

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

HC/S 668/2017 )  
HC/SUM 2050/2020 )

Between

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

...Plaintiff

And

1. **SYLVIA LIM SWEE LIAN**  
[REDACTED]
2. **LOW THIA KHIANG**  
[REDACTED]
3. **PRITAM SINGH**  
[REDACTED]
4. **CHUA ZHI HON**  
[REDACTED]
5. **KENNETH FOO SECK GUAN**  
[REDACTED]
6. **HOW WENG FAN**  
[REDACTED]
7. **HOW WENG FAN**  
[REDACTED]  
(PERSONAL REPRESENTATIVE OF THE ESTATE OF DANNY LOH  
CHONG MENG, DECEASED, IN HIS PERSONAL CAPACITY AND  
TRADING AS FM SOLUTIONS & INTEGRATED SERVICES)
8. **FM SOLUTIONS & SERVICES PTE. LTD.**  
(Singapore UEN No. 201111590H)

...Defendants

1ST TO 5TH DEFENDANTS' WRITTEN SUBMISSIONS FOR  
THE PLAINTIFF'S APPLICATION TO AMEND ITS STATEMENT OF CLAIM

**I. BACKGROUND**

1. HC/S 668/2017 ("**Suit 668**") was commenced by Aljunied-Hougang Town Council ("**AHTC**") on 21 July 2017 acting under the directions of an Independent Panel ("**IP**"). HC/S 716/2017 ("**Suit 716**") was commenced by Pasir-Ris Punggol Town Council ("**PRPTC**") on 3 August 2017.
2. The Suits were against the 1st to 5th Defendants who were some of the Town Councillors of AHTC. The 1st to 3rd Defendants were elected Town Councillors while the 4th and 5th Defendants were resident volunteers who were appointed as Town Councillors. The 6th Defendant and her husband, the late Mr Danny Loh were shareholders and directors of the 8th Defendant ("**FMSS**") which was the Managing Agent ("**MA**") of AHTC from 15 July 2011 to 14 July 2015. Mr Danny Loh was also the sole-proprietor of FM Solutions & Integrated Services ("**FMSI**"). Mr Danny Loh passed away in June 2015. His estate is the 7th Defendant and the 6th Defendant is its personal representative.
3. In the Suits, AHTC and PRPTC made various claims in respect of the appointment and payments made by AHTC to its MA and several third-party contractors that AHTC had engaged to manage its estate and/or perform services for its residents from 27 May 2011 to 27 November 2015.
4. Suits 668 and 716 were heard together before the Honourable Justice Kannan Ramesh over 17 days in October 2018. His Honour delivered Judgment on 11 October 2019 ("**Judgment**").
5. On 11 November 2019, the Defendants filed appeals against the findings made against them. PRPTC filed an appeal against the Honourable Court's finding that it needs to show but-for causation to ascertain the loss that it can recover for equitable compensation and that it is not entitled to substitutive compensation. No appeal was filed by AHTC.
6. On 18 May 2020, more than seven months after the Judgment, AHTC applied to amend its Statement of Claim ("**SOC**") dated 21 July 2018 by way of HC/SUM 2050/2020 ("**Application**") with a supporting 4th Affidavit of Philip Antony Jeyaretnam dated 18 May 2020 ("**AHTC's Affidavit**"). On 18 June 2020, the 1st to 5th Defendants filed two affidavits

to oppose the Application, Affidavit of Pritam Singh and Affidavit of Chua Zhi Hon both dated 17 June 2020.

7. The submissions herein are submitted on behalf of the 1st to 5th Defendants.

## II. SUBMISSIONS

### The Law - General Principles

8. The relevant provision in the Rules of Court (Cap. 322, 2014 Ed.) ("ROC") relating to the amendment of pleadings with leave is O 20 r 5 which is as follows:<sup>1</sup>

***"Amendment of writ or pleading with leave (O. 20, r. 5)***

***(1) Subject to Order 15, Rules 6, 6A, 7 and 8, and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.***

***(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.***

***(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.***

***(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.***

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<sup>1</sup> O 20 r 5 of ROC, Tab 2 of the 1st to 5th Defendants' Bundle of Authorities ("DBOA").

***(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.”***

(emphasis added)

9. It is settled law that the court has the power to grant leave to a party to amend his pleadings at any stage of the proceedings.<sup>2</sup> However, in the context of the present Application which is an amendment to an SOC after Judgment, specific considerations apply as set out below.
10. In Asia Business Forum Pte Ltd v Long Ai Sin [2004] 2 SLR(R) 173 ("**Asia Business Forum**"),<sup>3</sup> the plaintiff applicant sought to amend its SOC after judgment and pending its appeal to the Court of Appeal ("CA"). The CA held that "*leave to amend in such circumstances would be rare. Generally, very good and compelling grounds must be shown unless the proposed amendments are technical and of no real consequence*".<sup>4</sup>
11. In Susilawati v American Express Bank Ltd [2009] 2 SLR(R) 737 ("**Susilawati**"),<sup>5</sup> the appellant applied to amend its claim at the appeal stage to add a new cause of action. The CA held that where an application to amend comes so late in the proceedings as in that case, the court must necessarily be slow to grant leave. The CA affirmed the holding in Chwee Kin Keong v Digilandmall.com Pte Ltd [2004] 2 SLR(R) 594 ("**Chwee Kin Keong**")<sup>6</sup> that "*a court will generally be cautious if not reluctant to effect any amendments once the hearing has commenced; even more so once the evidential phase of the proceedings has been completed.*"

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<sup>2</sup> Asia Business Forum Pte Ltd v Long Ai Sin [2004] 2 SLR(R) 173 ("**Asia Business Forum**") at [9], Tab 4 of DBOA.

