IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No 668 of 2017
(Summons No. 2050 of 2020)

Between

Aljunied-Hougang Town Council

… Plaintiff

And

(1) Sylvia Lim Swee Lian
(2) Low Thia Khiang
(3) Pritam Singh
(4) Chua Zhi Hon
(5) Kenneth Foo Seck Guan
(6) How Weng Fan
(7) How Weng Fan (personal representative of the estate of Danny Loh Chong Meng, deceased, in his personal capacity and trading as FM Solutions & Integrated Services)
(8) FM Solutions & Services Pte Ltd

… Defendants

ORAL JUDGMENT

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Kannan Ramesh J:

Introduction

1 In Summons No. 2050 of 2020 ("the application"), the plaintiff, the Aljunied-Hougang Town Council ("AHTC"), seeks to amend its Statement of Claim filed in High Court Suit No. 668 of 2017 ("Suit 668"). It is important that AHTC makes the application after I delivered judgment on 11 October 2019 in Suit 668 and High Court Suit No. 716 of 2017 ("Suit 716") in *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241 ("the Judgment"). Suit 716 is brought by the Pasir-Ris Punggol Town Council ("PRPTC"). The defendants in both suits are the same. It is also important that Suit 668 and Suit 716 are not consolidated though they were directed, with the parties' consent, to be tried together. The order of court to this effect is HC/ORC 8302/2017 dated 22 November 2017.

2 Having considered the submissions made on behalf of AHTC and the defendants, I allow the amendments only in part. These are oral grounds which I may supplement at the relevant time.

Background

3 The background facts to Suit 668 are lengthy and are stated in detail in the Judgment. In the interest of brevity, I do not repeat them here. I shall only mention some salient facts for the purposes of the application. Firstly, as noted earlier, Suit 668 and Suit 716 were not consolidated pursuant to an application under O 4 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). They were ordered to be tried together. Secondly, AHTC's pleaded case in Suit 668 differs in several material respects from PRPTC's in Suit 716. Despite the claims in both suits arising from a largely common bedrock of facts, PRPTC's claim is broader in scope: the Judgment at [303] is one instance where I have noted this. Thirdly, as Suit 668 and Suit 716 were tried together, I had made factual findings and arrived at conclusions which arose out of the common bedrock of facts. However, it is important to emphasise that those findings and conclusions are relevant to Suit 668 and Suit 716 only insofar as they relate to the causes of actions/claims pleaded in the respective statement of claim. I shall deal with the significance of this at [14] to [23] below.

4 The claims in both Suit 668 and Suit 716 relate *inter alia* to the duties owed by the defendants to AHTC and PRPTC between 2011 and 2015, and the manner in which those duties were discharged. In sharp focus in the pleadings and at trial were: (a) the award of four contracts to the 8th defendant without the calling of tender, and (b) the process by which payments were approved and made by AHTC and PRPTC to the 8th defendant and the 7th defendant, trading as FM Solutions & Integrated Services ("FMSI"), for services rendered under

the four contracts and a related contract for Essential Maintenance Service Unit ("EMSU") services respectively. The features of this process, which I shall refer to as the "Payment System", and its flaws are asserted in paragraph 5.1.3, and paragraphs 5.1.1 and 5.1.5 respectively of the Statement of Claim in Suit 668 ("the 668SOC"). The four contracts are two Managing Agent ("MA") contracts and two EMSU contracts (which I will refer to separately as the "1st MA Contract", "2nd MA Contract", "1st EMSU Contract" and "2nd EMSU Contract", and collectively as the "FMSS Contracts"). Various other claims were made which are not germane for present purposes.

5 I now summarise AHTC's proposed amendments to the 668SOC, which are set out in the draft amended Statement of Claim ("Draft") appended to the application. The amendments are reproduced at the Annex to this judgment.

The proposed amendments

6 AHTC's proposed amendments may be broadly described and categorised as follows:

> (a) Amendments relating to the 1st and 2nd defendants: By amendments to paragraphs 7.1.1, 7.2.1 and relief 1(a)(iv), and the introduction of a new paragraph 4.3.6, AHTC: (i) asserts that the 1st and 2nd defendants breached their equitable duty of care and skill by failing to exercise proper scrutiny in causing AHTC to award the 1st EMSU Contract (in addition to the already pleaded 1st and 2nd MA Contracts) to FMSS without calling tender, and (ii) claims loss and damages for the 1st and 2nd defendants' breach of their equitable duty of care and skill in relation to the 1st EMSU Contract (in addition to the already pleaded 1st MA and 2nd MA Contracts) by reason of the matters pleaded in paragraphs 7.1 to 7.1.4 of the 668SOC, which include the Payment

System,. This category of amendment shall hereinafter be described as "the Category 1 amendments".

(b) Amendments relating to the 3rd to 5th defendants:

(i) By amendments to paragraphs 7.1.1 and 7.2.1, and the introduction of new paragraphs 4.3.6 and 7.1.2(A) and a new relief 1A(1), AHTC: (i) asserts that the 3rd to 5th defendants breached their equitable duty of care and skill by failing to exercise proper scrutiny in causing AHTC to award the 1st EMSU Contract, 1st MA Contract and 2nd MA Contract to FMSS without calling tender; and (ii) seeks a declaration of breach and claims damages arising from such breach. This category of amendment shall hereinafter be described as "the Category 2a amendments".

(ii) By amendments to paragraphs 5.1.7(A) and 7.2.1, and the introduction of a new paragraph 7.1.2(B) and a new relief 1A(1), AHTC: (i) asserts that the 3rd to 5th defendants breached their equitable duty of care and skill in relation to "control failures" in the Payment System, having at the very least permitted AHTC to make payments thereunder knowing or failing to enquire into or rectify the flaws therein; and (ii) seeks a declaration of breach and claims damages arising from such breach. This category of amendment shall hereinafter be described as "the Category 2b amendments". Counsel for AHTC did not pursue the amendment in paragraph 7.1.2(B) accepting in oral submissions that it was not necessary for AHTC's purposes.

(c) Amendments relating to the 6th and 7th defendants: By the introduction of a new paragraph 5.1.7(B) and amendment to relief 1(b)(ii), AHTC: (i) asserts that the 6th and 7th defendants breached their equitable duty of care and skill in making payments under the Payment System in the circumstances pleaded in paragraphs 5.1 to 5.7 (which allege flaws in the Payment System) and failing to enquire into or rectify such flaws; and (ii) claims, as an alternative remedy, damages arising from such breach, including in relation to the 1st MA and 1st EMSU Contracts, by reason of the matters pleaded in paragraphs 5.1.7(B) and 7.1.2(B) of the 668SOC. This category of amendment shall hereinafter be described as "the Category 3 amendments".

