IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 90

Suit No 323 of 2015

Between

(1) Lalwani Shalini Gobind
(2) Malti Gobind Lalwani

… *Plaintiffs*

And

Lalwani Ashok Bherumal

… *Defendant*

GROUNDS OF DECISION

[Probate and administration] — [Executors]
[Equity] — [Remedies] — [Account]
[Equity] — [Remedies] — [Equitable compensation]

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v
Lalwani Ashok Bherumal

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Introduction

1 In these proceedings, beneficiaries of an estate sought accounts to be taken against the sole executor and trustee, and recovery of sums that were said to have been misappropriated by him. Having heard the parties, I granted most of the reliefs sought, including orders for accounts to be taken on a common basis, and repayment of the specific sums. The sole executor and trustee has appealed.

Background

2 The patriarch of the family ("the Testator") passed away on 9 July 1999 leaving behind his son and two daughters. By virtue of a handwritten will dated 2 July 1999 ("the Will"), the validity of which was not challenged,

the Testator provided for his son to inherit 50% of his estate and for the remaining 50% to be divided equally between his daughters, who are the plaintiffs in this action ("the Plaintiffs"). The Testator also provided in the Will that his estate ("the Estate") was to be administered by his son and his brother as co-executors.

3 Grant of probate was issued on 13 February 2001 to the executors based on an incomplete schedule of assets. On 20 March 2002, the Testator's son passed away intestate, leaving behind no spouse or issue. Two consequences flowed from this. One, the Plaintiffs became the lawful beneficiaries to the son's share of the Testator's estate, and were accordingly each a beneficiary to 50% of the Estate. Two, the Testator's brother, who is the defendant in this case ("the Defendant"), bore the duty of distribution as the sole surviving executor.

4 Thereafter, a finalised Schedule of Assets with 41 assets dated 31 December 2008 was filed with the Commissioner of Estate Duties ("Schedule of Assets"), upon which permission to distribute the assets of the Estate was granted after the estate duties were finalised and paid.

5 For easy of reference, the names of the Testator's and the Defendant's siblings are as follows in decreasing order of age:

(a) Lalwani Moti ("Moti") deceased;

(b) Lalwani Bhagwan Bherumal ("Bhagwan") deceased;

(c) Lalwani Gobind Bherumal, who is the Testator;

(d) Lalwani Jiwan Bherumal ("Jiwan") deceased;

(e) Lalwani Rajan Bherumal ("Rajan"); and

(f) Lalwani Ashok Bherumal, who is the Defendant.

The Plaintiffs' Case

6 The Plaintiffs' present suit related to the Defendant's discharge of duties as executor and/or trustee in relation to certain assets of the Estate.

7 The Plaintiffs' first set of claims related to the taking of accounts. They submitted that the Defendant, as sole executor of the estate, owed fiduciary duties to the Plaintiffs as beneficiaries in relation to the administration of the Estate. By virtue of this, the Defendant was liable to furnish to them accounts relating to the Estate's assets. In particular, the Defendant had allegedly failed to properly account for the following assets of the Estate:

(a) shareholding in Basco Enterprises Pte Ltd ("Basco") and Eltee Development Pte Ltd ("Eltee");

(b) interest in Bob's Partnership ("Bob's") and any dividend payment or interests therefrom;

(c) the balance compensation ("the Property Proceeds") arising from the compulsory acquisition of 48 and 50 North Bridge Road Singapore ("the North Bridge Road Property") and 39 Stamford House Singapore ("the Stamford House"); and

(d) the Estate's share in the estate of the Testator's mother, Lalwani Lilan Bherumal ("Lilan").

8 In addition, the Plaintiffs sought recovery of specific sums that they alleged were misappropriated by the Defendant in breach of his fiduciary duty:

(a) a total sum of $118,000 which was withdrawn in 13 tranches by the Defendant from a UOB account designated to receive and hold all monies belonging to the Estate ("the Estate Account");

(b) a sum of $136,561.76, being half of the monies maintained in a UOB account held jointly by the Defendant and the Testator while the Testator was alive ("the Joint UOB Account"); and

(c) a sum of $40,641.78 being the remaining debt owed by the Testator's eldest brother, Moti, to the Estate under High Court Suit No 349 of 1997, which according to the Plaintiffs had since become time-barred under s 6 of the Limitation Act (Cap 163, 1996 Rev Ed) ("Moti's Debt").

The Defendant's Case

9 The Defendant did not contest that he owed a fiduciary duty to the Plaintiffs in relation to his administration of the Estate as the executor and/or trustee, but denied all allegations of breach. In relation to the accounts sought to be taken, the Defendant argued that he had, at various times prior to or during the trial, given sufficient account as regards the Estate's assets to the Plaintiffs, whose allegations to the contrary were baseless, untrue, or based on their own poor recollection of the matter.

10 In relation to the three specific sums claimed, the Defendant conceded that he withdrew the $118,000 from the Estate Account but submitted that his liability in that respect could be set off against his cross-claim against the Estate. This cross-claim allegedly arose because of his half-share interest in the constituent shares of a Central Depository Account ("the CDP Account"),

the proceeds of which were later deposited into the Estate Account, and which was held in the Testator's sole name while he was alive when it was in truth under the joint ownership of the Testator and the Defendant.[1] As regards the monies from the Joint UOB Account, the Defendant maintained that the sum was properly expended and used, *inter alia*, to pay off the Testator's funeral expenses, medical bills, and outstanding debts. Finally, the claim for Moti's Debt against the Defendant was argued to be premature as there was no evidence that Moti's estate was denying liability, or that a defence of time bar would be raised if a claim for recovery were brought against Moti's estate.

The decision

11 Most of the prayers sought in relation to the taking of accounts on a common basis were granted. The trustee's duty to furnish accounts to the beneficiary in relation to his administration of the trust assets is continuous and on demand. There may be limits to this duty, but none were applicable on the facts of this case. The transfer of some trust assets to the Plaintiffs, and the substitution of the Plaintiffs as the new executors and trustees of certain other assets, did not obviate the Defendant's duty to account for his conduct during his term as trustee. The mere provision of some financial documents by the Defendant during the course of trial also did not necessarily constitute full satisfaction of his duty to furnish accounts.

12 In relation to the claims in breach of trust, the Defendant was found liable for misappropriation of the sums of $118,000 from the Estate Account, and $136,561.76 from the Joint UOB Account. The Plaintiffs' claim for

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[1] Defendant's Opening Statement dated 13 September 2016 at para 9; Defendant's Closing Statement dated 1 November 2016 at paras 50-87.

repayment of Moti's Debt of $40,641.78 was, however, premature, and the taking of accounts in relation to the said debt was instead ordered.