<sup>3</sup> Asia Business Forum, Tab 4 of DBOA.

<sup>4</sup> Asia Business Forum at [17], Tab 4 of DBOA.

<sup>5</sup> Susilawati at [55] to [63], Tab 15 of DBOA.

<sup>6</sup> Chwee Kin Keong at [84], Tab 5 of DBOA.

12. Under O 20 r 5(1) of ROC and in the context of an amendment application after judgment and pending an appeal, Asia Business Forum sets out the following two key factors which have been affirmed in subsequent CA decisions:<sup>7</sup>
  - (a) The amendments should not cause any prejudice to the other party.
  - (b) The amendments should not give rise to a situation whereby the applicant was effectively asking for a second bite at the cherry.
13. The CA in Susilawati held that if the appellant was to be allowed leave to amend its pleadings and assert a new cause of action at the appeal stage after the judgment, the rules of fairness and procedure would dictate that the respondent also be granted leave to adduce further evidence to defend against the new claim which would necessitate a re-trial.<sup>8</sup> The CA in that case refused to allow the amendment and held that it would severely prejudice the respondent for which a costs order could not sufficiently compensate.
14. In Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd [2016] 2 SLR 1 ("Multistar Holdings"),<sup>9</sup> the CA explained that the common forms of prejudice suffered by the respondent would be of him being deprived of an opportunity to cross-examine witnesses on the unpleaded facts or to lead evidence to disprove such facts.<sup>10</sup>
15. The CA in Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd [2016] 4 SLR 351 ("Mer Vue"),<sup>11</sup> affirmed an important distinction between amendment applications which involve the defence of limitation and those that do not. After reviewing its earlier decisions, the CA held as follows:<sup>12</sup>

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<sup>7</sup> Asia Business Forum at [18], Tab 4 of DBOA. Endorsed by the CA in Susilawati at [58], Tab 15 of DBOA and more recently in Sunbreeze Group Investments Ltd and others v Sim Chye Hock Ron [2018] 2 SLR 1242 at [24], Tab 14 of DBOA.

<sup>8</sup> Susilawati at [60], Tab 15 of DBOA.

<sup>9</sup> Multistar Holdings, Tab 12 of DBOA.

<sup>10</sup> Multistar Holdings at [60], Tab 12 of DBOA.

<sup>11</sup> Mer Vue, Tab 11 of DBOA.

<sup>12</sup> Mer Vue at [42], Tab 11 of DBOA.

*"To sum up, based on the language of O 20 r 5 as well as the authorities cited above, we were of the view that O 20 r 5 operated in the following way:*

- (a) *If an amendment is applied for after the expiry of the relevant limitation period, and if the defendant has an accrued right of limitation which would be prejudiced by allowing the amendment, O 20 r 5(1) would be of no application and the amendment can only be allowed under O 20 rr 5(2)–5(5).*
- (b) *If, however, allowing the amendment would not prejudice the defendant's limitation defence, the amendment may be allowed under O 20 r 5(1)."*

16. Based on the general legal principles above which are further elaborated below, the 1st to 5th Defendants will address AHTC's Application under the following heads:

- (a) **Timing of the Application.**
- (b) **Limitation.**
- (c) **Irremediable Prejudice.**

#### **Timing of the Application**

17. AHTC has not explained why it did not apply to make the proposed amendments to its SOC earlier. AHTC had ample opportunities to do so as is evident from the following:

- (a) After the IP was appointed in February 2017, the IP would have reviewed the KPMG Report of 31 October 2016 as well as the other reports from the Ministry of National Development ("MND") and the Auditor-General's Office ("AGO"). The IP was advised by its present solicitors, Messrs Shook Lin & Bok LLP. Suit 668 was commenced five months later in July 2017.<sup>13</sup>
- (b) AHTC could have applied to amend its SOC to make claims similar to PRPTC after PRPTC commenced its claim on 3 August 2017 and at the time the Order was made on 22 November 2017 for the 2 matters to be heard together. AHTC did not do so.

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<sup>13</sup> The detailed background to Suit 668 is set out in the Affidavit of Pritam Singh at [9].