7 I now set out the parties' respective cases.

The parties' cases

8 AHTC's case in essence is that the proposed amendments ought to be allowed as the "factual underpinnings of all relevant reliefs were pleaded" and the "underlying factual material raised by the 668SOC provided a basis for the reliefs" that were granted by the court in the Judgment. AHTC submits that the pleaded facts assert that the 3rd to 7th defendants, as fiduciaries, breached their equitable duty of care and skill. AHTC explains that the proposed amendments are being sought in the interests of justice and for good order as they set out the real questions in controversy between the parties which have been determined in the Judgment. In short, AHTC's contention is that as the material underlying facts supporting the proposed amendments have been pleaded in the 668SOC and determined in the Judgment, it is just that they be allowed.

9 AHTC also submits that allowing the proposed amendments will not prejudice the defendants because they largely track the claims in Suit 716. In

defending Suit 716, the defendants had clear notice of the substance of the proposed amendments, and had ample opportunity to deal with them in evidence, at trial and in closing submissions, without the element of surprise.

10 AHTC further submits that allowing the proposed amendments will meet the ends of justice as findings in the Judgment that the defendants had breached their equitable duty of care and skill are premised on breaches of duties owed by the defendants to AHTC, which in turn caused AHTC loss. AHTC also submits that the ends of justice will not be served if it is not able to recover its loss when PRPTC is able to do so (as a result of its broader pleaded case), given that AHTC has suffered the primary loss. Lastly, AHTC submits that there is a public interest factor in ensuring that the 3rd to 7th defendants are held accountable for the full extent of any reliefs or remedies arising from the manner in which they, as town councillors or officers of AHTC, have managed its affairs and dealt with public monies held for the benefit of the constituents.

11 The 1st to 5th defendants oppose the application on six main grounds:

(a) AHTC made a deliberate decision to run its case according to its pleadings in Suit 668. The proceedings spanned more than two years from July 2017 to October 2019. AHTC thus had every opportunity to amend its pleadings to bring them in line with PRPTC's but failed to do so. It therefore made a conscious decision to frame its case differently in several material respects from PRPTC's and must accept the consequences of doing so. The application is a "blatant attempt to benefit" from the findings in the Judgment in relation to causes of actions and claims pleaded by PRPTC in Suit 716. Allowing the application would therefore be tantamount to giving AHTC a "second

bite at the cherry" which would "undermine the cardinal rule that parties are bound by their pleadings".

(b) The proposed amendments introduce new causes of action which are barred by limitation.

(c) It would be inappropriate to allow the proposed amendments as the Judgment would not have dealt with any new cause of action that the proposed amendments seek to introduce.

(d) Allowing the proposed amendments would cause "irremediable prejudice" as had the claims sought to be introduced been pleaded at the outset, that "would have affected the way the proceedings and the trial for Suit 668 were conducted". In particular, the 3rd to 5th defendants argue that they would have adduced additional evidence in their respective Affidavits of Evidence-in-Chief ("AEIC") as regards the new claims covering the extent of their knowledge and involvement in the FMSS Contracts instead of leaving the evidence in relation to those claims to be set out in the 1st and 2nd defendants' AEICs. Additional evidence would have been adduced because of the potential additional financial exposure that would result if the new claims had been pleaded at the outset. It was pointed out that unlike the 1st and 2nd defendants' AEICs which went into substantial detail on the process by which the FMSS Contracts were awarded, the 3rd to 5th defendants' AEICs only touched on such matters briefly specifically with regard to the meetings concerning this issue which they attended as town councillors.

(e) The 3rd to 5th defendants would have called additional witnesses such as the other town councillors and staff members of AHTC in respect of the new claims, whose evidence would have been in respect

of *inter alia* the extent of the 3rd to 5th defendants' involvement in the award of the FMSS Contracts and the alleged "control failures" in the Payment System.

(f) The 1st to 5th defendants would have "vigorously defended" the new claims if they had been made at the outset. Allowing the proposed amendments would deprive the 1st to 5th defendants of the opportunity to cross-examine AHTC's witnesses on the purported evidence that supported the new claims.

12 The 6th and 7th defendants oppose the application on four main grounds:

(a) The proposed amendments are an attempt at a "second bite of the cherry" by seeking the benefit of the findings and conclusions in the Judgment. Allowing the application would entitle AHTC to more reliefs than it had pleaded in Suit 668.

(b) The facts pleaded in the 668SOC do not support the proposed amendments. Allowing the proposed amendments would permit AHTC to add new causes of action against the 6th and 7th defendants. This would be prejudicial as the 6th and 7th defendants had not prepared their defences accordingly.

(c) The ends of justice would not be served if the proposed amendments were allowed because unlike AHTC which was a public institution funded by public monies, the 6th and 7th defendants were personal litigants who would be "forced to adjust their legitimate expectations of how [Suit 668] would conclude without having to endure additional stresses from the protracted litigation"; the ends of justice

would be served only if the claims were limited to what had been pleaded in Suit 668.

(d) The proposed amendments introduce new causes of action which are barred by limitation (this was a submission made at the hearing of the application and not in written submissions).

Preliminary issue

13 Before I consider whether leave ought to be granted, I shall first address AHTC's submission that the ends of justice necessitate that the proposed amendments be allowed to bring its pleadings in line with PRPTC's, as it is the party that has suffered the primary loss (see [10] above). I have difficulty with this submission as it ignores two fundamental facts. First, that the two suits were not consolidated. Second, based on its pleadings, AHTC's case differs in material respects from PRPTC's.

14 As Suit 668 and Suit 716 have not been consolidated, they are treated as separate proceedings, albeit ordered to be tried at the same time. As such, each suit rests on its pleadings. Accordingly, AHTC must establish its case on its pleadings, not PRPTC's. In an adversarial system such as ours, the general rule is that the parties and the court, are bound by the pleadings, which serve the important function of upholding the rules of natural justice by requiring a party to give his opponent notice of the case he has to meet to avoid his opponent being taken by surprise at trial. As such, the pleadings define the matters to be decided by the court: *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 ("*Sheagar*") at [94], citing *Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191 at 233. The general rule is that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue: *V Nithia (co-*

administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another [2015] 5 SLR 1422 ("*Nithia*") at [38], subject to some very limited exceptions, *ie* where no prejudice is caused to the other party or where it would be clearly unjust for the court not to do so: *Nithia* at [40]. Such cases are uncommon: *Nithia* at [41].