The analysis

Duties of an executor and trustee

13 In the present proceedings, it was not disputed that both executors and trustees owe fiduciary duties to the beneficiaries of an estate in relation to the administration of that estate. In *Lee Yoke San and another v Tsong Sai Cecilia and another* [1992] 3 SLR(R) 516 ("*Lee Yoke San*"), the High Court held that (at [35]):

> An executor "calls in" the estate that collects and converts the assets into cash, and pays all the funeral and testamentary expenses, estate duty, debts and legacies. When he has done this, he has discharged his duties as an executor. Then he steps into the shoes of a trustee. He owes a fiduciary duty to the beneficiaries, whether he is an executor or trustee.

14 As an incidence of this fiduciary relationship, the executor or trustee owes several specific duties to the beneficiaries of the estate, including the duty to determine the extent of the testator's assets and liabilities, to act diligently in the realisation of such assets, and to pay for the testator's debts and testamentary expenses (see generally *Foo Jee Boo and another v Foo Jhee Tuang and others* [2016] SGHC 260 ("*Foo Jee Boo*") at [73]-[83]). These specific duties are set against the backdrop of a general duty on the part of the executor or trustee to act with impartiality in the best interests of the beneficiaries (*Lee Yoke San* at [35]; *Foo Jee Boo* at [83]).

15 In the present case, the position of the executor is not significantly distinct from that of a trustee and, for ease of reference, the latter term will be used.

Taking of accounts

The law on accounts

16 In addition to the specific duties identified above, a critical aspect of the custodial fiduciary relationship is the duty of the trustee to keep accounts of the trust and to allow the beneficiaries to inspect them as requested. This accounting procedure serves two primary purposes: (a) "the informative purpose of allowing the beneficiaries to know the status of the fund and what transformations it has undergone", and (b) a "substantive purpose… [to ensure] that any personal liability a custodial fiduciary may have arising out of maladministration is ascertained and determined" (Steven Elliott, *Snell's Equity* (John McGhee QC gen ed) (Sweet & Maxwell, 33rd Ed, 2015) ("*Snell's Equity*") at para 20-013; see generally, 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 899-900).

17 Generally, the claim for an account on a common basis may be divided into three stages: (a) whether the claimant has a right to an account; (b) the taking of the account; and (c) any consequential relief (*Chng Weng Wah v Goh Bak Heng* [2016] 2 SLR 464 ("*Chng Weng Wah*") at [22], [38]).

18 In this case, it was not in dispute that the Plaintiffs, as beneficiaries of the Estate, had a *prima facie* right to take an account of the trust assets. As the Court of Appeal explained in *Foo Jee Seng v Foo Jhee Tuang* [2012] 4 SLR

339 ("*Foo Jee Seng*"), "[b]eneficiaries are entitled, within proper bounds, to be furnished with an account of the funds in the trust" (at [87]).

19 For avoidance of doubt, even though there are often allegations of breach of trust that precede litigation on this matter, as was the case at present, the trustee's duty to furnish account is not contingent on any allegation or establishment of such breach. This was clarified by the Court of Appeal in *Foo Jee Seng* (at [87]):

> There is no necessity to allege any breach of fiduciary duties on the part of the trustees. Of course, if there is such a breach, they would all the more be entitled to an account and if the trust were to suffer any loss on account of such breach, the trustees would be obliged to make good the same.

20 The duty to furnish account is continuous, on demand, and does not simply have to be discharged at the time of distribution of the trust assets. In the context of personal representatives, the High Court has rejected the proposition that such persons standing in a fiduciary position were only obliged to provide a full account of the estate to the beneficiaries at the time of distribution of the estate: "The duty in the case of a personal representative is a continuing duty, much like the duty imposed on a trustee..." (*Chiang Shirley v Chiang Dong Pheng* [2015] 3 SLR 770 ("*Chiang Shirley*") at [88]). This principle applies generally, including to executors, who in particular bear an additional obligation to submit full accounts for the beneficiaries' perusal and approval prior to their distribution of the assets comprising the estate (*Foo Jee Boo* at [80]).

21 There may be limits to the trustee's continuing duty to furnish account on demand. In *Foo Jee Boo*, the High Court observed that the court may decline to make an order for the taking of accounts in the exceptional case

where "it would be oppressive to require the [trustee] to so account, or for some other good reason" (at [81]). One such situation may be where the demands are made without a reasonable interval between them, or without reasonable time for the trustee to furnish the necessary information. As the High Court in *Chiang Shirley* observed:

> 89 Whilst both trustees and personal representatives have a duty to maintain accounts and generally to provide them at the beneficiary's request, this does not mean that any beneficiary can keep on demanding accounts and information without giving the trustee/personal representative some respite. In my view, it is common sense that there must be reasonable intervals between the demands and a trustee/personal representative should not be considered to be in breach of trust simply because he does not always supply the documents and information immediately upon the beneficiary's demand. Whether the trustee/personal representative has complied with his duty to supply documents and information is a fact-sensitive exercise in every case.

22 A further situation where an order for the taking of accounts may not be granted is where the trustee, as an alternative to providing an actual account of the trust assets, is able to show on a balance of probabilities that he had entered into a settlement with the counterparty as regards the provision of the trust accounts. This follows from the Court of Appeal's decision in *Chng Weng Wah*:

> 38 … if a trustee is able to produce a document evincing both parties' agreement that accounts have been settled conclusively, in the absence of any other evidence to the contrary, that should suffice and the trustee should not be made to go through the laborious, and if we may add, unnecessary, process of providing an actual account in the course of defending the action…
>
> 39 While it is acknowledged that, unlike the example given in the preceding paragraph, Chng has not managed to produce any documentary evidence to show that parties had agreed that accounts have been settled, that does not

> necessarily lead to the conclusion that Chng has to provide an actual account in the course of defending the present claim by Goh. Based on the evidence that has been led (such as the correspondence between the parties), the court may be able to draw an inference, on a balance of probabilities, that settled accounts have *already been provided* (*ie*, at some earlier point in time)…
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> [emphasis in original]

23 As regards the level of disclosure necessary to discharge the duty to furnish account on a common basis, regard must be had to the twin purposes of this duty as identified above. At its core, the accounting process is a means to hold the trustee accountable for his stewardship of trust property. Accordingly, the trustee must by this accounting process give proper, complete, and accurate justification and documentation for his actions as a trustee. This requires information as to the current status of, and past transactions that relate to, each of the constituent trust assets actually received by the trustee (see *Glazier Holdings Pty Ltd v Australian Men's Health Pty Ltd (No 2)* [2001] NSWSC 6 at [38]). What precisely is required for the discharge of this duty is fact-specific. More will likely be required for the specific assets and transactions against which there are allegations of breach of trust. More will also likely be required of a professional trustee, as compared to a non-professional trustee who may be granted "fair and reasonable allowances" (*Snell's Equity* at para 20-018). Thus, merely providing some financial documents in relation to the trust assets may not be enough (see, *eg*, *Foo Jee Boo* at [93]-[96]).