- (c) Substantial discovery of documents took place from November 2017 to February 2018. There was ample time during this period, or after the discovery was completed, for AHTC to amend its SOC but it did not do so.
  - (d) From about 24 August 2018 to 15 October 2018, the 1st to 8th Defendants and PRPTC amended their respective pleadings. AHTC only amended its Reply in response to the Defendants' amended Defences. AHTC again chose not to amend its SOC at this time.
  - (e) The trial took place over a total of 17 hearing days (more than 3 weeks) in October 2018. A hearing for oral closing submissions was held on 9 April 2019. Between October 2018 and April 2019, parties exchanged written closing submissions and reply submissions. Even during this time, AHTC did not state that it wished to amend its SOC.
  - (f) On 11 October 2019, the Judgment was issued. Seven months later, AHTC filed the present Application to amend its SOC on 18 May 2020.
18. In Susilawati, the CA in declining to allow the amendments, examined the facts and concluded that the relevant matters for the new cause of action were known to the appellant and it could have, with reasonable diligence, addressed this before or during the trial:<sup>14</sup>
- “In a case like the present one, where the appellant’s solicitors could have, with reasonable diligence, addressed all these evidential and pleading shortcomings before or during the trial phase, allowing such amendments, that would necessitate a retrial, would be plainly inappropriate and unjust. We were therefore constrained to dismiss the appellant’s application for leave to amend the pleadings, not least because it had been made at such a late stage in the proceedings, long after the decision of the trial judge had been delivered.”*
19. In the present case, AHTC similarly had all the information to make these claims previously but did not do so. This is not a case of new evidence or a technical amendment of no real consequence as elaborated at [31] to [40] below.

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<sup>14</sup> Susilawati at [63], Tab 15 of DBOA.

20. It is an important consideration in this case that **AHTC has not filed any appeal** against the Judgment. AHTC is not dissatisfied with the Judgment and it is not making the amendments as part of its appeal for the decision below to be corrected. It is submitted that in such circumstances, there is even less reason for the amendments to be allowed. The present case is an unusual fact scenario and the case law and legal principles relating to amendments post judgment should be considered in this light.
21. AHTC had made a deliberate decision to run its case as per its SOC during these proceedings which spanned more than 2 years from July 2017 to October 2019 when the Judgment was released. The Application is a blatant attempt to benefit from the findings in the Judgment in relation to Suit 716. Having had sight of the Judgment, AHTC is clearly attempting to have a **second bite at the cherry**. At a clarification hearing on 9 March 2020 in respect of AHTC's and PRPTC's draft judgment orders which the Defendants had disputed, AHTC's counsel submitted that AHTC should be allowed to include orders in its draft judgment for Suit 668 relating to its unpleaded claims. In response, the Honourable Trial Judge made the following important observations at the hearing:

*"Is that a correct submission? Surely if a cause of action and attendant reliefs are not pleaded, you cannot say that you have established the claim. **You cannot just piggy back on PRPTC's claims. You should have applied to amend your pleadings at the relevant point. The suits were not consolidated. The key question is: have you brought a claim and has the judgment allowed it. If you have not pleaded the claim, you surely cannot ride on PRPTC's claim. That is a choice you have made.**"<sup>15</sup>* (emphasis added)

22. A party should not be allowed to amend its pleadings after the trial and after judgment has been delivered where the amendments are intended to take advantage of the orders made in the judgment in respect of its unpleaded claims. Allowing a party to do so will undermine the cardinal rule that parties are bound by their pleadings. It is prejudicial and unjust to the respondent to such an application and clearly an abuse of process. AHTC is seeking to do just that in this Application and it should not be allowed to do so.

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<sup>15</sup> Lines 15 to 22 at page 7 of the Notes of Evidence of the hearing on 9 March 2020 at page 105 of the Affidavit of Pritam Singh.



23. In Asia Business Forum, the CA cited Lord Griffiths in Ketteman v Hansel Properties Ltd [1987] 1 AC 189 ("Ketteman")<sup>16</sup> as follows:<sup>17</sup>

*"But justice cannot always be measured in terms of money and in my view a judge is entitled to weigh in the balance the strain the litigation imposes on litigants, particularly if they are personal litigants rather than business corporations, the anxieties occasioned by facing new issues, the raising of false hopes, and the legitimate expectation that the trial will determine the issues one way or the other. Furthermore to allow an amendment before a trial begins is quite different from allowing it at the end of the trial to give an apparently unsuccessful defendant an opportunity to renew the fight on an entirely different defence.*

*Another factor that a judge must weigh in the balance is the pressure on the courts caused by the great increase in litigation and the consequent necessity that, in the interests of the whole community, legal business should be conducted efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age."*

(emphasis added)

24. It is submitted that the considerations highlighted above are even more pertinent where the applicant is the plaintiff and not the defendant. The plaintiff as the claimant should not be allowed to use the court process to harass and cripple the defendant.
25. In Hong Leong Finance Ltd v Famco (S) Pte Ltd [1992] 2 SLR(R) 225 ("Hong Leong"),<sup>18</sup> a corporate defendant sought to introduce a fresh line of defence nearly ten years after the events occurred, alleging that two other defendants had acted in breach of their fiduciary duties as directors. The High Court had regard to Ketteman and dismissed the application for amendment of pleadings as it was mindful that the suit "*has been hanging over the heads of these two defendants for seven years and their anxiety and need to have the issues resolved one way or the other must have some weight with the court.*"<sup>19</sup>

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<sup>16</sup> Ketteman at page 220, Tab 9 of DBOA.