15 Therefore, AHTC's pleadings in Suit 668 define the matters to be decided by the court *in Suit 668*. The court has to construe AHTC's claims with reference to its pleadings, *not PRPTC's*, and grant judgment on that basis. Accordingly, insofar as Suit 668 is concerned, the Judgment could only have granted the claims and reliefs pleaded by AHTC in the 668SOC. AHTC's pleaded case should therefore not be conflated nor confused with PRPTC's.

16 Accordingly, it is axiomatic that the findings and reliefs in the Judgment apply to Suit 668 insofar as they relate to claims pleaded in the 668SOC. The same would be true as regards the claims pleaded in Suit 716. That there is a broadly common bedrock of facts underlying Suit 668 and Suit 716 does not change the analysis. Ultimately, the focus must be on the specific claims and causes of action that have been asserted by AHTC and PRPTC in the statement of claims in their respective suits. This result flows from the fact that the two suits are not consolidated. The direction that the suits be heard together has no impact on this conclusion. Thus, as a general proposition, AHTC cannot avail itself of the benefit of the findings and conclusions made in the Judgment as regards claims pleaded in Suit 716, which AHTC has not pleaded, by simply amending the 668SOC to introduce new causes of action that mirror the claims in Suit 716. In this regard, the proposed amendments do raise new causes of action save in some instances discussed below. AHTC accepted this to be the case in oral submissions when it conceded that the application was made under O 20 r 5(2) read with O 20 r 5(5) of the Rules of Court (which only applies to a

new cause of action that is introduced in addition to or in substitution of an existing cause of action; this will be discussed in greater detail below).

17 It follows that the Judgment would not have addressed any new claims/causes of action that are sought to be introduced in Suit 668 by the proposed amendments. Allowing the proposed amendments will therefore require the Judgment to be amended or supplemented to address these new claims/causes of action. This is a point which was emphasised by counsel for the 1st to the 5th defendants in his oral remarks. Notably, counsel for AHTC did not challenge the point in his response, choosing instead not to deal with it. Amending or supplementing the Judgment will in turn require consideration of whether the trial ought to be re-opened for the purpose of considering fresh evidence and submissions. I note that AHTC has not made this application. In any event, amendment of a judgment before it is perfected is only permissible in limited circumstances.

18 It is clear that the court has the power to amend a judgment before it is perfected. This was recognised by the English Court of Appeal in *Re Harrison's Settlement* [1955] 1 All ER 185 ("*Re Harrison's Settlement*"). This remains the English position: see, *eg*, *Charlesworth v Relay Roads Ltd (in liquidation) and others* [1999] 4 All ER 397 at 400; *Stewart v Engel* [2000] 3 All ER 518 ("*Stewart*") at 523 and *Compagnie Noga D'Importation et D'Exportation SA v Abacha and another (as personal representatives of Sani Abacha (deceased)* [2001] 3 All ER 513 ("*Abacha*") at 525. The position in *Re Harrison's Settlement* was accepted in Singapore in *Chua Wah Keow v Ng Ho Huat & Anor* [1961] 1 MLJ 321.1 ("*Chua Wah Keow*").

19 However, in *Chua Wah Keow*, Tan Ah Tah J recognised that the power to amend was "not as untrammelled as it appears to be", and that an amendment

would *only* be allowed if "to perfect it [the judgment] as orally pronounced would result in an erroneous order". It is clear that this consideration does not apply here. AHTC does not suggest that the application has been made to correct any error in the Judgment. *Chua Wah Keow* is instructive. The plaintiff in that case brought an action for damage caused to a taxi as a result of an accident. The plaintiff originally pleaded that at all material times he was the owner of the taxi. At trial, it transpired that the plaintiff was not the owner but the hirer under a hire purchase agreement. The trial judge dismissed the plaintiff's claim with costs because he had wrongly pleaded that he was the owner. However, before the judgment was perfected, the trial judge allowed the plaintiff's application for leave to amend the statement of claim to plead that he was the bailee of the taxi. The trial judge then withdrew his original order dismissing the plaintiff's claim, and allowed the plaintiff to proceed and obtain judgment against the first defendant on the amended statement of claim. The first defendant appealed. The court allowed the appeal on the basis that the original order of the trial judge dismissing the plaintiff's action did not need correction as there was no error. As such, the trial judge did not exercise his discretion correctly when he withdrew his earlier order and gave judgment on the amended claim.

20 Apart from instances where the judgment of the court is incorrect, the court may "cautiously and sparingly" exercise the power of amendment to deal with cases "justly": *Stewart* at 524. Strong reasons must be shown: *Abacha* at 526. Examples of circumstances where it would be "just" for the court to do so were also set out in *Stewart*, citing *Re Blenheim Leisure (Restaurants) Ltd (No 3)* (1999) Times, 9 November:

> … a plain mistake on the part of the court; a failure of the parties to draw to the court's attention a fact or point of law that was plainly relevant; or discovery of new facts subsequent to the judgment being given. Another good reason was if the

> applicant could argue that he was taken by surprise by a particular application from which the court ruled adversely to him and that he did not have a fair opportunity to consider.

21 None of the reasons outlined in the passage cited above apply here. Accordingly, even if the application is allowed and leave is granted to amend the 668SOC, AHTC is nonetheless not entitled to judgment on any new claims and causes of action without first succeeding in an application to amend the Judgment. Such an application is permissible only in limited circumstances. Thus, allowing the proposed amendments does not *ipso facto* mean that AHTC is entitled to the reliefs that PRPTC has been awarded in the Judgment. Insofar as the proposed amendments introduce new causes of action, the Judgment will have to be amended and/or supplemented. This is regardless of whether the new causes of action are the same as or similar to the claims/causes of action asserted by PRPTC in Suit 716.

22 There is a further issue. As noted earlier, an application to amend the Judgment will require the court to also consider whether the trial ought to be re-opened. However, unlike the judgment in Suit 618, the judgment in Suit 716 has been perfected. As both suits were tried together in a single trial, the extraction of the judgment in Suit 716 raises the question of whether the trial can or ought to in fact be re-opened. As there is no application before me to amend or supplement the Judgment, I shall say no more on this point.

23 To summarise, the point is this. Even if the application is allowed, it does not follow that AHTC is entitled to the reliefs granted in the Judgment in favour of PRPTC simply on the basis that the findings made arose from a common factual matrix. AHTC's claims must rest on its pleaded case. An application to amend pleadings to introduce new claims after the judgment has been released and before it has been perfected will require the judgment to be

amended and/or supplemented. The court will only do so in limited circumstances and strong reasons must be shown. As noted earlier, this is not an application AHTC makes.

