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

[2021] SGHC 276

Suit No 160 of 2019 and Summons No 2708 of 2021

Between

Ratan Kumar Rai

… Plaintiff

And

(1) Seah Hock Thiam
(2) Tan Teck Kee
(3) Worldbridgeland (Cambodia) Co Ltd

… Defendants

JUDGMENT

[Civil Procedure] — [Interim payments]
[Courts and Jurisdiction] — [Court judgments] — [Declaratory]
[Contempt of Court] — [Civil contempt]
[Equity] — [Fiduciary relationships] — [Duties]
[Equity] — [Fiduciary relationships] — [When arising]
[Equity] — [Remedies] — [Account] — [Common account]
[Equity] — [Remedies] — [Account] — [Wilful default]

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Ratan Kumar Rai
v
Seah Hock Thiam and others

[2021] SGHC 276

General Division of the High Court — Suit No 160 of 2019 and Summons No 2708 of 2021
Valerie Thean J
23, 27–30 July, 3–6, 10–12 August, 30 September 2021

9 December 2021 Judgment reserved.

Valerie Thean J:

Introduction

1 Social and commercial interests commonly intertwine and reinforce each other. Venturing into foreign lands, co-adventurers give each other collective wisdom, strength in numbers, and the security of company. Trust is reposed. Responsibilities are voluntarily undertaken. Little may be written, for fear of disrupting the bonds of trust between brothers. Such journeys carry the uncertainty of not knowing when a social obligation becomes a legal one and, inevitably, the possibility that the unwritten code fractures in the face of the diverse risks presented by the horizon.

2 The plaintiff, Mr Ratan Kumar Rai ("Mr Rai"), is a Singaporean businessman who was a practising lawyer for 23 years from 1994 to 2017.[1] His claim pertains to a development of land in Cambodia and is premised on a tight friendship with the first two defendants and Mr Seah Chong Hwee ("Mr SCH"), since deceased. This friendship is not disputed. The first defendant, Mr Seah Hock Thiam ("Mr Seah"), is a businessman with wide business interests. The second defendant, Mr Tan Teck Kee ("Mr Tan"), was formerly a deputy superintendent in the Singapore Police Force, in which he served for some 12 years before he left on 1 October 2010.[2]

3 The third defendant, WorldbridgeLand (Cambodia) Co Ltd ("WBL"),[3] is a real estate company incorporated in Cambodia on 25 May 2011.[4] The chairman of WBL's board of directors, a Cambodian national named Mr Oknha Rithy Sear ("Mr Rithy"), holds the remaining 51% of its shares, as required by Cambodian law.[5] At the material time, the only other director of WBL was Mr Tan, who is a 49% shareholder of WBL and who was an executive director of WBL from its incorporation on 25 May 2011. He resigned on 19 August 2020 and this resignation took effect on 19 November 2020.[6]

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1 Statement of Claim (Amendment No 2) ("SOC") at para 1; Plaintiff's Opening Statement at para 5.

2 Transcript, 5 August 2021 at p 10 lines 5–18 and p 15 lines 20–21.

3 Plaintiff's Opening Statement at para 8; First and Second Defendants' Opening Statement at para 3.

4 SOC at para 3A; 1st Defendant's Defence (Amendment No 2) ("Mr Seah's Defence") at para 8; 2nd Defendant's Defence (Amendment No 2) ("Mr Tan's Defence") at para 7; Agreed Bundle of Documents, Vol 3 ("3 AB") 2514.

5 SOC at para 3A; Mr Seah's Defence at para 8; Mr Tan's Defence at para 7; Plaintiff's Opening Statement at para 10; First and Second Defendants' Opening Statement at para 4.

6 SOC at paras 3–3A; Mr Tan's Defence at para 7; 3 AB 2516.

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4 A group of Mr Seah's friends and business associates ("the Singapore investors") invested in land purchased by WBL. In 2011 and 2012, Mr Rai contributed a total sum of US$5,394,252 towards the acquisition of two plots of land in Cambodia (collectively, "the Land"), which were both purchased by WBL.[7] Subsequently, under a joint venture between WBL and Oxley Holdings Limited ("Oxley Holdings"), where profits were to be shared equally, the Land was developed into a 45-storey twin tower mixed-use development known as "The Bridge".[8]

5 From 2015 to 2018, Mr Rai received several payouts from the defendants in return of his capital investment in the Land and the distribution of profits from the investment. Following upon the publication of Oxley Holdings' profits generated from the joint venture, he contends that he has not received the full amount of profits to which he is entitled and that wrongful deductions were made to reduce the amount of profits paid to him.[9] By this suit, he seeks an account of all the moneys paid in relation to the investment in the Land and the profits thereof, and an order for all sums due to be paid to him upon the taking of the relevant accounts.[10]

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7 SOC at paras 7(a) and 29; Mr Seah's Defence at para 19(a); Plaintiff's Opening Statement at paras 4 and 35; First and Second Defendants' Opening Statement at para 18.

8 Plaintiff's Opening Statement at paras 3 and 43; First and Second Defendants' Opening Statement at para 20.

9 Plaintiff's Opening Statement at para 4.

10 SOC at pp 27–29.

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Background

6 The two plots of land that together comprised the Land were denoted by the parties as "Plot A" and "Plot B". They were purchased at separate points in time.

Acquisition of Plot A

7 On 10 October 2011, a sale and purchase agreement was entered into under which Mr Rithy, acting on behalf of WBL, purchased an approximately 7,000m^2 plot of land in Phnom Penh (Plot A).[11] A copy of the sale and purchase agreement was tendered during the trial stated that the purchase price of Plot A was US$11,854,100.[12]

8 Mr Rai contributed a sum of US$1,904,000 to the acquisition of Plot A. He paid S$2,500,000 to Mr Seah through three cash cheques dated 10 October 2011, 21 November 2011 and 8 December 2011, of which S$20,851.01 was returned by Mr Seah on 23 December 2011 by way of an OCBC Bank cash cheque.[13]

9 Several other individuals also contributed towards the acquisition of Plot A, including:[14]

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11 SOC at para 7A; Mr Seah's Defence at para 15; Mr Tan's Defence at para 15; Defence of the 3rd Defendant ("WBL's Defence") at para 7(e); 1st and 2nd Defendants' Bundle of Documents ("1 DB") 3–5.

12 1 DB 3 (Article 1).

13 SOC at para 7B; Mr Seah's Defence at para 21; Reply to Defence of the 1st Defendant (Amendment No 1) ("Reply to Mr Seah's Defence") at para 6A; Plaintiff's Written Closing Submissions dated 17 September 2021 ("PWS") at paras 14–15; 1st and 2nd Defendants' Written Closing Submissions dated 17 September 2021 ("DWS") at para 4.

14 DWS at para 4.

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(a) Mr Seah, who contributed US$2,856,000;

(b) Mr SCH, who contributed US$1,190,000;

(c) Mr Lee Eng Ngee ("Mr LEN"), who contributed US$1,190,000;

(d) Mr Tan Loo Lee ("Mr TLL"), who contributed US$1,190,000; and

(e) Mr Lee Teck Leng ("Mr LTL"), who contributed US$1,190,000.

