(2022) 34 SAcLJ 213
(Published on e-First 26 January 2022)

Case Note

THE QUINTET OF CASES ON BREACHES OF FIDUCIARY DUTIES, CAUSATION AND ABUSE OF PROCESS

Clarifications from the Court of Appeal in *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2

This case note discusses the decision of the Court of Appeal in *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2, which arose after a quintet of cases between a company and its former director for breach of his fiduciary duties. The decision also demonstrates an application of the current test for causation where breaches of fiduciary duties are concerned, a test first adopted by the Court of Appeal in *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199. This note also explores the effects of the Court of Appeal's decisions on issues which are vital to companies, such as the doctrine of separate legal entity for subsidiary companies, the doctrine of *res judicata* and judicial treatment of the single economic entity concept in Singapore.

Ben Chester **CHEONG**
LLM (Cambridge), LLB (First Class Honours) (University of Exeter);
Advocate and Solicitor (Singapore), Solicitor (England and Wales);
Lecturer, School of Law, Singapore University of Social Sciences.

Muhammad **BIN K M A JAHABAR SATHIK**
LLB Candidate, School of Law, Singapore University of Social Sciences;
Diploma in Law & Management, Temasek Polytechnic;
Paralegal, Heng, Leong & Srinivasan LLC.

I. Introduction

1 The litigation involving Goh Chan Peng ("Goh") and the Beyonics Group could be said to be one of the most long-drawn Singapore corporate disputes in recent times, spanning across five different reported judgments and delving into a wide area of laws, including company law and civil procedure. While this is primarily a case note about the latest cases, readers should refer to the procedural history of the cases for a greater understanding of the subject matter.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

2 The latest case in the dispute primarily between Goh and the Beyonics Group can be found in *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 ("*2021 CA*") upon which this case note is built. Immediately preceding *2021 CA* were *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 ("*2020 SICC*") and *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 5 SLR 235 ("*SICC Cost Order*"). For the purpose of this case note, *SICC Cost Order* is outside the remit of this discussion.

3 Before the *2021 CA* and the *2020 SICC* decisions, the dispute between Goh and the Beyonics Group can be traced back to two even earlier decisions, *ie*, the High Court decision in *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 ("*2016 HC*") which was then appealed to the Court of Appeal in *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 ("*2017 CA*").

4 As this case note is concerned primarily with directors' duties and abuse of process, it will be split into three distinct sections: (i) breach of fiduciary duties; (ii) whether the breach of duties caused the loss; and (iii) whether there was an abuse of process.

5 In *2021 CA*, *2020 SICC*, *2017 CA* and *2016 HC*, the background may be summarised expediently as follows: Beyonics Technology Ltd ("BTL") was incorporated in Singapore and was the parent company of the Beyonics Group. Other corporate entities included: (i) Beyonics Technology Electronic (Changsu) Co Ltd ("BTEC") incorporated in China to own and operate a baseplate manufacturing facility in China; (ii) Beyonics Precision (Malaysia) Sdn Bhd ("BPM") incorporated in Malaysia to own and operate a baseplate manufacturing facility in Malaysia; and (iii) Beyonics Asia Pacific Limited ("BAP") incorporated in Mauritius and while BAP did not own or operate manufacturing facilities, it was the sales company for the baseplates manufactured by BTEC and BPM.

6 On the other side of the fence was Goh, who was a director of BTL. BTL with its many subsidiaries would constitute the "Beyonics Group". The business of the Beyonics Group involved the contract manufacturing of base plates for hard disk drives. One of its key customers was Seagate. The process of manufacturing the base plates consisted of two stages. At the first stage, the baseplates would be die-casted and e-coated ("Stage 1"). The second stage involved precision machining on the baseplates before they were supplied to customers ("Stage 2").