24 I turn now to the applicable legal principles governing the amendment of pleadings.

The applicable law on amendment of pleadings

The court's general discretion to permit amendments to the pleadings

25 O 20 r 5(1) states that:

> **5.** – (1) Subject to Order 5, 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.

26 Under this provision, the court has a general discretion to grant leave to amend a pleading at any stage of the proceedings – before or during the trial, or after judgment or on appeal: *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [101]. The principles governing the court's exercise of this general discretion are well-established and are set out in *Wright Norman v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 ("*Wright Norman*") at [25] as follows:

> (a) All amendments should be allowed as are necessary to enable the real questions in controversy between the parties to be decided;
>
> (b) Amendments should not be refused solely because they have been made necessary by the honest fault or mistake of the party applying for leave. It is not the function of the court to punish parties for mistakes

which they have made in the conduct of their case by deciding otherwise than in accordance with their rights;

(c) However blameworthy (short of bad faith) may have been a party's failure to plead the subject matter of a proposed amendment earlier, and however late the application for leave to make such amendment may have been, the application should, in general, be allowed, provided that it will not prejudice the other party; and

(d) There is no injustice to the other party if he can be compensated by appropriate orders as to costs.

27 Even though the approach in *Wright Norman* leans in favour of permitting amendments unless prejudice to the other parties which cannot be compensated by costs is shown, different considerations apply where, as in the case with the application, leave is sought to amend the pleadings after a final judgment has been granted. In such cases, the court should only exercise its general discretion to amend the pleadings under O 20 r 5(1) in limited circumstances, bearing in mind the fundamental principle that there must be finality to litigation. In deciding whether to exercise that discretion, the court should also consider the nature and implications of the amendment sought: *Invar Realty Pte Ltd v Kenzo Tange Urtec Inc and another* [1990] 2 SLR(R) 66 ("*Invar Realty*") at [21].

28 In *Asia Business Forum Pte Ltd v Long Ai Sin* [2004] 2 SLR(R) 173 ("*Asia Business*"), the plaintiff sought to amend the Further and Better Particulars in its Statement of Claim, pending its appeal. In refusing the application, the Court of Appeal observed that while the claim following the amendments remained substantially the same, the premise upon which it was based would nonetheless be altered; the fact that the amendments were needed

suggested that there were some material differences, which the Court of Appeal found to be the case: at [16]. The Court of Appeal was of the opinion that while the court had the power to amend pleadings even after final judgment and pending appeal, leave to amend in such circumstances would be rare; *good and compelling grounds must be shown unless the proposed amendments are technical and of no consequence*: at [17]. Leave to amend would not be granted if the amendments caused prejudice to the other party and gave the applicant a second bite of the cherry: at [18]. The applicant ought not to be allowed to effectively re-litigate the same issue on different grounds and present the opponents with "a somewhat different battle" at the appeal stage: at [19] (see also similar comments by the Court of Appeal in *Sheagar* at [119]).

Amendments to the pleadings under the O 20 rr 5(2) to 5(5) regime

29 As the Court of Appeal observed in *Multistar Holdings v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 ("*Multistar*"), the court's general discretion to allow amendments to pleadings under O 20 r 5(1) is circumscribed by O 20 rr 5(2) to 5(5) (if they apply). This is clear from the language in O 20 r 5(2):

> (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 just to do so.

30 As such, if the amendments relate to the matters prescribed in O 20 rr 5(3) to 5(5) and the application is "made after any relevant period of limitation current at the date of issue of the writ has expired", the amendments will only be allowed if they satisfy O 20 rr 5(3) to 5(5) and the court thinks it just to do so: *Singapore Court Practice 2017* (Jeffrey Pinsler SC gen ed) (LexisNexis, 2017) at [20/5/17]. It follows that any other application to amend pleadings

would fall within the court's general discretion to permit amendments under O 20 r 5(1). As the Court of Appeal said in *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd* [2016] 4 SLR 351 ("*Mer Vue*") at [37]:

> In short, the decision in *Lim Yong Swan* identified two clear "distinct schemes of practice", depending on whether there was prejudice to an accrued right of limitation. If there was *no* such prejudice, the court may exercise its general power in O 20 r 5(1) to allow the amendment. If, however, the amendment *does* deprive a litigant of an accrued right of limitation, O 20 r 5(1) is inapplicable and the court may only allow the amendment under the statutory exceptions in O 20 rr 5(2)-5(5).

31 From the analysis above, the question of which "scheme of practice" applies – the court's general discretion under O 20 r 5(1) or the limited discretion under O 20 rr 5(2) to 5(5) – will depend on whether the amendment falls within O 20 rr 5(2). If so, the amendment must satisfy O 20 rr 5(3) to 5(5), failing which the court has no jurisdiction to allow it: *Multistar* at [61]. In this regard, AHTC accepts that O 20 r 5(2) governs the application as limitation has set in. AHTC further accepts that the proposed amendments have to satisfy O 20 r 5(5) as they seek to introduce new causes of action (save in some instances).

32 O 20 r 5(5) states as follows:

> (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]

Thus, for the purpose of O 20 r 5(5), an amendment which introduces a new cause of action by way of addition or substitution will only be permitted if it "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". In this regard, the Court of Appeal in *Lim Yong Swan v Lim Jee Tee and another* [1992] 3 SLR(R) 940 ("*Lim Yong Swan*") at [19] said:

> What is common in [O 20 rr 5(3), 5(4) and 5(5)] is this. For an application to come within any of the paragraphs, *there must already be asserted in the writ or the pleading a set of allegations* which, in spite of the expiry of the limitation period, reasonably identify the party suing or sued, which is capable of conveying the capacity of the party to sue or *which permits the addition or substitution of another cause of action*. In other words, the matters of identity, capacity or cause of action are *already asserted or implied*, from the inception of the writ or the filing of the pleading and *it is merely a matter of correction to make explicit what is implicit.*
>
> [emphasis added]

33 It is clear from the passage cited above that the pleadings must contain "a set of allegations" that is directed at or implicates the defendant so that it can be said that 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 such circumstances, the amendment seeks to make explicit what is implicit. The rationale is that if the proceedings had been from the beginning properly formulated, the defence of limitation would not have been available to the defendant. The defendant would not be deprived of the benefit of a defence which he would not have had if the proceedings had been so properly formulated or constituted in the first place: *Lim Yong Swan* at [27], citing *The Virginia Rhea* [1983-1984] SLR(R) 639 ("*The Virginia Rhea*"). Accordingly, if the court allowed the amendment, the defects in the proceedings would be treated as having been cured *ab initio*.

