IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No 612 of 2020

Between

OON KOON CHENG

... Plaintiff

And

1. LI HUA
2. TANOTO SAU IAN
3. USP GROUP LTD
4. SUNMAX GLOBAL CAPITAL FUND 1 PTE LTD
5. HUANG ZHI RONG
6. LEE KING ANNE
7. XIA ZHENG

... Defendants

Coram : Justice Mavis Chionh In Court 3A

*Mr Foo Maw Shen, Mr Chu Hua Yi and Mr Goh Jia Jie (FC Legal Asia LLC)* for the Plaintiff;
*Mr Peter Doraisamy and Mr Sathya Justin Narayanan (PDLegal LLC)* for the 2nd Defendant;
*Ms Wu Siyue and Ms Nadine Neo (Quahe Woo & Palmer LLC)* for the 4th Defendant;
*Ms Xia Zheng*, 7th Defendant, in person;
*Ms Marina Wang,* Mandarin interpreter.

**Notes of Evidence**

**29 September 2023**

Ct : I will summarise the key findings I have made in this case and the more important reasons for my decision. What I will be reading out will be part of the transcript of today's hearing, which parties may obtain a certified

true copy of by applying to the Registry. These are not my full grounds of decision, which will be released in writing at a later date if necessary.

***Oral Decision***

Suit 612 involves a claim by the plaintiff Oon Koon Cheng ("Mr Oon") against seven defendants (collectively "the defendants") for lawful means conspiracy, and in the alternative for unlawful means conspiracy. Mr Oon claims that the defendants conspired to take over control of USPGL and having successfully done so, used it to commence a series of lawsuits against Mr Oon. Mr Oon claims that these lawsuits were meant to and did in fact stifle Mr Oon's claim against Li Hua ("Tony Li", the first defendant in Suit 612) for the sum of $7,434,210.56, which Mr Oon now claims as damages caused by the conspiracy. Mr Oon further claims for a sum of $362,788.78, representing his costs of defending the lawsuits initiated by USPGL against him.

Suit 612 was originally scheduled to be heard together with HC/S 328/2020 ("Suit 328"), which was an action brought by *inter alia* USP Global Limited ("USPGL", the 3rd defendant in Suit 612) against Mr Oon, Tony Li, and three other defendants. Shortly after the trial commenced, I was informed that several of the defendants in Suit 612 had accepted an offer to settle by Mr Oon in respect of Suit 612 and Suit 328. Mr Oon subsequently filed a Notice of Discontinuance in Suit 612 against the fifth defendant Huang Zhi Rong ("Billy Huang") and the sixth defendant Lee King Anne ("Anne Lee", the wife of Billy Huang) on 20 April 2023, and against the third defendant USPGL on 22 May 2023. Suit 328 was discontinued entirely by USPGL and the other plaintiffs in that suit.

I note that although in his pleadings Mr Oon had referred to six allegedly unlawful acts for the purposes of his claim of unlawful means conspiracy,

he stated in his reply submissions that he was relying only on the following allegedly unlawful acts:

(a) Tanoto's knowing statement of false and misleading information in his Form 3 Notifications that he had fully paid the consideration price for the Sunmax Shares and the Yap Shares.
(b) Anne Lee's failure to disclose in her Form 3 that she had not fully paid the consideration price for the USPGL shares she was holding, was holding them as a nominee, or there was a charge over these shares;
(c) Tony's Li's failure, "in breach of the relevant laws", to make a make a mandatory takeover offer of USPGL, despite his shareholding and that of his associates crossing the requisite threshold for him to do so.

The elements of a claim for conspiracy by unlawful means are as follows (*EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]):

(a) there was a combination of two or more persons to do certain acts;
(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;
(c) the acts were unlawful;
(d) the acts were performed in furtherance of the agreement; and
(e) the plaintiff suffered loss as a result of the conspiracy (*Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 ("*Nagase Singapore*") at [23]).

The requirements for lawful means conspiracy are similar to that of unlawful means conspiracy save that instead of the requirement that the acts were unlawful, the claimant has to show that the conspirators carried out lawful acts with the predominant purpose of causing injury or damage to the plaintiff, which purpose was in fact achieved (*Quah Kay Tee v Ong*

*and Co Pte Ltd* [1996] 3 SLR(R) 637 at [45] ("*Quah Kay Tee*"); *Ok Tedi Fly River Development Foundation Ltd and others v Ok Tedi Mining Ltd and others* [2023] 3 SLR 652 at [113]).

I address first Mr Oon's claim in unlawful means conspiracy. Having reviewed the pleadings, the submissions, and the evidence adduced, it is clear to me that Mr Oon's claim in unlawful means conspiracy essentially relates to the following two acts which he alleged were committed by the defendants: the defendants conspired to obtain sufficient shares in USPGL to issue a requisition notice calling for the 20 February 2020 EGM where they successfully reconstituted its board (which I will collectively term the "Board Takeover Acts"); and having done this through unlawful means, the defendants conspired to commence Suits 328 and HC/S 292/2021 ("Suit 292") through USPGL against Mr Oon, thereby stifling Mr Oon's claim against Tony Li in Suit 904.

Mr Oon's case, as crystallised somewhat belatedly in his reply submissions, is that the Board Takeover Acts involved two unlawful actions by the defendants. First, Tanoto's and Anne Lee's false disclosures were unlawful under ss 135 and 137B of the SFA read with the SFDIR ("the SFA Breach"). Second, Tony Li failed to make a mandatory offer of USPGL, despite his shareholding and that of his associates crossing the requisite threshold for him to do so under Rule 14.1 of the Singapore Code on Take-overs and Mergers ("the Take-over Code") ("the Take-over Code Breach"). Tanoto has argued that Mr Oon has not adequately pleaded the unlawfulness of either the Take-over Code Breach or the SFA Breach, as the Statement of Claim does not refer to any law, regulation, or common law which was contravened.