<sup>17</sup> Asia Business Forum, Tab 4 of DBOA.

<sup>18</sup> Hong Leong, Tab 8 of DBOA.

<sup>19</sup> Hong Leong at [15], Tab 8 of DBOA.

26. The key allegations and claims in these proceedings have been hanging over the heads of the 1st to 5th Defendants since MND initiated legal proceedings in March 2015. There must be finality to the litigation. Allowing the amendments in circumstances where there is no explanation as to why these claims could not have been made earlier would clearly result in an outcome which is unjust.

### **Limitation**

27. Contrary to AHTC's position in its Affidavit,<sup>20</sup> **the proposed amendments in the SOC do raise issues of limitation.** AHTC refers to the HC's holding in its Judgment that the applicable limitation period started from 9 February 2015 and therefore no issue of limitation arises. This incorrectly suggests that the 6-year limitation period only starts to run from 9 February 2015 which is not the HC's decision. The HC's decision on limitation is summarised below:

- (a) The HC set out the Defendants' position that all the claims accruing before 21 July 2011 (in respect of AHTC) and 3 August 2011 (in respect of PRPTC) were time-barred by virtue of ss 6 and 22 of the Limitation Act (Cap 163, 1996 Rev Ed.) ("**Limitation Act**").<sup>21</sup>
- (b) The HC held that there were two heads of claim that it found liability for and which could potentially fall outside a 6-year limitation period: (i) The first is entering into the 1st MA contract on 8 July 2011; and, (ii) The second relates to the 1st to 7th Defendants' breach of their duties of skill and care in relation to four invoices issued by FMSS/FMSI between 28 May 2011 and 28 July 2011.<sup>22</sup>
- (c) The HC held that both the above heads of claim were not time-barred by reason of s 24A(3)(b) of the Limitation Act. The HC held that a further exception under s 22(1) of the Limitation Act applied to Ms Sylvia Lim's and Mr Low Thia Kiang's breach of fiduciary duties in relation to the 1st MA Contract.<sup>23</sup>

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<sup>20</sup> AHTC's Affidavit at [3.1.3].

<sup>21</sup> Judgment at [459].

<sup>22</sup> Judgment at [460].

<sup>23</sup> Judgment at [460].

- (d) The HC rejected AHTC's submission that the claim in relation to the 1st MA Contract only accrued after the relevant 6-year limitation period commenced i.e. only on 4 August 2011 when the 1st MA Contract was formally ratified or upon the payment of the first invoice on 21 July 2011. The HC held as follows:<sup>24</sup>

*"In so far as the claims for breach of fiduciary duties and of duties of skill and care are concerned, this cannot be correct. On the facts which I have found, Ms Sylvia Lim, Mr Low Thia Kiang, and Ms How Weng Fan acted in breach of their fiduciary duties to AHTC by entering into the first MA contract, and Mr Pritam Singh, Mr David Chua and Mr Kenneth Foo acted in breach of their duties of skill and care in failing to question these actions. To the extent that the defendants then procured the ratification of the first MA contract by AHTC, they perpetuated this same breach, as opposed to committing a fresh breach for the first time. **As such, this cause of action accrued on 8 July 2011 when the FMSS LOI was first signed by Ms Sylvia Lim.**"* (emphasis added)

- (e) The HC found that the 3-year limitation period under the knowledge exception in s 24A(3)(b) of the Limitation Act applied such that the claims in respect of the 1st MA Contract and the four invoices would not be time-barred as the applicable date when the 3-year limitation starts to run is 9 February 2015 when the AGO Report was issued.<sup>25</sup>
- (f) The HC found that the trust-related exception under s 22(1) of the Limitation Act applied to the 1st and 2nd Defendants but this was only in respect of their breaches of fiduciary duties.<sup>26</sup>

28. It is significant to note that for purposes of the accrual of AHTC's claims for the 6-year limitation period, the HC had found that the 1st and 2nd Defendants acted in breach of their fiduciary duties **by entering into the 1st MA Contract** and the 3rd to 5th Defendants acted in breach of their duties of skill and care **in failing to question** AHTC entering into these contracts. The MA and EMSU contracts were entered into in 2011 and 2012, about 8-9 years before the Application for the current proposed amendments. The proposed new claims are therefore time-barred under the 6-year limitation period.

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<sup>24</sup> Judgment at [461].

<sup>25</sup> Judgment at [464] to [474].

<sup>26</sup> Judgment at [475] to [484].

29. The HC's finding on the date of 9 February 2015 was in respect of the 3-year limitation period under s 24A(3)(b). The 3-year period from 9 February 2015 ended on 9 February 2018. Since Suit 668 was commenced on 21 July 2017 and Suit 716 was commenced on 3 August 2017, the original claim under the 1st MA Contract would not be time-barred. However, in the present Application, all the proposed new claims in respect of the MA and EMSU Contracts are being made after the 3-year limitation period had ended on 9 February 2018. All the proposed new claims are therefore time-barred.

