidence relating to this is elaborated at [42] to [45] below.

⁷¹ AHTC’s Closing Submissions at [4.12].

⁷² D1-D5’s Closing Submissions at [150].

⁷³ PRPTC’s Closing Submissions at [196].

- (f) AHTC was not worse off under the 1st MA Contract. As explained at [55] to [57] below, the Plaintiffs have not rebutted the evidence that FMSS was engaged at the same prevailing rates as CPG for Aljunied GRC, such that the MA fees that would be payable by AHTC would be no more than what it would have had to pay if CPG had continued as MA.⁷⁴ Likewise, AHTC was paying FMSS for Hougang SMC based on the annual staff cost for the previous year as per the audited Financial Statements of HTC.⁷⁵
35. PRPTC alleges that there were attempts to hide from CPG the appointment of FMSS and the payment to FMSS for its costs incurred for Hougang SMC.⁷⁶ However, given the unrebutted evidence that CPG wished to be released, there was no reason to hide these facts which in any case would become public information in due course. Without the evidence of CPG at the trial, PRPTC's submissions are pure speculation about what CPG knew or did not know and what Mr Jeffrey Chua could or could not have done as the Interim Secretary of AHTC. To attempt to run a case during the trial, as PRPTC's Counsel has done, that Ms Sylvia Lim had caused Mr Jeffrey Chua to be in breach of his duties as Secretary, is simply without basis. Ms Sylvia Lim's responses on the stand to this unpleaded case, which required her to recollect facts more than 7 years ago, must be looked at in the context that the Town Councillors had delegated full authority to Ms Sylvia Lim to make these decisions. Mr Jeffrey Chua who attended the 9 June TC Meeting was aware of this delegation. There is no reason for Mr Jeffrey Chua to be concerned about or react to these decisions. There is nothing to suggest that he did so even after the fact of FMSS's appointment without a tender for the 1st MA Contract became public knowledge.
36. PRPTC has alleged that Ms Sylvia Lim had admitted that the elected Town Councillors had breached their duties for not disclosing FMSS's rates at the 2nd TC Meeting. It is denied that not disclosing FMSS's rates is a breach. Ms Sylvia Lim's response came about after a long line of confusing questions that ignored the following facts:
- (a) FMSS was appointed on the same rates and the same terms as CPG under CPG's 2nd year fee structure. This is explained at [179(c)] of D1-D5's Closing Submissions.

⁷⁴ 22.10.2018 NE, Pg 132 L 3 to 5, Pg 135 L 18 to 22.

⁷⁵ D1-D5's Closing Submissions at [132].

⁷⁶ PRPTC's Closing Submissions at [152] to [164].

- (b) Given the above fact, there was no obligation for the elected Town Councillors to disclose the specific rates.
- (c) The entire exercise of seeking the Town Councillors' confirmation of Ms Sylvia Lim's decision to appoint FMSS was done out of an abundance of caution.⁷⁷ The decision to appoint FMSS at those rates would be valid independent of any confirmation given by the Town Councillors as the authority had been delegated to her.
37. PRPTC has also alleged that there was a breach of the law as AHTC's approval was not obtained for the appointment of FMSS for the period between 15 June 2011 and 14 July 2011.⁷⁸ This is incorrect. The Report of 3 August 2011 which was circulated to the Town Councillors and discussed at the 2nd AHTC Meeting on 4 August 2011, made mention of the fact that FMSS was taking over the staff of the former HTC on 15 June 2011. It was further mentioned that FMSS's MA fees would be based on the annual staff cost as per HTC's audited accounts.⁷⁹ It is the Town Councillors' case that these statements in the Report referred to and were understood by all the Town Councillors to mean that FMSS was appointed as MA for Hougang SMC on 15 June 2011. PRPTC has not rebutted this evidence of the Town Councillors' understanding at the meeting. It has instead focused on the lack of express wording reflecting the Town Councillors' agreement to this appointment in Annex 1 of the Minutes of the 2nd AHTC Meeting. It is submitted that the fact that it was not expressly stated does not mean that the Town Councillors did not agree with the appointment. This was also Ms Sylvia Lim's explanation of how the Report was understood by the Town Councillors.⁸⁰
38. In any case, Ms Sylvia Lim had the delegated authority to make the appointment of FMSS as submitted at [28] above. Even on PRPTC's case that the Minutes do not record the approval, it cannot amount to a breach.
- (3) **No bidders for the public tender for the 2nd MA Contract and 2nd EMSU Contract other than FMSS**
39. The fact that there were no bidders other than FMSS in the tender that was called for the 2nd MA Contract considerably weakens the Plaintiffs' case that the Town

⁷⁷ D1-D5's Closing Submissions at [177].

⁷⁸ PRPTC's Closing Submissions at [218].

⁷⁹ 8 CB 5436.

⁸⁰ 23.10.2018 NE, Pg 170 L 2 to 16, Pg 174 L 17 to 23.

- Councillors are in breach for not calling a tender for the 1st MA Contract. This undisputed fact only 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.
40. For the tender for the 2nd EMSU Contract in 2012, FMSS was the sole tenderer. One of the key commercial realities ignored by the Plaintiffs' accountants in their Reports is that many eligible contractors avoid working with opposition wards.⁸¹ The Town Councillors believe this to be the reason for CPG not wishing to continue as MA and for CPG and EM Services not wishing to continue as EMSU service providers, particularly in the later part of 2011 which was soon after the elections in May.
41. Faced with the incontrovertible fact that there were no bidders other than FMSS for the tender called for the 2nd MA Contract, PRPTC launched an unpleaded case at trial that due to the Defendants' alleged manipulation of events in 2011, FMSS's appointment under the 2nd MA Contract was a foregone conclusion.⁸² But this imaginative case cannot fly given the unrebutted evidence that it was CPG which wanted to be released from the MA Contract and did not wish to continue providing EMSU services.

(4) AIM terminated the TCMS

42. The Town Councillors' evidence on this is set out at [158] to [168] of D1-D5's Closing Submissions and **stands unrebutted.**
43. As with the case for the CPG MA Contract, the Plaintiffs conveniently dismiss the Town Councillors' evidence that the preparatory plans in contemplation of the need to upscale HTC's computer system was a contingency plan made in anticipation of TCMS's termination.⁸³ It is untrue that the WP MPs had no basis to contemplate that TCMS would be terminated such that they would have to make their contingencies. As the Town Councillors had submitted,⁸⁴ the need for such contingencies was shaped by Mr Low's past experience in HTC with the computer services being terminated.⁸⁵

⁸¹ AEIC of Mr Low at [18] to [27] 2 BA 344 to 347, and [32] at 2 BA 349, AEIC of Mr Pritam Singh at [39], 2 BA 888.

⁸² PRPTC's Closing Submissions at [307] to [310].

⁸³ AHTC's Closing Submissions at [4.11] and PRPTC's Closing Submissions at [98] to [107].

⁸⁴ D1-D5's Closing Submissions at [160] to [168].

⁸⁵ AEIC of Mr Low at [23], 2 BA 346.

44. The Plaintiffs sought to rely on AIM's conduct in agreeing to the extensions requested to show that AIM would not have terminated the TCMS. AHTC had stated that AIM had "*gone out [of] its way*" to assist AHTC with the upscaling process.⁸⁶ PRPTC alleges that "*AIM had bent over backwards to help AHTC*".⁸⁷ The fact that AIM granted the extensions sought does not in any way diminish the unrebutted evidence that it was AIM that issued the notice of termination for the provision of TCMS on 22 June 2011. Faced with this evidence, PRPTC weaved another unpleaded case at trial that AIM issued this notice because it was told that its TCMS was no longer needed. This allegation is without basis. It is a fact that the Town Councillors did not have the capacity to produce an alternative to the TCMS.⁸⁸ Much of the subsequent audit issues that the Town Councillors faced were due to the pull out of the TCMS.⁸⁹ The WP MPs had never managed a GRC before and were heavily dependent on the system which the previous management of ATC was using. AIM, which was owned by the PAP, knew this. In what was clearly a political move, AIM pulled the plug on the TCMS.
45. In this regard, AHTC has misrepresented the evidence on the transcript record of Ms How's telephone conversation with KPMG's Ms Eng Chin Chin which took place in 2016.⁹⁰ AHTC relies on the words "*she doesn't want to extend*" used by Ms How during this conversation to allege that Ms Sylvia Lim did not want to use the TCMS provided by AIM. However, a review of the transcript will reveal that this was said in the context of Ms Sylvia Lim asking for a further interim extension from AIM to use the TCMS which by then had been terminated by AIM. The conversation leading up to this makes it clear that the TC's operations were affected by the lack of a computer system (i.e. the TCMS) and that the TC did not have an alternative system to replace the TCMS. Ms How had stated that the computer system used in Hougang was clearly inadequate for AHTC and it was not possible to modify/enhance it within one and a half months. It must be pointed out that the Plaintiffs cannot rely on their own interpretation of this recording given that they did not raise this portion of the transcript with Ms How at trial.⁹¹

⁸⁶ AHTC's Closing Submissions at [4.11.12] to [4.11.15].

⁸⁷ PRPTC's Closing Submissions at [137].

⁸⁸ AEIC of Ms How at [93] 4 BA 1347, at [109] to [111] 4 BA 1352 to 1353. AEIC of Mr Yeo Soon Fei at [34], 4 BA 1438, and [38] 4 BA 1439, AEIC of Ms Serene Loi at [3] to [11], 4 BA 1453 to 1456.

⁸⁹ D1-D5's Closing Submissions at [158] to [159].

⁹⁰ 28 CB 21925 to 21927. See also 29.10.2018 NE, Pg 311 L 10 to 13.

⁹¹ AHTC's Closing Submissions at [4.11.17].

(5) **CPG and EM Services did not wish to extend their contracts for provision of EMSU Services**

46. It is not in dispute that both the incumbent EMSU service providers, CPG and EM Services did not wish to extend their contracts for the provision of EMSU services.⁹² Given this fact, it is hardly surprising that the Town Councillors chose to go with FMSS. The facts leading up to this decision are set out at [127] to [129] of Ms Sylvia Lim's AEIC which had not been rebutted by any evidence called by the Plaintiffs.