In respect of the SFA Breach, the Statement of Claim does not specify the legislation under which Tanoto and Anne Lee's false disclosures, or

Tony Li's failure to make a takeover offer, would be illegal. Mr Oon's case was not that these actions were generally fraudulent or involved misrepresentations at common law, but a breach of a specific civil statutory duty. The level of specificity to be expected from Mr Oon's pleaded case would thus be higher because the unlawful act which he was alleging was of a more specific character.

I find that irreparable prejudice would be caused to the defendants if Mr Oon were allowed to advance his claim in relation to the SFA Breach. The assessment of prejudice is necessarily a fact-sensitive one and entails close scrutiny of, among other things, a party's pleadings, written submissions and the manner in which evidence was led and adduced at trial (*How Weng Fan and others v Sengkang Town Council and other appeals* [2023] SGCA 21, ("*How Weng Fan*") at [28]). It was only in reply submissions that Mr Oon specified for the first time that he was relying on the SFA for the basis of his submission that Tanoto's and Anne Lee's false disclosures were illegal. The defendants had no opportunity to respond to this. There was no previous mention of any contravention of ss 135 and 137B of the SFA, let alone the SFA more generally, in Mr Oon's pleadings, cross-examination, or closing submissions. Even though Mr Oon's opening statement at trial did allege a breach of the provisions of the SFA generally, this was in relation to the defendants "acting in concert to vote at the 20 February 2020 EGM", rather than any false declaration. It would not have been possible for the defendants to reasonably deduce from this that Mr Oon was in this mention of the SFA referring to Tanoto's and Anne Lee's false disclosures, or that the relevant provisions in the SFA would be ss 135 and 137B (which deal with the duty of shareholders to give notification of their interests in shares). In my view, Mr Oon's pleadings lacked sufficient details of the SFA Breach for the defendants to know the case they had to meet, and

the defendants would suffer irreparable prejudice if Mr Oon were permitted now to rely on the SFA Breach.

Conversely, in respect of the Take-over Code Breach, it was expressly pleaded in the Statement of Claim (at [77]) that Tony Li had failed to "do a mandatory takeover in [USPGL] in breach of the relevant laws" when his disclosed shareholding and that of his associates crossed the requisite threshold. While the Take-over Code was not expressly mentioned, I consider that the matters pleaded were sufficient to allow the defendants to know the case they had to meet. Moreover, the Take-over Code Breach was an issue on which both side cross-examined witnesses on. It was clear that Tanoto was aware of Mr Oon's reliance on this issue, and was aware that Mr Oon's claim would be founded on a breach of Rule 14.1 of the Take-over Code specifically. There is thus no prejudice to the defendants in considering Mr Oon's claim in unlawful means conspiracy in relation to the Take-over Code Breach, notwithstanding Mr Oon's failure to plead the basis for the unlawfulness of Tony Li's failure to make a takeover offer.

I next address whether there was a combination of the defendants to breach the Take-over Code. I accept Mr Oon's submission that the existence of such an agreement can be inferred from the circumstances and acts of the defendants. On the facts, I agree with Mr Oon's submission that there was an agreement between the defendants for Tanoto and Anne Lee to acquire shares in USPGL so as requisition an EGM, and that this agreement would have encompassed Tony Li intentionally failing to make a mandatory takeover offer. *Inter alia*, I find that Tanoto's communications to the other conspirators show that his acquisition of shares in USPGL was part of a mutually agreed plan with Tony Li (see *eg*, Tanoto's email to Tony Li on 1 December 2020 ("the 1 December 2020 Email"). In this connection, I note that Tanoto relies on

a subsequent email sent by him to Tony Li on 8 December 2020 to claim that he was unaware of Tony Li's intention to begin suits against Mr Oon in order to stifle Suit 904. I reject Tanoto's argument. The email extract cited by him is contradicted by his remarks in the 1 December 2020 Email. Tanoto was unable to explain why he would have written what he did in the 1 December 2020 Email if there had been no mutual agreement between him and Tony Li to this effect. Tanoto's allegation in cross-examination that he was just being "sarcastic" was illogical and disingenuous; and his answers in cross-examination were evasive and inconsistent with available documentary evidence.

Not only do the communications between the defendants show that Tanoto's acquisition of shares in USPGL was pursuant to an agreement between him and Tony Li, they also evidence that Tanoto and Billy Huang specifically contemplated that the combined shareholdings of Tony Li, Anne Lee, and Tanoto would necessitate an immediate offer to all shareholders under Rule 14.1 of the Take-over Code. They agreed to avoid disclosure of this information. I refer for *eg* to Tanoto's and Billy Huang's exchange of WhatsApp messages on 4 February 2020. Based on the evidence of parties' communications, I find there was clearly a combination between Tanoto and Billy Huang to commit the Takeover Code Breach.

I also find it noteworthy that Tony Li told Tanoto and Billy Huang to destroy the messages between them relating to their accumulation of shares in USPGL. Tanoto confirmed this in cross-examination. The intentional, concerted destruction of relevant evidence warrants an adverse inference being drawn against the defendants. I find that the appropriate inference to draw is that Tony Li was aware of the implications of Tanoto, Billy Huang and Tony Li himself being seen as concerted parties – and he was aware that he would have therefore been

obligated to make a mandatory takeover offer under the Take-over Code were this fact to be disclosed. I find, therefore, that Tony Li, along with Tanoto and Billy Huang, agreed to act in concert in relation to the Take-over Code Breach. This would also apply to Sunmax, whose controlling mind was Tony Li, and whose shares had been sold to Tanoto.