**Whether Order 20 r 5(1) or O 20 r 5(2) read with r 5(5) applies**

30. In Mer Vue, the CA summarised the operation of O 20 r 5 in a case where a question of limitation could arise, as follows:<sup>27</sup>

*“(a) First, it must be determined **whether the amendment, if allowed, would prejudice the other party’s limitation defence.** As mentioned at [43] above, this is a **question of fact** that can only be answered on a case by case basis. **A key consideration in this regard is whether the amendment effectively allows the plaintiff to prosecute a claim which would otherwise have been time-barred if it were brought under a new writ. Courts should have regard not only to the form, but also to the practical effect of the amendment.***

*(b) If it is determined that the amendment **would not prejudice** the other party’s limitation defence, the court should then consider **whether it would be just to allow the amendment under O 20 r 5(1).***

*(c) On the other hand, if it is determined that the amendment **would prejudice** the other party’s limitation defence, **the court can only allow the amendment under O 20 rr 5(2)–5(5).** The court must first consider whether the amendment falls within one of the three categories mentioned in O 20 rr 5(3)–5(5) (ie, whether the amendment is an amendment to correct the name of a party, to alter the capacity in which a party sues, **or to add or substitute a new cause of action based on facts already pleaded**). **If it does, the amendment may only be allowed if the requirements in the applicable paragraph are satisfied and if the court deems it just to allow the amendment. If it does not, the amendment must be disallowed.**”*  
(emphasis added)

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<sup>27</sup> Mer Vue at [48], Tab 11 of DBOA.

31. AHTC's claims against the 1st to 5th Defendants in its SOC are as follows:

(a) **As against the 1st and 2nd Defendants:**

- (i) Conflict of interest: As pleaded at [6.1.1] and [6.1.2] of the SOC, a claim for breach of fiduciary duties as Mr Danny Loh and Ms How would be acting for both AHTC and FMSS/FMSI under the contracts with FMSS and FMSI and these contracts and the payment process were therefore allegedly "*tainted by conflicts of interest and/or contrary to the best interests of AHTC.*"
- (ii) Lack of authorisation, contracts awarded without proper justification and/or evaluation, and insufficient control over expenses and payments of AHTC: As pleaded at [6.1.3] of the SOC, a claim for breach of fiduciary duties for allegedly:
  - (1) "*Waiving the need for quotations for certain transactions without obtaining the necessary authorisation of the AHTC Chairman;*"
  - (2) "*Awarding and/or acquiescing in and/or approving and/or authorising the award of contracts pursuant to quotations/tenders which were not the lowest quotations/tenders received, without proper justification and/or evaluation;*"
  - (3) "*Failing to maintain sufficient control over the expenses and payments of AHTC, including ...*".
- (iii) Appointment of FMSS: As pleaded at [7.1.1] of the SOC, a claim for breach of duty of care and skill and care for allegedly "*failing to exercise proper scrutiny in causing AHTC to improperly waive the tender for the 1st MA Contract and awarding the 1st MA Contract and 2nd MA Contract to FMSS*".

(iv) Damages: “Equitable compensation in respect of any losses suffered by AHTC as a result of their breaches of fiduciary duties ... which, subject to Sylvia Lim and Low Thia Khiang showing otherwise in a proper account and inquiry, comprises of total payments of **\$33,717,535** made to FMSS and FMSI.” Alternatively, the alleged higher MA fees paid to FMSS of \$515,773 in respect of the 1st MA Contract and \$746,000 in respect of the 2nd MA Contract.<sup>28</sup>

(b) **As against the 1st, 3rd, 4th and 5th Defendants:**

(i) As pleaded at [7.5.2] of the SOC, a claim for breach of duty of care and skill for allegedly “(a) causing AHTC to appoint LST Architects [“LST”] and Design Metabolists to [“DM”] for 7 out of 10 construction projects to the contractors on this Panel of Consultants without calling for a separate tender for each project; and (b) in respect of 7 out of 10 construction projects, awarding the contracts to [LST] despite [DM] being the lower-priced contractor.” (words in square brackets added.)

(ii) Damages: It was alleged that if DM had been appointed, AHTC would not have been liable to pay an additional sum of **\$2.79 million**.<sup>29</sup>

32. The proposed amendments seek to add **new causes of action** as follows:

(a) **New causes of action as against the 1st and 2nd Defendants:**

(i) As per the proposed amendments at [4.3.6], [7.1.1] and [7.2.1] of the Draft Amended SOC, **alleged breaches of equitable duties of care and skill “by failing to exercise proper scrutiny in causing AHTC to improperly waive the tender” for the 1st EMSU Contract and awarding the 1st EMSU Contract to FMSS.**

(See also the relief at [1(a)(iv)] at page 63 of the Draft Amended SOC.)

<sup>28</sup> SOC at [1(a)(ii)] and [1(a)(iii)] at page 61.

<sup>29</sup> SOC at [7.5.2(f)] and [7.6.1].