47. PRPTC's case in its Closing Submissions is that the Town Councillors somehow deliberately planned to not call a tender and appoint FMSS as the EMSU service provider. This imaginative case defies logic. 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. It is also undisputed that CPG only sent its letter declining to continue providing EMSU services on 14 September 2011, just 2 weeks from the expiry of its contract on 30 September 2011 when on the contemporaneous evidence, CPG had previously indicated its interest to continue. This is recorded in Ms Sylvia Lim's e-mail of 16 September 2011 (12.46am) to the Town Councillors which states that they were briefed of the "verbal agreement" at the 3rd AHTC Meeting on 8 September 2011.⁹³

48. PRPTC has alleged that Rule 76(4) of the TCFR has been breached because FMSS was involved in making a recommendation for its appointment as EMSU service provider. PRPTC alleges that Ms Sylvia Lim had admitted to such a breach.⁹⁴ However, it is clear from the context of the cross-examination that Ms Sylvia Lim disagreed with the Plaintiffs on the meaning of the word "recommend" and the manner with which it was being used. Therefore, Ms Sylvia Lim cannot be taken to have admitted to this allegation in responding as follows:

- "Q "Yes. So as drafted by them, they were recommending that they provide the services referred to there; yes?
 A **Based on the wording**, yes."⁹⁵ (emphasis added)

⁹² PRPTC's Closing Submissions at [284], D1-D5's Closing Submissions at [210].

⁹³ The relevant document should be Ms Sylvia Lim's email of 16 September 2011 and not the Minutes as stated in D1-D5's Closing Submissions at [210].

⁹⁴ PRPTC's Closing Submissions at [289].

⁹⁵ 23.10.2018 NE, Pg 174, L 21 to 24.

(6) **FMSS, FMSI and the other Third Party Contractors carried out the services for which they were contracted for**

49. 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. AHTC's claim for the full amount of the fees paid, even when no actual losses were suffered, is therefore an absurdity.

50. Given the fact that neither of the Plaintiffs' accountants were able to say that the services were not provided by FMSS/FMSI, there was nothing in these reports to support the Plaintiffs' claim for \$33.7 million. The Honourable Court's attention is drawn to [70] to [89] of D1-D5's Closing Submissions where these matters are elaborated.

51. As far as the third party contractors are concerned, including LST, it has never been the Plaintiffs' case that they did not perform the services for which they were contracted. For the Plaintiffs to succeed in their claims in respect of the payments made to the third party contractors, they require the Honourable Court to question the Town Councillors' decisions to appoint specific contractors for specific jobs and substitute the Town Councillors' decision with of the Court's.⁹⁶

(7) **Payments to FMSS, FMSI and the Third Party Contractors were at the same rates as previous contractors and/or were reasonable**

52. Much ado has been made by the Plaintiffs about the rates at which FMSS, FMSI and the other third party contractors were paid by AHTC. The Town Councillors have given evidence⁹⁷ 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. Where the prices paid are higher, particularly for the third-party contractors, the Town Councillors have provided their explanations for doing so. For example, in the case of LST and Rentokil, these contractors were better than the cheaper alternatives. Further, there is also evidence of other TCs adopting a similar approach such as the former ATC appointing a contractor that was not the lowest tenderer to construct an elderly and senior citizens corner and upgrade an existing children playground as it had the "*highest play value per equipment*".⁹⁸ As has been previously highlighted, the latitude given to MPs to manage their TCs will result in disparities in what TCs pay their contractors. The

⁹⁶ See [89] to [94] below.

⁹⁷ D1-D5's Closing Submissions at Issues (II), (III) and (IV).

⁹⁸ AEIC of Ms Sylvia Lim at [210], 2 BA 256. See "Tab 4" of Exhibit "SL-1".

following extract shows that this was also Parliament's intention when introducing the TCA:

*"Basically, the idea is to allow Town Councils to make the decisions as to the kind of services they should buy and what they should pay for these services, whether the payments are to companies or to individuals."*⁹⁹

53. In fact, back in 1988 during the pilot phase of Town Councils in Ang Mo Kio, it was reported by The Straits Times on 8 November 1988 that *"town councils will be given some flexibility in handling money matters when rules governing their operations are gazetted soon"* such that *"they need not accept the lowest tender for a contract if the council is unanimous about picking someone else – so long as they have good reasons for doing so."*¹⁰⁰ During this pilot phase, one of the Town Councillors with Ang Mo Kio South TC was reported to have shared the difficulties of having to apply a strict rule of accepting the lowest bid during the two-year experimental scheme which resulted in the TC having to accept the lowest bidder even though there was a better contractor at a higher price.¹⁰¹
54. Given the above, the Plaintiffs and in particular, PRPTC, has no basis to allege that AHTC has "suffered losses" simply because the Town Councillors appointed a contractor who was not the cheapest.

FMSS's rates under the 1st MA Contract and 1st EMSU Contract

55. The Plaintiffs argued that FMSS charged higher prices than CPG would have charged for managing AHTC.¹⁰² For reasons already set out at [229] to [231] of D1-D5's Closing Submissions, this submission is a non-starter. The inclusion of Hougang SMC will result in an addition of 8,881¹⁰³ dwelling units to the 48,886¹⁰⁴ dwelling units managed by ATC – an increase of 18%. Even on KPMG's computation, the additional cost of \$687,660 is more than 10% of the original contract sum of \$4,225,176.¹⁰⁵ The Town Councillors submit that this would allow CPG to re-negotiate the MA fees under Clause 10.5 read with Clause 10.4 of the Conditions of Contract. PRPTC's reading of Clause 10.4 is that CPG can be compelled to manage the entire AHTC even if the increase was more than 10%. Given the significant burden that an increase of almost 9,000 dwelling units will

⁹⁹ Parliamentary Debates, Official Report (29 June 1988) vol 51 at col 441–444, Tab 48 of the D1-D5BOA.

¹⁰⁰ 27 CB 20791.

¹⁰¹ 27 CB 20791.

¹⁰² AHTC's Closing Submissions at [4.13.1] to [4.13.7], and PRPTC's Closing Submissions at [204] to [212].

¹⁰³ KPMG Report at [5.5.9], 26 CB 19909 to 19910.

¹⁰⁴ 29 CB 22700.

¹⁰⁵ AEIC of Ms Sylvia Lim at [106] to [109], 2 BA 218 to 220.

- impose on CPG, there is no basis for PRPTC to proceed on the assumption that CPG will carry on as MA on the existing rates.
56. PRPTC has also misrepresented the evidence in stating that Ms Sylvia Lim had accepted that there was no limit to the number of new staff FMSS could hire.¹⁰⁶ While Ms Sylvia Lim had accepted that there was no numerical limit, she made it clear that there were limits imposed: “*the limit is in terms of the function and the time period. So this would only cover up till 15 July, when the MA contract kicks in in full steam*”.¹⁰⁷ Clause 3(a) of the Letter of Intent states that FMSS “*shall engage new staff as necessary for the preparation of handing and taking over*”.¹⁰⁸ Ms Sylvia Lim further testified that she acted responsibly in so doing as it was necessary for FMSS to have some discretion in this regard as she did not know whether it is possible to set a numerical limit. In any case, she considered that this was a practical arrangement that would only apply for a limited period up to 15 July 2011 and the invoice that was presented to her for payment would show the justification.¹⁰⁹ In line with Ms Sylvia Lim’s assessment that FMSS would have acted responsibly in exercising this discretion,¹¹⁰ the June 2011 Invoice shows that FMSS was reimbursed only a sum of \$23,225.13 by AHTC for the staff cost of 3 Managers, 5 Property Officers, and 2 Admin Assistants that assisted in the takeover exercise.¹¹¹
57. PRPTC had grossly exaggerated the evidence in submitting that the WP MPs had lied with respect to the media statement of 5 August 2011.¹¹² The Town Councillors’ position has always been that: (i) AHTC did not incur additional fees on appointing FMSS which took over the management of ATC and HTC at a “steady state”; and, (ii) the additional expense of \$89,150 incurred from having to hire additional staff during the interim period to prepare for the handover¹¹³ was not a material detail because it was a one-off expense.¹¹⁴ This was Ms Sylvia Lim’s explanation during a protracted cross-examination which essentially involved a disagreement between PRPTC’s Counsel and Ms Sylvia Lim on what the term “MA fees” as used in the media statement constitutes. It was only on the basis put

¹⁰⁶ PRPTC’s Closing Submissions at [213].

¹⁰⁷ 19.10.2018 NE, Pg 160 L 2 to 5.

¹⁰⁸ 8 CB 5229.

¹⁰⁹ 19.10.2018 NE, Pg 160 L 18 to 25, Pg 161 L 1 to 20.

¹¹⁰ 19.10.2018 NE, Pg 163 L 15.

¹¹¹ 33 CB 25739. See also 19.10.2018 NE, Pg 180 L 19 to 25, Pg 181 L 1 to 9.

¹¹² PRPTC’s Closing Submissions at [243] to [247].

¹¹³ AEIC of Ms Sylvia Lim at [107], 2 BA 219.

¹¹⁴ 23.10.2018 NE, Pg 86 L 17 to 22, Pg 87 L 25, Pg 88, L 1 to 7.

by PRPTC's Counsel that the MA fees included the additional sum of \$89,150 that Ms Sylvia Lim agreed that the contents of the media statement were not correct. However, the Town Councillors reject this self-serving interpretation of the media statement by the Plaintiffs.

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

58. 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.¹¹⁵ These allegations are without merit.
59. Ms How had explained on cross-examination (mention of which was omitted in the Plaintiffs' Closing Submissions¹¹⁶) that the jump in FMSS's revenue arose from the by-election **in 2013** through which PE came under AHTC's management.¹¹⁷ 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 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.**
60. AHTC's operating expenditure increased from about \$35.5 million to about \$44.7 million from FY 2012/2013 to FY 2013/2014. This increase of about \$9.2 million was brought about by an increase in number of households of nearly 15,000 households with the inclusion of PE to the existing 57,000 households managed by AHTC.¹¹⁸ The increase in operating expenses of \$9.2 million should be contrasted with the increase in payments to FMSS of about \$1.7 million.¹¹⁹ Accordingly, there is no merit to the Plaintiffs' suggestion that AHTC's deficit was caused by the increase in payments to FMSS.
61. PRPTC questions the T&C Committee's acceptance of Ms How's response that it was not possible to provide a projection of AHTC's bottom line based on FMSS's rates.¹²⁰ Ms How had testified that short of doing it manually there would have been immense difficulties in providing the projections mainly because the

¹¹⁵ AHTC's Closing Submissions at [6.3.4], PRPTC's Closing Submissions at [323].

¹¹⁶ AHTC's Closing Submissions at footnote 158.

¹¹⁷ 29.10.2018 NE, Pg 300, L 15 to 22.

¹¹⁸ See the Chairman's message in the Financial Statements for FY 2013 at 24 CB 17989.

¹¹⁹ 24 CB 18005. See also 24 CB 18031 under "General and administrative expenditure" – "Managing Agent's Fees" of \$5,246,867 paid in 2013 and \$6,804,459 paid in 2014.