7 In October 2011, the Beyonics Group's factory in Thailand was destroyed as a result of severe flooding. A concerned Seagate wanted to ensure it had a sufficient supply of baseplates for the hard disk drives produced. In November 2011, an alliance was formed between the

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Beyonics Group and its competitors, Nedec Co Ltd and Kodec Co Ltd (collectively known as the "NedKo Group"). The alliance was known as the "B-N Alliance" and was formalised through an agreement between the Beyonics Group and the NedKo Group.

8 After the B-N Alliance was formed, Goh entered into two separate agreements with the Nedko Group on behalf of Wyser International Limited ("Wyser"), which was beneficially owned and controlled by him. Under this agreement, Wyser received payment for its assistance in securing business from Seagate (the "Wyser Agreements").

9 Soon, disagreements arose between Goh and the other directors of the Beyonics Group. Goh tendered his resignation on 9 January 2013. The Beyonics Group's business with Seagate eventually declined and by the end of 2014, Seagate had ceased its business with the Beyonics Group.

10 BTL claimed that Goh had breached his fiduciary duties owed to it, among other things.

II. Breach of fiduciary duties by Goh – *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592[1]

11 The Court of Appeal in *2017 CA* partly affirmed the decision in *2016 HC*[2] and held that Goh was in breach of his fiduciary duties owed to BTL and the Beyonics Group,[3] as Goh was instrumental in approving the B-N Alliance and that it was Goh who convinced Seagate to secure the contract between both parties.[4] As for the payment under the Wyser Agreements, the High Court agreed that they were appropriately characterised as bribes[5] and that Goh had assisted the NedKo Group to build its capabilities for the Stage 1 and Stage 2 works.[6]

12 The High Court in *2016 HC* also had to consider whether the loss of profit as a result of the diversion of the Stage 2 work to the NedKo Group from January 2012 to January 2013 (the "Diversion Loss") and the loss of profit as a result of the loss of future baseplate business from Seagate (the "Total Loss") were caused by Goh. The High Court in *2016 HC* held that Goh had not succeeded in discharging the evidential

1 *2017 CA*.
2 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [34]–[35].
3 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [38]–[46], [47] and [50].
4 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [69].
5 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [76].
6 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [90].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

burden as he was unable to prove that Seagate's decision to terminate the Beyonics Group as a supplier was not caused by his misconduct.[7]

III. The proper person to bring the claim – *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592[8]

13 Goh and Wyser appealed against the decision of the High Court in *2017 CA*. Goh argued that since BAP was the party that invoiced Seagate for the base plates and received payment from it, BTL had no grounds to claim for any loss of profit. BTL's counter argument was that Goh should not be able to characterise BTL's claims as claims for reflective loss as this was not pleaded in his pleadings.[9]

14 The Court of Appeal partially allowed the appeal on the basis that the Diversion Loss and Total Loss were suffered by BAP and not BTL, as the baseplates manufactured by BPM and BTEC were sold to BAP and BAP in turn sold them to and invoiced Seagate and was accordingly the entity that suffered the losses. The Court of Appeal recognised that while the result of this ruling would be harsh given the egregious nature of Goh's breaches, recognising the single economic entity concept would undermine the doctrine of separate legal personality which was the bedrock of company law.[10]

IV. Re-litigation by the Beyonics Group's other subsidiaries – *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215[11]

15 These findings were only a partial victory for the Beyonics Group because the Court of Appeal in *2017 CA* held that BTL had no grounds to recover the Diversion Loss and Total Loss awarded by the High Court in *2016 HC*, as these losses were suffered by BAP.[12] The other subsidiary companies, including BAP, thus commenced a new action against Goh and Wyser in *2020 SICC* and claimed for both the Diversion Loss and Total Loss which had been disallowed by the Court of Appeal *in 2017 CA*.

16 On the flipside, Goh and Wyser argued that the commencement of *2020 SICC* was an abuse of process as the current claims by the Beyonics Group could have been raised in the previous suits. Goh and Wyser relied

7 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [154].
8 *2017 CA*.
9 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [60].
10 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [75].
11 *2020 SICC*.
12 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [43]–[44].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

on the doctrine of an extended form of *res judicata*,[13] which originated in the English case of *Henderson v Henderson*[14] ("*Henderson*").