I find, in addition, that the circumstances of Tanoto's acquisition of the Sunmax Shares also point towards this being part of a combination between the defendants, such that they would have known they were acting in concert for the purposes of Rule 14.1 of the Take-over Code. In respect of the Sunmax SPA, through which Tanoto acquired the Sunmax Shares, for *eg*, Tanoto could not give a consistent description of the status of the Sunmax SPA. He vacillated between various contradictory and illogical stances. At one point, he claimed that the Sunmax SPA was null and void because he and Tony Li had entered into an actual arrangement other than that reflected in the SPA, such that Tony Li had no right to sue him for the consideration sum under the agreement. At the same time, however, he also insisted that the Sunmax SPA was not a sham because there had been real disputes on the terms of the agreement, which presumed the legitimacy of the agreement. This was despite there being no evidence of him having any prior disputes on any of the terms with Tony Li prior.

There is in addition an abundance of circumstantial evidence to suggest that Tanoto's acquisition of the Yap Shares and Joshua Shares were pursuant to similar irregular arrangements. For *eg*, Tanoto admitted in cross-examination that he had never met the seller of the Yap Shares before, and that the entire transaction was handled by Tony Li. Tanoto was also unable to give any coherent explanation in court for whether payment for the Yap Shares had been made, if at all, and on what terms.

As for Anne Lee's acquisition of shares in USPGL, the documentary evidence shows that Anne Lee's acquisition of shares in USPGL was pursuant to an arrangement by her with Billy Huang and Tony Li: see for *eg*, Anne Lee's email on 4 December 2020 to Xia Zheng's lawyers. Circumstances regarding this acquisition were also anomalous: for *eg*, payment for the Bestway Shares and Zeng Shares amounting to at least $1.8 million was made by Tony Li's then wife Xia Zheng, who then signed what purported to be two interest-free loan agreements with Anne Lee for the acquisition. Xia Zheng did not have any previous involvement in USPGL. Communications between the parties show moreover that Billy Huang, Tanoto, and Tony Li were aware of this arrangement.

Based on the evidence, I find that in respect of the *acquisition* of shares in USPGL by Anne Lee and Tanoto, there was an agreement to do this which included not just Tony Li, Tanoto and Sunmax, but also Billy Huang, Anne Lee, and Xia Zheng as well.

Although I have found that Mr Oon cannot rely on the purported false disclosures by Tanoto and Anne Lee for the purposes of his claim in unlawful means conspiracy because these were inadequately pleaded, they are nevertheless of probative value in showing the existence of a combination between the defendants. Having reviewed the evidence, I find that Tanoto's and Anne Lee's disclosures in their respective Form 3s were indeed false.

The relevant section in Form 3 states "Amount of consideration paid or received by Substantial Shareholder/Unitholder (excluding brokerage and stamp duties)". The Form 3s submitted by Tanoto for the Yap Shares and the Sunmax Shares represented that consideration of $400,000 and $3,072,000 respectively had been paid for these shares. On the evidence before me, I find that this representation was false as Tanoto had not

made payment of those amounts as of the dates that he submitted the respective Form 3s. For *eg*, Tanoto confirmed in his evidence to the court that as of the date of the EGM on 20 February 2020, he had not paid a single cent for the Sunmax Shares. This was also confirmed by Tanoto's own statements in his Further and Better Particulars ("FBP"), which stated that Tanoto had made payments to third party law firms as part payment for the sale consideration for the purchase of the Sunmax Shares and the Pan Shares. The payments detailed only commenced on 11 March 2020, which post-dated the submission of Tanoto's Form 3 for the Sunmax Shares. The FBP also attested to the fact that the payments for the Yap Shares only commenced on 11 March 2020. Further, Tanoto's attempt to provide more details raised more questions than answers. For *eg*, he could not provide a coherent explanation for his inability to produce a copy of the Pan SPA: his contention, for *eg*, that the Pan SPA had been left with Tony Li was contradicted by his own affidavit of 23 November 2021, which took the position that the Pan SPA had been couriered back to Pan. His evidence on the contents of the Pan SPA was also inconsistent. At some points, he claimed not to be able to recall "how the SPA was written" or whether there was any fixed payment date. At others, he was able to remember that the payment obligation was on a deferred term, but that there was "no fixed timeline to that".

As for Anne Lee's Form 3 declarations for the Bestway Shares and the Zeng Shares, I similarly find that these were false. As noted by Anne Lee herself in her email correspondence, she held these shares on behalf of Tony Li and had no beneficial interest in them. Yet she nevertheless declared that she had a direct interest in the Zeng Shares and the Bestway Shares in the Form 3s that she submitted. She ought to have disclosed the fact that she was not the beneficial owner of these shares under Form 4 as stipulated in the Schedule of the SFDIR.

The communications between the defendants, the intentional destruction of evidence, the circumstances in which Tanoto and Anne Lee acquired their shares, and the false disclosures by Tanoto and Anne Lee cumulatively point to the resulting failure of Tony Li to make a mandatory take-over offer being pursuant to a combination between Tanoto, Tony Li, Billy Huang, Sunmax, Anne Lee, and Xia Zheng.

As to whether the defendants had the intention to cause damage or injury to Mr Oon, I find that Billy Huang, Tanoto, Tony Li, and Sunmax (with Tony Li as its controlling mind) had an intention to cause injury to Mr Oon through the Take-over Code Breach, to the extent that this was a necessary part of their agreement to eventually use USPGL to commence lawsuits against Mr Oon. However, I disagree that Xia Zheng or Anne Lee possessed such an intention. In relation to these two women, there was no evidence produced by Mr Oon, nor was it pleaded or argued by him, that Xia Zheng and/or Anne Lee had any involvement or intention to be involved in the conspiracy beyond Anne Lee's conduct in acting as a nominee shareholder for Tony Li, and Xia Zheng's facilitation of the same. There is insufficient evidence for me to find that Xia Zheng and/or Anne Lee intended injury to Mr Oon specifically on the basis of their agreement to participate in those acts alone.