¹²⁰ AHTC's Closing Submissions at [6.4.1] to [6.4.4], PRPTC's Closing Submissions at [320] to [323].

upscaling process of the computer system had not yet stabilized. The data concerning the resident's accounts, which the National Computer Systems Pte Ltd (also known as "NCS") had transferred, was incomplete and this was vital information needed to develop the upscaled system properly.¹²¹ A computer system that was running smoothly was crucial for capturing the TC's expenses so that the system could thereafter be used for analysis such as budgeting.¹²² Taking PRPTC's case at its highest,¹²³ even if FMSS was able to provide a projection at the time, the projection would not have led the Town Councillors to anticipate that AHTC's budget surplus would have been "wiped out" because AHTC's deficit was not a consequence of FMSS's increased rates as abovementioned.

62. Where PRPTC's allegations in respect of the 2nd EMSU Contract are concerned,¹²⁴ the T&C Committee was cognizant of the 8.5% increase in FMSS's tender price. The considerations were discussed at a T&C Committee meeting on 21 June 2012.¹²⁵ As per the Tender Evaluation Report dated 31 July 2012, the T&C Committee subsequently decided that the increase was reasonable for the following reasons:

- (a) The TC had no major issues with the performance of FMSS as EMSU service providers for Aljunied GRC;
- (b) The rate tendered of 8.5% higher than the existing rate was contrasted with the then inflationary environment of 5 to 6% increase annually; and,
- (c) The rate tendered would be fixed for the next 3 years.¹²⁶

Alleged Cost Difference Between CPG and FMSS under the 2nd MA Contract

63. AHTC submits that the alleged cost difference between appointing FMSS under the 2nd MA Contract and retaining CPG is the sum of \$746,000 at the minimum.¹²⁷ However, the assumptions which KPMG adopted to compute this sum are the same as those adopted in relation to the alleged cost difference under the 1st MA Contract. As submitted at [230] of D1-D5's Closing Submissions, this approach is flawed primarily because KPMG has assumed that CPG would have continued to charge the same rates despite the material change in circumstances in 2011

¹²¹ AEIC of Ms How at [56], [115] to [117], 4 BA 1338, 1354 to 1355.

¹²² 29.10.2018 NE, Pg 290 L 16 to Pg 293 L 5.

¹²³ PRPTC's Closing Submissions at [323].

¹²⁴ PRPTC's Closing Submissions at [328] to [329], [353] to [355], [357] to [359].

¹²⁵ 6 CB 3488.

¹²⁶ 6 CB 3486.

¹²⁷ AHTC's Closing Submissions at [6.7].

where HTC and ATC were amalgamated to form AHTC and TCMS was terminated.¹²⁸

Payment of Project Management Fees

64. AHTC's case that overpayments to FMSS in the form of Project Management Fees were blindly paid as a result of the "System"¹²⁹ is a new case that was unpleaded and not raised until AHTC's Closing Submissions.¹³⁰ There were no blind payments as AHTC had earlier made the decision on whether the works in question were project management or MA services. On the basis of this decision, a project management team would be involved and an architect or quantity surveyor would then certify the progress payments due to the third party contractors. The Plaintiffs dispute the payment of Project Management Fees based on their own interpretation of what works fall under the scope of "Project Management". This has been dealt with at [143] to [144] of D1-D5's Closing Submissions.

(8) Appointments and payments were in accordance with the processes of ATC and the TCA/TCFR

65. 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:

- (a) The key staff of the MA would hold key appointments in the TC in order to manage the TC. CPG's Managing Director, Mr Jeffrey Chua held the appointments of General Manager and Secretary of ATC. While KPMG sought to conveniently distinguish this by claiming that Mr Danny Loh and Ms How of FMSS were shareholders and therefore had a "profit motive" unlike Mr Jeffrey Chua, this distinction fell apart when it was revealed that Mr Jeffrey Chua was also a shareholder of CPG through its parent company. PRPTC cannot therefore distinguish the situation concerning CPG and Mr Jeffrey Chua, from the situation concerning FMSS and Ms How/Mr Loh.¹³¹

¹²⁸ See [55] to [57] above.

¹²⁹ AHTC's Closing Submissions at [1.2.7]: The "System" has been defined as "*the appointment of FMSS' shareholders and employees as officers of AHTC and their placement at important gateways of AHTC's payment approval process.*"

¹³⁰ AHTC's Closing Submissions at [7.4].

¹³¹ PRPTC's Closing Submissions at [232] to [234].

- (b) The payment approval process for payments to the MA involved the staff of the MA but the ultimate signatories of the cheques were the elected Town Councillors.¹³²
- (c) The assessment of the MA's work was through the TC's officers and based on residents' feedback.
- (d) MND was informed of the various contracts which the TC had entered into with the MA through Quarterly Reports.¹³³
- (e) The TC was subject to annual audits by external auditors.¹³⁴
- (f) The use of a panel of consultants for LST and DM.¹³⁵
- (g) ATC had similarly classified and paid for certain services by the MA as project management for which project management fees are payable.¹³⁶
- (h) ATC had selected contractors who were not the cheapest.¹³⁷

Alleged Conflict of Interest

66. The Plaintiffs' submissions on conflict of interest¹³⁸ obfuscate the real concerns on this issue. This is that Town Councillors should not have any interest in the MA and if they did, this must be disclosed. Section 15 of the TCA¹³⁹ deals with the need for disclosure by Town Councillors **of their own interest** in a transaction or project of the TC. This section does not prescribe any duty on the Town Councillors to disclose whether the TC staff had any interest in the MA. In the present case, the Town Councillors ensured that they did not have any interest in the MA.¹⁴⁰
67. The Plaintiffs' attempt to claim that there was a conflict of interest due to the dual appointments held by the MA staff in the TC is a red-herring. Given that the appointment of an MA is effectively an "outsourcing" of the management of the TC, as per the past practice of ATC and other TCs in Singapore, it was a

¹³² AEIC of Ms Sylvia Lim at [199], 2 BA 252.

¹³³ D1-D5's Closing Submissions at [187(b)].

¹³⁴ D1-D5's Closing Submissions at [187(d)].

¹³⁵ AHTC's Closing Submissions at [11.2.18].

¹³⁶ D1-D5's Closing Submissions at [144].

¹³⁷ See [52] above.

¹³⁸ AHTC's Closing Submissions at [7.2] and [7.3].

¹³⁹ Section 15 of the TCA (Cap 329A, 2000 Rev Ed), Tab 4 of D1-D5BOA.

¹⁴⁰ Mr Toh Kay Seng, a shareholder of FMSS, was not appointed as a Town Councillor, See D1-D5's Closing Submissions at [188].

necessary aspect of the appointment of an MA that key personnel of the MA will hold key roles in the MA. These persons are under the direct supervision of the Town Councillors who are the decision-makers.

68. The Town Councillors' position on conflict of interest is also consistent with MND's views in relation to the AIM Transaction – which is that the substantive issue where a conflict of interest is concerned is whether the TC members had a pecuniary or direct interest in the transaction.¹⁴¹

Payment Approval Process

69. PRPTC alleges that the “ill-conceived payment approval process” allowed Ms How and Mr Danny Loh to “*to enrich themselves at will because they were involved in every step of the payment approval process*”.¹⁴² This allegation, which suggests that Ms How and Mr Danny Loh had full control over the payment process, is not grounded on any facts. Firstly, the payment approval process did not merely include only “conflicted persons” as identified by KPMG. This is evident from the table at Annex F of the KPMG Report.¹⁴³ Secondly, and more importantly, PRPTC has not shown that FMSS was paid in excess of the sums that were due to it under its contract. The sums paid to FMSS comprised of fixed monthly MA 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.
70. Neither Ms How nor the late Mr Danny Loh could make payments to “themselves” “*at will*” as the payments had to be approved by the Chairman or the Vice-Chairman. The thrust of the evidence given by the 6th to 8th Defendants' witnesses¹⁴⁴ on the payment process is that their involvement in the payment process does not constitute an **approval** for the payment, as such approval can only come from the MA's “paymaster”,¹⁴⁵ i.e. the TC. The role performed by the staff were to ensure that the payment process and the documentation in respect of the same were in order. **The critical point is that the MA does not approve its own payments.** This is perfectly consistent with the Town Councillors' case

¹⁴¹ D1-D5's Closing Submissions at [193]. See also MND Report at 24 CB 18531.

¹⁴² PRPTC's Closing Submissions at [370].

¹⁴³ 26CB 19994 to 20017. See the following S/Nos. in Annex F.2: 6, 120 to 125, 151 to 189, 193, 195, 196, 198 to 215, 230 to 233, 244 to 247, 261 to 266, 270 to 273, 296 to 298, 334 to 342, 354 to 368, 393 to 396, 422 to 501, 514 to 519, 696 to 707, 727 to 729, 732 to 746, 748.

¹⁴⁴ PRPTC's Closing Submissions at [387] to [399].

¹⁴⁵ 30.10.2018 NE, Pg 62 L 9 to 19.

- that the decision-making authority lay with the TC and the MA executed the TC's decisions.¹⁴⁶
71. As stated at [49] to [51] above, the Plaintiffs have adduced no evidence that FMSS did not provide the services for which it had been contracted. There was sufficient oversight of the MA's work.¹⁴⁷ PRPTC's case that the Chairman of AHTC had to "*personally verify the works before she signed the cheques*" is ludicrous.¹⁴⁸
72. The Plaintiffs' myopic emphasis on review of documentation by the Chairman or Vice-Chairman during the payment process is misconceived.¹⁴⁹ As Mr Low had explained in his AEIC, "*assessing an MA who has a wide range of work and responsibilities go beyond documentary proof of its works. Reliance on reviewing the supporting documentation prepared by the MA without more in assessing whether the MA had carried out its work is simplistic and will only be a paper exercise.*"¹⁵⁰ Contrary to Mr Hawkes' opinion that it is unlikely the Chairman or Vice-Chairman would have been independently informed as to whether the earlier certifications in respect of FMSS invoice were appropriate or justified,¹⁵¹ AHTC had in place a system that allows them to supervise the MA and make an overall assessment of the MA's works and to satisfy themselves that things were being managed.¹⁵² Further, Ms Sylvia Lim and Mr Pritam Singh had testified about how the signatories such as themselves had knowledge of how the MA was performing as the MPs worked closely with the MA.¹⁵³
73. In this regard, there is evidence of how the signatories such as Ms Sylvia Lim would not have blindly signed the cheques for payment. Indeed, as AHTC had itself admitted, there were many occasions where Ms Sylvia Lim would take the documents presented to her back to review before actually signing them.¹⁵⁴ There are also documentary records which demonstrate the Town Councillors' supervision of the MA's work, such as the MPs or other Town Councillors specifically giving instructions to the MA concerning its work and/or questioning its work: (a) AHTC gave FMSS specific instructions to prioritise the AGO audit during

¹⁴⁶ D1-D5's Closing Submissions at [187] to [188] and [193], and AEIC of Ms Sylvia Lim at [41], 2 BA 196.