17 The High Court in *2020 SICC* held that the claims by the subsidiary companies could have been brought in *2016 HC*[15] and held that BAP and the other subsidiary companies should have been joined as parties in *2016 HC*.[16]

V. Appeal in *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2[17]

18 The subsidiary companies filed an appeal against the decision of the High Court in *2020 SICC* for having struck out their claims on the ground of abuse of process.

A. Abuse of process

19 The Court of Appeal in *2021 CA* held that the claims in *2020 SICC* should not have been struck out by the High Court.[18] Before analysing this issue, the Court of Appeal took into account the key principles in relation to an abuse of process claim; this in turn informed the court of its procedural powers and that a finding of an abuse of process depended on the specifics and circumstances of each case.[19]

20 While the Court of Appeal acknowledged that the claims in *2020 SICC* could have been raised in *2016 HC*, it was of the opinion that this was not the end of the enquiry as "could have" does not necessarily equate to "should have".[20]

21 The reasoning given by the Court of Appeal on why the claims should not have been struck out can be summarised as follows: Firstly, the Court of Appeal was of the opinion that Goh and Wyser were unable to show that it would be oppressive for them to be subject to the claims in *2020 SICC*. This burden was held to be on the respondents.[21]

13 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [15] and [43].
14 (1843) 3 Hare 100.
15 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [71] and [73].
16 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [95].
17 *2021 CA*.
18 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [70].
19 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [50]–[51].
20 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [54].
21 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [55] which cited *Johnson v Gore Wood* [2002] 2 AC 1 at 59–60.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

22 Secondly, the Court of Appeal held that the issue of whether BTL was the proper plaintiff was not a major issue in the trial of *2016 HC* and that this was a contributing factor to how the respondents had chosen to move forward in this case. The Court of Appeal held that there was no pleading which specifically stated that the claims for the Diversion Loss and the Total Loss under the statement of claim should have been brought by BAP or by any other party.[22]

23 The Court of Appeal was of the opinion that whether BTL was the proper plaintiff was not a major issue in *2016 HC*. It held that whether the issue had been pleaded was a technical question and that the purpose of pleadings was to ensure that each party would be aware of the respective arguments against it and no party would be taken by surprise.[23]

24 The Court of Appeal held that it was hard to conclude that the Beyonics Group should have added the subsidiary companies as parties to *2016 HC*, as it was an expensive process which would have led to a delay in the adjudication process.[24]

25 Lastly, the Court of Appeal held that at the time the issue of proper plaintiff was raised at trial, the plaintiffs honestly believed that they had a cause of action and that there was no good reason to delay the procedure and incur further expenses by adding the subsidiary companies as parties to the case.[25]

26 Before concluding, the Court of Appeal reiterated that the threshold in finding an abuse of process was high, and that the court would be cautious so as to not shut out a genuine cause of action unless there was an unjust harassment of a party.[26] In summary, the Court of Appeal held that the *2020 SICC* claims should not have been struck out as the respondents were unable to raise the argument that it would be unjust or oppressive for them to have to defend *2020 SICC*.[27]

B. Breach of duties by Goh

27 When determining if Goh was in breach of his fiduciary duties, the Court of Appeal firstly analysed the Wyser Agreements. The Court of

22 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [56].
23 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [64].
24 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [67].
25 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [68].
26 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [69] which cited *Johnson v Gore Wood* [2002] 2 AC 1 at 31.
27 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [70].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Appeal disagreed with the findings of the High Court, which had relied on the structuring of the payments to Wyser and Goh's lack of disclosure to the board. The Court of Appeal held that the Wyser Agreements should be categorised as bribes from which Goh had personally benefited. Thus, the Court of Appeal held that Goh's involvement in the Wyser Agreements was in breach of his fiduciary duties, specifically the no-profit and no-conflict rules.[28]