10 Mr LEN, Mr TLL and Mr LTL are all Mr Seah's business partners or acquaintances.[15] It is not disputed that Mr Seah assisted the Singapore investors in the transmission of funds between Singapore and Cambodia, both to and from WBL. Some of those fund transfers were done through Esun International Pte Ltd ("Esun"), a Singapore-incorporated company of which Mr Seah is a director. Mr Seah holds 26.5% of the shares in Esun. His wife, Mdm Lee Poh Choo ("Mdm Lee"), who is also a director of Esun, holds 24.5% of its shares[16] and assisted him with managing the fund transfers.

"Cambodian Investment Funds" document

11 Following the acquisition of Plot A, on or around 1 December 2011, Mr Tan distributed a document titled "Cambodian Investment Funds" to those

15 SOC at para 8B; Mr Seah's Defence at para 24.

16 SOC at para 2; Mr Seah's Defence at para 5.

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who had invested in Plot A ("the Cambodian Investment Funds Document").[17] This document, which was signed by Mr Tan,[18] stated as follows:[19]

> 1. A total fund of USD$9,520,000 has been set up for investment into Cambodia market by a group of subscribers to these funds.
>
> 2. The decision on investment opportunities and the amount of investments for each projects [*sic*] will be solely decided by Tan Teck Kee … director of WORLDBRIDGE LAND Company Limited, the company handling these funds.
>
> 3. To protect the interests of all subscribers, these funds will be logged in for a minimum period of two years. At the maturity of the investment funds, 10% of the net profit (after deducting all cost and tax) will be paid to the director, Tan Teck Kee as the director fees.
>
> 4. The details of the share allotment of all the subscribers are as follows:

SUBSCRIBER	**SHARE**	**AMOUNT IN USD**
SEAH HOCK THIAM	30%	$2,856,000.00
RATAN KUMAR RAI	20%	$1,904,000.00
SEAH CHONG HWEE	12.5%	$1,190,000.00
LEE ENG NGEE	12.5%	$1,190,000.00
TAN LOO LEE	12.5%	$1,190,000.00
LEE TECK LENG	12.5%	$1,190,000.00
TOTAL	100%	$9,520,000.00

17 SOC at para 8; Mr Seah's Defence at para 22; Mr Tan's Defence at para 20; WBL's Defence at para 9.

18 SOC at para 8A; Mr Seah's Defence at para 23; Mr Tan's Defence at para 21; WBL's Defence at para 9.

19 Agreed Bundle of Documents, Vol 1 ("1 AB") 58.

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Acquisition of Plot B

12 On 29 March 2012, another sale and purchase agreement was entered into under which WBL, acting through Mr Rithy, purchased an approximately 3,000m^2 plot of land in Phnom Penh which was adjacent to Plot A (Plot B).[20] A copy of this sale and purchase agreement tendered during the trial stated that the purchase price of Plot B was US$5,424,700.[21]

13 In or around April 2012, Mr Rai contributed a total of US$3,490,252 towards the acquisition of Plot B,[22] in the following sums:[23]

(a) S$3,150,168.78 by POSB cash cheque to Mr Seah, for remittance to Mr Tan or WBL; and

(b) the balance S$1,261,000 by cheque to Mr Seah for remittance to Mr Tan or WBL.

14 Several other individuals also contributed to the acquisition of Plot B:

(a) Mr Rithy and Mr SCH each contributed US$542,470;[24] and

(b) the remaining sum of $849,508 was contributed by Ms Amy Yap (Mr Tan's "aunty") and her "group of investors".[25] The contributor of this sum was previously identified only as "Investor X".[26]

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20 1 DB 8–9.

21 1 DB 8 (Article 1).

22 SOC at para 9A; Mr Tan's Defence at para 15; WBL's Defence at para 11(c).

23 Plaintiff's Lead Counsel's Statement on Trial Proceedings dated 28 June 2021, Part Two, Section III ("Common Ground between Parties") at para 21; PWS at para 18.

24 Mr Tan's Defence at para 15; WBL's Defence at para 11(c).

25 DWS at para 8; Transcript, 10 August 2021 at p 28 lines 11–16.

26 First and Second Defendants' Opening Statement at para 17.

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15 Mr Seah did not contribute towards the acquisition of Plot B.

Joint venture to develop the Land

16 In late 2012 or early 2013, the Land had appreciated in value and the investors concluded it was more profitable to develop it instead of selling it.[27] Mr Seah introduced several potential developers of the Land, including Mr Ching Chiat Kwong ("Mr Ching"), the executive chairman and chief executive officer of Oxley Holdings, a property development and property investment company listed on the Singapore Stock Exchange.[28] It is undisputed that Mr Tan was involved in negotiating the details of the joint venture agreement with Oxley Holdings' Mr Ching.[29] On 15 July 2013, Oxley Holdings (represented by Mr Ching) and WBL (represented by Mr Tan) entered into a joint venture agreement to develop the Land ("the JVA")[30] into a project which would eventually become known as The Bridge.[31] The Bridge was a mixed-use development comprising 762 residential units, 963 "SoHo" units, five levels of retail units, two food and beverage spaces, and two sky bridges.[32]

17 Pursuant to the JVA, Oxley Diamond (Cambodia) Co Ltd ("Oxley Diamond") was incorporated on 1 July 2013[33] as the joint venture vehicle for

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27 Common Ground between Parties at para 26; PWS at para 32.

28 Common Ground between Parties at paras 5 and 27.

29 Affidavit of Evidence-in-Chief of Tan Teck Kee dated 17 June 2021 ("Mr Tan's AEIC") at para 42; PWS at para 34.

30 1 AB 223–238 (redacted); Agreed Bundle of Documents, Vol 6 ("6 AB") 3243–3260 (unredacted).

31 Plaintiff's Opening Statement at para 11; PWS at para 38; DWS at para 11.

32 SOC at paras 12, 13(b) and 14; Mr Seah's Defence at paras 33–35; Mr Tan's Defence at paras 29–31; Common Ground between Parties at paras 5 and 31.

33 3 AB 2511.

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the development of The Bridge.[34] WBL and Oxley Holdings each hold 50% of the shares in Oxley Diamond.[35] Mr Ching, Mr Tan and Mr Rithy were appointed as directors of Oxley Diamond (with Mr Rithy being the chairman of the board of directors[36]), with Mr Ching being Oxley Holdings' nominee director and Mr Tan and Mr Rithy being WBL's nominee directors.[37]

18 Under the JVA, it was agreed that the net profits earned from The Bridge would be divided equally between Oxley Holdings and WBL.[38]

"Investment Agreement for 'The Bridge'" document

19 On or around 31 December 2013, Mr Tan provided Mr Rai with a document titled "Investment Agreement for 'The Bridge'" ("the Bridge Investment Agreement") of the same date. This document was issued on WBL's letterhead and signed by Mr Tan.[39] Mr Rai's copy of the Bridge Investment Agreement provided as follows:[40]

> 1. A total of USD$17,278,800 has been set up for investment into Cambodia market by a group of subscribers to these funds. This fund has been used by [WBL] to purchase a parcel of land at [the Land] measuring about 10090 square metres.
>
> 2. [WBL] has, with the consent of all the subscribers of this fund, entered into a Joint Venture Agreement with Oxley Holdings … to develop a mixed development of 45 storeys comprising of condominiums, offices and shops named "The Bridge" …

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34 SOC at paras 13(a) and 15; Mr Tan's Defence at para 32; WBL's Defence at para 15.