¹⁴⁷ D1-D5's Closing Submissions at [199] to [202].

¹⁴⁸ PRPTC's Closing Submissions at [374] and [380] to [382].

¹⁴⁹ AHTC's Closing Submissions at [7.3], PRPTC's Closing Submissions at [237] to [242] and [379] to [394].

¹⁵⁰ AEIC of Mr Low, at [107], 2 BA 380.

¹⁵¹ AHTC's Closing Submissions at [7.3.9], PRPTC's Closing Submissions at [238] and [371], KPMG Report at [5.2.13], 26 CB 19895.

¹⁵² D1-D5's Closing Submissions at [200].

¹⁵³ D1-D5's Closing Submissions at [201].

¹⁵⁴ AEIC of Ms How at [171], 4 BA 1377. AHTC's Closing Submissions at [7.3.10].

the AHTC meeting in May 2014; (b) Ms Sylvia Lim queried FMSS on its classification of various project claims; (c) Mr Pritam Singh queried FMSS on tender specifications; (d) AHTC refused to approve certain works suggested by FMSS; and (e) Ms Sylvia Lim declined to sign documents presented by FMSS until they came back with clarification.¹⁵⁵ None of this evidence has been challenged by the Plaintiffs.

74. As previously submitted,¹⁵⁶ the Plaintiffs have failed to provide any evidence that FMSS did not carry out its work as MA. Instead, the Plaintiffs can only muster speculative concerns that that may be the case simply because they have “concerns” over the “integrity” of the System, the Town Councillors and FMSS. In contrast, the 1st to 8th Defendants alike have provided evidence to the contrary. The following bears highlighting:

- (a) There are voluminous documentary records of the liquidated damages that AHTC/AHPETC imposed on contractors who performed works unsatisfactorily, as identified by Property Officers in their regular walkabouts.¹⁵⁷
- (b) External parties such as HDB and MND had also carried out regular inspections of AHTC’s common areas.¹⁵⁸
- (c) In the MND’s annual Town Council Management Reports,¹⁵⁹ AHTC performed well for all categories of performance measured save for arrears management and corporate governance due to audit issues, an outcome that was largely due to the new TC still being in the process of developing the upscaled computer system in order to enable it to cater for a GRC at the time.¹⁶⁰

No Written Contract

75. Although there was no written contract for the 1st EMSU Contract, there was an exchange of correspondence. PRPTC’s allegations in this regard are incorrect.¹⁶¹

¹⁵⁵ AEIC of Mr Low at [116], 2 BA 384, Tab 45 of Exhibit “LTK-1”.

¹⁵⁶ D1-D5’s Closing Submissions at [70] to [89].

¹⁵⁷ AEIC of Mr Vincent Koh at [52], 3 BA 1041 to 1042. See 30 CB 22738 to 23294 and 32 CB 24396 to 24666.

¹⁵⁸ AEIC of Ms How at [167], 4 BA 1375.

¹⁵⁹ S/Nos. 3000 to 3003 of the AB.

¹⁶⁰ AEIC of Ms How at [170], 4 BA 1376. See also D1-D5’s Closing Submissions at [158] to [159].

¹⁶¹ PRPTC’s Closing Submissions at [293] to [294].

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. Ms Sylvia Lim's abovementioned e-mail exchange is further explained in D1-D5's Closing Submissions at [214] to [217].

76. PRPTC has also alleged that Rule 81(6) of the TCFR 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 issue. The 1st MA Contract expired on 15 July 2012 and the 1st EMSU Contract expired on 30 June 2012. The written agreements were entered into at the next TC meeting on 2 August 2012. While Rule 81(6) was not strictly complied with, the Town Councillors submit that there was no prejudice to AHTC. As per AHTC's response to the AGO when the above issue was raised, there was no prejudice to AHTC "*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 Aug 2012.*"¹⁶²

No Tender

77. The Plaintiffs made an issue of FMSS's provision of MA services from 15 July 2012 to 2 August 2012¹⁶³ (a period of 2 weeks) and of EMSU services from 1 July 2012 to 2 August 2012¹⁶⁴ (a period of 1 month) – without a tender. This was again not the Plaintiffs' pleaded case.
78. With respect to FMSS's provision of MA services after the expiry of its 1st MA Contract, a public tender had already been called in April 2012 and FMSS was the sole tenderer. When FMSS was formally appointed as MA for the 2nd MA Contract on 3 August 2012, it was agreed that FMSS's appointment will commence from 15 July 2012.¹⁶⁵
79. With respect to the FMSS's provision of EMSU services after the expiry of its 1st EMSU Contract, again a public tender was called in April 2012 and FMSS was

¹⁶² 25 CB 19381.

¹⁶³ AHTC's Closing Submissions at [6.2.1] to [6.2.2]. On this note, AHTC's submissions refer to the provision of EMSU services between 15 July 2012 to 2 August 2012 on the expiry of the 1st EMSU Contract on 14 July 2012. This is likely an erroneous reference to the 1st EMSU Contract given the date ranges cited. We have therefore addressed this submission on the basis that AHTC is referring to the 1st MA Contract instead. PRPTC's Closing Submissions at [334] to [337].

¹⁶⁴ PRPTC's Closing Submissions at [360].

¹⁶⁵ See Letter of Acceptance dated 3 August 2012 from AHTC to FMSS, 6 CB 3491 to 3492

again the sole tenderer. FMSS's provision of EMSU services was pursuant to a Letter dated 28 June 2012 from AHTC confirming their appointment for the period from 1 July 2012 to 30 June 2015 on terms to be agreed.¹⁶⁶

80. Accordingly, there is no logical basis for the Plaintiffs to allege that a tender needs to be called in these circumstances.

Appointment of LST for 7 Projects

81. The Plaintiffs allege that the failure to call for a tender is a breach of Rule 74(1), (15) and (16) of the TCFR.¹⁶⁷ This has been addressed at [234] to [246] of D1-D5's Closing Submissions.
82. In this regard, AHTC has chosen to present a skewed picture of the evidence once again. AHTC refers to Ms Sylvia Lim's e-mail of 8 August 2016 to KPMG's representatives¹⁶⁸ and purports to cite the T&C Committee's "*actual reason*" for preferring LST over DM as stated in the e-mail.¹⁶⁹ What AHTC glaringly omits to mention is that Ms Sylvia Lim also stated in this e-mail that "*3) AHTC management was aware that DM was busy with the 2 NRPs, and also projects with other Town Councils. We noted that the 2 NRP projects were slow-moving... 5) LST was assessed to be responsive to AHTC's requirements*" (emphasis added). A proper reading of this e-mail would show that the reasons for preferring LST over DM have always been consistent. There has been no suppressing of the "actual reasons" as AHTC alleges.
83. Further to the allegation that a tender should have been called, PRPTC alleges that Rule 34(1) of the TCFR was also breached as the TC incurred expenditure without the requisite authority when the 7 projects were awarded to LST without fresh approval from the TC each time a project was awarded.¹⁷⁰ As previously submitted,¹⁷¹ this allegation is a non-starter because the projects were awarded to LST pursuant to an existing contractual obligation under the Appointment Agreements for which the TC's requisite approval was obtained when LST was appointed to the panel. There is no need for fresh approval to incur the expenditure each time a project is awarded to LST.

¹⁶⁶ 9 CB 6206.

¹⁶⁷ AHTC's Closing Submissions at [11.2.19]. PRPTC's Closing Submissions at [427] to [438].

¹⁶⁸ 16 CB 11469.

¹⁶⁹ AHTC's Closing Submissions at [11.3.7].

¹⁷⁰ PRPTC's Closing Submissions at [443].

¹⁷¹ D1-D5's Closing Submissions at [234] to [246].

Payment of FMSS/0601 and FMSS/0701

84. PRPTC relies on the KPMG Report to support its objections to the payment of FMSS/0601 on the basis that there was no certification that the MA services for June 2011 was provided.¹⁷² However, Mr Hawkes admitted during cross-examination that KPMG is not disputing that MA services were in fact provided. If the services were provided, it would be proper for payments to be made.¹⁷³
85. With respect to FMSS/0701, PRPTC alleges that FMSS has no basis to issue this invoice as its appointment only took effect from 15 July 2011.¹⁷⁴ As previously submitted, FMSS had been appointed as MA of the Hougang division on 15 June 2011¹⁷⁵ and FMSS/0701 related to payments due for the Hougang division for July 2011.

Appointment and Payments to Third Party Contractors

86. The appointments and payments were in accordance with the previous practices of ATC. 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. Where tenders were called, the appointments were made on the basis of the lowest bid save for cases where the Town Councillors were of the view the more expensive contractor was a better contractor. 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 that the payments made were in excess of the contractual sums due.

III. The CA 114 Decision

87. AHTC's attempt to distinguish this matter from CA 114, is flawed.¹⁷⁶ The core issues and holdings in CA 114 are the very same matters that this Honourable Court needs to take into consideration in dealing with the allegations made in Suits 668 and 716 against the Town Councillors. The core issues considered by the CA are set out in the following extract at the start of the CA's judgment:

¹⁷² PRPTC's Closing Submissions at [172].

¹⁷³ D1-D5's Closing Submissions at [130].

¹⁷⁴ PRPTC's Closing Submissions at [173] to [174].

¹⁷⁵ D1-D5's Closing Submissions at [128] to [129], and [131] to [134].

¹⁷⁶ AHTC's Closing Submissions at [3.3.17].

*“The TCA also deals with another important issue, namely, the obligation of Town Councils to manage their finances in accordance with the broad principles laid down in the TCA as well as the more detailed provisions contained in the Town Councils Financial Rules (Cap 329A, R 1, 1998 Rev Ed) (“TCFR”). **But what if a town council (“Town Council”) fails to act in accordance with these principles or to comply with the detailed stipulations? What remedies avail an interested party in such a situation? Who may apply for relief in such circumstances and what are the limits of the court’s power to act? These are the questions that lie at the heart of this appeal ...**”¹⁷⁷ (emphasis added)*

88. In CA 114, it was decided that:

- (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.¹⁷⁸
- (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.¹⁷⁹
- (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*”.¹⁸⁰
- (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.¹⁸¹
- (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

¹⁷⁷ CA 114 at [1], Tab 34 of the D1-D5BOA.

¹⁷⁸ CA 114 at [50] to [52], Tab 34 of the D1-D5BOA.

¹⁷⁹ CA 114 at [122] to [123], Tab 34 of the D1-D5BOA.

¹⁸⁰ CA 114 at [85], Tab 34 of the D1-D5BOA.