24 The taking of accounts on a common basis must, however, be distinguished from two related concepts.

25 First, it is different from the taking of an accounts on a wilful default basis (see *Chng Weng Wah* at [21]). Conceptually, the taking of accounts on a common basis supposes and requires no misconduct, while that on a wilful default basis is entirely grounded on misconduct (*Partington v Reynolds* (1858) 62 ER 98 at 99). Practically, in order to obtain an order for account on wilful default basis, it is necessary that the claimant allege and prove at least one act of wilful neglect or default (*Ong Jane Rebecca v Lim Lie Hoa and Others* [2005] SGCA 4 ("*Ong Jane Rebecca*") at [61]). Further, as the Court of Appeal explained in *Ong Jane Rebecca*, the taking of account on a wilful default basis is significantly more onerous for the trustee (at [55]):

> … In a common or standard account… the trustee need only account for what was actually received and his disbursement and distribution of it. In an account on the basis of wilful default, the trustee is not only required to account for what he has received, but also for what he might have received had it not been for the default. In the latter case, the accounting party also carries a much more substantial burden of proof than that which applies to him in the case of a common account: see *Glazier v Australian Men's Health* (No 2) [2001] NSWSC 6.

26 Second, the taking of accounts on either basis above should not be conflated with an account of profits. While there is a common aspect between the taking of accounts and the accounting of profits in that they both attempt to quantify the deficit, if any, in the trust fund that must be made good by the defendant to the claimant, the taking of accounts is a process, while accounting of profit is a remedy. Thus, an account of profits is usually the very relief sought by claimants, whereas the taking of accounts may only be the first step, to be followed by the beneficiary's objections to the accounts presented and his claim for specific reliefs (*Snell's Equity* at para 20-017; Lord Millett NPJ, *Libertarian Investments Ltd v Hall* (2013) 16 HKCFAR 681 at

[168]). There are other nuanced differences. For instance, the taking of accounts arises generally in custodial fiduciary relationships, such as *vis-à-vis* trustees, executors, or custodial agents. An account for profits, however, may be relevant as a remedy for the breach of any form of fiduciary duty, regardless of whether the relationship is predicated on the custody of assets. Indeed, an account of profits may exceptionally be invoked even in cases beyond the fiduciary context (*Ng Bok Eng Holdings Pte Ltd and another v Wong Ser Wan* [2005] 4 SLR(R) 561 at [54]). Further, the taking of accounts on a common basis, unlike an account of profits, is also not predicated on the allegation or establishment of a breach (see, in the context of partnerships, *Ang Tin Gee v Pang Teck Guan* [2011] SGHC 259 at [86]).

The accounts sought by the Plaintiffs

(1) General Accounts

27 By virtue of the fiduciary relationship between the Defendant and the Plaintiffs, I granted the Plaintiffs' general claim for the taking of accounts in relation to the Estate Account and the monies due to the Estate pursuant to the Schedule of Assets. This was subject to the exclusion of certain assets which the Plaintiffs conceded had been properly administered.[2] The trustee's duty to furnish accounts being continuous and on demand, disclosures in 2010 to 2012 of such estate accounts,[3] even if assumed to be made fully and properly, did not suffice to discharge the Defendant's present duty to account.

28 Only specific assets were in dispute and they are dealt with below in turn.

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2 Statement of Claim (Amendment 1) dated 20 September 2016 at para 14.

3 Defendant's Reply Closing Submissions dated 17 November 2016 at para 31.

(2) Shareholdings in Basco and Eltee

29 The Plaintiffs sought an account of the Estate's shareholdings in Basco and Eltee. They alleged that the Defendant acted in breach of his fiduciary duties by, *inter alia*, under-declaring the shares in the Schedule of Assets, acting as the director of said companies in direct conflict of interest with the Estates, and not declaring dividends or attempting liquidation of the shares.[4]

30 The Defendant denied all allegations of breach and raised two main arguments. First, he relied on cl 5 of the Testator's Will that the executors and trustees "shall have unfettered discretion to postpone the sale and conversion of any asset into cash".[5] Second, the Defendant argued that as an executor he was only liable to account for the Estate's shares in Basco and Eltee, and not the assets and liabilities underlying those shares. This was also premised on the narrow language of the Plaintiffs' Statement of Claim. To this end, the number and value of the relevant shares had been obvious to the Plaintiffs as early as February 2001 and had since remained unchanged. No dividends had been declared by the two companies. The Defendant had thus properly fulfilled his duty to account in relation to Basco and Eltee.[6]

31 The Defendant further argued that the claims in relation to Basco and Eltee were moot as the Plaintiffs had accepted his offer, conveyed on the first day of trial, that he would:

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4 Statement of Claims dated 7 April 2015 at para 19.

5 Defendant's Closing Submissions dated 1 November 2016 at para 22.

6 Defendant's Closing Submissions dated 1 November 2016 at paras 10-13.

(a) transfer all shares owned by the Estate in Basco and Eltee to the Plaintiffs in lieu of sale of those shares within two weeks from the first day of trial;[7] and

(b) provide the Plaintiffs with copies of the audited financial statements of Basco and Eltee for the period from 2011 to 2014 by the end of the first day of trial.[8]

32 The Plaintiffs accepted the Defendant's offer of transfer and disclosure, but argued that the Defendant's selective disclosure did not sufficiently discharge his duty to account. In any event, by the accounts provided, the Defendant's remuneration as director of Basco and Eltee was far too exorbitant as it depleted almost the entirety of the rental incomes generated by the two companies.[9]

33 As the shares in Basco and Eltee had been transferred over by the Defendant to the Plaintiffs, I made no specific order in respect of these shareholdings. However, for avoidance of doubt, accounts in respect of Basco and Eltee may still be covered by my general order as to the accounts to be taken pursuant to the Schedule of Assets. The Defendant bore a duty to account for his conduct *during his term* as a trustee, which was not extinguished by the *subsequent* transfer of the Basco and Eltee shares to the Plaintiffs. As a matter of law, the disclosure of corporate documents and financial statements, audited or otherwise, also would not necessarily discharge the Defendant's duty to account. To the extent that the Defendant

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7 Notes of Evidence dated 20 September 2016 at p 7.