As I said, I do agree with Mr Oon that the other defendants had an intention to cause injury to Mr Oon through the commencement of Suits 328 and 292, which the defendants intended to facilitate through the Take-over Code Breach. The various communications between these defendants show that they possessed the intention to cause injury to Mr Oon by means of Suit 292 and Suit 328. These include messages by Billy Huang to the WhatsApp group chat "USP Mgt Grp" ("the USP WhatsApp Group") on 7 March 2020, and similar messages exchanged

between Billy Huang and Tanoto in the same WhatsApp group on 27 April 2020.

I reject Tanoto's attempts to suggest alternative explanations for his intentions. Tanoto's contention that he wished to take over USPGL for his own business purposes, and that he never possessed the intention or predominant intention of injuring Mr Oon, is contradicted by the evidence: see for his 1 December email (which I referred to earlier). In relation to Tanoto, Tony Li, and Billy Huang collectively, the messages exchanged between them show that their motive was more likely than not a matter of exacting retribution for past acts done by Mr Oon against them. I reject Tanoto's suggestion that his acquisition of shares in USPGL was in line with any business plan of his. Thus, for *eg*, no business plan was evident in the messages which Tanoto shared in the USP WhatsApp Group with Tony Li, Billy Huang and others.

Overall, I find that the contents of the defendants' messages establish that they possessed an intention to cause injury to Mr Oon by taking over control of USPGL and then commencing Suit 328 and Suit 292 against him. Having found that Tanoto, Billy Huang, Tony Li, and Sunmax possessed the intention to cause injury to Mr Oon, I reject Tanoto's argument that he was acting in good faith in commencing Suit 328.

Following from my finding that the commencement of Suits 328 and 292 was not motivated by Tanoto's (or any of the defendants') commercial purpose, I also find that this crosses the threshold of "predominant intention" under the test for lawful means conspiracy, which I will come to.

As to whether the defendants breached the Take-over Code in furtherance of an agreement between them, I find that Tony Li did commit a breach

of Rule 14.1 of the Take-over Code ("Rule 14.1") by not making a mandatory take-over offer following the acquisition of shares in USPGL by himself, Tanoto and Anne Lee.

Tanoto conceded in cross-examination that the shares in USPGL controlled by the defendants totalled 31.8 million, and that these shares (amounting to at least 36% of USPGL's then-total shareholding) were used to collectively vote in concert at the 20 February 2020 EGM pursuant to an agreement. The existence of this agreement is supported *inter alia* by messages on WhatsApp sent by Tony Li in a chatgroup titled "20 Feb EGM", which included Tanoto, Nah Ee Ling, and Tony Li. Further, there is clear evidence that both Tanoto's and Anne Lee's acquisition of shares in USPGL was part of a mutually agreed plan between them and Tony Li. Tony Li had thus acquired by a series of transactions over a period of time shares, which if taken together with Tanoto and Anne Lee acting in concert with him, carried 30% or more of the voting rights of USPGL. It is undisputed that he did not make a takeover offer as required. This would be a breach of Rule 14.1(a) of the Take-over Code.

However, Mr Oon also has to satisfy me that the Take-over Code Breach was unlawful for the purposes of his claim in unlawful means conspiracy. Mr Oon's case seems to be that such a breach can constitute an unlawful act by virtue of being a breach of a statutory duty. I note that he has not been able to point me to any local authority in which it has been held that a breach of statutory duty constitutes an unlawful act in unlawful means conspiracy. In *EFT Holdings*, while the Court of Appeal ("CA") made the *obiter* observation at [91] that unlawful means should not be confined to actionable civil wrongs for which the intermediary could maintain an action (*contra* the view of Lord Hoffmann at [49], Baroness Hale at [302], and Lord Brown at [320] in *OBG Ltd v Allan* [2008] 1 AC 1

("*OBG*"), the court did not articulate any conclusions on whether breaches of statutory duty should also fall within this category. It appears to me that the position in English law is also tentative.

Given the novel nature of the issue before the court, I find curious that Mr Oon did not choose to present any argument as to when, if at all, breaches of civil statutory duties should constitute unlawful means for the purposes of the tort of conspiracy. I have doubts as to whether a breach of the Take-over Code in this case can amount to unlawful means for the purposes of the claim in unlawful means conspiracy. Strictly speaking, though, it is unnecessary for me to come to any firm conclusion on this issue because I find – on the evidence adduced – that Mr Oon's pleaded loss was not a result of the Take-over Code Breach.

In this connection, I note firstly that the CA in *EFT Holdings* at [112] (as set out above at page 3), has affirmed that unlawful means conspiracy requires, *inter alia*, a combination of two or more persons to do certain acts, that the acts were unlawful, and that the plaintiff "suffered loss as a result of the conspiracy". It is also settled in English law that a plaintiff's loss or damage in unlawful means conspiracy must be the result of unlawful action (*Kuwait Oil Tanker Co SAK and another v Al Bader and others* [2000] 2 All ER (Comm) 271 at [108]).

On the facts of the present case, I find that there is no causal connection between Mr Oon's pleaded loss and the Take-over Code Breach. To reiterate, Mr Oon's pleaded loss concerns (a) the sum of $7,434,210.56 (or such amount as may be assessed by the court) being allegedly the amount of his claim against Tony Li in Suit 904 which he says was "stifled" by virtue of the defendant's conspiracy to commence Suits 328 and 292; and (b) the balance of costs of defending Suits 328 and 292 which he has not managed to recover through costs awarded to him or

through settlements out of court. I find that there are at least three insurmountable obstacles to Mr Oon's case in unlawful means conspiracy in relation to causation.