¹⁸¹ CA 114 at [87], Tab 34 of the D1-D5BOA.

duty has been breached. If a public duty is breached, there is the remedy of judicial review.¹⁸²

- (f) 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.¹⁸³

IV. Second-Guessing of the Town Councillors' Decisions

89. As stated above, the CA in CA 114 held that the Court's role was circumscribed by Section 21(2) and 21(3) of the TCA. The CA held that in compelling a public body to perform its statutory duty, the "*courts will give specific directions as to how the statutory duty can be performed, so long as they do not impinge on the discretion (if any) conferred on the public body.*"¹⁸⁴ Following a review of the case law, the CA held that Section 21(3) does not warrant the conclusion that the court has the power to make any order whatsoever and the section does not enlarge the power of the court either to step into the shoes of the TC or take it upon itself to attend to the performance of the requirements and duties that have been neglected. The Court can order the TC to take such steps, as it may consider necessary to effectively secure compliance with the requirement or duty in question.¹⁸⁵
90. In the present case, the Plaintiffs' claims amount to requesting the High Court to enforce the duties of the Town Councillors under the TCA. This falls within Section 21(2) of the TCA. However, the Plaintiffs' claims effectively require the Honourable Court to substitute its decisions with that of the TC – including decisions such as to which contractor should be appointed, the terms of the appointment and how much the contractor should be paid. For example, AHTC's submissions require this Court to assess what is "commercially unacceptable".¹⁸⁶ Applying the holding in CA 114, the Court should not second-guess these decisions. The Town Councillors have given evidence of the facts and circumstances then existing and their reasons for making the decisions which they did. The Plaintiffs have not shown that these decisions resulted in actual losses to AHTC/AHPETC. The purported losses which are claimed in the 2 Suits are losses imagined by the Plaintiffs or their accountants on the basis of figures plucked from the

¹⁸² CA 114 at [126], Tab 34 of the D1-D5BOA.

¹⁸³ CA 114 at [128], Tab 34 of the D1-D5BOA.

¹⁸⁴ CA 114 at [90], Tab 34 of the D1-D5BOA.

¹⁸⁵ CA 114 at [97], Tab 34 of the D1-D5BOA.

¹⁸⁶ AHTC's Closing Submissions at [1.2.2], [1.2.8], [3.6.2], [4.1.1], [4.2.1], [4.7.7], [4.8.1], [5.1.1], [6.2.2], [6.4.4(a)], [7.1.1], [7.6.2], and [15.3.6].

documentation. This was done without ascertaining whether these alleged lower cost figures were in reality achievable at the material time.

91. For the Plaintiffs to assert that the various contracts entered into by the Town Councillors are void in public law,¹⁸⁷ they must apply public law principles. As in the case of judicial review, they must satisfy the usual legal prerequisites that apply in the context of such applications. Further and more importantly, in the realm of public law, there are established principles on the extent of the court's role in judicial review - the courts should not undertake the role of ruling on the merits of the public bodies' actions or omissions. The CA in Jeyaretnam Kenneth Andrew v. Attorney-General [2014] 1 SLR 345 ("**Jeyaretnam**") cited with approval the following passages from the House of Lords decision in IRC v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617:

"... Lord Wilberforce, however, upon review of the Inland Revenue's powers, made the following remarks on the role of the courts (at 635):

*On the evidence as a whole, I fail to see how any court considering it as such and not confining its attention to an abstract question of locus standi could avoid reaching the conclusion that the Inland Revenue ... were acting in this matter genuinely in the care and management of the taxes, under the powers entrusted to them. This has no resemblance to any kind of case where the court ought, at the instance of a taxpayer, to intervene. **To do so would involve permitting a taxpayer or a group of taxpayers to call in question the exercise of management powers and involve the court itself in a management exercise. Judicial review under any of its headings does not extend into this area.***

This cautionary tenor was also present in Lord Roskill's observations, after he affirmed the importance of making judicial review available in appropriate cases, as follows (at 633) :

... On the other hand, it is equally important that the courts do not by use or misuse of the weapon of judicial review cross that clear boundary between what is administration, whether it be good or bad administration, and what is an unlawful performance of that statutory duty of a body charged with the performance of that duty."¹⁸⁸ (emphasis added)

92. The CA in Jeyaretnam went on to hold as follows:

"... In so far as an applicant's intention in bringing judicial review proceedings against public bodies for certain acts or omissions is to ask the court to rule on the merits of these acts or omissions – such as the wisdom of granting the Loan to IMF – this is not a role that the courts should, in any event, undertake."¹⁸⁹

¹⁸⁷ AHTC's Statement of Claim dated 21 July 2017 at the reliefs section, at [1(c)(v)]. PRPTC's Statement of Claim (Amendment No. 1) dated 12 October 2018 at the reliefs section, at [8].

¹⁸⁸ Jeyaretnam at [57] and [58], Tab 51 of the D1-D5BOA.

¹⁸⁹ Jeyaretnam at [59], Tab 51 of the D1-D5BOA.

93. Even if we ignore the fact that the Plaintiffs have sidestepped the judicial review regime and the constraints that it would have imposed on them¹⁹⁰ by prosecuting their claims through civil suits against the Town Councillors instead, such a review would be limited to the legality of the Town Councillors' actions or omissions. Such reviews are undertaken in cases of "*some exceptionally grave or widespread illegality*".¹⁹¹ The Plaintiffs have not shown that there was any such illegality in this case. It is submitted that the allegations, which are denied, that the Town Councillors (a) did not document the reasons for the waiver of the tender; (b) did not have a written contract; (c) did not document their reasons for selecting or not selecting a specific contractor; and, (d) made payments on invoices even though they were not properly authorised and/or certified according to the TCFR, are not of a nature that warrants intervention by the court. In any event, the TC did not suffer any actual loss from these alleged non-compliances.
94. It is worth noting that the Court in *MB v British Columbia* [2000] BCSC 735¹⁹² ("**MB**") acknowledged that "*larger decisions involve the exercise of discretionary authority*"¹⁹³ and "*[t]here is generally more than one legitimate response to a set of facts. The court does not intrude itself into this inherently complex process so long as the Crown demonstrates that it considered the matter once put on inquiry and made a choice sufficient to indicate that it did not fail to carry out its duty*".¹⁹⁴ The Plaintiffs, in postulating hypothetical scenarios that could have played out if the Town Councillors had taken different approaches to the decisions they made, are suggesting that there is only one legitimate response that the Town Councillors could have adopted despite the difficult circumstances that they were in. This position is untenable.

V. Response to Specific Legal Issues

95. With respect to the Plaintiffs' submissions on legal issues, in particular the submissions that the Town Councillors' actions were in breach of their duties as trustees and/or fiduciaries, breach of the TCA/TCFR and/or void in public law, these are relevant only if the facts pertaining to the breach are first established.

¹⁹⁰ See Order 53 of the Rules of Court and explained in Singapore Civil Procedure (Sweet & Maxwell, Volume 1, 2019) at [53/0/1] to [53/1/10], Tab 59 of the D1-D5BOA. See also *Vellama d/o Marie Muthu v. Attorney-General* [2013] 4 SLR 1, Tab 54 of the D1-D5BOA.

¹⁹¹ *Jeyaretnam* at [60] and [61], Tab 51 of the D1-D5BOA.

¹⁹² *MB*, Tab 25 of the D1-D5BOA.

¹⁹³ *MB* at [168], Tab 25 of the D1-D5BOA.

¹⁹⁴ *MB* at [168], Tab 25 of the D1-D5BOA.

As set out in D1-D5's Closing Submissions and in these submissions, the Plaintiffs have not established any such alleged breach. Be that as it may, the submissions below address some of the key legal principles and issues raised by the Plaintiffs.

96. It is submitted that the authorities from other jurisdictions that the Plaintiffs cite in support of their claim that the Town Councillors are trustees and/or fiduciaries are generally not applicable to the present case. The Honourable Court's attention is drawn to the following key points:

- (a) The system of town council management in Singapore is unique.¹⁹⁵
- (b) The TCA is therefore a unique piece of legislation. Parliament's intention to give elected MPs wide latitude to run their TCs within broad and general rules laid down in the TCA/TCFR is clear.
- (c) The CA in CA 114 has held that 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.¹⁹⁶

(1) Town Councillors' liability is under the TCA/TCFR and not the Common Law

97. AHTC asserts that if a claim in private law cannot be maintained against the Town Councillors, they could not be held liable for damages under common law no matter their depredations.¹⁹⁷ AHTC's submissions misses the point. If the Town Councillors can be held personally liable under the TCA/TCFR for breach of statutory duties and are subject to the provisions under the Penal Code and other criminal law enactments for any criminal breaches, there can be no prejudice if there is no liability under common law.¹⁹⁸ The CA in CA 114 held as follows:

"It is one thing to say that the Town Councils would have latitude in developing their plans and operations. It is entirely another thing to say on this basis that there is either no duty to comply with the TCA and the TCFR, or, which in substance comes to the same thing, that there is no remedy to speak of in the event of a breach of such a duty. Section 21(1)(f) of the TCA casts upon Town Councils the duty to comply with the provisions of the TCA and the rules made thereunder, and the TCA is replete with provisions that impose obligations of proper governance on the Town Council. Brief reference may be made in this connection to ss 21 and 33–38 of the TCA which set out the obligations of a Town Council to manage its funds as well as the estate under its charge properly. Indeed, taken together with the provisions of the TCFR, it is simply unarguable that there is nothing to constrain the governance of the Town Councils.

¹⁹⁵ CA 114 at [1], Tab 34 of the D1-D5BOA. See also Halsbury's Laws of England (Volume 69 (2018), Local Government) at [36], Tab 56 of the D1-D5BOA. In the UK, a local authority may act in other capacities in addition to its general functions, such as that of a local education authority, a planning authority or a licensing authority.

¹⁹⁶ CA 114 at [128], Tab 34 of the D1-D5BOA.

¹⁹⁷ AHTC's Closing Submissions at [3.3.18].

¹⁹⁸ D1-D5's Closing Submissions at [35] and [36].