- (b) **New causes of action against the 3rd, 4th and 5th Defendants:**
- (i) As per the proposed amendments at [7.1], [7.1.1], [7.1.2(A)(a)] and [7.2.1] of the Draft Amended SOC, **alleged breaches of equitable duties of care and skill “by failing to exercise proper scrutiny in causing AHTC to improperly waive the tender” for the 1st MA Contract and awarding the 1st MA Contract and the 2nd MA Contract to FMSS.**  
(See also the relief sought at [1(A)(1)] at page 64 of the Draft Amended SOC.)
- (ii) As per the proposed amendments at [7.1], [7.1.1], [7.1.2(A)(a)] and [7.2.1] of the Draft Amended SOC, **alleged breaches of equitable duties of care and skill “by failing to exercise proper scrutiny in causing AHTC to improperly waive the tender” for the 1st EMSU Contract and awarding the 1st EMSU Contract to FMSS.**  
(See also the relief sought at [1(A)(1)] at page 64 of the Draft Amended SOC.)
- (iii) As per the proposed amendments at [5.1.7(A)], [7.1.2(B)] and [7.2.1] of the Draft Amended SOC, **alleged breaches of equitable duties of care and skill in relation to alleged “control failures” in the payment process** (i.e. allegedly allowing “conflicted persons” to certify work done and approve payments to themselves which is described as the “System” in the SOC). As set out in the SOC, the payments made under this System include payments made under the **1st MA Contract, 1st EMSU Contract, 2nd MA Contract and 2nd EMSU Contract**. The proposed new claim for “miscellaneous improper payments” against the 3rd to 5th Defendants relates to specific payments made as a result of the alleged “control failures”.<sup>30</sup>  
(See also the relief sought at [1(A)(1)] at page 64 of the Draft Amended SOC.)

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<sup>30</sup> This is part of the new claim for “control failures” and not a separate claim as suggested in AHTC’s Affidavit at [2.1.4(a)].

- (iv) As per the proposed amendments at [5.1.7(A)(b)], [7.1.2(A)(b)] and [7.2.1] of the Draft Amended SOC, **alleged breaches of equitable duties of care and skill in respect of the 3rd to 5th Defendants' alleged failure to "enquire into the facts and/or circumstances ... and thereafter disclose to and/or inform AHTC of and/or set right and/or rectify" the alleged control failures and/or aforementioned breaches of duties.**  
(See also the relief sought at [1(A)(1)] at page 64 of the Draft Amended SOC.)

**Order 20 r 5(2) read with r 5(5) applies**

33. In Mer Vue, the CA refused to allow an amendment to add 113 subsidiary proprietors to the MCST's existing claim against the developer as it would not only allow these 113 subsidiary proprietors to pursue claims which would have been time-barred if a fresh writ had been issued, the claim for damages against the developer would have increased substantially – a five-fold increase in that case.<sup>31</sup>
34. Applying Mer Vue to the present case, the first question is whether the amendment if allowed would prejudice the other parties' limitation defence. It is submitted that the proposed new causes of action in the Draft Amended SOC will **prejudice** the 1st to 5th Defendants:
- (a) The new claims against the 1st and 2nd Defendants and against the 3rd to 5th Defendants are distinct new causes of action which would have been time-barred if pursued under a fresh writ.
- (b) The new claims, if allowed and found against the 1st to 5th Defendants, would substantially increase their liability for damages. The 1st and 2nd Defendants would be potentially liable for an additional sum of \$583,641 which was paid under the 1st EMSU Contract. The 3rd to 5th Defendants are looking at an additional damages claim of \$33.7 million over and above the current claim of \$2.79 million – a twelve fold increase.

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<sup>31</sup> Mer Vue at [37], Tab 11 of DBOA.



35. Given that the proposed amendments would prejudice the 1st to 5th Defendants, the Honourable Court can only allow the amendment under O 20 rr 5(2) – 5(5), in particular under one of the three categories under rr 5(3)-5(5).
36. The CA in Mer Vue affirmed its earlier observations in Lim Yong Swan v Lim Jee Tee and another [1992] 3 SLR(R) 940 ("Lim Yong Swan") that O 20 rr 5(3) to 5(5) cover circumstances where amendments may be allowed after the expiry of any relevant limitation period and **the common thread for all these provisions is to allow a correction to make explicit what was implicit.**<sup>32</sup>
37. In The Virginia Rhea [1983-1984] SLR(R) 639 ("The Virginia Rhea"),<sup>33</sup> the appellants had claimed as the indorsees or holders for value of and under four bills of lading under four contracts of carriage. The CA refused to allow an amendment to insert a claim under a fifth bill of lading. The CA held this to be a new cause of action. The CA held that the mention of the contracts of carriages could not necessarily imply that there could be another claim in respect of another contract of carriage under another bill of lading which need not be identified even though it was made for the same voyage by the same vessel and the fifth bill of lading bore the same date.<sup>34</sup>
38. AHTC's proposed amendments are **not corrections** intended to make explicit what was implicit. **They are completely new claims which had not been made before: (i) No claim had been made against the 1st and 2nd Defendants by AHTC for appointing FMSS under the 1st EMSU Contract without inviting tenders; (ii) No claim had been made against the 3rd to 5th Defendants by AHTC in respect of the MA and EMSU Contracts.**
39. In respect of O 20 r 5(5), the CA in Mer Vue held that the rule only permitted the addition of a new cause of action brought by an existing claimant against an existing defendant on facts which were already pleaded i.e. to **make explicit what was implicit.**<sup>35</sup> In Multistar Holdings, the CA held that "cause of action" means the essential factual material that supports a claim.<sup>36</sup> Contrary to AHTC's assertion at [2.4.11] and [3.2] of its Affidavit,

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<sup>32</sup> Lim Yong Swan at [16] to [19], Tab 10 of DBOA.