35 SOC at para 13(d); Common Ground between Parties at paras 5 and 32; PWS at para 40.

36 Plaintiff's Opening Statement at para 12.

37 Common Ground between Parties at paras 5 and 32; PWS at para 40.

38 Common Ground between Parties at para 33; PWS at para 39.

39 SOC at para 16; Mr Tan's Defence at para 33; WBL's Defence at para 16.

40 1 AB 256.

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> 3. In this JVA, the land is valued at USD$35,000,000 as the cost of the land for developing "The Bridge". This land will be considered as the investment of [WBL] while Oxley Holdings … will be the developer, which means they will be solely responsible for the development and construction of "The Bridge" until such time their total investments matches USD$35,000,000.
>
> 4. The additional funds needed for any amount above US$35,000,000 will be injected by both companies on a 50-50 basis until the completion of "The Bridge". The profit from the sales revenue of "The Bridge" will be shared equally between the two parties of this JVA after deducting the land cost of USD$35,000,000 due to [WBL] and all the costs incurred for the development and construction of "The Bridge" due to Oxley Holdings … and [WBL] accordingly.
>
> 5. Your subscription of USD$5,394,252 translates into a share percentage of 31.2% ownership of this land parcel. You will be entitled to 31.2% of the land cost of USD$35,000,000 during the cash out period and in addition, 31.2% of the 50% profit [WBL] gets from the shared profits as described in paragraph 4 above.
>
> 6. 10% of the net profit (profit from land appreciation and development) will be paid to [WBL] as management fees after deducting all cost and tax.

20 Mr Rai's copy of the Bridge Investment Agreement was signed and acknowledged by him.[41]

Ground-breaking ceremony for The Bridge

21 The ground-breaking ceremony for The Bridge took place in or around May 2014 in Phnom Penh. Mr Rai, Mr Seah, Mr Tan, Mr SCH and Mr Rithy, among others, attended this ceremony.[42]

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41 SOC at para 17; Mr Tan's Defence at para 33; WBL's Defence at para 17; 1 AB 256.

42 Mr Tan's Defence at para 40; WBL's Defence at para 20; Plaintiff's Opening Statement at para 51; PWS at para 41.

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Addendum to the JVA

22 By an addendum letter to the JVA dated 24 July 2015, WBL and Oxley Holdings "unanimously agreed" to reduce Oxley Holdings' contribution to The Bridge from US$35m to US$20m ("the JVA Addendum").[43] This was because it transpired that the land development costs required were only US$20m. The difference of US$15m was paid out by Oxley Diamond to WBL, which in turn paid out this sum to the individual investors in their respective proportions in or around August 2015.[44]

Monthly reports sent by Mr Tan

23 In most months during the period from August 2014 to June 2016, Mr Tan e-mailed Mr Rai and Mr Seah a monthly management report which Oxley Diamond had prepared for WBL.[45] These management reports detailed the progress of the construction and the sale of the units in The Bridge. The last management report which Mr Rai received from Mr Tan was dated 31 May 2016 and received on 7 June 2016.[46] After this, Mr Tan ceased to send Mr Rai any further monthly management reports.[47]

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43 SOC at para 22; Mr Tan's Defence at para 41; WBL's Defence at para 21; Agreed Bundle of Documents, Vol 2 ("2 AB") 976–977.

44 Mr Tan's Defence at paras 41(b)–41(d).

45 SOC at para 24; Transcript, 5 August 2021 at p 78 lines 5–8 (Mr Tan); 1 AB 389–403 (August 2014); 1 AB 671–687 (September 2014); 1 AB 688–702 (October 2014); 1 AB 718–728 (November 2014); 1 AB 729–742 and 2 AB 869–884 (December 2014); 2 AB 904–917 (January 2015); 2 AB 918–931 (February 2015); 2 AB 932–945 (March 2015); 2 AB 961–975 (May 2015); 2 AB 1004–1016 (August 2015); 2 AB 1043–1053 (September 2015); 2 AB 1054–1065 (October 2015); 2 AB 1101–1111 (November 2015); 2 AB 1275–1285 (December 2015); 2 AB 1332–1334 (May 2016).

46 2 AB 1332–1334.

47 SOC at paras 25 and 28A; Mr Tan's Defence at para 46; PWS at para 43.

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Payouts received by Mr Rai

24 It is not disputed that Mr Rai received four payouts from the defendants, amounting to US$7,058,809 and S$5,379,555, between August 2015 and November 2018:[48]

(a) On 11 August 2015, Mr Rai received a cheque for US$4,672,009 issued by Esun to Mr Devinder Kumar Rai ("Mr DKR"), Mr Rai's brother, on Mr Rai's instruction ("the First Payout"). This sum was payment for Mr Rai's 31.2% share of the US$15m paid out by Oxley Diamond to WBL (see [22] above).[49]

(b) On 2 April 2018, Mr Seah issued two Maybank cash cheques from his personal bank account to Mr Rai for a total sum of S$2,840,000 ("the Second Payout").[50]

(c) On 12 June 2018, Mr Rai received a personal cheque from Mr Seah in favour of Mr Rai's wife (on Mr Rai's request), for S$2,539,555 ("the Third Payout").[51]

(d) On 19 November 2018, Mr Seah issued a personal cheque in favour of Mr Rai's wife (at Mr Rai's request) for US$2,386,800 ("the Fourth Payout").[52]

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48 SOC at para 36; WBL's Defence at para 30; Plaintiff's Opening Statement at para 4; PWS at para 66.

49 SOC at para 29; Mr Seah's Defence at para 48; Mr Tan's Defence at para 41(e); PWS at para 50.

50 SOC at para 32; Mr Seah's Defence at para 50; PWS at para 53.

51 SOC at para 32B; Mr Seah's Defence at para 51; PWS at para 60.

52 SOC at para 35; Mr Seah's Defence at para 53; PWS at para 65.

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Commencement of the present suit and discovery orders against WBL

25 According to Mr Rai, he became suspicious of Mr Seah and Mr Tan after reading Oxley Holdings' press statement dated 29 April 2018 which stated that The Bridge had generated a gross profit of approximately S$140.8m for Oxley Holdings.[53] As an equal partner under the JVA, WBL should have received the same amount of gross profits.[54] In September or October 2018, Mr Rai also read Oxley Holdings' Annual Report 2018 which stated that The Bridge had been completed and handed over by June 2018 and that 100% of the residential and "SoHo" units, and 86% of the retail units, had been sold.[55] Mr Rai had not received a full account of these profits from the defendants. He then attempted to ask Mr Seah and Mr Tan for more information and for his share of the profits from The Bridge, but they were not forthcoming.[56]

26 On 4 February 2019, Mr Rai filed the writ of summons in the present suit against Mr Seah and Mr Tan.[57] In December 2019, Mr Rai amended his Statement of Claim to add WBL as the third defendant.[58] Subsequently, in February 2021, Mr Rai filed an application for specific discovery against WBL.[59]

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53 3 AB 1915–1916.

54 PWS at para 68.

55 3 AB 1660; PWS at para 69.