C. Whether the breach of duties caused the Diversion Loss and the Total Loss

28 The current approach *vis-à-vis* causation which was set out in *Sim Poh Ping v Winsta Holding Pte Ltd*[29] ("*Winsta Holdings*") was considered by the Court of Appeal in *2021 CA*. It held that the main issue to be determined was whether Goh could show that the Diversion Loss and Total Loss would have occurred in any event regardless of his breaches.[30]

29 When considering the events prior to the floods, the court took into account the decision of the Beyonics Group's board of directors in 2010 to divest and limit investments. The Court of Appeal held that the board's decision in 2010 to divest and limit investments proved that the B-N Alliance would have been entered into regardless of whether Goh had entered into the Wyser Agreements.[31]

30 As for the Wyser Agreements, the Court of Appeal held that the High Court had rightfully concluded that there was nothing insidious about how the B-N Alliance was conceptualised.[32] The Court of Appeal agreed with the findings of the High Court, which had considered the brainstorming meeting held at Seagate and the email between Goh and a Mr Billy Chua of Seagate, before concluding that the proposal for the B-N Alliance had come from Seagate, and that Goh was not aware of the possibility of the B-N Alliance on 27 October 2011.[33]

31 Furthermore, the Court of Appeal was convinced that Goh was able to discharge his burden of proving that the losses suffered due to the B-N Alliance were not due to his decisions, and that his decisions were in the interests of the Beyonics Group.[34] The Court of Appeal agreed

---

28 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [104]–[113].
29 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199.
30 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [115].
31 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [116]–[117].
32 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [121].
33 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [122].
34 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [134].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

with the finding of the High Court, and concluded that there was no suggestion that a Mr LH Lee had lied or had made a misrepresentation regarding BTEC's capacity. In conclusion, the Court of Appeal held that Goh was entitled to rely on the information provided by Mr LH Lee.[35]

32 As for the facilitation of the growth of the NedKo Group, the Court of Appeal agreed with the finding of the High Court that the assistance rendered by Goh *vis-à-vis* the Stage 2 work was in line with promoting the success of the B-N Alliance, which was deemed as a reasonable partnership made by Goh for BTEC.[36]

33 Lastly, the court considered the causation test in *Winsta Holdings*, and agreed with the High Court that based on the second stage of this test, the evidence produced by Goh proved that his breaches *vis-à-vis* the Wyser Agreements did not cause the losses suffered by the subsidiary companies.[37] As for the Diversion Loss, the Court of Appeal accepted Goh's argument that the evidence showed there was no spare capacity for the Stage 2 work, and that the B-N Alliance provided an opportunity for the Beyonics Group to make a profit from its excess capacity for the Stage 1 work.[38]

34 As for the Total Loss, the Court of Appeal upheld the decision of the High Court and deemed that the Wyser Agreements did not cause the B-N Alliance to be formed. In this regard, the Court of Appeal held that although the NedKo Group becoming qualified for the Stage 1 work and Stage 2 work was one of the reasons why Seagate decided to replace the Beyonics Group with the NedKo Group, there was nothing unreasonable about entering into the alliance or Goh's facilitation of the NedKo Group's growth. The Court of Appeal also reasoned that there was insufficient evidence to prove that Goh's acts were against the interest of the Beyonics Group, and that he had discharged the burden in proving that the losses were not due to his actions.[39]

---

35 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [127].
36 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [140].
37 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [147].
38 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [151].
39 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [152].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