8 Notes of Evidence dated 20 September 2016 at p 5.

9 Plaintiffs' Closing Submissions dated 4 November 2016 at para 41.

sought to rely on a document dated more than 15 years ago and an assertion that affairs remained unchanged since the Testator's death as satisfactory discharge of his duty to account,[10] I could not accept that as the trustee's duty to account is continuous and on demand. The Plaintiffs' request for trust accounts was not so unreasonable or oppressive in the circumstances as to fall within the narrow limits to the trustee's duty to account as identified by the High Court in *Chiang Shirley* and *Foo Jee Boo*.

34 Nor did I consider appropriate to infer, from the transference of shareholdings and the disclosure of certain financial statements, that there had therefore been a settlement of the Plaintiffs' claim. A settlement connoted a release by the Plaintiffs of the Defendant's duty to account, and the burden of proof of such release rested on the Defendant (*Chng Weng Wah* at [24]; *Snell's Equity* at para 20-016). The Plaintiffs' agreement to the transfer of shareholdings in a bid to take over trust administration cannot be construed as their agreement to release the Defendant of his existing duty to account in relation to his tenure as trustee. There was also no indication that the Plaintiffs considered the mere disclosure of the companies' audited financial statements as satisfaction of their claim in respect of Basco and Eltee. Indeed, at the time of acceptance of the Defendant's offer to disclose, the Plaintiffs had not assessed the financial statements and was not fully appraised as to what information would be disclosed. Any inference of settlement would thus have been artificial.

35 A trustee may discharge his responsibility, as noted by the Court of Appeal in *Chng Weng Wah*, by providing accounts in the midst of proceedings

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10 Defendant's Closing Submissions dated 1 November 2016 at para 12.

for such accounts: "it is accepted that a trustee may, at the first stage of the claim [*ie*, when establishing a right to account], be able to prove that he or she no longer owes a duty to account by *providing an actual account* in the course of legal proceedings" [emphasis in original] (at [38]). However, that must be a full and proper account; where there has been anything less than proper, complete, and accurate disclosure, an order may still be made despite the attempt to stave things off late in the day.

(3) Interest in Bob's

36 Bob's partnership had as its only substantial asset a property located at 865 Mountbatten Road #01-63 Katong Shopping Centre Singapore ("the Katong Property"). The three registered proprietors of the Katong Property were the Testator, Moti, and Bhagwan. The Plaintiffs thus submitted that as beneficiaries of the Testator's estate, they were entitled to a one-third share of the proceeds of the Katong Property and an account of the same. They also pointed out that the Defendant had been declaring the 1st Plaintiff's share of profits in Bob's to the Inland Revenue Authority of Singapore for the purpose of tax assessment between 2007 and 2014, when no such profits had in fact been paid out. It was only on the 1st Plaintiff's enquiry that the Defendant returned to the 1st Plaintiff her relevant tax payments.[11]

37 The Defendant submitted that he could not sell the Katong Property because the title deeds to the said property were missing, and none of the family members was prepared to administer the relevant portion of Jiwan's estate in order to deal with his one-third interest in the property.[12] In these

11 Statement of Claim dated 20 September 2016 at para 19(c)(iii); Plaintiffs' Closing Submissions dated 4 November 2016 at paras 92-93.

12 Defendant's Closing Submissions dated 1 November 2016 at para 37.

circumstances, the Defendant acted reasonably in leasing out the Katong Property. However, the rental proceeds were retained by Rajan, against whom the Defendant could not in good conscience take legal action. This was because Rajan suffered from a medical condition and had undertaken to repay, after the sale of the Katong Property, the excess of the retained rental proceeds over his entitlements in the sale proceeds. The Defendant therefore offered that the Plaintiffs be substituted as executors so that they may directly pursue their claim against Rajan if they so wished. The Defendant also admitted to making the tax declarations over the 1st Plaintiff's share of profits, which he conceded had not been distributed but, rather, kept in Bob's bank account which was maintained by Rajan.[13]

38 The Defendant further maintained that the Katong Property was only registered in the names of the Testator, Bhagwan, and Jiwan "for convenience". There had in fact been an agreement between the five brothers to share equally the proceeds of sale from the Katong Property.[14] The Estate was thus only entitled to 20% of the interest in Bob's and the attendant profits.[15]

39 On the first day of trial, the Defendant also undertook to provide the Plaintiffs with copies of Bob's audited financial statements for the financial years 2011 to 2015.[16]

40 In reply, the Plaintiffs rejected the Defendant's reliance on Rajan's promise to repay rental proceeds as, *inter alia*, Rajan was not a registered

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13 Defence (Amendment 1) dated 24 June 2015 at para 20.

14 Defendant's Closing Submissions dated 1 November 2016 at para 47.

15 Defence (Amendment 1) dated 24 June 2015 at para 17(g).

16 Notes of Evidence dated 20 September 2016 at p 2.

proprietor and had no interest in the Katong Property; there would thus be no sale proceeds on which Rajan could rely to repay the retained rental proceeds.[17]

41 Having heard the parties, I granted the Plaintiffs' prayer for the taking of accounts in Bob's, including but not limited to any dividend payments and interest. As stated above, the mere provision of financial statements did not necessarily discharge the Defendant's duty to account for his conduct as trustee during his term as such. Even if the Plaintiffs were substituted as executors and trustees, the Defendant remained liable to account for his conduct during his term as trustee. No limits on the Defendant's duty to account were found applicable.

42 In relation to the Defendant's claim of an informal arrangement to share equally the proceeds of the Katong Property amongst all five brothers, including himself and Rajan, that was not proven by the evidence. No objective evidence even suggestive of such an arrangement was adduced, and the Defendant conceded at trial that none was available.[18] In fact, an application filed earlier in the High Court had made express reference to the three registered proprietors' interest in the Katong Property, and none to that of Rajan and the Defendant.[19] The Defendant also conceded that no step had been taken to rectify the land register, or to draw up a separate deed or other documentation, to reflect the informal arrangement alleged.[20] The arrangement as alleged was simply not reflected on the title, nor caveated in any way. This was despite the fact that the Defendant had been of age at the time of

17 Plaintiffs' Closing Submissions dated 4 November 2016 at para 96.

18 Notes of Evidence dated 21 September 2016 at p 91.

19 Notes of Evidence dated 21 September 2016 at pp 90-91.

20 Notes of Evidence dated 21 September 2016 at pp 92-93.

acquisition of the Katong Property, and could have been included as a registered proprietor then or any time since.[21] Nothing showed that the state of affairs on the land register was inaccurate or incomplete. For these reasons, I did not accept the existence of the informal arrangement, and was of the view that accounts ought to be taken on the basis of what was reflected on the land register.