56 PWS at paras 70–73.

57 PWS at para 75.

58 PWS at para 83.

59 PWS at para 91; HC/SUM 734/2021.

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27 On 25 March 2021, WBL (through its solicitors in Singapore, Lee & Lee) confirmed to the court that it no longer intended to participate in this suit and Lee & Lee withdrew from representing them.[60]

28 Thereafter, on 16 April 2021, the court granted an order in terms for specific discovery of all 17 categories of documents Mr Rai had sought against WBL ("the First Discovery Order").[61] On the same day, the defendants' counsel informed Mr Rai's counsel that Mr Tan had resigned as a director of WBL.[62] The First Discovery Order was served on WBL by registered post on 21 April 2021, but WBL has not complied with the First Discovery Order to date.[63] On 26 May 2021, the First Discovery Order with a penal notice was served on Mr Tan at his registered home address.[64]

29 Mr Tan then applied on 10 June 2021 for declarations that the First Discovery Order does not require him to influence WBL to comply with it; that the First Discovery Order cannot be enforced by an order of committal against him; and further or in the alternative, that the service of the First Discovery Order and penal notice on him was improper ("SUM 2708").[65] On 17 June 2021, after SUM 2708 was filed, Mr Rai filed an *ex parte* application for leave to commence committal proceedings against Mr Tan pursuant to O 52 r 2 of the Rules of Court (2014 Rev Ed) ("the ROC").[66] SUM 2708 was filed first and its object was clearly to obviate committal proceedings. I decided therefore that it

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60 PWS at para 92.

61 PWS at para 93; HC/ORC 2158/2021.

62 PWS at para 95; 3 AB 2517.

63 PWS at para 96.

64 PWS at para 97; Agreed Bundle of Documents, Vol 4 ("4 AB") 2579–2584.

65 HC/SUM 2708/2021.

66 HC/SUM 2849/2021.

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would be correct to hear it first, before the leave application. There were also several issues common to the trial and SUM 2708 which were dealt with in the parties' affidavits of evidence-in-chief ("AEICs") for trial. While Mr Rai wished to file a reply affidavit, Mr Tan preferred the application to be dealt with after trial of the suit. At that time trial was scheduled to commence less than a month later. I decided it would be more efficacious to deal with SUM 2708 together with the main suit, which also obviated the need for any further affidavit to be filed.

The parties' positions on the suit

Mr Rai's claim that the defendants owe him fiduciary duties to account

The relationship between Mr Rai, Mr Seah and Mr Tan

30 Mr Rai claims that the investment in Cambodia began as a venture by a group of close friends, namely, himself, Mr Seah, Mr Tan and Mr SCH.[67] According to Mr Rai, he and Mr Seah had been friends since 2006.[68] The key thrust of Mr Rai's claim is that Mr Seah and Mr Tan had assured him on various occasions that they would "take care" of and manage the investment in Cambodia, and that they would be accountable to him. On this basis, and based on his deep friendship with Mr Seah, Mr Rai agreed to invest close to US$2m in Plot A without signing any formal agreement beforehand.[69] Mr Rai contends that Mr Seah played a central role in gathering the Singapore investors to invest; engaging Mr Tan to manage the investment in Cambodia; collecting the contributions from the investors and distributing the payouts; and accounting to

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67 SOC at para 4; Plaintiff's Opening Statement at paras 1 and 9.

68 SOC at para 2.

69 Plaintiff's Opening Statement at para 19.

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the Singapore investors for the same.[70] Meanwhile, Mr Tan was the appointed representative of the Singapore investors tasked with managing the investment. Although he was a director and 49% shareholder in WBL, Mr Tan did not contribute any money towards the purchase of the Land. Mr Rai's case is that the real decision-making power lay with Mr Seah, who regularly consulted Mr Rai and Mr SCH.[71]

31 The version of events put forth by Mr Seah and Mr Tan is vastly different. They contend that the investment in Cambodia was initiated and driven by WBL, and that they played minor roles in the overall investment.

(a) Mr Seah contends that he was merely another individual investor as Mr Rai was, and he did not manage, control, or have any interest in WBL at all material times.[72] He was not in any position to give instructions to Mr Rithy and/or Mr Tan, nor did he do so.[73]

(b) Mr Tan contends that he was never engaged by Mr Seah. Instead, he was acting in his capacity as WBL's representative, and was an agent of WBL, at all material times.[74] Mr Tan argues that he does not owe any fiduciary duties to Mr Rai and/or any of the other individual investors, and also denies that Mr Rai reposed full trust and confidence in him. Instead, Mr Rai, as with the other investors, had a direct contractual relationship with WBL.[75]

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70 Plaintiff's Opening Statement at paras 103–104.

71 Plaintiff's Opening Statement at para 107.

72 Mr Seah's Defence at para 8; Mr Tan's Defence at para 12.

73 Mr Seah's Defence at para 40; Mr Tan's Defence at para 37.

74 Mr Tan's Defence at paras 12 and 28(b).

75 Mr Tan's Defence at para 38.

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The agreement between the parties

32 Mr Rai's case is that in September or early October 2011, he, Mr Seah and Mr SCH entered into an oral understanding to be partners (in a colloquial sense) in a land investment project in Cambodia ("the Oral Understanding").[76] Shortly after this Oral Understanding was formed, Mr Rai, Mr Seah and Mr Tan met with Mr Rithy to discuss the land investment. At this point, Mr Rithy agreed to join as a partner under the Oral Understanding.[77]

33 Mr Rai contends that Mr Seah was not merely another individual investor who did not manage, control or have any interest in WBL. Instead, Mr Seah was the custodian of the investment fund set up for the purpose of the land investment in Cambodia ("the Investment Fund") and the promoter of the project, and all the subscribers to the Investment Fund were members invited by Mr Seah. Mr Tan was merely his agent for the purpose of the Investment Fund.[78] In the result, the partners made the following contributions to the Investment Fund in accordance with the Oral Understanding:

(a) Mr Rai paid US$5,394,252 to Mr Seah.[79]

(b) Mr SCH paid approximately US$1,728,800 to Mr Seah.[80]

(c) Mr Seah and Mr Rithy should have paid approximately US$10,155,748 to the Investment Fund.[81]

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76 SOC at para 4, read with Plaintiff's Further and Better Particulars Served Pursuant to Request (Amendment No 1) dated 5 March 2020 ("FBPs of SOC"), p 2 at Answer (1).

77 SOC at para 4A.

78 Reply to Mr Seah's Defence at para 3; Reply to Defence of the 2nd Defendant (Amendment No 1) at para 4.

79 SOC at para 7(a).

80 SOC at para 7(b).

81 SOC at para 7(c).

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According to Mr Rai, Mr Seah and Mr Tan subsequently informed him that the total Investment Fund for all parties' contributions was US$17,278,800. However, he is unable to verify this as the defendants have declined to provide supporting documents.[82] The moneys from the Investment Fund were then used to purchase the Land.[83]

34 On the other hand, Mr Seah and Mr Tan deny that the Oral Understanding existed.[84] They aver that any communications to Mr Rai were direct communications from WBL to Mr Rai.[85] In particular, they argue that it was not possible for Mr Seah to have communicated directly with Mr Rai as Mr Seah was not conversant in English.[86] They contend that Mr Rai has been inconsistent as to the details of the Oral Understanding arising from differences in his original pleaded case, his AEIC, and his positions at trial and after trial. I deal with this issue at [81]–[90] below.

35 Mr Seah and Mr Tan's narrative is instead that WBL was incorporated by Mr Tan and Mr Rithy on 25 May 2011 as a real estate company in Cambodia for use in various projects involving land investment and/or development in Cambodia.[87] In or around October or November 2011, WBL, as one of its ventures, intended to purchase Plot A and sell the land at a profit when the price of the land appreciated.[88] Mr Rithy personally contributed 20% of the purchase

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82 SOC at para 7(d).