VI. Commentary

A. The doctrine of separate legal entity

35 The decision of the court has reinforced the position that the doctrine of separate legal entity should be upheld and should not be displaced for companies that are structured as subsidiaries or are related to each other. In this regard, parent companies are not allowed to sue an employee (or a fiduciary) for the losses suffered by its subsidiary. This principle is aligned with the "no-reflective loss rule", which states that even if a shareholder (in this case a parent company) has, in addition to the company (in this case a subsidiary company), been wronged by the defendant's conduct (in this case, the errant director's conduct) and the company has not commenced proceedings against the defendant, any claim for damages brought by the shareholder will be barred. The court also refused to recognise that the Diversion Loss and Total Loss were suffered by BTL even though the Beyonics Group's business was conducted on a collective nature, and held that the concept of single economic entity was not applicable in Singapore.[40] This position was endorsed by the High Court in *Manuchar Steel Hong Kong Limited v Star Pacific Line Pte Ltd*[41] ("*Manuchar Steel*"), which held that there was no legal basis for accepting this concept in the Singapore context.[42]

36 In this case, the Beyonics Group had erred and the initial suit against Goh and Wyser should have been commenced by BAP instead of BTL.[43] Further to the above, the consistent upholding of the separate legal entity doctrine has to be welcomed as this put Singapore in line with other common law jurisdictions and facilitated investments which have enabled Singapore to become the leading business hub that it is today. Be that as it may, the question that remains is whether technical errors such as the commencement of a suit by the wrong party should allow directors who are clearly in breach of their fiduciary duties to be let off scot-free. This would be at the expense of justice, and justice would demand that there should be an exception in place for companies in a similar corporate structure to claim against directors who have breached their fiduciary duties.

40 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [75].
41 [2014] 4 SLR 832.
42 [2014] 4 SLR 832 at [87]–[136]; see also Ben Chester Cheong, "Granting Legal Personhood to Artificial Intelligence Systems and Traditional Veil-Piercing Concepts to Impose Liability" (2021) 1(9) *SN Social Sciences* 231 at pp 10–11.
43 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [43]–[44].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

37 While fully recognising such a concept would be disadvantageous to companies such as one-man companies, there ought to be circumstances where such a concept would be recognised to ensure that there is a proper administration of justice. It was held by the Court in *Manuchar Steel* that there were exceptional cases in competition law where tribunals and the courts recognised this concept to allow the joining of a parent of a subsidiary to an arbitration.[44] Perhaps this could have been a solution in *2016 HC* as well.

38 Furthermore, it has been suggested that the privilege given to companies (*ie*, operating as a separate legal entity) must operate in accordance with the terms upon which they were granted, and that the doctrine of corporate veil piercing[45] is based on the fact that the privileges should work hand in glove to avoid the possibility of abuse or exploitation.[46] But it is contended that relying on veil piercing in such a situation would appear to expand the narrow scope of the veil-piercing doctrine which would lead to an unprincipled outcome.

39 Instead, in a narrow situation similar to *2021 CA*, we argue that directors in corporate groups should be treated differently. Recently, in the case of *HRH Emere Godwin Okpabi v Royal Dutch Shell Plc*[47] ("*Okpabi*"), the UK Supreme Court provided guidance on the circumstances in which a parent company may owe a duty of care to those affected by acts or omissions of its foreign subsidiary.[48] The Supreme Court appeared to suggest that there may be situations where a strict approach to corporate separation may not be applied, by making it clear that companies may not rely on the corporate form alone to limit risks associated with the operations of corporate affiliates.[49] Proponents of maintaining a strict adoption of separate legal personality would argue that recognising the decision of the court in *Okpabi* would lead to unprincipled and less predictable outcomes for companies with parent-subsidiary relationships in the long run. However, it is likely that the decision in *Okpabi* would only be confined to parent companies that had taken active steps to implement and impose group-wide environmental and safety policies on its subsidiaries.[50]

44 [2014] 4 SLR 832 at [135].
45 Stephen Bull, "Piercing the Corporate Veil – in England and Singapore" [2014] SJLS 24 at 24–40.
46 Yeo Hwee Ying & Ruth Yeo, "Revisiting the Alter Ego Exception in Corporate Veil Piercing" (2015) 27 SAcLJ 177 at 178.
47 [2021] UKSC 3.
48 [2021] UKSC 3 at [151].
49 [2021] UKSC 3 at [147].
50 *Lungowe v Vedanta Resources plc* [2019] UKSC 20 at [53].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