34 In *Lim Yong Swan* at [29], it was held that the test for whether a new cause of action "arises out of the same or substantially the same facts" as an existing cause of action was "whether there is a sufficient overlap between the

facts supporting the existing claim and those supporting the new claim" (citing *Steamship Mutual Underwriting Association Ltd v Trollope & Colls (City) Ltd* (1986) 33 BLR 77 and *Hancock Shipping Co Ltd v Kawasaki Heavy Industries Ltd (The Casper Trader)* [1991] 2 Lloyd's Rep 237). Put another way, O 20 r 5(5) only permits the addition of a new cause of action brought by an existing claimant against an existing defendant on facts which are already pleaded: *Mer Vue* at [55].

35 Even if the requirements in O 20 r 5(5) are met, the court must be satisfied that allowing the amendment is just. As observed in *Lim Yong Swan* at [32]–[33]:

> 32 When *The Casper Trader* … was before the judge in chambers, Webster J expressed the view that consideration of whether it would be just to grant leave to amend under para (5) required a balancing of the applying party's need to amend and the prejudice to the opposing party's interests. "Prejudice" in this context, in the opinion of the learned judge, at 243, meant:
>
> > For the purpose of answering this question I do not think it relevant simply to consider whether the defendants will or may have difficulty in defending the claim, specifically at the trial. In my view for any relevant prejudice to be found it must constitute prejudice resulting from the amendment, either in the sense that the defendants, in reliance on the claim originally made, altered their position so as to make it more difficult to defend the new claim now made or in the sense that it will be more difficult for them to defend that claim than it would have been had the claim been brought within the period of limitation.
>
> 33 We were in agreement with the view of the learned judge and would only add that it would also be relevant prejudice if the new cause of action would deprive the opposing party of any remedy against a third party.

36 In *Lim Yong Swan* it was noted that the burden of persuading the court that it is just to allow the amendment lay on the applicant: at [35]. The Court of Appeal observed that the question of what is just "will inevitably be one of

impression and discretion in most cases and that the question of discharging any burden of proof or persuasion will seldom be a central consideration": at [37].

37 In this regard, it seems correct as matter of principle that the observations in *Invar Realty* ([27] *supra*) and *Asia Business* ([28] *supra*), *ie* that good compelling reasons ought to be present before amendments to pleadings after judgment are allowed, are pertinent in assessing whether it will be just to allow an amendment that falls within O 20 r 5(2) read with O 20 rr 5(3) to 5(5).

38 Accordingly, the analysis proceeds as follows:

(a) The court must first consider whether the following two conditions are satisfied:

(i) That the proposed amendments are of the type mentioned in O 20 r 5(5) (the provision applicable in this case); and

(ii) The application is made "after any relevant period of limitation current at the date of issue of the writ has expired".

(b) If the conditions in (a) are not satisfied, then the proposed amendments ought to be considered under O 20 r 5(1).

(c) If the conditions in (a) are satisfied, the proposed amendments may be allowed only if:

(i) They satisfy O 20 r 5(5); and

(ii) It is just in the circumstances.

39 I now apply the above framework to the application.

Application to the facts

Whether the application for amendment is made after limitation has set in

40 As noted earlier, counsel for AHTC accepted in oral submissions that the application was made after limitation had set in. The question then is whether the proposed amendments introduce new causes of action. If they do, the court has to consider whether O 20 r 5(5) is satisfied, and whether it is just to allow the application. Counsel for AHTC accepts that the proposed amendments introduce (save in some instances) new causes of action and O 20 r 5(2) read with O 20 r 5(5) have to be satisfied. Counsel for the defendants are also on the same page that O 20 r 5(5) needs to be satisfied. I note that the concession by counsel for AHTC that limitation had set in departs from the position taken in the supporting affidavit and the written submissions. However, the concession is well made. I now turn to consider each of the proposed amendments.

Whether the amendments should be allowed

The Category 1 amendments

41 The Category 1 amendments assert that the 1st and 2nd defendants breached their equitable duty of care and skill by awarding the 1st EMSU Contract to the 8th defendant without calling tender. Damages, as an alternative remedy, are also claimed against the 1st and 2nd defendants' for breach of their equitable duty of care in connection with the 1st EMSU Contract by reason of the matters pleaded in paragraphs 7.1 to 7.4.1 of the 668SOC.

42 AHTC submits that the factual background pleaded in relation to the "1st MA and 1st EMSU Contract" in paragraphs 4 and 7.1.2 of the 668SOC supports these amendments. I do not agree. Paragraph 4 sets out the factual background

for the award of the 1st MA and 2nd MA Contracts. As originally pleaded, there is no reference to the 1st EMSU Contract in this paragraph. The same is also true of paragraph 7.1.2.

43 However, I note that it is pleaded in the 668SOC that the 1st and 2nd defendants had "authorized, approved, acquiesced in and/or otherwise caused AHTC to enter into the FMSS Contracts … without appropriate safeguards for the protection of AHTC's interests and public money having been put in place". In its written submissions, AHTC drew my attention to paragraph 6.1.2 of the 668SOC, where it is pleaded that the 1st and 2nd defendants' "entry into and/or authorisation and approval of, or acquiescence in, the FMSS Contracts … constituted breaches of their fiduciary duties as set out in paragraph 2.1 above." It is important to note that "FMSS Contracts" is defined in paragraph 1.8.5 of the 668SOC as including the 1st EMSU Contract, and that "fiduciary duties" as defined in paragraph 2.1 include the "duty to diligently exercise reasonable care and skill in the exercise of [the 1st and 2nd defendants'] powers and in the discharge of their responsibilities."

44 The thrust of these pleadings is that the 1st and 2nd defendants had breached their fiduciary duties to AHTC by causing it to award the "FMSS Contracts" (which includes the 1st EMSU Contract) to the 8th defendant in circumstances which breached *inter alia* their equitable duty of care and skill. This essentially already includes the cause of action in the Category 1 amendments, *ie* that the 1st and 2nd defendants breached their equitable duty of care and skill by causing AHTC to award the 1st EMSU Contract without calling tender. I had made findings to this effect in the Judgment at [334] and [441].

45 The Category 1 amendments therefore do not, in my view, introduce a new cause of action. The gravamen of these amendments is already pleaded in

the 668SOC and findings have been made in the Judgment in this regard. They therefore do not engage O 20 r 5(5) and are instead subject to the court's general discretion to permit amendments under O 20 r 5(1).