First, Mr Oon has failed to plead or to argue that Tony Li did not have the means – or was otherwise unable – to make the takeover offer. It therefore cannot be Mr Oon's case that the requirement to make a takeover offer would have been so onerous that Tony Li, Sunmax, Tanoto, and Anne Lee would have been unable to make the share acquisitions which they did had they needed to observe Rule 14.1 of the Take-over Code.

Second, even if Tony Li had made the requisite takeover offer, this would only have resulted in him acquiring more shares in USPGL, and would not have hampered his or the other defendants' ability to pursue Suits 328 and 292. The failure to observe the Take-over Code thus cannot be said to be a but-for cause of the defendant's control of USPGL as alleged by Mr Oon *(Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased, and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133 at [70], affirming *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [64]). In short, the Take-over Code Breach is not causally connected to the commencement of Suits 328 and 292.

Third, even if the failure to observe Take-over Code could be said to be causally connected to defendants' alleged control of USPGL, and have enabled the defendants to commence Suits 328 and 292, it has not been shown that the commencement of these suits caused Mr Oon's failure to pursue Suit 904 to a successful conclusion against Tony Li. I say more about this in a while, in relation to the lawful means conspiracy claim.

**For the reasons I have given, therefore, I dismiss Mr Oon's claim in respect of unlawful means conspiracy.**

As for Mr Oon's claim in lawful means conspiracy, I find that at its core, this claim is reducible to a single issue – whether there was a conspiracy by the defendants to commence Suits 328 and 292 through USPGL against Mr Oon, which suits allegedly stifled Mr Oon's claim in Suit 904. This is both a sufficient and necessary condition for Mr Oon's claim to succeed. It is sufficient because as long as Mr Oon were able to establish that the defendants conspired to commence Suits 328 and 292 against Mr Oon, and that this act satisfied the elements of lawful means conspiracy, it would not be necessary for him to show that the initial acquisition of shares in USPGL through Tanoto and Anne Lee were also part of the conspiracy for his claim to succeed. Likewise, it is a necessary condition because even if Mr Oon were able to show that the defendants had conspired to acquire shares in USPGL, requisition the 20 February 2020 EGM, and reconstitute USPGL's board pursuant to their conspiracy, his claim would still fail if he were not able to show that Suits 328 and 292 were commenced pursuant to that conspiracy.

Having established that the question of whether Suits 292 and 328 were commenced pursuant to a conspiracy between the defendants is the key dispositive issue to Mr Oon's claim in lawful means conspiracy, it is necessary to consider the parties to *this* particular claim. Mr Oon has not pleaded or argued that either Anne Lee or Xia Zheng had any involvement with the decision by USPGL to commence Suits 292 or 328, beyond their participation in Anne Lee's acquisition of shares in USPGL. Similarly, even though Sunmax's controlling mind was Tony Li as its sole shareholder, it also had no involvement with the commencement of Suits 292 or 328 after it sold its shares to Tanoto. On this basis, the only

relevant parties to Mr Oon's claim in lawful means conspiracy could be said to be USPGL itself, Tanoto, Billy Huang, and Tony Li (USPGL itself having already entered into a settlement agreement with Mr Oon in respect of this case). I will refer to Tanoto, Billy Huang and Tony Li as "the conspirators".

In respect of the lawful means conspiracy claim, I find that there was a combination between the conspirators to commence Suit 292 and Suit 328 through USPGL. I find that there is clear evidence in the communications between the conspirators and their subsequent actions that the planning of these suits was conducted in concert by them and involved the commencement of litigation for purposes other than legal merit: see for *eg* the message sent by Billy Huang on 24 February 2020 to the USP WhatsApp Group, which Nah Ee Ling, Tony Li and Tanoto were part of, stating various legal matters USP was involved in and which Huang followed up on with multiple other messages which demonstrated planning by Tanoto, Tony Li and Billy Huang to commence litigation against Mr Oon regardless of the legal advice given (as evidenced for *eg* by the comment that they needed to "exert some influence" on the way the cases were conducted). Messages from Tony Li to the USP WhatsApp Group also show that the commencement of litigation against Mr Oon was contemplated by the conspirators collectively: see for *eg* Li's message on 12 March 2020 where he sent a to-do list of "work by new team" which included the item "Planning and designing legal cases against Ricky and YKC to prevent them from sinking USP and suing them to bankruptcy and jail-term", following this up with the comment "[t]his is what the whole team has been doing for the last 20 days… quite impossible to breakdown for individual because it is a team effort".

Tanoto's communications to the other conspirators also show he was aware of the commencement of litigation against Mr Oon. As I have

noted, he acknowledged in an email to Tony Li that the only reason for his acquisition of shares in USPGL was an agreed plan between the two of them to "unseat the previous Board, defeat [Mr Oon] in his claim against [Tony Li] for the undertaking [Tony Li] gave him for the USP shares…and to take him to task for any misdemeanour committed". Tanoto was not able to give any convincing explanation of why he would have stated this had there not been an agreed plan between him and Tony Li to do the things mentioned in that email.

Further, as I have also noted above, the existence of such a combination is supported by the manner of involvement of Tanoto, Tony Li, and Billy Huang in acts which included the share acquisitions and false Form 3 declarations by Tanoto and Anne Lee.

In addition, it is clear that Tanoto's requisition for the 20 February 2020 EGM and subsequent voting to reconstitute the board of USPGL was pursuant to a combination between him and Tony Li so as to enable the defendants to commence legal action against Mr Oon. The Sunmax SPA itself included an express undertaking by Tanoto to requisition for an EGM no less than 30 days from the completion date of the SPA. Tanoto's email to Tony Li on 8 December 2020 also confirms that Tanoto believed that the Sunmax SPA was for the objective of, among other things, assisting Tony Li to hold an EGM to remove USPGL's second board, and to replace it with Tanoto's and Tony Li's nominees as its directors. Likewise, the shares held by Anne Lee were used by the conspirators to vote in the 20 February 2020 EGM. Anne Lee confirms as much in an email on 25 September 2022 to the board of USPGL, explaining that she relented to Billy Huang and Tony Li's persistent requests that the shares held by her be used by them to replace the second board and appoint Tanoto as USP's CEO. I am also satisfied that other matters such as the

issuance of the RHT Report were part of the concerted effort between the conspirators to pursue legal action against Mr Oon.