83 SOC at paras 7A and 9B.

84 Mr Seah's Defence at para 9; Mr Tan's Defence at para 8.

85 Mr Seah's Defence at para 44; Mr Tan's Defence at para 43.

86 Mr Seah's Defence at para 56; Mr Tan's Defence at para 57.

87 Mr Tan's Defence at para 9(a); WBL's Defence at para 7(a).

88 Mr Seah's Defence at para 10(a); Mr Tan's Defence at para 9(b); WBL's Defence at para 7(b).

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price for Plot A and WBL then sourced for individual investors to subscribe to the project for the remaining 80% of the purchase price, and Mr Seah, Mr SCH and Mr Rai were all individual investors who invested directly with WBL for the project.[89]

36 Further, the defendants aver that the project was to be managed and administered only by WBL, and that the individual investors (including Mr Rai and Mr Seah) were not entitled to play any decision-making role at all material times.[90] In line with this, the individual investors (such as Mr Rai and Mr SCH) remitted the moneys to Mr Seah and/or his wife, who subsequently remitted such moneys to WBL, simply for convenience and at WBL's request (as the investors were based in Singapore and WBL was a Cambodian company). There was no agreement between any of the investors that Mr Seah would be the custodian of the funds, and he was not responsible or accountable to Mr Rai and Mr SCH. Instead, at all material times, Mr Seah and/or his wife merely facilitated the transfer of the funds in relation to the project from Mr Rai and Mr SCH to WBL.[91] Mr Seah also denies that he engaged Mr Tan, and argues that Mr Tan was an agent of WBL at all material times.[92]

37 According to Mr Seah and Mr Tan, the terms of the investment, which were conveyed to all the individual potential investors (including Mr Seah and Mr Rai), were as follows:

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89 Mr Seah's Defence at para 10(b); Mr Tan's Defence at para 9(c).

90 Mr Tan's Defence at para 11.

91 Mr Seah's Defence at paras 13 and 17; Mr Tan's Defence at paras 14 and 15.

92 Mr Seah's Defence at para 14.

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(a) The funds from the individual investors would be used by WBL to purchase Plot A.[93]

(b) WBL would sell Plot A at a profit when the land price appreciated. After deducting the costs and tax from the sale price of the land, the net profits would be distributed as follows; WBL would receive 10% (being management fees), while the remaining 90% would be split among the investors in accordance with the proportions of their respective investments in Plot A.[94] Mr Seah and Mr Tan deny that they and Mr Rithy were entitled to receive, or did receive, any management fee.[95]

38 The defendants accept that Mr Rai invested a total of US$5,394,252 in the Land, and that the total investment amount was US$17,278,800.[96] However, the defendants contend that Mr Seah invested a total sum of US$2,856,000,[97] Mr SCH invested a total sum of US$1,732,470,[98] and Mr Rithy invested a total sum of US$2,922,470.[99]

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93 Mr Seah's Defence at para 10(c)(i); Mr Tan's Defence at para 9(e)(i).

94 Mr Seah's Defence at paras 10(c)(ii); Mr Tan's Defence at para 9(e)(ii).

95 Mr Seah's Defence at para 11; Mr Tan's Defence at para 10.

96 Mr Seah's Defence at paras 19(a) and 19(d); Mr Tan's Defence at para 17; WBL's Defence at para 6(a).

97 Mr Seah's Defence at para 19(b); Mr Tan's Defence at para 17; WBL's Defence at para 6(b).

98 Mr Seah's Defence at para 19(c); Mr Tan's Defence at para 17; WBL's Defence at para 6(c).

99 Mr Tan's Defence at para 17; WBL's Defence at para 6(d).

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Duties owed by the defendants to Mr Rai

39 Mr Rai contends that Mr Seah and Mr Tan owe him fiduciary duties as he reposed full trust and confidence in them at all material times.[100] Mr Rai and Mr SCH had entrusted Mr Seah and Mr Tan with their contributions to the Investment Fund,[101] and Mr Seah and Mr Tan had complete knowledge and control over the use of the Investment Fund moneys for the partnership objective of land development in Cambodia. They knew that Mr Rai relied on what he was told by them about the use of the Investment Fund moneys because Mr Rai had no visibility over the same.[102]

40 As for WBL, Mr Rai's pleaded case was that WBL held the Land on resulting trust for the investors.[103] Mr Rai's eventual submission, however, focused on WBL's joint and several liability to account to Mr Rai as the corporate vehicle receiving dividends from Oxley Diamond and holding on to these moneys even though its beneficial interest was confined to the 10% management fee.[104]

41 On this basis, Mr Rai contends that all three defendants owe him a duty to account for all matters relating to the following:[105]

(a) the use of the moneys in the Investment Fund;

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100 SOC at paras 19 (Mr Seah) and 20 (Mr Tan).

101 FBPs of SOC, p 5 at Answer (3).

102 FBPs of SOC, p 5 at Answer (3).

103 SOC at para 20A, read with FBPs of SOC, p 16 at para 19, Answer (3).

104 PWS at para 269.

105 SOC at paras 19(a)–(d) (Mr Seah), paras 20(a)–(d) (Mr Tan) and paras 20A(a), 20A(c), 20A(d) and 20A(f) (WBL).

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(b) the costs of construction and other expenses relating to the Land purchased using the moneys in the Investment Fund;

(c) the sale proceeds and profits earned from the sale of the Land purchased using the moneys in the Investment Fund; and

(d) the business and financial affairs of WBL.

42 In addition, Mr Rai contends that:

(a) Mr Seah and Mr Tan also owe him a duty to account for all matters relating to the business and financial affairs of the joint venture between WBL and Oxley Holdings, and the business and affairs of Oxley Diamond.[106]

(b) WBL also owes him a duty to account for all matters relating to the use of the Land, and the distribution of profits earned from the sale of the Land.[107]

43 Mr Seah[108] and Mr Tan[109] deny owing Mr Rai any of the above duties.

Mr Rai's claim that Mr Tan owes him a duty to account as an agent

44 Further or in the alternative, Mr Rai avers that Mr Tan was his agent for the use of the moneys that he had paid for the acquisition of the Land.[110] Under the Cambodian Investment Funds Document, Mr Tan was appointed as the

106 SOC at paras 19(e)–19(f) (Mr Seah) and paras 20(e)–20(f) (Mr Tan).

107 SOC at paras 20A(b) and 20A(e).

108 Mr Seah's Defence at para 40.

109 Mr Tan's Defence at para 38.

110 SOC at para 42.

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agent of the "Subscribers" who had invested in Plot A, including Mr Rai, to make decisions on the use of the Investment Fund. The same arrangement applied in respect of Plot B.[111] Mr Rai avers that Mr Tan has breached the fiduciary duties so arising by failing to provide him with any account.[112]

45 On the other hand, the defendants aver that it was WBL who issued the Cambodian Investment Funds Document, and that Mr Tan signed this document on behalf of WBL.[113] Mr Tan contends that he did not act as an agent of the investors (including Mr Rai), either individually or collectively. Each investor had a contractual relationship with WBL only, based on the terms and conditions of the Bridge Investment Agreement. Mr Tan acted in his capacity as a representative and agent of WBL at all material times in respect of the project.[114]

Mr Rai's claim that the defendants have breached their duty to account

46 Mr Rai claims that he relied fully on Mr Seah and Mr Tan for information regarding the moneys in the Investment Fund, the purchase of the Land, the progress of the construction and the sale of the units in The Bridge.[115] In the second half of 2018, he asked Mr Seah for an account whenever they met. However, Mr Seah's standard response to Mr Rai was that Mr Tan was "working on it".[116] Similarly, Mr Rai contends that almost every Sunday in the second half of 2018, whenever Mr Tan was in Singapore, he would meet

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111 SOC at para 43.