*In our judgment, it is clear from this that such latitude or independence was to be exercised subject to the safeguards that were incorporated in the TCA and the TCFR...*¹⁹⁹

98. The CA in CA 114 disagreed with the court below and held that the TCA precludes the application of common law rights and remedies.²⁰⁰ In their submissions, the Plaintiffs ignore this critical holding of the CA.²⁰¹
99. As held by the CA in Tan Juay Pah v. Kimly Construction Pte Ltd [2012] 2 SLR 549 ("**Tan Juay Pah**"), it is clear law that the mere existence of a statutory duty does not, by itself, give rise to a private right of action.²⁰² The CA held that in considering whether a statute conferred such a right of action, there is no universal formula and "*each statute will have to be considered contextually, and the precedents will illuminate only infrequently the right legal path to be taken*".²⁰³ The Plaintiffs have not explained their basis for disregarding the holding of the CA in CA 114. As a matter of legal principle, the Plaintiffs have not established how a private right of action exists in this case. In fact, the Plaintiffs recognise the availability of statutory remedies in the TCA/TCFR.²⁰⁴ For example, PRPTC submits that the Defendants should make good PRPTC's share of the improper payments under Rule 56 of the TCFR. This underscores the Town Councillors' position that the TCA/TCFR is a self-contained legislation with statutory remedies available.
100. Further, the Plaintiffs have also not shown why the statutory remedies are inadequate. It is submitted that Section 52 of the TCA, which accords protection from personal liability for the Town Councillors where they have acted in good faith, makes it clear that the relevant legal duty for all Town Councillors is that they must act in good faith and in execution of the Act at all times. If they fail to do so, they will be in breach of their statutory duty and be subject to personal liability. There is therefore no need to resort to private law remedies for any breaches of duties under the TCA/TCFR.
101. In a similar vein, the Plaintiffs' submissions that Town Councillors owe fiduciary duties by analogy to trustees and/or custodial fiduciaries are misplaced. PRPTC

¹⁹⁹ CA 114 at [51] and [52], Tab 34 of the D1-D5BOA.

²⁰⁰ CA 114 at [122], Tab 9 of the D1-D5BOA. See also D1-D5's Closing Submissions at [37].

²⁰¹ AHTC's Closing Submissions at [3.6.5] and [9.1] to [9.2], PRPTC's Closing Submissions at [34] to [36].

²⁰² Tan Juay Pah at [53], Tab 53 of the D1-D5BOA. See also the seminal case of X (Minors) v Bedfordshire County Council [1995] 3 WLR 152, Tab 55 of the D1-D5BOA, which was referred to in Tan Juay Pah.

²⁰³ Tan Juay Pah at [54], Tab 53 of the D1-D5BOA.

²⁰⁴ AHTC's Closing Submissions at [3.5.4], PRPTC's Closing Submissions at [561].

has simply asserted that the TC's assets, property and monies in the Town Council Fund form a statutory trust without any further explanation beyond simply stating that such trusts are created when the statute stipulates that the legal owner of certain property is not to have beneficial ownership of that property.²⁰⁵ PRPTC relies on the case of *MF Global Singapore Pte Ltd v Vintage Bullion DMCC* [2015] 4 SLR 0831 ("**MF Global**") for this proposition. In *MF Global*, a statutory trust over the monies received by a commodity broker was found due to language in the relevant regulation which states that the "*commodity broker shall treat certain funds as belonging to that customer*"²⁰⁶ such that they are beneficially owned by the customer though held by the commodity broker.²⁰⁷ In contrast, the TCA/TCFR does not have similar language. *MF Global* is therefore not applicable.

102. Further, for reasons already submitted at Issue (I) of the D1-D5's Closing Submissions, the Town Council Fund and/or the TC's assets and properties are not a "true trust" or a private trust and the Town Councillors are therefore not trustees and they do not owe fiduciary/custodial fiduciary duties.

(2) Alleged breach of Fiduciary Duties

Town Councillors are not in a Well-established Category of Fiduciaries

103. AHTC submits that the Town Councillors fall into the well-established category of fiduciaries as they are agents of the TC.²⁰⁸ This is incorrect. The Town Councillors' acts represent the acts of the TC such that no question of agency and therefore fiduciary duties arise.²⁰⁹ It is pertinent to highlight that the CA has held in *Gabriel Peter & Partners v. Wee Chong Jin* [1997] 3 SLR(R) 649 ("**Gabriel**") that the managerial powers of a company are vested in the board and when such organs of the company act within their scope of powers, there is no question of agency involved because their acts are the acts of the company.²¹⁰ The same principle must apply here given that a TC is a body corporate that can only act through its organ, a meeting of the Council or a committee thereof.²¹¹
104. AHTC also seeks to run an alternative case that Town Councillors fall within a well-recognised category of fiduciary relationships and they have cited three cases

²⁰⁵ PRPTC's Closing Submissions at [9].

²⁰⁶ *MF Global* at [78], Tab 45 of PRPTC's BOA.

²⁰⁷ *MF Global* at [101], Tab 45 of PRPTC's BOA.

²⁰⁸ AHTC's Closing Submissions at [3.3.1(a)], [3.2.1(a)], [3.3.1(a)] and [3.3.2].

²⁰⁹ D1-D5's Closing Submissions at [59].

²¹⁰ *Gabriel Peter & Partners v Wee Chong Jin*, at [25] to [27], Tab 50 of the D1-D5BOA.

²¹¹ Sections 5 and 28 of the TCA, Tab 4 of the D1-D5BOA.

in this regard.²¹² In the first case, *Porter v. Magill* [2002] 2 WLR 37²¹³ (“**Magill**”), the House of Lords did not proceed on the basis that the councillors were fiduciaries. This was explained in D1-D5’s Opening Statement.²¹⁴ In the second case, *The Toronto Party v. Toronto (City)* [2013] ONCA 327²¹⁵ (“**Toronto Party**”), there was no discussion on whether the municipal councillors in that case were fiduciaries as the issue was not contested by the municipal councillors. In a similar vein, in *Sumas Indian Band v Ned* [2002] B.C.J. No. 1529²¹⁶ (“**Sumas**”) it was not in issue whether an Indian band council and its chief owed fiduciary duties. The court in *Sumas* merely held that to be clear law. Given that there was no discussion in *Sumas* as to what the function and role of the Indian band council was, there is no basis for AHTC to conclude that the Indian band council and the chief were analogous to the Town Councillors.

Town Councillors are not Custodial Fiduciaries

105. As previously submitted,²¹⁷ the term “custodians” is not a term of art through which enforceable rights attach simply because such expressions were adopted in the WP MPs’ language. Mr Low and Ms Sylvia Lim cannot be taken to have “conceded” this point.²¹⁸
106. AHTC’s submissions that a custodial fiduciary relationship arises in this case is based on an analogy to the imposition of such duties on company directors.²¹⁹ In *Toronto Party*, the Court held that municipal councillors should not be imposed with fiduciary duties by analogy to company directors:

“First, to the extent that the appellant seeks to establish the joint and several personal liability of municipal councillors by analogy to the basis upon which company directors may be held personally liable for ultra vires corporate acts, the analogy is misplaced.

...

The decision in Angus has not been applied in the municipal law context, nor do the authorities support any equation of the fiduciary duty of company directors with the duty imposed on municipal councillors. See Gook Country Estates Ltd. v. Quesnel (City), 2006 BCSC 1382, 26 MPLR (4th) 36 at para. 95.²²⁰
(emphasis added)

²¹² AHTC’s Closing Submissions at [3.2.1(c)] and [3.3.1(c)].

²¹³ *Magill*, Tab 22 of AHTC’s BOA.

²¹⁴ 1st to 5th Defendants’ Opening Statement at [61] to [62].

²¹⁵ *Toronto Party*, Tab 34 of D1-D5BOA.

²¹⁶ AHTC’s Closing Submissions at [3.2.1(c)(iii)].

²¹⁷ D1-D5’s Closing Submissions at [47].

²¹⁸ AHTC’s Closing Submissions at [3.1.2], PRPTC’s Closing Submissions at [16], [25] to [29].

²¹⁹ AHTC’s Closing Submissions at [3.2.3].

²²⁰ *Toronto Party*, at [47] and [49], Tab 34 of D1-D5BOA.

107. The logic of why analogies to the corporate context are inapt is explained in an article entitled “*The False Promise of Fiduciary Government*”:

“... But there is general agreement that the law, at its base, imposes fiduciary duties on directors in the interests of a discrete class of beneficiaries, as defined by a well-understood maximand. **Directors must pursue the “best interests of the corporation and its shareholders” by maximizing long-term corporate value... Interpolating the duty of loyalty into public law cannot work that way. There is no similar consensus on the ends of administrative or constitutional law. Moreover, it is far from clear, in any given case, who the beneficiaries of public fiduciary duties are...**”²²¹ (emphasis added)

108. Town Councillors should therefore not be compared with company directors. The Plaintiffs’ case on a custodial fiduciary relationship is dealt with at [45] to [50] of D1-D5’s Closing Submissions.

(3) Section 52 defence of “Good Faith”

109. As explained at [306] to [313] of D1-D5’s Closing Submissions, Section 52 of the TCA applies to claims by any party. The Plaintiffs have not provided any basis for their submissions that Section 52 is not applicable to claims by a TC.²²²

110. AHTC asserts that a “jealous interpretation” ought to be taken of Section 52 of the TCA,²²³ such that it cannot be invoked where the TC makes claims against its councillors. In this regard, AHTC incorrectly applies the commentary of Iain Field in “*Good Faith Protections and Public Sector Liability*” [2016] 23 TLJ 210.²²⁴ Field sets out the following propositions:

- (a) Good faith protections give effect to the strong public interest in freeing certain public servants from technical difficulties in conducting their defence and from the heavy costs which must follow a verdict against them. This public interest must be balanced against the private interests affected by the protection afforded.²²⁵
- (b) In some instances, parliament might seek to protect private interests, while at the same time freeing public servants from economic risks, by allocating the public servant’s obligation to pay damages to the Crown.²²⁶

²²¹ At pg. 1165 to 1166, Tab 45 of the D1-D5BOA.

²²² AHTC’s Closing Submissions at [12.1.2] and [12.1.3], PRPTC’s Closing Submissions at [528].

²²³ AHTC’s Closing Submissions at [12.1.4] to [12.1.7].

²²⁴ *Field*, Tab 30 of AHTC’s BOA.

²²⁵ *Field* at Pg. 5 Section V(A), Tab 30 of AHTC’s BOA.

²²⁶ *Field* at Pg. 5 Section V(A), Tab 30 of AHTC’s BOA.

- (c) This allocation may be achieved by (1) shifting liability for a public servant's wrong entirely to the Crown; (2) defeating the personal liability of the public servant while preserving the vicarious liability of the Crown; or (3) indemnifying a public servant who is sued for a tortious conduct arising out of his or her employment.²²⁷
- (d) Field posits that the language adopted by the Singapore Legislature – that “no suit or other legal proceedings shall lie personally against” – is an example of where the Crown's liability is preserved, while protecting the economic interests of public servants by granting them an immunity from suits i.e. situation (2) at sub-paragraph (c) above.²²⁸
- (e) Further, where the protection extends to acts done “pursuant to” or “in the exercise of” particular statutory functions, this is likely to apply if an authorised statutory function, power or duty is exercised without reasonable care. It is in this context that Field explained that the protection should not be “*carried further than a jealous interpretation will allow*”.²²⁹
111. The Town Councillors will be personally liable if the Plaintiffs can show that they did not act in good faith and not in execution of the TCA. AHTC highlights certain alleged facts in their Closing Submissions in support of their claim that Ms Sylvia Lim and Mr Low did not act in good faith.²³⁰ However, AHTC has not proven these facts. In this regard, the Honourable Court's attention is drawn to D1-D5's Closing Submissions under Issues (II), (III) and (IV).