I have found, in the context of the unlawful means conspiracy claim, that the evidence shows an intention by the defendants to cause damage or injury to Mr Oon by their acts. The tort of lawful means conspiracy requires the further distinctive mental element of a "predominant purpose" by the defendants to cause injury or damage to the plaintiff. Having examined the evidence adduced, I find that the defendants' intention to cause injury to Mr Oon through Suits 328 and 292 could not be said to serve any of their commercial purposes, and that Tanoto, Tony Li, and Billy Huang did have the predominant intention of causing injury to Mr Oon through the commencement of the said lawsuits.

Given my conclusion that there was a combination by the conspirators to commence these proceedings, and having regard to the evidence adduced, I also find that Suit 328 and Suit 292 were commenced in furtherance of the conspiracy.

In this connection, Tanoto makes the argument that he could not have responsible for the commencement of Suits 328 as it was started by USPGL and not unilaterally by him, and he was but one director on the third board. I give this argument short shrift. It is sufficient that each of the participants to a conspiracy has acted or taken *some* step to further a common design. It does not matter if conspirators have lent their support in different ways at different times – they need only to have participated in some way within the overall scope of their common design (*OCM Opportunities* at [50]). It is not necessary for each conspirator to have individually carried out each and every act pursuant the conspiracy. I need only note that I do find Tanoto to have acted in furtherance of the conspiracy by obtaining shares in USPGL, requisitioning the 20 February

2020 EGM, voting to reconstitute USPGL's board, and that he was in fact aware and a participant of the combination between the conspirators to carry out the above actions in order to commence Suit 328 against Mr Oon.

Tanoto's other argument in relation to this issue in essence amounts to a claim that he, as well as USPGL's board, was acting in good faith when deciding to commence Suit 328. On the evidence before me, I reject this argument as well: he and the other conspirators were clearly not acting in good faith.

As to whether Mr Oon has proved that he suffered the pleaded loss as a result of the commencement of the two suits: to recap, in his pleaded case, Mr Oon outlines two distinct sources of loss arising as a result of the conspiracy. First, he claims damages in the sum of $7,434,210.56, representing his claim against Tony Li in Suit 904. Second, he claims the difference between the actual solicitor-client costs incurred and the costs actually awarded and recovered in Suit 328 and Suit 292. This is stated in the Statement of Claim as "$670,000 or such amount to be assessed", and in his closing submissions as either $362,788.78 or $280,788.78.

As to the Suit 904 claim, Mr Oon relies on two cases in support of the proposition that conspirators can be made liable for damages equivalent to the value of the legitimate claim stifled: *Lim Leong Huat v Chip Hup Hup Kee Construction Pte Ltd and another* [2011] 1 SLR 657 ("*Lim Leong Huat*") and *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2017] SGHC 102 ("*Sandipala (HC)*").

In my view, both these cases are unhelpful for the purposes of Mr Oon's argument. In both cases, the alleged conspiracy involved the stifling of a claim in the *same suit* by the bringing of an unmeritorious claim, both of

which were before the court. Conversely, Mr Oon's claim is in respect of the stifling of a claim by the bringing of an allegedly unmeritorious claim in a *separate* suit, *neither of which* are before this court. The fact that the both the stifled claim and the unmeritorious claim were before the court in *Sandipala (HC)* and *Lim Leong Huat* is significant for two reasons.

First, the court was able to make a finding on the merit of the original claim that was stifled. In *Lim Leong Huat*, the defendants could only be held liable for the sum of the outstanding loans to Lim because Loh J had already decided in favour of Lim on that issue (*Lim Leong Huat* at [197]). Similarly, in *Sandipala (HC)*, Oxel had to first succeed in its counterclaim in respect of the Sandipala's breach of the Supply Contract before finding Sandipala's co-conspirators liable for the consequences arising from the breach. Mr Oon, however, has not adduced any evidence relating to the merit of his case in Suit 904. All that is before the court is Mr Oon's statement in closing submissions that "Tony Li knew that he had no valid defence against Mr Oon's claim in Suit 904". On the evidence made available to me, I am unable to make any determination of the merits of Mr Oon's claim in Suit 904.

Second, in *Lim Leong Huat* and *Sandipala (HC)*, the way in which the unmeritorious claim stifled the original claim would have been evident to the court. In these two cases, CHKC's counterclaim and Sandipala's claims would have had a direct bearing on the cost and duration of litigation of claims by Lim and the counterclaims of Oxel respectively. In the former, for *eg*, Loh J noted that Neo and CHKC's unmeritorious counterclaim turned what was a relatively simple debt-recovery claim into a protracted legal battle lasting over three years (*Lim Leong Huat* at [200]). This resulted in damage to Lim, being deprived of monies which were rightfully due to him from the very start.

Here, it is not clear how the commencement of Suit 328 and Suit 292 stifled Mr Oon's claim in Suit 904, since the initiation of those claims would not have had any direct impact on proceedings in Suit 904. Unfortunately, Mr Oon has not offered any cogent explanation as to what he means when he uses the term "stifled". He is moreover vague in his description of how exactly his claim has been stifled, offering nothing beyond the generic statements that his claim was "stifled and he was prevented from recovering on his claim against Tony Li in Suit 904", and that the commencement of Suit 328 caused the proceedings in Suit 904 to be "protracted/delayed", "deflat[ed]", "nullif[ied]", dragged back, or slowed. There is no explanation in either Mr Oon's pleaded case or his submissions for why Suit 904 would be protracted, nullified or slowed.