(4) Property Proceeds

43 The Plaintiffs sought an account of the quantum and location of the Estate's share in the Property Proceeds. They argued that the Defendant's piecemeal and belated updates during the litigation process did not suffice. The Plaintiffs also averred that the lawyer who read the Testator's will to them had informed all parties present that some compensation monies relating to the Stamford House had yet to be distributed. As such, they denied that distribution of proceeds had been completed during the Testator's lifetime.[22]

44 In relation to the North Bridge Road Property, the Defendant submitted that he had properly accounted for the Estate's share in the compensation monies. He pointed to certain figures in the Plaintiffs' case which he argued would not have been known had there not been proper disclosure.[23] In relation to the Stamford House, the Defendant argued that all proceeds had been distributed during the Testator's lifetime; no monies remained unaccounted for. Further, the sale proceeds should be received by Basco as the owner and not the Estate; the Plaintiffs were thus not the proper plaintiffs.[24] Before me,

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21 Notes of Evidence dated 21 September 2016 at pp 87-89.

22 Plaintiffs' Closing Submissions dated 4 November 2016 at paras 35-36.

23 Defendant's Closing Submissions dated 1 November 2016 at paras 24-28.

the Defendant also maintained that he was not in a position to answer questions about the Stamford House as its acquisition and sale had been completed a long time ago, when the Testator was still alive. As such, the Defendant had not seen it as necessary to make enquiries as to the proceeds since that was "water under the bridge".[25]

45 I did not agree with the Defendant's submission that he had fully accounted for the proceeds from the sale of the North Bridge Road Property. The evidence before me was ambiguous at best. The Defendant himself acknowledged that the Plaintiffs may have been "misconceived" as to the numbers allegedly provided to them, and there was no allegation that such confusion was not *bona fide*.[26] Having regarding to the objective of trustee accountability, the onus remained on him to clarify, where necessary, the justifications for his action or inaction in respect of the trust assets, particularly if he knew that there was *bona fide* confusion on the part of the beneficiaries. Indeed, it appeared to me that such early resolution of doubts would ordinarily be in his own interests.

46 In any event, I did not agree with the premise of the Defendant's submission. Even taking his case at the highest, disclosure of the state of affairs in relation to the sale proceeds of the North Bridge Road Property in 2011 by way of a lawyer's letter, and in 2012 at a meeting between the parties, did not in this case constitute satisfactory discharge of his duty to account at or around the commencement of this suit in 2015.[27] The trustee's duty to account

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24 Defendant's Closing Submissions dated 1 November 2016 at paras 29-32.

25 Notes of Evidence dated 21 September 2016 at p 115.

26 Defendant's Closing Submissions dated 1 November 2016 at para 26.

27 Notes of Evidence dated 20 September 2016 at pp 20-22; Defendant's Closing

is continuous and on demand, and there was again no indication of oppression or unreasonableness on the part of the Plaintiffs. My general order as to accounts thus included accounts as to the proceeds of the North Bridge Road Property.

47 The position in relation to the proceeds from the Stamford House could not be resolved on the evidence before me, and I accordingly left the determination of that to the taking of accounts. For avoidance of doubt, the Defendant as trustee was liable to account for his conduct during his term as trustee, which includes both action and inaction, in relation to these proceeds. The mere fact that the proceeds had been obtained by the family a long time ago did not mean it was thus, as he claimed, "water under the bridge" and beyond the scope of his trusteeship.[28] I also did not accept the Defendant's tenuous reasoning that the Plaintiffs were not entitled to such an account as the Estate owned the Stamford House indirectly through Basco, which was also the Estate's asset.[29] The Stamford House and the proceeds therefrom were thus caught within the scope of my general order as to accounts.

(4) Estate's interest in Lilan's estate

48 The Plaintiffs claimed for an account of the Estate's share in the estate of Lilan, who is the Testator's and the Defendant's mother. They argued that the Defendant's reliance on the litigation process to give piecemeal accounts did not suffice.[30] In response, the Defendant claimed that Lilan's estate had

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Submissions dated 1 November 2016 at paras 25-27.

28 Notes of Evidence dated 21 September 2016 at p 114-115.

29 Defendant's Reply Closing Submissions dated 17 November 2016 at para 16.

30 Plaintiffs' Opening Statement dated 15 September 2016 at paras 57-60.

been fully distributed and accounted for. He also contended that this issue was moot as the 1st Plaintiff had confirmed in cross-examination that she had been given sufficient documentation to satisfy herself as to the proper distribution of this asset.[31]

49 The relevant extract of the cross-examination read as follows:[32]

> Q: … I'm asking you to take a look at the defendant's core bundle again. Again, I refer to you the same set of documents from tab G onwards. I'm asking you to take a look at tab H. Do you see the letter [at] tab H dated 1st of November 2011?
>
> A: Yes. Yes.
>
> Q: So this is a letter written by Madhavan Partnership to your uncles and solicitors. And the title of this letter says "FINAL DISTRIBUTION OF MONIES", "ESTATE OF LALWANI LILIAN BHERUMAL", correct?
>
> A: Yes.
>
> Q: So if you look at paragraph 22---or second paragraph of this letter, it says that:
>
> [Reads] "As instructed by our clients as Administrators of the above-captioned 19 Estate, we are proceeding to make the final distribution of monies to the five (5) beneficiaries of the Estate on 1st"---of---"November 2001."
>
> Right?
>
> A: Yes.
>
> Q: And on the next page, there's a breakdown of the various amounts to be paid. So do you agree that this letter actually confirms that the final distribution of monies from your grandmother's estate had already been done at that point in time?
>
> A: Yes.
>
> Q: So do you accept that there are no monies to be distributed from your grandmother's estate anymore?

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31 Defendant's Closing Submissions dated 1 November 2016 at paras 48-49.

32 Notes of Evidence dated 20 September 2016 at p 46.

A: Yes, I accept that now that I have the information.

Q: Thank you.

50 In my judgment, this extract could not bear the weight that the Defendant placed on it. Taken in its proper context, the 1st Plaintiff's concession was that she accepted that there were no more monies to be distributed from Lilan's estate to the Testator's Estate. That related to the proper discharge of duties by the executor of *Lilan's estate*. That was not the same as a concession that she had no more concerns or queries as to the Defendant's conduct as trustee and executor of the *Testator's Estate*. The status of the monies that had been paid from Lilan's estate to the Testator's Estate remained in question. Thus, the Plaintiffs' claim for accounts in relation to the proceeds of Lilan's estate remained a live one. The facts also did not show that the Plaintiffs' request for accounts was unreasonable, or that an inference of settled accounts relating to the Defendant's conduct as trustee was justified. On balance, therefore, I was of the view that it would only be prudent to grant the Plaintiffs' prayer for an account of the Estate's share in Lilan's estate.