40 It is possible to argue that a similar exception to that in *Okpabi* could be adopted but in a different context. It is suggested that even though an employment contract is signed only between the parent company and a director, once a key employee and director of a parent company tasked with overseeing the operations of various subsidiaries is established (and this could be determined as a matter of evidence from the organisation charts), the courts should, in the interests of justice, allow the subsidiary company to bring an action against the *de facto* director for a breach of director's duty notwithstanding the no-reflective loss principle.[51] This would not be a situation of piercing the corporate veil. It is submitted that this "modified *Okpabi* approach" would enable a more equitable outcome by allowing large organisations with multiple subsidiaries to contemplate legal action against directors for egregious breaches of directors' duties.

B. **Henderson *doctrine***

41 There are two justifications for the doctrine of *res judicata*, which are encapsulated by the legal maxims, *nemo debet vexari pro una et eadem causa*[52] (no person should be vexed twice by the same cause) and *interest reipublicae ut sit finis litium*[53] (in the interest of society as a whole, the litigation must come to an end). There is a rational basis for this doctrine, as there would be no end to litigation if the parties are not bound by the judgment rendered by the court.

42 The *Henderson* doctrine is a crucial rule in common law systems and is an important safeguard against abuse of process. It seeks to ensure that the parties in an action submit their entire case in proceedings and prohibits parties from pursuing a different suit at a later stage *vis-à-vis* matters which could and should have been raised in the earlier proceedings but was excluded due to an accident or because of their own negligence.

43 In *2020 SICC*, the defendants relied on the extended form of *res judicata* and stated that the commencement of the action by the subsidiary companies was an abuse of process.[54] The High Court stated that the subsidiary companies should have brought an action against the

51 In *Marex Financial Ltd v Sevilleja* [2020] UKSC 31, the minority judges advocated the abolition of the no-reflective loss rule. See also *Miao Weiguo v Tendcare Medical Group Holdings Pte Ltd* [2021] SGCA 116 for the current Singapore position on the no-reflective loss rule.

52 David A R Williams QC & Mark Tushingham, "The Application of the *Henderson v Henderson* Rule in International Arbitration" (2014) 26 SAcLJ 1036 at 1037–1038.

53 David A R Williams QC & Mark Tushingham, "The Application of the *Henderson v Henderson* Rule in International Arbitration" (2014) 26 SAcLJ 1036 at 1037–1038.

54 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [15].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

defendants at an earlier stage, and analysed the conduct of the subsidiary companies before and during *2016 HC* and after *2017 CA* before it made its decision.[55] However, the Court of Appeal in *2021 CA* stressed that for this doctrine to apply, the key factors were: (i) whether there were *bona fide* reasons why the issue which ought to have been raised in the earlier action was not; and (ii) whether there were any other special circumstances that would justify the commencement of the action.[56]

44 Although the defendants were, on appeal in *2021 CA*, unsuccessful in striking out the plaintiffs' claim based on the *Henderson* doctrine,[57] this quintet of cases serves as a reminder to plaintiffs that all claims brought by the respective entities (be it a parent company or its subsidiaries) should be commenced in one action. If plaintiffs fail to bring an action at the initial stage and commence another action subsequently, there is a high probability that the opposing party would raise this doctrine and prevent the plaintiffs from claiming in the suit because such claims could have been raised and settled at the initial proceedings.