112 SOC at para 45.

113 Mr Seah's Defence at paras 22 and 23; Mr Tan's Defence at paras 20 and 21; WBL's Defence at para 9.

114 Mr Tan's Defence at paras 59 and 61–62.

115 SOC at para 26.

116 SOC at para 38A.

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Mr Tan for coffee and ask him for an account of the details of the purchase of the Land, the construction costs and other expenses relating to The Bridge, the sale proceeds of The Bridge, and the profits made from the development of The Bridge. However, Mr Tan did not provide Mr Rai with any account.[117] Mr Rai further avers that, in December 2018 and January 2019, he telephoned Mr Rithy to ask for an account, given that Mr Tan was not forthcoming in providing information. During these telephone calls, Mr Rithy informed Mr Rai that he would check with Mr Tan and get back to him, but he did not.[118]

47 Mr Rai's case is that the defendants were, or must have been, fully aware of the financial details of all transactions regarding the Investment Fund, the joint venture between Oxley Holdings and WBL, the Land, the development and sale of The Bridge, and the profits made by Oxley Diamond.[119] Notwithstanding this, in breach of the Oral Understanding and/or their respective duties to account and despite several oral requests for an account by Mr Rai, the defendants refused, failed or neglected to provide a sufficient or proper account to him.[120]

Mr Rai's claim for an account to be taken on the basis of wilful default

48 Mr Rai seeks an account from both Mr Seah and Mr Tan on a wilful default basis.

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117 SOC at para 38.

118 SOC at para 38B.

119 SOC at para 39.

120 SOC at para 41.

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49 As against Mr Tan, he argues that the evidence discloses at least three areas of wilful default:[121]

(a) improper deductions from Mr Rai's payouts for capital gains tax and withholding tax in 2018;

(b) the failure to account to Mr Rai for seven dividend payments amounting to US$45m that WBL received from Oxley Diamond as distributions of profits generated from The Bridge; and

(c) the wrongful retention of US$35m of the profits received by WBL from Oxley Diamond without consultation with Mr Rai.

50 Mr Rai contends that Mr Tan has either misrepresented such payments to him or failed to protect his interests by overpaying capital gains and withholding tax to the Cambodian tax authorities.[122] Further, Mr Rai seeks proof of payment to the Cambodian tax authorities for capital gains tax and withholding tax, as well as proof of the validity of the defendants' calculations.[123]

51 Mr Rai argues that Mr Seah should be made to account to him on the same terms, *ie*, on a wilful default basis, because Mr Seah's duties to account are concomitant with Mr Tan's and Mr Seah's position is completely aligned with that of Mr Tan.[124] Alternatively, Mr Rai argues that Mr Seah should nevertheless be liable to account on a *common* basis for:[125]

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121 PWS at paras 237–264.

122 SOC at para 41(a).

123 SOC at paras 31 and 34B.

124 PWS at paras 265–267.

125 PWS at para 268.

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(a) the moneys he received from Mr Rai in 2011 and 2012 for onward transmission to WBL, and

(b) the moneys he received from WBL or Mr Tan in 2015 and 2018 for onward transmission to Mr Rai.

Relief sought

52 Mr Rai seeks the following relief from the defendants:

(a) an account of all monies paid by the contributors (in particular, Mr Rithy, "Investor X", "Investor Y", and Mr Ang Yew Lai) into the Investment Fund;[126]

(b) an account of all monies and expenses incurred for the acquisition of the Land;[127]

(c) an account of the full project costs and expenses in relation to The Bridge;[128]

(d) an account of all taxes, including capital gains tax and withholding taxes, paid by WBL and Oxley Diamond for The Bridge;[129]

(e) an account of all profits made by Oxley Diamond in the joint venture between Oxley Holdings and WBL, and/or WBL, in relation to The Bridge;[130]

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126 SOC, p 27 at para (a).

127 SOC, p 27 at para (b).

128 SOC, p 27 at para (c).

129 SOC, p 28 at para (e).

130 SOC, p 28 at para (f).

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(f) an account of all sale proceeds, dividends and other income received from Oxley Holdings and/or Oxley Diamond in relation to The Bridge;[131]

(g) an account of all management fees and/or fees paid under the "profit sharing scheme" to the defendants;[132]

(h) an order that the defendants jointly and/or severally pay Mr Rai all moneys due to him upon the taking of such accounts;[133]

(i) a declaration that the deductions from the Second, Third and/or Fourth Payouts were wrongful;[134]

(j) an order that the defendants pay Mr Rai such amounts wrongfully deducted under the Second, Third and/or Fourth Payouts within seven days from the date of the order;[135]

(k) interest on such amounts as found due to Mr Rai at such rates and for such periods as the court deems fit;[136]

(l) further or other reliefs, including all further necessary or appropriate accounts, inquiries and directions;[137] and

(m) costs on an indemnity basis.[138]

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131 SOC, p 28 at para (g).

132 SOC, p 28 at para (gA).

133 SOC, p 28 at para (h).

134 SOC, p 28 at para (hA).

135 SOC, p 28 at para (hB).

136 SOC, p 28 at para (i).

137 SOC, p 28 at para (j).

138 SOC, p 29 at para (k).

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53 At the end of the trial, Mr Rai additionally sought for various sums to be paid to him as interim payment.

Summary of issues and decision

Issues

54 The parties' positions raise the following issues:

(a) First, whether any of the defendants owe Mr Rai fiduciary duties. This issue in turn raises the following factual issues:

(i) whether the Singapore investors or WBL initiated the investments in Plot A and Plot B;

(ii) the terms of the agreement between Mr Rai, Mr Seah and Mr Tan; and

(iii) the respective roles of Mr Seah and Mr Tan in the investment.

(b) Second, whether an account may be ordered, and if so, whether on the basis of common account or wilful default.

(c) Third, whether interim payment may be ordered.

(d) Fourth, whether Mr Tan should be granted the three declarations he seeks in SUM 2708.

Decision

55 In my judgment, the facts show that Mr Rai, Mr Seah, Mr Tan and Mr SCH had an agreement to invest in land in Cambodia. Mr Rithy, a Cambodian citizen, was brought alongside for this purpose. WBL was used as a corporate vehicle to purchase the land and Mr Tan was made a 49%

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shareholder in order to safeguard and to manage the investment. Mr Tan's fiduciary obligations arise from this context. Mr Seah's fiduciary obligations, which arise out of his assumption of the responsibility to be a conduit for funds, is of a smaller scope. After a second parcel of land (Plot B) was added, the parties recognised that the enlarged site was ideal for development. Oxley Holdings became a joint venture partner with WBL to exploit this opportunity, with an agreement for the equal sharing of net profits. It is not disputed that Mr Rai is owed a sum of WBL's earnings from this venture, proportionate to his investment.