Misappropriation of trust funds

51 The Plaintiffs' second set of claims related to three specific sums which they alleged the Defendant had misappropriated in breach of his fiduciary duties. Ordinarily, the taking of accounts on a wilful default basis would have been ordered. In this case, however, evidence had already been led as to the breach of trust and the loss suffered by the Estate. As such, no further order for accounts for wilful default would be necessary, and I made orders dealing directly with the specific claims.

Unauthorised withdrawals from the Estate Account

52 The Plaintiffs alleged that the Defendant had withdrawn a total sum of $118,000 from the Estate Account over 13 occasions between December 2010 and February 2012, and that such withdrawal was without basis and in breach of trust.[33] They further contended that the Defendant's various promises to pay back this sum to the Estate ought to be construed as an admission of his appropriation of the Estate's assets for personal use.[34]

53 The Defendant conceded that he had withdrawn a total of $118,000 but gave two justifications. First, he regarded his withdrawal of the sum as a loan by the Estate to him pending resolution of dispute with the Plaintiffs.[35] Second, he claimed that the Estate owed him $235,385.52 (being half of $470,771.04) by virtue of his half-share in the constituent shares of the CDP Account, which proceeds had been deposited into this Estate Account. Based on this entitlement, the Defendant submitted that he was entitled to set off the Plaintiffs' claim for $118,000 against his half-share entitlement against the Estate of $235,385.52, such as to derive a balance of $117,385.52 remaining due and owing to him by the Estate.[36] The Plaintiffs' claim was thus allegedly extinguished.

54 Having considered the evidence, I did not accept either of the Defendant's justifications. It was not disputed that the Defendant had withdrawn the sum of $118,000 from the Estate Account, and that that sum

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33 Plaintiffs' Closing Submissions dated 4 November 2016 at para 59.

34 Plaintiffs' Closing Submissions dated 4 November 2016 at paras 60-61.

35 Defendant's Opening Statement dated 13 September 2016 at para 10.

36 Defendant's Closing Submissions dated 1 November 2016 at paras 86-87.

was part of the trust assets. It was thus incumbent on the Defendant to bring evidence to show that he had a good basis for making such withdrawal. The Defendant had not done so.

55 First, in respect of the purported loan, no legal authority was cited for the proposition that a trustee could unilaterally take a loan from the trust assets. Indeed, it was not apparent to me how this loan would be a proper discharge of the Defendant's duty to act in the best interests of the beneficiaries. This was particularly so when the Defendant had conceded that the purported loan had been taken for his personal use, *eg*, to pay for his daughter's education.[37] No evidence was also brought before me as to the terms of this purported loan, such as the duration or nature of the repayment obligations.[38] Nor was evidence presented to show that the fully informed consent of both beneficiaries to the loan had been obtained at any material time. Indeed, as it appeared that the Defendant had discarded this justification by the time of his closing submissions, I make no further comment in this regard.

56 Second, in respect of the Defendant's claim as to set-off, I did not accept his assertion that he was entitled to a half-share of the constituent shares of the CDP Account.

57 I turn to the evidence. It was undisputed that the CDP Account was at all material times held in the Testator's sole name, subject to the caveat that, at an earlier point in time between 1993 and 1997, the said account had been held in the joint names of the Testator and the Defendant.[39] The Plaintiffs

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37 Notes of Evidence dated 21 September 2016 at p 43.

38 Plaintiffs' Closing Submissions dated 4 November 2016 at para 18.

conceded this, but argued that the conversion of the ownership of the CDP Account from joint names to the Testator's sole name meant that all shares and securities in that account belonged entirely to the Testator, and that it was indeed the Testator's intention by such conversion to make clear the extent of his ownership.[40]

58 The Defendant argued that, even though the CDP Account had been in formality under the Testator's sole name, the said account was in truth under the joint ownership of the Testator and the Defendant, by virtue of which his half-share entitlement arose.[41] The conversion of account ownership from the Testator's and Defendant's joint names to the Testator's sole name was only because of an purported change in rule by the Singapore Exchange Limited ("SGX") between 1993 and 1997 that CDP accounts must be operated in sole and not joint names.[42]

59 I was unconvinced by the Defendant's assertion as to the motivation underlying the conversion of ownership of the CDP Account. In cross-examination, he conceded that he had no supporting evidence of this purported SGX rule change.[43] The Defendant averred that he made telephone enquiries with SGX through their "normal enquiry line", but could not recall with whom he had spoken.[44] He further testified that he had gone down to the CDP office

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39 Notes of Evidence dated 20 September 2016 at p 78; Agreed Bundle at 747.

40 Plaintiffs' Closing Submissions dated 4 November 2016 at paras 73-74.

41 Defendant's Opening Statement dated 13 September 2016 at para 9; Defendant's Closing Submissions dated 1 November 2016 at paras 50-87.

42 Defendant's Closing Submissions dated 1 November 2016 at para 53.

43 Notes of Evidence dated 21 September 2016 at p 59.

44 Notes of Evidence dated 21 September 2016 at p 59.

at Buona Vista twice to make enquiries personally, and had received responses that the office did not have "records going back that far",[45] but produced no documentary evidence or contemporaneous record of what had transpired. Even if his account was to be believed, the CDP's response was at best ambiguous and did not aid the Defendant's case.

60 On the other hand, the Plaintiffs tendered an e-mail correspondence with SGX dated 11 August 2016, in which the 1st Plaintiff had written to SGX asking if two siblings would be able to jointly hold a single CDP account (a) at the time of the e-mail, and (b) between January 1993 and December 1999. In an e-mail response dated 11 August 2016, Yasmin Yusay, a CDP representative of SGX stated that:[46]

> (a) a CDP joint account was available to anyone, regardless of relationship, so long as both persons were of age and not undischarged bankrupts; and
>
> (b) the "opening of CDP joint accounts is available eversince [sic] CDP's inception in 1987".

61 The Defendant sought to raise doubts as to the authenticity and probative value of this e-mail by arguing, *inter alia*, that nothing was known of the CDP representative and that the response was too vague to be helpful. This did not take him too far. SGX's e-mail response was, on the whole, unequivocal and directly responsive to the 1st Plaintiff's questions, which were framed appropriately given the issues in this case. While I accepted that

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45 Notes of Evidence dated 21 September 2016 at p 59.