46 It is clear from a review of the 668SOC that what was being challenged was *inter alia* the conduct of the 1st and 2nd defendants in awarding the FMSS Contracts without properly calling tenders. That was the real controversy between AHTC and the 1st and 2nd defendant. As noted earlier, that was also the focus of the trial – see the Judgment at [25] and [245]. The FMSS Contracts include the 1st EMSU Contract which the Category 1 amendments seek to introduce. Accordingly, the Category 1 amendments do not do more than make clear the real controversy between the parties which the Judgment has addressed. For this reason, I do not think that the 1st and 2nd defendants suffer any prejudice if the Category 1 amendments are allowed. This is not a case of AHTC having a second bite of the cherry or re-litigating the same issues on different grounds. The issues were already before the court. No amendment to the Judgment is necessary even if the Category 1 amendments are allowed since they do not change the substance of the pleadings on which the Judgment was given. As such, I allow the Category 1 amendments under O 20 r 5(1).

The Category 2a amendments

47 The Category 2a amendments assert that the 3rd to 5th defendants breached their equitable duty of care and skill in awarding the 1st EMSU Contract, the 1st MA Contract and the 2nd MA Contract without calling tenders. This is a new cause of action as the claims pleaded in the 668SOC relating to the waiver of tender for each of these contracts were directed against the 1st and 2nd defendants only. Accordingly, the proposed amendments are governed by O 20 r 5(5).

48 In oral submissions, counsel for AHTC submitted that paragraph 6 of the 668SOC formed the bedrock of facts supporting the Category 2a amendments. I do not agree. Paragraph 6 contains allegations of breach of duties against the 1st, 2nd, 6th and 7th defendants only. It is difficult to see how those allegations can be construed as a "set of allegations" against the 3rd to 5th defendants. Nor can it be conceivably said that those allegations are implicitly directed at the 3rd to the 5th defendants such that the Category 2a amendments seek to make explicit what is implicit: *Lim Yong Swan* at [19]. There is clearly insufficient overlap of the facts between the pleaded claim against the 1st, 2nd, 6th and 7th defendants, and the new claim against the 3rd, 4th and 5th defendants – see *Lim Yong Swan* at [29]. Indeed, the 3rd to 5th defendants did not understand those allegations to be directed at them, and made that plain in paragraph 66 of their Defence to Suit 668. On the other hand, where the allegation was specifically made by PRPTC, they had demurred. In this regard, I reiterate my earlier comment that the Judgment had observed at [303] that PRPTC's claim was framed wider in terms of causes of actions and parties. AHTC must have known of this; yet, it failed to bring a timeous application to make the necessary amendments. AHTC has also not furnished any explanation for why it had failed to do so. This speaks to the fact that such claims were never originally brought against the 3rd to 5th defendants in Suit 668.

49 *The Virginia Rhea* is instructive. There, the appellants had claimed as the indorsees or holders for value of and under four bills of lading. They sought to amend their pleadings to include another bill of lading which was in respect of the same voyage on the same vessel and bore the same date as the four bills of lading in the original pleadings. The Court of Appeal, however, refused to allow the amendment because the reference to the four bills of lading in the original pleadings "could not necessarily imply that there could be another claim of the appellants under or in respect of another contract of carriage under

another bill of lading which need not be identified": *The Virginia Rhea* at [11]. As such, the appellants had failed to bring themselves within O 20 r 5(5) and were out of time in asserting their claim: *The Virginia Rhea* at [11]. It follows *a fortiori* from *The Virginia Rhea* that the pleaded facts must at the very least imply a claim against the 3rd to 5th defendants. It is difficult to see how that can be so where the allegations are directed specifically at the 1st, 2nd, 6th and 7th defendants.

50 As such, I find that the Category 2a amendments do not satisfy O 20 r 5(5). It is therefore not necessary to consider whether it will be just to allow the amendments.

The Category 2b amendments

51 The Category 2b amendments relate to allegations that the 3rd to 5th defendants breached their equitable duty of care and skill in relation to the Payment System. This is in my view a new cause of action against the 3rd to 5th defendants in Suit 668. These amendments are therefore governed by O 20 r 5(5).

52 AHTC relies on paragraph 5.1.7 of the 668SOC as the bedrock of facts supporting this amendment. This paragraph states:

> 5.1.7 AHTC avers that the System is inherently flawed as it is clearly incapable of providing:
>
> a. Any independent and/or effective check against payments made by the AHTC to FMSS/FMSI; nor
>
> b. Any safeguard to public monies held by AHTC and/or AHTC's interest.

> *Accordingly, no Town Councillor could have reasonably approved the System, without being in breach of his or her duties.*
>
> (emphasis added)

53 The "System" referred to above is the Payment System. The Payment System is the process by which the invoices issued by the 8th defendant and FMSI are processed and approved for payment by the 6th and 7th defendants. The allegation is that 1st and 2nd defendants set up or allowed the setting up of a flawed system (the Payment System) that permitted the 6th and 7th defendants to process and approve payments in which they were interested parties, without independent checks and balances. The term "Town Councillor" in the cited paragraph is defined in the 668SOC as comprising the 1st to 5th defendants. AHTC argues that the reference to "Town Councillors" means that the allegation of breach of duty with regard to the Payment System extends to the 3rd to 5th defendants.

54 AHTC also relies on paragraph 5.2.1 of the 668SOC as the bedrock of facts supporting the Category 2b amendments. The paragraph alleges that the FMSS Contracts were entered into in breach of fiduciary duties owed to AHTC by the Town Councillors (as defined above) as the conflicts of interest in those transactions were so severe that the transactions could not have been authorised by the Town Councillors acting consistently with their fiduciary duties. However, it is not entirely clear how those allegations, which relate to the award of the FMSS Contracts, are relevant to a claim that the Payment System suffered from inadequate safeguards.

55 It is clear what has *not* been pleaded in Suit 668 is that the 3rd to 5th defendants had "approved" and/or "authorised" the Payment System and the payments that were made thereunder. The allegations in this regard are levelled against the 1st, 2nd, 6th and 7th defendants only. There is no allegation that the 3rd

to the 5th defendants were involved in setting up the Payment System and processing payments thereunder. It is crucial that this be pleaded and particularised for a cause of action against the 3rd to 5th defendants for breach of their duties in respect of the Payment System to be made out. It is again inconceivable that allegations which are specifically directed at the 1st, 2nd, 6th and 7th defendants can be said to be implicitly made against the 3rd to the 5th defendants.