56 Fiduciaries have a duty to account. A common account is sufficient save where there has been wilful default on the part of the fiduciary, in which event the account should be on a wilful default basis. WBL and Mr Tan have a duty to account to Mr Rai on a wilful default basis. Mr Seah has a duty to furnish a common account in respect of funds received from Mr Rai and on behalf of Mr Rai. An order for interim payment is not appropriate in this case. As for SUM 2708, Mr Tan's application for the three declarations is dismissed.

57 I explain the reasons for these findings below.

Whether fiduciary obligations to account are owed by the defendants

WBL

58 It is not disputed that WBL owes Mr Rai fiduciary duties, including the duty to give an account as prayed for. WBL was expressly identified in cl 2 of the Cambodian Investment Funds Document as "the company handling these funds",[139] and it is not disputed that it received and held the investment moneys

[139] 1 AB 58.

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from the investors. In its Defence, WBL did not plead any substantive defence to Mr Rai's claim for an account.[140] In these circumstances, I find that WBL clearly owed Mr Rai a fiduciary duty to account and it is not necessary for me to deal with Mr Rai's further argument that WBL held the Land on resulting trust for the investors.[141]

59 Mr Seah and Mr Tan contend that only WBL owes Mr Rai fiduciary duties, and it is in this context that I deal with their defences.

Mr Seah and Mr Tan

Legal conditions necessary for a fiduciary relationship

60 In *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [192]–[194], the Court of Appeal elucidated three principles on fiduciary obligations, as follows:

> (a) The hallmark of a fiduciary obligation is that the fiduciary is to act in the interests of another person and must not exploit the relationship for his own benefit.
>
> (b) The term used is unimportant. Equity has imposed obligations upon particular persons because they are carrying on particular activities that require the law's regulation.
>
> (c) Fiduciary obligations are voluntarily undertaken in the sense that they arise as a consequence of the fiduciary's conduct. The question is not whether the fiduciary is subjectively willing to undertake those

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140 WBL's Defence at para 7(d)(iii); PWS at para 272.

141 SOC at para 20A, read with FBPs of SOC, p 16 at Answer (3).

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> obligations, but rather whether the fiduciary "voluntarily places himself in a position where the law can objectively impute an intention on his or her part to undertake those obligations" [emphasis in original omitted].

61 The precise content of these duties is to be "deduced from the surrounding circumstances, including, and especially, any relationship between the parties" (*Tan Yok Koon* at [205]). A fiduciary obligation is therefore "a *conclusion* rather than a *premise*" [emphasis added], in that the label "fiduciary" is a conclusion reached only once it is determined that particular duties are owed (see *Tan Yok Koon* at [193].

62 In *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto Emporium*"), the Court of Appeal endorsed this approach at [42], and at [43], emphasised that whether the parties are in a fiduciary relationship depends upon the nature of their relationship. The present case concerns parties in a joint venture, who "may or may not share a fiduciary relationship, depending on the circumstances of their relationship" (*Turf Club Auto Emporium* at [43]).

63 In a case such as the present, where the parties' rights and obligations are not fully defined in any formal agreement, the observations of the High Court of Australia in *United Dominions Corporation Limited v Brian Pty Ltd* (1985) 157 CLR 1 at 747 are also instructive:

> A fiduciary relationship can arise and fiduciary duties can exist between parties who have not reached, and who may never reach, agreement upon the consensual terms which are to govern the arrangement between them. *In particular, a fiduciary relationship with attendant fiduciary obligations may, and ordinarily will, exist between prospective partners who have embarked upon the conduct of the partnership business or venture before the precise terms of any partnership agreement have been settled.* Indeed, in such circumstances, *the mutual confidence and trust which underlie most consensual fiduciary*

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> *relationships are likely to be more readily apparent than in the case where mutual rights and obligations have been expressly defined in some formal agreement.* Likewise, the relationship between prospective partners or participants in a proposed partnership to carry out a single joint undertaking or endeavour will ordinarily be fiduciary *if the prospective partners have reached an informal arrangement to assume such a relationship and have proceeded to take steps involved in its establishment or implementation.*
>
> [emphasis added]

64 Determining the legal query therefore requires an assessment of the following factual issues:

(a) whether, as the defendants contend, WBL initiated the investment, or whether, as Mr Rai contends, the Singapore investors initiated the investment;

(b) in the context of the investment, what Mr Rithy's role was; and

(c) what the roles played by Mr Tan and Mr Seah were, and whether any fiduciary obligations were thereby created.

Whether WBL or the Singapore investors initiated the investment

65 Mr Rai's claim is premised on the Singapore investors being the driving force behind the investment. Plot A was acquired by WBL on 10 October 2011. Prior to the acquisition of Plot A, a "Land Sale and Purchase Deposit Agreement" was signed on 30 September 2011, under which WBL agreed to purchase Plot A at the agreed price and placed a deposit of US$100,000 with the seller of Plot A.[142] The intention to acquire Plot A must, therefore, have been formed by mid- to late 2011 at the very latest. Mr Rai contends that this intention was formed between *him, Mr Seah and Mr SCH* after they came across Plot A

142 1DB 3 (Article 3).

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and saw its investment potential given its prime location in a central part of Phnom Penh.[143] Mr Seah and Mr Tan, in contrast, contend that *WBL* formed the intention to purchase Plot A as one of its land investment ventures, and it was WBL which then sourced for individual investors who would invest directly with WBL.[144]

66 However, Mr Seah and Mr Tan have not adduced evidence of any communications between the individual investors and WBL other than the Cambodian Investment Funds Document distributed in December 2011, which recorded the contributions *already* made by each investor. The absence of any communications is particularly glaring given that all five investors listed in the Cambodian Investment Funds Document were from Singapore, whereas WBL was a Cambodian company investing in land in Cambodia. Furthermore, WBL was incorporated in May 2011 with a nominal capitalisation of only approximately US$5,000 (20m Cambodian riel).[145] The defendants have provided no explanation for why a group of Singapore investors would have, without any prior written communication with WBL, made substantial investments of at least US$1.1m each into a newly incorporated Cambodian company with such low capitalisation and no prior track record of land investments. Mr Seah and Mr Tan's assertion that the land investment was initiated and driven by WBL is therefore implausible.

67 On the other hand, Mr Rai's version of events coheres with the evidence.

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143 Plaintiff's Opening Statement at paras 15 and 17.

144 Mr Seah's Defence at paras 10(a)–10(b).

145 PWS at para 9; 1 AB 36 (WBL's original memorandum and articles of association dated 2011, Article 5-1).

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68 As a matter of background and context, it is undisputed that Mr Seah and Mr Tan had known Mr Rai for several years before the acquisition of Plot A. Mr Tan states that he met Mr Rai in 2005 through their mutual friends[146] and introduced him to Mr Seah in 2007 or 2008.[147] While this casts some doubt on Mr Rai's contention that he had been friends with Mr Seah since 2006, it is clear that Mr Rai shared a close personal friendship with the two men before the acquisition of Plot A. Mr Rai would join their social drinking and karaoke sessions from time to time.[148] Mr Seah described them as "good friends" and "brothers",[149] and Mr Tan similarly said that Mr Rai trusted him "as a friend" at the time of entering into the investment.[150]

69 It was also undisputed that Mr Seah and Mr Tan had a close working partnership that was known to Mr Rai. Mr Seah and Mr Tan had known each other since 2007, and they were very close friends who met regularly for drinking sessions.[151] When Mr Tan left the police force in 2010, Mr Seah gave him a monthly allowance of $6,000 to $8,000 to support his family for several months, possibly "even a year or more, until [he made] the first buck".[152] Mr Seah also offered him various employment and business opportunities, and when Mr Tan decided that he could not "value-add" to Mr Seah's existing

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146 Mr Tan's AEIC at para 4.