45 The power to dismiss proceedings as an abuse of process under the *Henderson* rule is a procedural power, and that in most common law systems, the court's power to strike out proceedings is provided for under the respective rules of court relating to civil procedure.[58] However, the threshold for establishing an abuse of process remains high in Singapore, as the court has clarified that it will be cautious not to shut out a genuine cause of action unless the later proceedings are deemed an unjust harassment of the other party.[59] Thus, defendants intending to raise this doctrine to strike out a claim must be able to prove that it would be oppressive or unjust for them to defend the subsequent suit, and they must have informed the court as to whom the correct plaintiffs should have been. If they are unable to establish this, the court would not allow such claims under this doctrine as it would be unconvinced that the threshold *vis-à-vis* this doctrine has been satisfied.

46 In conclusion, claimants should ensure that all claims against a party must be commenced in a single action. While the parties' reliance on this doctrine was overturned by the Court of Appeal in *2021 CA*, the court has stressed that whether an abuse of process is found would be

---

55 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [98].
56 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [52].
57 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [70].
58 David A R Williams QC & Mark Tushingham, "The Application of the *Henderson v Henderson* Rule in International Arbitration" (2014) 26 SAcLJ 1036 at 1050, which cited the Supreme Court of Judicature Act (Cap 322) and O 18 r 19 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).
59 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [69].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

dependent on the specific facts and circumstances in each case.[60] While the *Henderson* doctrine serves as a safeguard against an abuse of process, defendants must be able to satisfy the high threshold required before the courts would strike out a claim, otherwise the balance may fall in favour of allowing the plaintiffs to bring their subsequent claim.[61]

C. Test for causation vis-à-vis *breach of fiduciary duty*

47 In *Winsta Holdings*, the Court of Appeal set out a uniform test of causation in the context of equitable compensation for breaches of fiduciary duties. Prior to this decision, there was some uncertainty and varying approaches to determining which party had to prove that the alleged breaches by the fiduciary caused the losses suffered by a company, or whether a fiduciary was liable to pay compensation even if the principal was unable to prove "but for" causation.[62]

48 This may be illustrated in *2016 HC*, in which the High Court had discussed the less strict approach in *Brickenden v London Loan & Savings Co*[63] ("*Brickenden*"),[64] which stands for the proposition that a claim for equitable compensation would succeed as long as the principal could show that the fiduciary's breach was "in some way connected" to the loss,[65] and would apply where the fiduciary: (a) is in one of the well-established categories of fiduciary relationships; (b) commits a culpable breach; and (c) breaches an obligation which stands at the very core of the fiduciary relationship.[66] In other scenarios, the principal still has to satisfy the strict "but for" causation test.[67]

49 The current test in *Winsta Holdings* can be summarised as follows: Firstly, the principal bears the legal burden of establishing its claim.[68] However, the legal burden of proving that the loss would have been sustained by the principal even if the fiduciary had not breached

---

60 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [51].

61 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [75].

62 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [51]–[56]; *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [135]; see also Tan Ruo Yu, "Causation in Equitable Compensation: *Then Khek Koon v Arjun Permanand Samtani*" (2014) 26 SAcLJ 724 at 737.

63 [1934] 3 DLR 465.

64 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [137].

65 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [132]–[134]; see also Jonathan Tian Heng Lee, "Recasting *Brickenden*: *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199" (2021) 33 SAcLJ 680 at 682.

66 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [137]; see also *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [249].

67 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [239].

68 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [238] and [239].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

his duties falls on the fiduciary. If the fiduciary is unable to satisfy this burden of proof, the court will award equitable compensation to the principal.[69] In this regard, the court rejected the *Brickenden* rule in favour of a modified test.[70]

50 In *2021 CA*, the court adopted the test in *Winsta Holdings* and held that the B-N Alliance would have been entered into regardless of whether Goh had entered into the Wyser Agreements.[71] Thus, Goh was able to discharge his burden of proving that the losses suffered due to the B-N Alliance were not a result of his actions.[72] Furthermore, the court held that Goh was able to show that he was acting in the Beyonics Group's interest when he entered into the B-N Alliance.[73] In summary, the court concluded that evidence submitted by Goh demonstrated that his breaches in relation to the Wyser Agreements did not cause the losses suffered by the subsidiary companies.