(4) Plaintiffs' claims that are Time-Barred

112. Contrary to the Plaintiffs' submissions,²³¹ the Town Councillors have sufficiently identified in their pleadings the claims and causes of action that are time-barred. There is no reason for the Plaintiffs to feign ignorance of the claims that are time-barred. Be that as it may, the following will show that the claims that are time-barred are essentially those that arise before either 21 July 2011 (for AHTC) or 3 August 2011 (for PRPTC):
- (a) Based on AHTC's pleadings, the alleged breaches of fiduciary duties and/or duties of care by Ms Sylvia Lim and Mr Low arising from the

²²⁷ *Field* at Pg. 5 Section V(A), Tab 30 of AHTC's BOA.

²²⁸ *Field* at Pg. 7 Section V(C), Tab 30 of AHTC's BOA.

²²⁹ *Field* at Pg. 7 and 8 Section VI(A), Tab 30 of AHTC's BOA.

²³⁰ AHTC's Closing Submissions at [12.3] to [12.5].

²³¹ AHTC's Closing Submissions at [15.1.3] and [15.1.4], PRPTC's Closing Submissions at [262].

appointment of FMSS for the 1st MA Contract and payments to FMSI under the FMSI EMSU Contract.²³²

- (b) Based on PRPTC's pleadings, 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:²³³
- (a) The payment of Invoices FMSS/0601 and FMSS/0701 (insofar as PRPTC alleges that the latter payment arises from the appointment of FMSS);²³⁴
- (b) 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;²³⁵ and,
- (c) Payments to FMSS pursuant to the 1st MA Contract insofar as they arise between 15 July 2011 to 2 August 2011.²³⁶

AHTC's Submissions

113. In respect of its causes of action for 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, AHTC claims that FMSS's appointment as MA was only formally ratified on 4 August 2011 and that any losses could have only crystallised then.²³⁷ This is clearly a self-serving position taken in response to the limitation point raised by the Town Councillors. It has always been AHTC's position that the appointment of FMSS was "*a fait accompli*" from as early as 15 June 2011.²³⁸
114. AHTC's submissions²³⁹ on when it had the requisite knowledge and control to bring an action have been addressed at [331] to [336] of D1-D5 Closing Submissions.
115. In submitting that AHTC was only armed with the knowledge required to bring Suit 668 after the KPMG Report was released, AHTC made reference to the Town

²³² AHTC's Statement of Claim at [5.2.1], [5.2.2(a) and (e)] and Pg 60 and 61.

²³³ PRPTC's Statement of Claim (Amendment No. 1) at Pgs 79 and 80.

²³⁴ PRPTC's Statement of Claim (Amendment No. 1) at [28] to [31].

²³⁵ PRPTC's Statement of Claim (Amendment No. 1) at [42] to [45].

²³⁶ PRPTC's Statement of Claim (Amendment No. 1) at [53] to [57].

²³⁷ AHTC's Closing Submissions at [15.1.5(a)] and [15.1.6(a)].

²³⁸ AHTC's Statement of Claim at [4.3.2], AHTC's Opening Statement at [2.1.4], D1-D5's Closing Submissions at [344].

²³⁹ AHTC's Closing Submissions at [15.1.5(d)].

Councillors' "appreciation of the consequence of these facts and the potential damage caused"²⁴⁰ and whether they thought "there was any actionable damage".²⁴¹ If AHTC accepts that the Town Councillors' knowledge is relevant in determining the knowledge required for bringing an action under Section 24A(4) of the Limitation Act, it should not artificially segregate the TC's knowledge from that of the Town Councillors in respect of the "conflicts of interest" or "lack of disclosure and controls" arising from the appointment of FMSS.²⁴²

Section 22(1)(a)

116. AHTC's submissions on Section 22(1)(a) of the Limitation Act have been addressed at [337] to [342] of D1-D5's Closing Submissions.
117. AHTC has neither pleaded nor proven that there is "fraud" or "fraudulent breach of trust" as per the definitions set out in the authorities of Dynasty Line v Sia Sukanto [2013] SGHC 146²⁴³ ("Dynasty"), Armitrage v. Nurse [1998] 1 Ch 241²⁴⁴ ("Armitrage") and First Subsea Ltd v. Baltec Ltd [2017] EWCA Civ 186²⁴⁵ ("First Subsea"). Although AHTC cited the authority of First Subsea for the proposition that the phrase "breach of trust" must encompass any breach of a director's fiduciary duties to the company, it omitted to mention the definition of a "fraudulent breach of trust" in that case.²⁴⁶ The Court in First Subsea held that "[f]or a breach of trust to be fraudulent, it is not enough to show that it was deliberate. There must also be an absence of honesty or good faith. This can include being reckless as to the consequences of the action complained of."²⁴⁷
118. Further, contrary to AHTC's mischaracterisation of the Town Councillors' position,²⁴⁸ the Town Councillors have never accepted that they, or Mr Danny Loh and Ms How for that matter, are in a position analogous to that of directors/key officers of a company insofar as their **duties** are concerned. As stated at [103] above, it is the Town Councillors' acts which are taken to be that of the TC, as with the case for directors of a company.

²⁴⁰ AHTC's Closing Submissions at [15.2.3(b)].

²⁴¹ AHTC's Closing Submissions at [15.2.3(c)].

²⁴² AHTC's Closing Submissions at [15.2.7].

²⁴³ Dynasty, Tab 13 of the D1-D5BOA.

²⁴⁴ Armitrage, Tab 9 of AHTC's BOA.

²⁴⁵ First Subsea, Tab 14 of AHTC's BOA.

²⁴⁶ AHTC's Closing Submissions at [15.3.4].

²⁴⁷ First Subsea at [64], Tab 14 of AHTC's BOA.

²⁴⁸ AHTC's Closing Submissions at [15.3.6].

PRPTC's Submissions

119. PRPTC's submissions as to why its claims are not time-barred are denied for the following reasons:

- (a) PRPTC's claim that it is entitled to take the benefit of Section 22 of the Limitation Act because it is a beneficiary of the trust²⁴⁹ is denied for the reasons contained in D1-D5's Closing Submissions at [348] to [352].
- (b) PRPTC's submission that its cause of action in relation to the alleged improper payment of the FMSS/0601 invoice is continued and revived every day²⁵⁰ is unsustainable and is dealt with at D1-D5's Closing Submissions at [356] to [357].
- (c) Contrary to PRPTC's assertion that the earliest date on which it had the knowledge and right to bring an action was 31 October 2016 when the KPMG Report was released,²⁵¹ PRPTC would have known of the factual essence of its claims more than 6 years before Suit 716 was commenced as submitted at D1-D5's Closing Submissions at [353] to [355].

(5) Plaintiffs are not entitled to Equitable Compensation

120. The Plaintiffs have not shown that they are entitled to equitable compensation even if this Honourable Court finds that the Town Councillors are fiduciaries. It is submitted that the legal burden of proving but-for causation remains on the Plaintiffs. This is addressed at [359] to [368] of D1-D5's Closing Submissions.

Causation Rules

121. Both Plaintiffs have submitted that the *Brickenden* rule²⁵² on causation ought to apply in their claims for equitable compensation.²⁵³ As stated in *Quality Assurance Management Asia Pte Ltd v Zhang Qing and others* [2013] 3 SLR 631²⁵⁴ ("**Quality Assurance**"), this rule stands for the proposition that a claim for equitable compensation arising from a breach of fiduciary duty will succeed so long as the wronged party can show that the fiduciary's breach of duty is in some way

²⁴⁹ PRPTC's Closing Submissions at [263] to [265].

²⁵⁰ PRPTC's Closing Submissions at [266].

²⁵¹ PRPTC's Closing Submissions at [267].

²⁵² From the case of *Brickenden v London Loan & Savings Company of Canada* [1934] 3 DLR 465, Tab 13 of PRPTC's BOA.

²⁵³ AHTC's Closing Submissions at [8.3.6], PRPTC's Closing Submissions at [59].

²⁵⁴ *Quality Assurance*, Tab 28 of D1-D5BOA.

- 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.²⁵⁵ In Quality Assurance and Then Khek Khoon and anor v Arjun Permanand Samtani [2014] 1 SLR 245²⁵⁶ (“Then Khek Khoon”), the Brickenden rule was held 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.²⁵⁷ For the reasons set out in [103] to [104], the Town Councillors deny that they are in a well-established category of fiduciaries nor did they commit a culpable breach of their duties. The Brickenden rule would therefore not apply to the claims against the Town Councillors.
122. Further, AHTC’s summary of the Brickenden rule that “*there is no need to prove causation*” is incorrect and misleading.²⁵⁸ In the subsequent High Court case of Beyonics Technology Ltd & anor v Goh Chan Peng & ors [2016] SGHC 120²⁵⁹ (“Beyonics”), it was clarified that the statement in Then Khek Khoon that liability can be established even if the principal is unable to prove “but for” causation should not be understood as dispensing with the need for “but for” causation altogether. Instead there is merely a shift in the **evidentiary burden** to the fiduciary to prove that the loss would still have occurred.²⁶⁰
123. 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.²⁶¹ 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. In order for the payments to the contractors to be losses, the Plaintiffs need to prove one or more of the following, which they have not done:
- (a) The contractors did not carry out the work for which they were engaged;
and

²⁵⁵ Quality Assurance at [43], Tab 28 of D1-D5BOA.

²⁵⁶ Then Khek Khoon, Tab 58 of PRPTC’s BOA.

²⁵⁷ Quality Assurance at [56], Tab 28 of D1-D5BOA. Then Khek Khoon at [108(b)].

²⁵⁸ AHTC’s Closing Submissions at [8.3.3(b)].

²⁵⁹ Beyonics, Tab 28 of PRPTC’s BOA.

²⁶⁰ Beyonics at [136], Tab 28 of PRPTC’s BOA.

²⁶¹ PRPTC’s Closing Submissions at [60].