56 Furthermore, as was the case with the Category 2a amendments, the 3rd to 5th defendants did not understand these allegations to be directed at them, and expressly pointed this out at paragraph 43 of their Defence to Suit 668. On the other hand, where the allegation was specifically made by PRPTC, they had pleaded to the same. In this regard, similar to the Category 2a amendments, I reiterate that PRPTC's claim is framed wider and is against all the defendants. Again, AHTC must have known this; yet, they failed to bring a timeous application to make the necessary amendments. AHTC has also not furnished any explanation for failing to do so. The Category 2b amendments therefore do not satisfy the requirements of O 20 r 5(5). There is therefore no need to consider whether allowing the amendments will be just in these circumstances.

The Category 3 amendments

57 The Category 3 amendments relate to claims made by AHTC against the 6th and 7th defendants for breach of their equitable duty of care and skill by (i) approving payments under the Payment System, and (ii) failing to rectify the flaws in the Payment System.

58 AHTC submits that the bedrock of facts supporting these amendments are pleaded at paragraphs 5.1.2 to 5.1.6 and 5.3 of the 668SOC.

59 Paragraph 5.1.4 of the 668SOC sets out the details of the 6th and 7th defendants' involvement in the Payment System:

> a. First, invoices from FMSS to AHTC would be raised by How [the 6th defendant] on behalf of FMSS (in her capacity as director of FMSS), and invoices from FMSI to AHPETC would be raised by Loh [the 7th defendant] on behalf of FMSI (in his capacity as sole proprietor of FMSI);
>
> b. Second, How (in her capacity as General Manager) and/or Yeo (in his capacity as Deputy General Manager), on behalf of the Town Council, would certify the work done for a significant number of these invoices, without any second review by another Town Council Officer/member, despite How and Yeo being interested parties to the transaction;
>
> c. Third, the approval of the payment voucher and/or the cheque to FMSS or FMSI would also be performed by How (in her capacity as General Manager) on behalf of the Town Council, without any second review by another Town Council Officer/member despite How being an interested party to the transaction; and
>
> d. Finally, Loh, on behalf of the Town Council, would also sign most of the cheques to FMSS/FMSI.

60 The effect of these processes was then pleaded at paragraph 5.1.6 of the 668SOC:

> In the premises, it is clear that the persons, *i.e.* Loh [the 7th defendant] and How [the 6th defendant], who issued the invoices on behalf of the payee (*i.e.* FMSS or FMSI) also certified the work done and approved payment on behalf of the payor (*i.e.* the Town Council) and/or signed off on the cheques. *Effectively, these interested persons had carte blanche in the Town Council to make payments to FMSS/FMSI, which directly and financially benefitted themselves.*
>
> (emphasis added)

61 It is then pleaded at paragraphs 5.3.1 to 5.3.3 of the 668SOC that improper payments had been made to FMSS and FMSI under the Payment System. Additionally, at paragraph 5.3.4 of the 668SOC, it is pleaded that "in the premises" (which I take to mean in the context of paragraphs 5.3.1 to 5.3.3 of the 668SOC), *inter alios* the 6th and 7th defendants had breached their

"fiduciary duties" (which, as I observed at [43] above, include the duty of care and skill).

62 These pleadings make the case that:

(a) The 6th and 7th defendants were involved in the Payment System;

(b) Under the Payment System, the 6th and 7th defendants effectively approved payments that they were interested in from AHTC to FMSS/FMSI without any independent checks;

(c) Improper payments to FMSS/FMSI had been made under the Payment System; and

(d) As a result, the 6th and 7th defendants breached their fiduciary duties owed to AHTC (including the equitable duty of care and skill).

63 In my view, this amounts to a claim that the 6th and 7th defendants breached their fiduciary duties, including their equitable duty of care and skill, by approving payments to FMSS/FMSI under the Payment System. This also supports the claim that the 6th and 7th defendants breached their fiduciary duties, including their equitable duty of care and skill, by failing to rectify the flaws in the Payment System; the obligation to correctly approve payments under the Payment System must necessarily include the concomitant obligation to ensure that the Payment System was not flawed. The two are in substance two sides of the same coin. In my view therefore, the claims contained in the Category 3 amendments are already pleaded in the 668SOC. They do not engage O 20 r 5(5); instead, they fall under the court's general discretion to permit amendments under O 20 r 5(1).

64 I am fortified in my view by the fact that in the Judgment at [444], I had found the 6th and 7th defendants liable for breaches of their equitable duty of care and skill in respect of the improper payments made to FMSS and FMSI under the Payment System. While the 6th to 7th defendants have appealed this finding in Suit 668, they do not do so on the basis that AHTC's allegations in this respect are not pleaded, but on the basis that such payments are "contractually stipulated and fixed sums". In addition, the 6th and 7th defendants have directly addressed the allegations relating to the Payment System in the 668SOC in their closing submissions at paragraphs 256 to 258. As such, there is no controversy as to whether the cause of action contained in this part of the Category 3 amendments have already been pleaded.

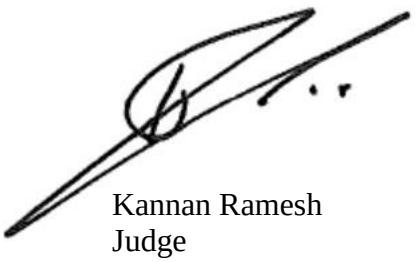
65 As for that part of the Category 3 amendments which expressly sets out a claim for damages as an alternative relief for the 6th and 7th defendants' breach of their equitable duty of care and skill, I am of the view damages (as a primary or alternative relief) follow for such breach assuming of course there is proof. The Category 3 amendments do not introduce any new cause of action, but merely make clear the reliefs available in law in respect of the 6th and 7th defendants' breach of their equitable duty of care and skill.

66 For these reasons, I allow the Category 3 amendments under O 20 r 5(1) for the same reasons as the Category 1 amendments outlined earlier. I do not think that the 6th and 7th defendants will suffer any prejudice if the amendments are allowed, particularly when they have proceeded on the basis that the allegations in the Category 3 amendments form part of AHTC's pleaded case, which I believe to be the case. It also follows that no amendment to the Judgment is necessary since the Category 3 amendments do not change the substance of the pleadings on which the Judgment was given.