51 The decision of the court has reinforced the *Winsta Holdings* approach to causation, that is to say, how parties who commence actions against their fiduciaries for breach of fiduciary duties should claim for the losses suffered. In *2021 CA*, this test was vital as it provided clarity on when companies would be able to receive compensation for breaches of fiduciary duties. Furthermore, it highlights the fact that a breach of fiduciary duties does not automatically allow a principal to recover any losses suffered.[74]

52 While there have been criticisms of the *Brickenden* test,[75] the reformulated test in *Winsta Holdings* has proven to yield a fair and principled outcome for opposing parties. In *2021 CA*, applying the test in *Winsta Holdings*, the subsidiary companies were able to prove that Goh had breached his fiduciary duties and that the companies suffered losses.[76] However, instead of ending the inquiry at this stage, the court called upon Goh (*ie*, the fiduciary) to rebut the presumption and prove the absence of causation.[77]

---

69 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [240].
70 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [240].
71 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [116]–[117].
72 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [134].
73 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [134].
74 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [115].
75 See Jonathan T H Lee, "Equitable Compensation and *Brickenden*: Fiduciary Loyalty and Causation" (2020) 26(8)–26(9) *Trusts & Trustees* 800 at 813.
76 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [113].
77 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [147].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

53 The test appears to strike an appropriate balance between the interests of the principal and the interests of the fiduciary by ensuring fiduciaries do not abuse the power given to them and that they are not tempted to act against the interests of their principals. Yet, leaving in place the "narrow escape route" of a rebuttable presumption appears to be a concession to practicality, since only the fiduciary would be in a better position to know how the loss had been caused.[78] In this situation, the rebuttable presumption allowed Goh to successfully disprove causation.

VII. Conclusion

54 The Court of Appeal's decision in *2021 CA* has provided a general outline on some of the key concepts which form the essence of company law and civil procedure. By holding that the doctrine of separate legal entity would not be displaced for subsidiary companies, the court affirmed that concepts such as the single economic entity would not be applicable in Singapore's context, which is in line with previous judicial precedents.[79] While this decision will be welcomed by entrepreneurs and business entities, it remains to be seen if technical errors such as the commencement of a suit by a parent company instead of the subsidiary company that had suffered the breach would affect the liability of directors who have breached their duties. The decision in *2021 CA* also demonstrates that if errant directors (of a parent) in similar cases were to raise a defence that the losses were suffered by the subsidiary company and not the parent company, a subsidiary may initiate a subsequent suit against the errant directors (of the parent) which may be held to be not an abuse of process under the *Henderson* doctrine.[80]

55 The test on causation in *Winsta Holdings*, which was applied by the Court of Appeal in *2021 CA*, also provides an opportunity for fiduciaries who are deemed to be in breach of their duties to rebut the presumption *vis-à-vis* the losses suffered by them, provided that they are able to prove that the losses could have occurred regardless of whether they were in breach.[81] While the two-stage framework provides an opportunity for fiduciaries to prove that the losses would have occurred regardless of their acts or omissions, it remains to be seen if the recognition of a more lenient test as opposed to the *Brickenden* rule would fare well given

78 *Beyonics Technology Ltd v Goh Chan Peng* [2016] 4 SLR 472 at [137]; see also Jonathan Tian Heng Lee, "Recasting *Brickenden*: *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199" (2021) 33 SAcLJ 680 at 689.

79 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [75].

80 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2020] 4 SLR 215 at [15].

81 *Beyonics Asia Pacific Ltd v Goh Chan Peng* [2021] SGCA(I) 2 at [134].

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Singapore's strict approach towards breaches of duties owed by fiduciaries to a company.[82]

---

82 Yip Man & Goh Yihan, "Navigating the Maze: Making Sense of Equitable Compensation and Account of Profits for Breach of Fiduciary Duty" (2016) 28 SAcLJ 884 at 890–891.

© 2022 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.