The only apparent attempt to elaborate on the nature of the alleged "stifling" came on the last day of trial when counsel for Mr Oon stated that his client's pleaded conspiracy involved the defendants having had the aim of causing Mr Oon to bleed by incurring legal costs, keeping pressure on Mr Oon, and then effectively forcing him to come to the negotiating table. No statements to that effect can be found in Mr Oon's Statement of Claim. Be that as it may, this belated explanation was not in any event supported by evidence. Neither Mr Oon's Affidavit of Evidence-in-Chief, nor his evidence in court, or for that matter the documentary evidence adduced, contained any indication that Mr Oon was facing financial pressure, was unable to obtain funds to continue Suit 904, or was otherwise hampered in his claim because of Suit 328 or Suit 292. In the circumstances, I find that Mr Oon has not managed to prove on the balance of probabilities any explanatory mechanism by which his claim in Suit 904 has been stifled.

Even if there had been an explanation for how Suit 904 had been stifled or delayed by Suit 328 and Suit 292, I do not find that this resulted in any

loss to Mr Oon. First, Mr Oon has failed to establish that his claim in Suit 904 had a chance of success to begin with. Mr Oon has failed to produce any evidence that his case in Suit 904 was meritorious.

Second, even if Mr Oon's claim in Suit 904 did have some chance to succeed, on the evidence available, it does not appear that he lost his ability to pursue his claim in court as a result of the conspiracy. Mr Oon has not claimed to be unable to continue with the proceedings in Suit 904 because of impecuniosity, or any other reason. Suit 904 has not concluded. Mr Oon still intends to apply to court for permission to resume the stayed proceedings against Tony Li. The only sense in which Mr Oon's claim has been conceivably hampered is that his likelihood of recovering any damages he would be awarded in Suit 904 is very low, due to Tony Li having voluntarily declared bankruptcy. However, this has been the case ever since the commencement of Suit 904. Mr Oon stated during cross-examination that he had known since at least July 2019 that Tony Li was divorcing his wife and transferring all his properties and assets to her. The transfer of Tony Li's assets to Xia Zheng was completed on 8 July 2019, which was before the commencement of Suit 904 on 12 September 2019. Even if I were to interpret the stifling of Mr Oon's claim to encompass a decrease in the probability of successfully enforcing and recovering any potential judgment debt, it is not clear that this likelihood has been diminished by virtue of any delay because of the defendants' conspiracy. Importantly, Mr Oon has not pleaded that Tony Li's voluntary bankruptcy nor his alleged "sham divorce" formed part of the defendants' conspiracy. Mr Oon himself conceded as much in cross-examination. Thus, it cannot be said that any delay in Suit 904 (which Mr Oon has not managed to show in any case) has caused any loss to Mr Oon. This also deals with Mr Oon's argument that a risk of loss is sufficient to sustain a claim for conspiracy (*United Overseas Bank Ltd v Lippo Marina Collection Pte Ltd* [2023] 1 SLR 415

at [124]): even if this is true, it is not clear that the risk of any loss has been increased as a result of the defendants' conspiracy to commence Suit 328 and Suit 292.

As to the costs of Suit 328 and Suit 292, Mr Oon's ability to advance a claim for these costs rests on three questions:

(a) First, are legal costs claimable as damages in the tort of conspiracy?

(b) Second, if legal costs are claimable as damages, can these damages be claimed against non-parties to Suit 328 and Suit 292?

(c) Third, can Mr Oon claim for a full indemnity of his legal fees, notwithstanding the indemnity principle?

The specific issue of recovery of legal costs in claims for conspiracy was canvassed in *Singapore Shooting Association and others v Singapore Rifle Association* [2020] 1 SLR 395 ("*Singapore Shooting Association*"). In *Singapore Shooting Association*, the plaintiff Singapore Rifle Association ("SRA") pursued *inter alia* a claim in the tort of unlawful means conspiracy against the defendants for conspiring to cause it damage by procuring the passage of a resolution. The High Court held, *inter alia*, that the second to fourth defendants were liable in the tort of unlawful means conspiracy, with SRA's damage taking the form of the legal fees and disbursements incurred in investigating, detecting, and responding to the conspiracy. On appeal by the defendants, the Court of Appeal reversed the High Court's decision in relation to the plaintiff's claim in unlawful means conspiracy. Legal fees incurred in investigating, detecting, unravelling and/or mitigating a conspiracy could not constitute actionable loss or damage in the tort of unlawful means conspiracy if they are in substance the sort of expenses that would be incurred in preparation for litigation, and so would be recoverable as costs in an action (at [92]). In general, this rule would also apply to the legal costs of defending an action, although the court left open for consideration "the exceptional

case where the conspiracy is said to consist of the bringing and the conduct of litigation for purposes that are, and in a manner that is, oppressive in order to injure the defendant" (at [101]), on the basis that the tort of abuse of process was not part of Singapore law (*Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 ("*Lee Tat Development Pte Ltd*"). Further, the court noted that there was "no reason in principle" why this general rule should not apply with equal force to cases of lawful means conspiracy and stated it was therefore likely that this would be so, although it left the question open for determination on a future occasion (at [99]).

Mr Oon submits that the present circumstances constitute just such an exceptional case. He argues that the defendants deliberately intended the lawsuits to inflict maximum harm on him and to cause him financial loss.