46 Plaintiffs' Opening Statement dated 15 September 2016 at Tab C.

the manner in which the evidence was presented was not ideal, there was some irony in the Defendant's contentions as he too did not call as witnesses the CDP officers to whom he personally spoke at CDP's Buona Vista office. In his closing submissions, the Defendant challenged the admissibility of the e-mail correspondence, but did not make clear his legal basis for doing so.[47] Even if I were to rule in his favour, there remained nothing before me to support the Defendant's assertion that there had been a CDP rule change which motivated the conversion of ownership of the CDP Account.

62 In the circumstances, I preferred the Plaintiffs' case that the reason for the conversion of the CDP Account from the Testator's and Defendant's joint names into the Testator's sole name was not the CDP rule change, but rather to make clear the Testator's whole entitlement to the constituent shares in that account. Further, I did not accept that the existence of a linked joint account to CDP Account *ipso facto* meant that the constituent shares were thus jointly owned by the Defendant and Testator.[48] This was so particularly as the Defendant had conceded that he had no evidence of his contribution to the joint account.[49] In his closing submissions, the Defendant criticised the manner in which the Plaintiffs' cross-examination questions had been framed,[50] but these were matters which he could and should have addressed in re-examination. The finding that these shares were wholly owned by the Testator was also consistent with the position declared by the Defendant himself to the Commissioner of Estate Duties in the Statement of Assets, under which the

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47 Defendant's Closing Submissions dated 1 November 2016 at para 55.

48 Plaintiffs' Closing Submissions dated 4 November at paras 73-74; Agreed Bundle at p 779.

49 Plaintiffs' Closing Submissions dated 4 November at paras 17-20.

50 Defendant's Reply Closing Submissions dated 17 November 2016 at paras 5-7.

Testator was attributed full ownership of such shares, and the Defendant made no caveat of his interest therein even though he did so *vis-à-vis* other assets against which he claimed an entitlement.[51]

63 The Defendant also made general attacks against the reliability of the Plaintiffs' testimony. He claimed that he had a "long-standing personal and business relationship with the Testator" and was thus more likely to be privy to matters which the Plaintiffs were not made aware.[52] He also criticised the Plaintiffs for being laypersons unfamiliar with business affairs, particularly those of the Testator and the Defendant.[53] In contrast, the Defendant pointed out that he had clearly been placed in a position of trust by the Testator, as evidenced by his appointment as executor of the Testator's estate.[54] These arguments were neither here nor there. Even taking them at the highest, they did not lead to the conclusion that the Defendant had a half-share entitlement in the CDP Account.

64 In fact, on the preponderance of evidence, I found that the Defendant's claim *vis-à-vis* the CDP Account was more likely than not an afterthought designed to justify his unauthorised withdrawals. As mentioned, the Defendant's position as to his interest in the Estate Account, or in the constituent shares of the CDP Account, was never conveyed to the Commissioner of Estate Duties at any time during or after the process of finalising the Testator's Schedule of Assets.[55] In fact, the Defendant conceded

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51 Plaintiffs' Reply Closing Submissions dated 23 November 2016 at para 66.

52 Defendant's Closing Submissions dated 1 November 2016 at paras 61-62.

53 Defendant's Closing Submissions dated 1 November 2016 at paras 69-74.

54 Defendant's Closing Submissions dated 1 November 2016 at paras 63-64.

55 Notes of Evidence dated 21 September 2016 at p 21.

that he had in the final Schedule of Assets listed the constituent shares in the CDP Account as being wholly owned by the Testator, with no caveat as to his own entitlement therein.[56]

65 Further, in the course of communications between the 1st Plaintiff and the Defendant in 2012, the Defendant also did not make any mention of his interest in the Estate Account or CDP Account. Rather, the clear presumption shared by the parties in 2012 had been that the Defendant would return the sums withdrawn as they were in the nature of a loan.[57] The Defendant's silence was all the more telling when he raised no issue or protestation, even after the 1st Plaintiff had given him clear instructions to prepare a cheque for the *entire balance* of the Estate Account, and unequivocally referred to a sum of $118,000 which the Defendant was said to owe to the beneficiaries.[58] I did not accept the Defendant's explanation that he had kept silent because he wanted to wait for the 1st Plaintiff to cool off.[59] The e-mail exchange between the parties at that time was not particularly heated, and the allegations made by the 1st Plaintiff were so blatantly contradictory to the Defendant's alleged entitlement that it would only have been reasonable for him to refute them or, at the very least, make an express caveat in respect of them. Instead, the Defendant only informed the Plaintiffs of his alleged entitlement to the CDP Account during a meeting with the 1st Plaintiff sometime in late 2013.[60] Given that the Testator had passed away in 1999, and the many opportunities to raise this issue in the interim, the assertion of entitlement in late 2013 was simply

56 Notes of Evidence dated 21 September 2016 at p 36; Agreed Bundle at 662.

57 Agreed Bundle at pp 687, 708.

58 Notes of Evidence dated 21 September 2016 at p 31; Agreed Bundle at 707.

59 Notes of Evidence dated 21 September 2016 at pp 31-32.

60 1st Plaintiff's Affidavit of Evidence in Chief dated 22 July 2016 at para 80.

far too late to be explained on the basis of ordinary delays in communication. Even accounting for some degree of informality in the dealings between the Defendant and the Plaintiffs, who were after all family and operated on some degree of trust at least initially,[61] the Defendant's evidence as to his entitlement did not, to my mind, stand scrutiny.

66 Apart from the facts, the Defendant also did not establish the legal basis of his case. In particular, no authority was cited for the proposition that the Defendant had been entitled to set off a personal claim by him, as against the property of the trust. Indeed, there was authority that a "[s]et-off is only available in respect of debts or liquidated demands due between the same parties in the same right. So… to a claim against the defendant as executor, the latter cannot set-off a debt due to him personally" (Foo Chee Hock JC, *Singapore Civil Procedure 2017* (Sweet & Maxwell, 2017) at para 18/17/3). It did not appear to me that the Plaintiffs' and Defendant's claims were "in the same right", and the Defendant made no arguments in this regard. The Defendant's failure to establish his basis and right to set-off meant that he had no defence to the Plaintiffs' claim for breach of trust, even assuming that he factually established a half-share entitlement to the CDP Account.

67 For the foregoing reasons, having regard to both the facts and the law, I found that the Defendant did not established his defence of set-off and/or his entitlement as to any interest in the CDP Account. He therefore remained liable to the Plaintiffs for his unauthorised withdrawal of $118,000 from the Estate Account, which constituted a breach of trust.

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61 Notes of Evidence dated 21 September at p 39.