- (b) The sums paid to the contractors were not in accordance with their contracts.
124. AHTC also seeks to stretch the *Brickenden* rule to apply to a situation even where the fiduciary is not in a well-established category of fiduciaries but has committed a culpable breach of duties.²⁶² There is no basis for this submission which is inconsistent with *Then Kek Khoon* as stated above.
125. 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.²⁶³ This cannot be correct. AHTC bears the burden of proving that they had suffered the losses alleged and that there are improper 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*".²⁶⁴ Both KPMG and PwC had in total spent 14 months²⁶⁵ 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.
126. The decision of *Then Khek Khoon* and its reliance on *Brickenden* must now be considered in light of the UK Supreme Court's landmark ruling in *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2015] AC 1503²⁶⁶ ("**AIB Group**"), a case which was highlighted by the CA in *Maryani Sadeli v Arijun Permanand Samtani and another and other appeals* [2015] 1 SLR 496²⁶⁷ ("**Maryani**") as relevant jurisprudence for future consideration in respect of the causation test for equitable compensation:

"... In particular, the Judge considered the controversy surrounding, inter alia, the issue of causation in the context of the award of equitable compensation for breach of fiduciary duties (here, by the Respondents, as found in Ng Eng Ghee (CA) ([2] supra) but which the Respondents nevertheless sought to controvert in the

²⁶² AHTC's Closing Submissions at [8.3.4].

²⁶³ AHTC's Closing Submissions at [8.3.8]. AHTC cites the case of *Keefe v Isle of Man* [2010] EWCA Civ 683 which has been addressed in D1-D5's Closing Submissions at [364] and [365].

²⁶⁴ AHTC's Closing Submissions at [8.3.8] to [8.3.12].

²⁶⁵ KPMG was engaged on 1 March 2016 and it produced its Report on 31 October 2016. PwC states that it commenced "effective work" on 1 November 2016 and it produced its Report on 30 April 2017.

²⁶⁶ *AIB Group*, Tab 6 of PRPTC's BOA.

²⁶⁷ *Maryani*, Tab 44 of PRPTC's BOA.

present proceedings). The Judge characterised this issue of causation as a question of whether the Appellants' claim against the Respondents fell within the class of cases stemming from the Canadian Privy Council decision of *Brickenden v London Loan & Savings Company of Canada* [1934] 3 DLR 465 (in which but-for causation is not essential for liability) or the class of cases stemming from the House of Lords decision of *Target Holdings Ltd v Redfern (a firm)* [1996] 1 AC 421 (in which but-for causation is essential for liability) (see the Judgment at [109]). Counsel for the Appellants, Mr Kannan Ramesh SC, submitted during the appeal that this was an unsettled area of law within the Commonwealth and was the subject of much academic debate (**although this submission must now be considered in light of the very recent UK Supreme Court decision of *AIB Group (UK) Plc v Mark Redler & Co Solicitors* [2014] UKSC 58 ("AIB"), which in fairness to the parties was not yet decided when the present appeals were heard.**)²⁶⁸ (emphasis added)

127. The case of *AIB Group* concerns a claim by the bank, AIB, against solicitors who had acted for AIB and the borrowers in the purchase of a property. The solicitors held the loan sum until completion. On completion, the solicitors released a sum that was lower than what was required to redeem a first charge that another bank, Barclays, had held on the property. Barclays refused to release its first charge and only consented to the registration of AIB's charge as a second charge. Subsequently, the borrowers defaulted and the property was repossessed and sold. AIB received less than what it would have received from the sale proceeds if it had held a first charge. In its claim against the solicitors, AIB claimed that it was entitled to the full amount of the loan less the amount recovered. The solicitors contended that their liability was limited to the amount they should have paid which would have redeemed Barclays' charge. There was no question in that case that the solicitors held the monies in trust due to the professional rules governing the holding of such monies. AIB claimed for, *inter alia*, reconstitution of the fund paid away in breach of trust and in breach of fiduciary duty and equitable compensation.

128. 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 Redfern* [1996] AC 421²⁶⁹ ("**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.²⁷⁰ The Court in *AIB Group* therefore held that the loss must be caused by the breach

²⁶⁸ *Maryani* at [9], Tab 44 of PRPTC's BOA.

²⁶⁹ *Target Holdings*, Tab 57 of PRPTC's BOA.

²⁷⁰ *AIB Group* at [116] (also see [64]), Tab 6 of PRPTC's BOA.

- of trust, in the sense that it must flow directly from it.²⁷¹ AIB Group therefore reaffirms the “but-for” test for causation for equitable compensation and is a move away from the Brickenden rule.
129. Given that AIB Group was decided on the basis of the “but-for” test for causation, PRPTC has sought to distinguish AIB Group from the present case by restricting its applicability to breaches of trust in a commercial setting.²⁷² PRPTC submits that as the present alleged breaches arose “*in the context of a public body borne of and governed by a statute whose provisions are designed to protect others*” and “*not in a commercial context*”, the Brickenden rule should apply to its claims against the Defendants.²⁷³ PRPTC’s submissions in this instance are self-serving given that it has on all other occasions assessed the Town Councillors’ actions on a commercial basis.²⁷⁴ In fact, as pointed out at [90] of these submissions, it is AHTC’s case that the actions of the Town Councillors are, *inter alia*, “*commercially unacceptable*”.
130. As submitted before, the Town Councillors are not trustees. However, even if they are held to be trustees, it is submitted that the “but-for” test of causation should still apply.
131. The Plaintiffs’ submissions that the “but-for” test does not apply in the present case is further called into question by the recent Singapore High Court decision in Winsta Holding Pte Ltd v Sim Poh Ping [2018] SGHC 239²⁷⁵ (“Winsta”) which PRPTC has cited in its Closing Submissions.²⁷⁶ In Winsta, the Court adopted the approach in AIB Group. In particular, the Court in Winsta opined that the but-for causation test applies and “*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 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*”.²⁷⁷

²⁷¹ AIB Group at [135] (also see generally [64], [70], [73], [116] and [133] to [138]), Tab 6 of PRPTC’s BOA.

²⁷² PRPTC’s Closing Submissions at [48] and [99].

²⁷³ PRPTC’s Closing Submissions at [59].

²⁷⁴ At various instances, PRPTC has compared the TC with companies and the Town Councillors with directors of companies. See PRPTC’s Closing Submissions at [10] and [22].

²⁷⁵ Winsta, Tab 63 of PRPTC’s BOA.

²⁷⁶ PRPTC’s Closing Submissions at [57] and [61].

²⁷⁷ Winsta at [193] and [194], Tab 63 of PRPTC’s BOA.

132. Without further explanation, PRPTC has submitted that the approach in Winsta is incorrect. Curiously, PRPTC has also rejected the case of Bank of New Zealand v New Zealand Guardian Trust Co Ltd [1991] 1 NZLR 664²⁷⁸ (“Bank of New Zealand”) despite relying heavily on the case during its bifurcation application in SUM 3482 of 2018.²⁷⁹ 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.²⁸⁰
133. Unable to prove that AHTC/AHPETC had suffered actual losses, the Plaintiffs rely on equitable compensation to shift the evidentiary burden. Given that the Plaintiffs have not established the alleged breaches of duties, it is submitted that in the present case, and in the words of the CA in Maryani, “*there would consequently be no need to discuss, inter alia, the complex as well as thorny issues relating to the test for causation for equitable compensation.*”²⁸¹

(6) Plaintiffs not entitled to an Account and Inquiry

134. In addition to the points made at [369] to [371] of D1-D5’s Closing Submissions, it is submitted that no order for an account and inquiry should be made²⁸² as the Plaintiffs are already in possession of all relevant accounts. Even in the context of directors and companies, which the Plaintiffs have often relied on as analogous to the present case (which is denied), it has been observed by the learned contributor of Snell’s Equity, Dr Steven Elliot, that directors are not liable to have their account taken in court.²⁸³ Dr Elliot refers to Bacon V-C’s holding in Re Exchange Banking Ltd (Flitcroft’s Case) (1882) 21 ChD 519 which is as follows:

“A man going abroad says to another person: “You take charge, possession, and management of all my property and account to me for it when I come back.” What do subscribers to a joint stock company say? “We select you as directors; we entrust you with all our moneys now paid, and all that we are liable to pay hereafter, and with the management of all our interests, and we look upon you to account to us for them;” **and they do account at their general meetings, and by their balance sheets, and so on.**”²⁸⁴ (emphasis added)

²⁷⁸ Bank of New Zealand, Tab 12 of PRPTC’s BOA.

²⁷⁹ PRPTC’s Closing Submissions at [61].

²⁸⁰ Bank of New Zealand at Pg 687 L 29 to 51, Tab 12 of PRPTC’s BOA

²⁸¹ Maryani at [11], Tab 44 of PRPTC’s BOA.

²⁸² AHTC’s Closing Submission at [3.3.17], [8.2.3], and [8.3.6]. PRPTC’s Closing Submissions at [40] to [45].

²⁸³ Steven Elliot, Compensation Claims Against Trustees (DPhil Thesis, University of Oxford, 2002) at p. 24 to 25, Tab 80 of PRPTC’s BOA. This authority was relied on by PRPTC at PRPTC’s Closing Submissions at [22].

²⁸⁴ Flitcroft’s Case at pg. 525, Tab 52 of D1-D5BOA.

135. Given the extensive audits that AHTC has already underwent with KPMG and PwC as abovementioned at [125], 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. The Plaintiffs' claim for an account and inquiry is an abuse of process. It is being pleaded to cover up for the fact that the Plaintiffs have not found that AHTC has suffered any actual loss.

(7) PRPTC is not entitled to claim for share of the Improper Payments

136. Insofar as PRPTC claims that it is entitled to monies that were paid prior to the point in time when PE became part of AHTC because of the 2013 Order or 2015 Order,²⁸⁵ this is denied and dealt with at [380] to [382] of the D1-D5's Closing Submissions.

(8) Town Councillors' decisions are not void in Public Law

137. The Town Councillors disagree with the Plaintiffs' submissions that the FMSS Contracts and the payments made pursuant to these contracts are void in public law.²⁸⁶

138. For the Plaintiffs to establish that the contracts are void in public law, they accept²⁸⁷ 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*". It is submitted that the Plaintiffs have not established any of these matters on the basis of the Town Councillors submissions under Issues II, III and IV of D1-D5's Closing Submissions and in the submissions herein. 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.²⁸⁸

²⁸⁵ PRPTC's Closing Submissions at [526].

²⁸⁶ AHTC's Closing Submissions at [14]. PRPTC's Closing Submissions at [547] to [555].

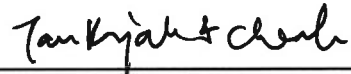
²⁸⁷ AHTC's Closing Submissions at [14.1.1] and [14.1.2] and PRPTC's Closing Submissions at [547] to [549].

²⁸⁸ Halsbury's Laws of England (Volume 20 (2014), Administrative Law) at [644], Tab 57 of D1-D5BOA.

VI. Conclusion

139. For the reasons set out in D1-D5's Closing Submissions and the submissions herein, we humbly request that the Plaintiffs' claims in Suits 668 and 716 be dismissed with costs.

Dated this the 1st day of March 2019.



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