I do not accept Mr Oon's submissions. Although I have found that the defendants did conspire to bring litigation against Mr Oon with the predominant intention to injure him, Mr Oon has failed to demonstrate how this litigation has been conducted *in an oppressive manner* such that he has incurred costs beyond what any other litigant would incur as part of a necessary incidence of using the litigation process. This is not to say that in principle the incurring of legal fees can never be oppressive, particularly if a party to litigation was of limited means. However, Mr Oon has not pled, nor adduced any evidence, nor submitted that the legal fees expended by him in the course of Suit 292 and Suit 328 were in any way oppressive to him beyond stating that such expenses were "significant". Given that Mr Oon has in fact already received costs on an indemnity basis in Suit 292, and has received in settlement fees of $268,000, it is far from clear – and he has not proved – that the litigation has panned out in a manner oppressive to him.

Moreover, Mr Oon has not adduced any argument in favour of the fact that Suit 612 was necessary in order to vindicate any substantive rights of his. This points towards giving weight to the consideration in procedural law that parasitic litigation should be suppressed (*Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 ("*Then Khek Koon*") at [183]).

In the circumstances, although legal costs may in principle constitute actionable loss or damage for a claim in lawful means conspiracy in exceptional cases, Mr Oon has failed to show that his legal costs in Suit 328 and Suit 292 constitutes such an exceptional case.

In the interests of completeness, I should make it clear that even if Mr Oon's legal costs were claimable as damages against the conspirators, his claim nevertheless fails because the legal costs which he is claiming do not fall within the exceptionally rare set of circumstances where the measure of damages awarded can consist of the full costs of legal proceedings, going beyond the measure awardable pursuant to the indemnity principle (*Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 ("*Maryani*") at [53]).

In *Maryani,* the CA set out the general principles relating to costs in civil proceedings at [29]–[32] and [34]. In particular, the CA noted:

> 31 The indemnity principle, however, does *not* result in an indemnity in the full or literal sense. The legal costs recoverable by the successful party from the losing party are more often than not less than the actual legal fees incurred as between the successful party and his solicitor. This is because the indemnity principle is also subject to a series of rules governing how recovery of costs is quantified, and those rules operate such that a *full* indemnity for legal costs is only recoverable by parties to litigation in exceptional circumstances (for example, where there is a contractual agreement between the parties to this effect).
>
> 32 ...As the Judge [below] aptly observed, 'while compensation is the immediate effect of applying the indemnity principle, the ultimate policy of the indemnity principle is rooted not in compensation but in enhancing access to justice' (see the Judgment at [156]). ...

> 34 Ultimately, our legal regime on costs recovery is calibrated in a manner such that full recovery of legal costs by the successful part is the exception rather than the norm. What we need to bear in mind is that this state of affairs is not something which exists to prejudice the winning party in litigation, but is a manifestation of the law's policy of enhancing access to justice for all. Put another way, unrecovered legal costs is something which is part and parcel of resolving disputes by seeking recourse to our legal system and all parties who come before our courts must accept this to be a necessary incidence of using the litigation process. It is in this light that the general rule must be understood.

In considering Mr Oon's claim for legal costs, it must also be remembered that indemnity costs have already been ordered in Suit 292, while in Suit 328 Mr Oon elected to conclude a settlement agreement with the other parties. To allow Mr Oon further to claim the excess legal costs he has incurred would necessitate consideration of the effect this would have on the principle of finality in the law and legal process (*Lee Tat Development* at [105]; *Maryani* at [26] and [27]). In particular, allowing parties to claim a full indemnity for excess legal costs incurred by way of secondary claims in conspiracy would encourage much unnecessary satellite litigation, and waste the valuable time and resources of the court.

There are thus compelling reasons in legal policy and principle that point in favour of Mr Oon not being permitted to claim a full indemnity for his costs.

Given that Mr Oon cannot claim a full indemnity of his legal costs, I find that even if his costs were claimable as damages, they would be subject to the indemnity principle such that he ought not in subsequent proceedings to be able to claim for the unrecovered costs of Suit 292 and Suit 328 (*Maryani* at [53]).

**For the reasons give, therefore, I also dismiss Mr Oon's claim in lawful means conspiracy.**

I wish to make it clear that none of the defendants – including Tanoto – should imagine their actions to have been in any way vindicated or endorsed by virtue of my dismissal of Mr Oon's claims. I take a dim view of Tanoto's, Tony Li's and Billy Huang's conduct in terms of the manner in which they engineered the acquisition of the shares in USPGL and the commencement of litigation against Mr Oon. They have in no way covered themselves in glory – far from it. In Tanoto's case, too, as I have indicated at various points, I found him to be a shifty, evasive and disingenuous witness who appeared to me to be ready both to feign ignorance and to make things up on the witness stand as it suited him.

In light of these observations, I would like counsel for Mr Oon and Tanoto to put in written submissions on costs. Specifically, I would like counsel to address me on the appropriate costs orders to be made in this case. While I have dismissed Mr Oon's claim and while costs usually would follow the event, the court in exercising its discretion on costs under O 59 r 3(2) of the Rules of Court ("ROC") can take into account the conduct of parties during proceedings (under O 59 r 5). There have been cases where the courts have (a) ordered the successful party to pay costs, (b) made no order as to costs, or (c) reduced the costs payable on the basis of a party's false testimony or evasive responses during trial. See for *eg*, in *GIB Automation Pte Ltd v Deluge Fire Protection (SEA) Pte Ltd* [2007] 2 SLR(R) 918; *Baldor Electric (Asia) Pte Ltd v Liew Chin Choy and others* [2010] SGHC 32; *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2011] 1 SLR 582; *Tan Wei Leong v Tan Lee Chin and others* [2021] 4 SLR 84; *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723; *Lee Seng Choon Ronnie v Singapore Island Country Club* [1993] 1 SLR(R) 557.

Ct : **Written submissions on costs to be filed and exchanged by close of business on 13 October 2023.**

**Reply submissions if any by close of business on 20 October 2023.**

**Decision costs on 27 October at 10am in Chamber 3A (via Zoom).**

Sgd.: Justice Mavis Chionh

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Manager, Judge's Chambers
Supreme Court Singapore