<sup>33</sup> The Virginia Rhea, Tab 16 of DBOA.

<sup>34</sup> The Virginia Rhea at [11], Tab 16 of DBOA.

<sup>35</sup> Mer Vue at [55], Tab 11 of DBOA.

<sup>36</sup> Multistar Holdings at [34], Tab 12 DBOA.

AHTC's proposed new claims are not based on facts that were already pleaded. The facts which had to be proved in order to succeed in the new claims are substantially different from those relevant under the original claim.<sup>37</sup> The essential new facts that AHTC's proposed amendments seek to include in order to support its new claims are as follows:

- (a) In respect of the new claim against the 1st and 2nd Defendants, the Draft Amended SOC at [4.3.6] contains, inter alia, **new facts that AHTC had entered into the 1st EMSU Contract without inviting tenders:**

"4.3.6 Sometime in 2011, AHTC also entered into the 1st EMSU Contract with FMSS for the provision of EMSU services for the period 1 October 2011 to 30 June 2012 without inviting tenders. It had been proposed by Mr Loh to the Elected Members as early as 2 June 2011 that FMSS take over the provision of EMSU services once the current contract with CPG expired."

- (b) In respect of the new claims against the 3rd to 5th Defendants, the Draft Amended SOC at [7.1.1], [7.1.2(A)] and [7.1.2(B)] contains, inter alia, **new facts that the 3rd to 5th Defendants caused AHTC to improperly waive the tender for the 1st MA Contract and additionally, the 1st EMSU Contract:**

"7.1 Sylvia Lim and Low Thia Khiong Town Councillors: Appointment of FMSS

7.1.1 Sylvia Lim and Low Thia Khiong The Town Councillors breached their duty of care and skill qua fiduciary and/or duty of care and skill in tort to AHTC by failing to exercise proper scrutiny in causing AHTC to improperly waive the tender for the 1st MA Contract and 1st EMSU Contract, and awarding the 1st MA Contract 1st EMSU Contract, and 2nd MA Contract to FMSS.

7.1.2(A) AHTC further avers that Mr Pritam Singh, Mr Chua Zhi Hon and Mr Kennelth Foo breached their duty of care and skill qua fiduciary and/or duty of care and skill in tort to AHTC:

- a. By 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 Contracts and 1st EMSU Contracts in

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<sup>37</sup> McGee Andrew, Limitation Periods (8th Edition, Sweet & Maxwell) at [23.029], Tab 18 of DBOA.

the circumstances set out at paragraphs 4.1 to 4.3, 6.1.2, 6.6 and 7.1.1 above; and/or

- b. By virtue of their position as Elected or Appointed Members of AHTC, they had the means of knowledge of and knew or ought to have known about the facts and/or circumstances set out at paragraphs 4.1 to 4.3, 6.1.2, 6.6 and 7.1.1 above, which would have awakened suspicion and put a prudent man on his guard. They failed to enquire into the facts and/or circumstances set out at paragraphs 4.1 to 4.3, 6.1.2, 6.6 and 7.1.1 above and thereafter disclose to and/or inform AHTC of and/or set right and/or rectify the aforementioned breaches of duties.

7.1.2(B) In respect of the System, Paragraphs 5.1.7 and 5.1.7(A)-(B) above are also repeated.

- (c) AHTC's proposed amendments at [5.1.7(A)] and [7.1.2(A)] of the Draft Amended SOC refer to facts already pleaded in their SOC in purported support of their new claims against the 3rd to 5th Defendants. However, the existing facts in the SOC only relate to the 1st and 2nd Defendants' involvement in the MA and EMSU Contracts and the System, and are not facts supporting the new claims against the 3rd to 5th Defendants.

40. Even though the 1st to 5th Defendants are existing parties in Suit 668, the making of entirely new claims bringing with them additional liability for the parties involved cannot be "merely a matter of correction to make explicit what is implicit". It is therefore submitted that the proposed amendments should not be allowed.

### Irremediable Prejudice

41. Apart from the significantly higher damages that are now being claimed against the 1st to 5th Defendants in the Draft Amended SOC, the proposed amendments will cause irremediable prejudice to the Defendants as it would have affected the way the proceedings and the trial for Suit 668 were conducted on behalf of the 1st to 5th Defendants. The following sets out some of the key new evidence that would have been adduced at the trial:

- (a) Additional evidence would have been adduced by the 3rd to 5th Defendants in their respective Affidavits of Evidence-in-Chief (“AEICs”) in respect of the new claims. The evidence adduced would cover the extent of their knowledge and involvement in the MA and EMSU Contracts. As stated in the two Affidavits filed by Mr Pritam Singh and Mr Chua Zhi Hon, as no claims had been made against the 3rd to 5th Defendants in Suit 668 in respect of the MA and EMSU Contracts, the evidence in relation to these claims was left to Ms Sylvia Lim and Mr Low. Unlike Ms Sylvia Lim and Mr Low’s AEICs which went into substantial detail on the formation of these contracts and KPMG’s purported findings in respect of these contracts, the AEICs of the 3rd to 5th Defendants only dealt briefly on meetings that they attended as town councillors.<sup>38</sup>
- (b) The 3rd to 5th Defendants would have called additional witnesses such as the other town councillors and staff of AHTC in respect of these new causes of action. Their evidence would have been in respect of the extent of their involvement in the MA and EMSU Contracts, the alleged “control failures” in the payment process for payments made to FMSS/FMSI and the alleged wrongful miscellaneous payments.<sup>39</sup>
- (c) The 3rd to 5th Defendants’ evidence would have addressed the key documents which concern the claims in respect of the MA and EMSU Contracts that were raised by the Plaintiffs at trial and relied upon by the High Court in its Judgment. There was no evidence at trial of the 3rd to 5th Defendants’ knowledge, involvement or understanding of each of these key documents.<sup>40</sup>
- (d) In addition, the 4th and 5th Defendants would have given specific evidence on:<sup>41</sup>
- (i) The lead role played by the Workers’ Party Members of Parliament (“WP MPs”) as elected representatives in the planning and decision-making in the TC compared to their role as Appointed Town Councillors.

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<sup>38</sup> AEIC of Pritam Singh at [13] to [27]; AEIC of Chua Zhi Hon at [12] to [22]; AEIC of Kenneth Foo at [12] to [22].

<sup>39</sup> Affidavit of Pritam Singh at [21(b)]; Affidavit of Chua Zhi Hon at [10(e)] and [10(f)].

<sup>40</sup> Affidavit of Pritam Singh at [21(a)]; Affidavit of Chua Zhi Hon at [10(c), (d), (g) and (h)].

<sup>41</sup> Affidavit of Chua Zhi Hon at [10(a) and (b)].

- (ii) The extent of their knowledge and involvement in the various discussions and communications that the WP MPs had from the time they were elected on 7 May 2011 in respect of the MA and EMSU appointments and any alleged impropriety associated with these appointments.

42. As stated in the Affidavit of Pritam Singh, the following factors affected the 1st to 5th Defendants' decision as to what and how the evidence should be adduced for the trial:<sup>42</sup>

- (a) Contrary to AHTC's assertion, its proposed new claims are not similar to PRPTC's claims. PRPTC did not claim for \$33.7 million against any of the Defendants and its claims were significantly lower than AHTC's claims as PRPTC's claims were only for part of the sums paid.
- (b) Given the specific context of PRPTC's claims, the 1st to 5th Defendants' key defence to PRPTC's claims was that (a) significant payments under the MA and EMSU Contracts were made before Punggol East SMC became part of AHTC; and, (b) PRPTC is not the proper party to bring this claim.

43. The 1st to 5th Defendants are entitled to and would have vigorously defended these new claims if they had been made at the outset. The proposed amendments if allowed at this stage would deprive the 1st to 5th Defendants of an opportunity to cross-examine AHTC's witness on his purported evidence that supports these new claims, in particular, what findings, if any, in the KPMG Report support these claims.<sup>43</sup> As held in Susilawati, the justice of the case demands that the Defendants be given an opportunity to adduce further evidence if the proposed amendments are allowed and therefore the new claims cannot be determined by the Court without a re-trial. This would however severely prejudice the Defendants given the length and complexity of these proceedings.

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<sup>42</sup> Affidavit of Pritam Singh at [21(c)]; Affidavit of Chua Zhi Hon at [10(e)] and [10(f)].

<sup>43</sup> Multistar Holdings at [60], Tab 12 of DBOA.

III. CONCLUSION

44. In conclusion, the Honourable Court's attention is drawn to the following key matters:

- (a) AHTC has offered no explanation as to why these new claims could not have been made earlier.
- (b) AHTC should not be allowed to have a second bite at the cherry by amending its pleadings to suit the Judgment. This undermines the rule that parties are bound by their pleadings and is an abuse of process of the court.
- (c) The proposed new claims raise issues of limitation. All the proposed new claims are time-barred both under the 6-year limitation period and the 3-year limitation period under s 24A(3)(b) of the Limitation Act.
- (d) The 1st to 5th Defendants would be prejudiced by the proposed amendments which raise completely new claims and heads of damages – the amendments do not make explicit what was implicit.
- (e) The prejudice suffered is irremediable as the 1st to 5th Defendants would have conducted their defence differently if these claims had been made at the outset. At the trial, additional evidence would have been adduced, in particular, by the 3rd to 5th Defendants as to the extent of their knowledge and involvement in the MA and EMSU contracts. They would have also called the other town councillors to testify on these matters.
- (f) The proposed amendments would necessitate the Defendants being granted leave to adduce further evidence which would require a re-trial. This would severely prejudice the 1st to 5th Defendants.

45. For the reasons set out above and to be further submitted at the hearing, it is humbly submitted on behalf of the 1st to 5th Defendants that AHTC's Application should be dismissed with costs.

Dated this the 20th day of July 2020.



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