Misappropriation of monies from Joint UOB Account

68 In relation to the Joint UOB Account, the Plaintiffs submitted that sometime after October 2000, the Defendant closed the said account and misappropriated the Estate's half-share entitlement to the monies therein, being a total sum of $136,561.76.[62] In response, the Defendant initially submitted that the monies in the Joint UOB Account had been "shared" between the Testator and him, and either of them could make withdrawals on an informal as-and-when basis without the need for permission from the other party. As such, the Defendant claimed entitlement to *all* the monies in the Joint UOB Account by virtue of the right of survivorship.[63] That submission was discarded in the course of trial.[64] Instead, the Defendant argued that the sum concerned had been used to pay off the Testator's funeral expenses, medical bills, and outstanding debts including that owed to the Defendant. The Testator's son, who was also a beneficiary and co-executor of the Estate while he was alive, was further alleged to have taken portions of the said sum.[65]

69 The Plaintiffs contended that the Defendant's claim to the whole deposit by virtue of a right of survivorship was an afterthought that contradicted the position he had stated to the Commissioner of Estate Duties in the Schedule of Assets.[66] Further, they submitted that the Defendant's later explanation that the Estate's share of the monies in the Joint UOB Account

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62 Statement of Claim at para 35.

63 Defendant's Opening Statement dated 13 September 2016 at para 15.

64 Notes of Evidence dated 20 September 2016 at p 88.

65 Defendant's Closing Submissions dated 1 November 2016 at paras 88-90.

66 Plaintiffs' Closing Submissions dated 4 November 2016 at paras 68-69.

had been used to pay for the Testator's funeral and debts, and/or had been taken by the Testator's son, was without evidential basis.

70 As a matter of law, a trustee has the right to be reimbursed and indemnified for expenses that were properly incurred in the management of the trust (*Snell's Equity* at para 7-030). This right of indemnity may lie in some situations as a personal indemnity against the beneficiaries, but also as against the trust property in priority over the claims of any beneficiary (*E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2013] 4 SLR 123 at [13]).

71 However, in the present case, while that right of indemnity existed, the Defendant did not adduce sufficient evidence to show that there had indeed been such expenses incurred, and further, did not satisfy the court of the propriety of such expenses. In respect of the funeral and medical expenses, no receipts were tendered. Thus, neither the existence nor the quantum of such expenses was established. In respect of the Testator's alleged debts, there was no evidence of any such debt in fact owed. This was the case even for the Testator's purported debt to the Defendant himself.[67] The Testator's good relationship with the Defendant[68] could not be used to surmount this gaping evidential inadequacy. Moreover, as the 1st Plaintiff pointed out, it was more than a little curious that the Defendant would only make mention of the debts owed to him by the Testator in 2012, some 13 years after the Testator's death.[69] In respect of the claim that the Testator's son had taken the monies from the

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67 Notes of Evidence dated 21 September 2016 at p 46.

68 Defendant's Closing Submissions dated 1 November 2016 at para 90; Notes of Evidence dated 20 September 2016 at p 89.

69 Notes of Evidence dated 20 September 2016 at p 89.

Joint UOB Account, the Defendant had no supporting evidence. Indeed, the Defendant invited the court to infer that it was more likely than not that the Testator's son had taken monies originating from the Joint UOB Account, based solely on the 1st Plaintiff's concession in cross-examination that it was "possible" that the Testator's son could have taken some monies from the Defendant without informing her,[70] and that the Testator's son "liked to travel".[71] In a world of plentiful possibilities, this was not sufficient. Further, the 1st Plaintiff also explained that the Testator's son had, at the material time, been earning a salary and been entitled to 50% of the Estate which had already started receiving some insurance pay-outs around 1999 to 2000.[72] There was simply no evidential basis upon which the Defendant's claim of reasonable expenditure or indemnity could be sustained. The Defendant thus remained liable for breach of trust by misappropriation of the sum of $136,561.76 from the Joint UOB Account.

Moti's Debt

72 The Plaintiffs alleged that a balance sum of $40,641.78 owed by Moti to the Estate may, by the time of trial, be time-barred as more than 12 years had passed since the incurrence of the debt.[73] Accordingly, the Plaintiffs claimed for both an account to be taken in respect of the debt, and the repayment of the debt itself.[74] The Defendant submitted that this claim was premature as there was no evidence that Moti's estate would be denying

70 Notes of Evidence dated 20 September 2016 at p 90.

71 Defendant's Reply Closing Submissions dated 17 November 2016 at para 21.

72 Notes of Evidence dated 20 September 2016 at p 90; Plaintiffs' Closing Submissions dated 4 November 2016 at para 67.

73 Notes of Evidence dated 21 September 2016 at pp 69-70.

74 Statement of Claim (Amendment 1) at paras 41(d) and (h).

liability for the debt, or that a defence of time bar would be raised if such claim were in fact brought. Further, the primary liability was as against Basco, which liability to the Estate it would be willing to honour, according to the Defendant in his position as director of Basco.[75]

73 I agreed with the Defendant that an order on the specific sum claimed by the Plaintiffs would be premature at this stage of the proceedings. However, an account by the Defendant on a common basis of the said debt owed by Moti was appropriate, and I accordingly so ordered.

Conclusion

74 As explained, no specific orders were made in respect of Basco and Eltee as the relevant shareholding had been transferred by the Defendant to the Plaintiffs (see above at [33]). The position in relation to the Stamford House was also left to the taking of accounts (see above at [47]).

75 Further, I made no orders in respect of the Plaintiffs' prayers as to (a) damages and (b) indemnification for losses suffered in relation to the accounts and inquiries sought. The latter prayer was not necessary if the accounting process as explained had been properly understood. In respect of (a), I observe that the claim, which was premised on a breach of trust in equity, was crafted as a general one for damages, and not equitable compensation as it should have been (see, generally, *Quality Assurance Management Asia Pte Ltd v Zhang Qing* [2013] 3 SLR 631 at [31]-[50]).

76 In the circumstances, I granted the following orders:

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[75] Defendant's Closing Submissions dated 1 November 2016 at paras 92-93.

(a) an account to be taken of the Estate Account and the monies due to the Estate pursuant to the Schedule of Assets, including, but not limited to the debts owed by Basco, Eltee and Bobby-O;

(b) an account to be taken of Bob's, including but not limited to any dividend payments and interest;

(c) an account to be taken of the debt owed by Moti to the Estate;

(d) an account to be taken of the Estate's share in the estate of Lilan; and

(e) sums of $136,561.76 and $118,000 to be repaid to the Estate with interest at 5.33% per annum. This award is compensatory, and for that reason interest may be awarded under the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed).

77 As to the issue of costs, I was of the view that costs on an indemnity basis was not called for here; costs was thus awarded to the Plaintiffs on the standard basis.

Aedit Abdullah
Judicial Commissioner

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