Conclusion

67 In the final analysis, the application is a consequence of two things: (i) AHTC's decision to plead its claims in the way that it did rather than mirror PRPTC's claims, and (ii) the fact that Suit 668 and Suit 716 are not consolidated. Notably, AHTC has not offered an explanation, either in the supporting affidavit or in its submissions, as to why it did not at the outset align its pleadings with PRPTC's, and why the application has been brought so late in the day. Accordingly, insofar as the proposed amendments seek to introduce new causes of action in Suit 668, they ought not to be allowed.

68 I therefore allow the application only in part in the terms set out in the Annex. I shall hear the parties on costs. Parties are to file submissions on costs limited to five pages each for the plaintiff, the 1st to the 5th defendants, and the 6th and 8th defendants, within one week from the date hereof.



Kannan Ramesh
Judge

Chan Ming Onn David and Joseph Tay Weiwen (Shook Lin & Bok LLP) for the plaintiff;
Eusuff Ali s/o N B M Mohamed Kassim and Yong Manling Jasmine (Tan Rajah & Cheah) for the first to fifth defendants;
Netto Leslie and Roqiyah Begum d/o Mohd Aslam (Netto & Magin LLC) for the sixth to eighth defendants.

Annex

The various amendments which are the subject-matter of this application are set out as follows.

Para (Draft)	**Amendment sought (*per* Draft SOC) in <u>underline</u>**	**Cat.**	**Decision**
4.3.6	<u>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.</u>	1	Allowed
5.1.7(A)	Accordingly, no Town Councillor could have reasonably approved the System, without being in breach of his or her duties. <u>As such, AHTC avers that Mr Pritam Singh, Mr Chua Zhi Hon and Mr Kenneth Foo breached their duty of care and</u>	2b	Disallowed

	skill *qua* fiduciary and/or duty of care and skill in tort to AHTC:		
5.1.7(A)a.	By causing and/or procuring and/or authorising and/or permitting AHTC to make payments to FMSS under the System, in the circumstances set out at paragraphs 5.1 to 5.7 above; and/or	2b	Disallowed
5.1.7(A)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 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 5.1 to 5.7 above and thereafter disclose to and/or inform AHTC of and/or set right and/or rectify the flaws in the System and/or aforementioned breaches of duties.	2b	Disallowed

5.1.7(B)	AHTC also avers that Loh and How breached their duty of care and skill *qua* fiduciary and/or duty of care and skill in tort to AHTC:	3	Allowed
5.1.7(B)a.	By causing and/or procuring and/or authorising and/or permitting AHTC to make payments to FMSS under the System, in the circumstances set out at paragraphs 5.1 to 5.7; and/or	3	Allowed
5.1.7(B)b.	By failing to disclose to and/or inform AHTC of and/or set right and/or rectify the flaws in the System and/or aforementioned breaches of duties.	3	Allowed
7.1	~~Sylvia Lim and Low Thia Khiang~~ Town Councillors: Appointment of FMSS	2a	Disallowed
7.1.1	~~Sylvia Lim and Low Thia Khiang~~ The Town Councillors breached their duty of care and skill *qua* fiduciary and/or duty of care and	1a, 2a	Partially allowed as follows:

	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.		"Sylvia Lim and Low Thia Khiang 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 Kenneth Foo breached their duty of care and skill *qua* fiduciary and/or duty of care and skill in tort to AHTC:	2a	Disallowed
7.1.2(A)a.	By causing and/or procuring and/or authorising and/or	2a	Disallowed

	permitting AHTC to waive and/or fail to invite tenders in respect of the 1st MA Contracts and 1st EMSU Contracts in the circumstances set out at paragraphs 4.1 to 4.3, 6.1.2, 6.6 and 7.1.1 above; and/or		
7.1.2(A)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.	2a	Disallowed

7.1.2(B)	In respect of the System, Paragraphs 5.1.7 and 5.1.7(A)-(B) above are also repeated.	2b, 3	Disallowed
7.2.1	AHTC is entitled to equitable compensation and/or damages for all losses arising from or in connection with the 1st MA Contract 1st EMSU Contract, and the 2nd MA Contract in respect of ~~Sylvia Lim and Low Thia Khiang's~~ the Town Councillors' and/or Loh and/or How's breach of their duties of care and skill *qua* fiduciary and/or duty of care and skill in tort.	1, 2a, 2b, 3	Partially allowed as follows: "AHTC is entitled to equitable compensation and/or damages for all losses arising from or in connection with the 1st MA Contract, 1st EMSU Contract, and the 2nd MA Contract in respect of Sylvia Lim and Low Thia Khiang's and/or Loh and/or How's breach of their duties of care and skill *qua* fiduciary and/or duty of care and skill in tort."
p 63, 1(a)(iv).	In the alternative, damages for their breaches of duty of care,	1b	Allowed

	including loss and damage on the 1st MA Contract, 1st EMSU Contract and 2nd MA Contract as set out above in paragraphs 7.1 to 7.4.1;		
p 64, 1A(1).	As against Pritam Singh, Chua Zhi Hon and Kenneth Foo:	2a, 2b	Disallowed
p 64, 1A(1)i.	Declarations that Pritam Singh, Chua Zhi Hon and Kenneth Foo have breached their duty of care owed to AHTC as set out in paragraphs 5.1.7, 5.1.7(A), 7.1 and 7.2 above; and	2a, 2b	Disallowed
p 64, 1A(1)(ii).	Damages for their breaches of duty of care, including loss and damage on the 1st MA Contract, 1st EMSU Contract and 2nd MA Contract as set in paragraphs 5.17, 5.1.7(A), 7.1 and 7.2 above.	2a, 2b	Disallowed
P 64, 1(b)(i)	Declarations that Loh and How have breached their fiduciary duties and/or duty of care to AHTC and/or dishonestly assisted the breaches of fiduciary duties committed by Sylvia Lim	3	Allowed

	and Low Thia Khiang as set out in paragraphs 6.3 to 6.5 above;		
p 64, 1(b)(ii)	Equitable compensation for all losses arising from or in connection with the appointment of FMSS as Managing Agent, and improper payments made to FMSS/FMSI under the FMSS Contracts and the FMSI EMSU Contract, which, subject to Loh and How showing otherwise in a proper account and inquiry, comprises of the total payments of $33,717,535 made to FMSS and FMSI. <u>In the alternative, damages for their breaches of duty of care, including loss and damage on the 1st MA Contract and 1st EMSU Contract as set out above in paragraph 5.1.7(B) and 7.1.2(B);</u>	3	Partially allowed as follows: "… In the alternative, damages for their breaches of duty of care, including loss and damage on the 1st MA Contract and 1st EMSU Contract as set out above in paragraph 5.1.7(B)."