147 Affidavit of Evidence-in-Chief of Seah Hock Thiam dated 17 June 2021 ("Mr Seah's AEIC") at para 4; Mr Tan's AEIC at para 5.

148 Mr Tan's AEIC at para 5; Transcript, 3 August 2021 at p 20 lines 6–7 (Mr Seah); Transcript, 6 August 2021 at p 66 line 19 to p 67 line 11 (Mr Tan).

149 Transcript, 3 August 2021 at p 21 lines 10 and 25 and p 22 lines 9–10.

150 Transcript, 6 August 2021 at p 18 line 19.

151 Mr Seah's AEIC at para 3; Mr Tan's AEIC at para 3.

152 Transcript, 5 August 2021 at p 15 line 1 to p 16 line 5.

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businesses, he told Mr Seah of his plan to try to start businesses in Cambodia.[153] Mr Tan began working in Cambodia and sourcing for business opportunities there as early as the end of 2010.[154]

70 It was in this context that, in 2010 and 2011, Mr Rai visited Cambodia several times on social visits, sometimes individually and sometimes together with Mr Seah and Mr SCH.[155] During these trips to Cambodia, they observed that Phnom Penh was developing rapidly and they began to discuss the possibility of investing in Cambodian land together and looking at potential sites.[156] Plot A was identified during one such trip in the first half of 2011, and after some consideration Mr Seah, Mr SCH and Mr Rai selected Plot A for their investment around mid-2011.[157] Mr Rai was unable to produce his old passport or any other documents (such as flight tickets) showing the dates of his trips to Cambodia in 2010 and 2011, but his explanation that he did not retain copies of these documents from ten years ago[158] is plausible. Mr Rai's account is also corroborated by Mr Seah's passport records, which show that Mr Seah visited Cambodia from 27 February to 2 March 2011, 9 to 11 September 2011, and 6 to 9 October 2011;[159] and Mr LTL, who recalls that he visited Cambodia with Mr Rai, Mr Seah, Mr Tan, Mr LEN and Mr SCH on or around 6 October 2011

153 Transcript, 5 August 2021 at p 16 lines 14–17.

154 Transcript, 5 August 2021 at p 16 line 24 to p 17 line 1.

155 Affidavit of Evidence-in-Chief of Ratan Kumar Rai dated 17 June 2021 ("Mr Rai's AEIC") at para 26; PWS at para 5.

156 Mr Rai's AEIC at paras 29–30.

157 Mr Rai's AEIC at paras 32–37.

158 Mr Rai's AEIC at para 27.

159 Exhibit P3 at s/n 3, 4 and 5; Agreed Bundle of Documents, Vol 5 ("5 AB") 3046–3047 and 3053.

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to view Plot A.[160] The day after Mr Seah left Cambodia on 9 October 2011, WBL signed the sale and purchase agreement for Plot A on 10 October 2011.

71 Concurrently, while the prospective investors were considering potential sites for their investment, they would also have needed to consider how to go about purchasing the land they selected. Ms Vanseka Sok ("Ms Sok"), the managing partner of a law firm in Cambodia with about ten years' experience of practice in Cambodian land law, banking and finance law and regulatory compliance,[161] gave evidence that Cambodian law does not permit foreign nationals to own land in Cambodia, and that a Cambodian company is entitled to own land in Cambodia only if at least 51% of its shares are held by a Cambodian national.[162] Therefore, the Singapore investors would have had to purchase Plot A through a Cambodian company with at least 51% of its shares owned by a Cambodian national. Mr Rai,[163] Mr Seah[164] and Mr LTL[165] were all well aware of this requirement; indeed, Mr Seah testified that "[e]veryone" knew this before Plot A was acquired.[166] WBL was therefore incorporated in Cambodia in May 2011 with Mr Rithy holding 51% of its shares and Mr Tan holding the remaining 49%.

72 At the time of its incorporation, WBL's business objectives were general and varied, ranging from "[c]onsultant service on financial and commercial

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160 Affidavit of Evidence-in-Chief of Lee Teck Leng ("Mr LTL's AEIC") dated 16 July 2021 at para 6.

161 Affidavit of Evidence-in-Chief of Vanseka Sok ("Ms Sok's AEIC") dated 17 June 2021 at para 1.

162 Ms Sok's AEIC at p 13.

163 Mr Rai's AEIC at para 38.

164 Transcript, 3 August 2021 at p 59 lines 7–13.

165 Transcript, 12 August 2021 at p 15 lines 8–17.

166 Transcript, 3 August 2021 at p 59 line 13.

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sectors" and "[h]ospital and medical clinics" to "[b]uying, [s]elling and leasing land and housings".[167] It was only later, in 2016, that WBL's "purposes of exploitation" were narrowed to focus only on real estate activities, and specifically the development of building projects.[168] This is consistent with Mr Rai's characterisation of WBL as merely a "corporate vehicle" for the investors' business ventures in Cambodia.[169] At the time Plot A was acquired, WBL was evidently not an established or specialised land investment company. Instead, as Mr Tan conceded, WBL appears to have been incorporated as a general purpose vehicle which was on standby to invest in property and perhaps also explore other areas of business if the opportunity arose.[170]

73 Mr Seah and Mr Tan contend that WBL cannot have been incorporated as a mere corporate vehicle to serve the investors' objectives because WBL had other projects apart from The Bridge. In particular, WBL was also involved in the development of "The Peak", which was a similar type of development in the same district and which targeted a similar sector of potential buyers, at a time when The Bridge was facing reduced demand for its units. Mr Seah and Mr Tan suggest that the investors would have taken issue with this if WBL had merely been their corporate vehicle for land investment in Cambodia.[171] However, The Peak was launched towards the end of 2015.[172] WBL's only other project referred to by the defendants was "The Palm", which WBL embarked on in

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167 1 AB 34–35 (WBL's original memorandum and articles of association dated 2011, Article 2).

168 2 AB 1377 (WBL's memorandum and articles of association dated 26 October 2016, Article 2).

169 PWS at para 24.

170 Transcript, 5 August 2021 at p 67 lines 4–13.

171 DWS at paras 104–107.

172 Transcript, 30 July 2021 at p 47 lines 10–23.

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2015 or 2016.[173] These two projects were undertaken by WBL several years after the acquisition of Plot A in October 2011, and the defendants produced no proof of any other project embarked on by WBL any earlier than The Peak and The Palm.[174] I am therefore unable to accept the defendants' contention that WBL's other projects show that it was not *initially* incorporated as a corporate vehicle to support the investors' intentions of investing in land in Cambodia.

74 The Cambodian Investment Funds Document, which was distributed by Mr Tan on or around 1 December 2011, further supports Mr Rai's account. This document stated that a total fund of US$9.52m (the sum of the contributions made by Mr Seah, Mr Rai, Mr SCH, Mr LEN, Mr TLL and Mr LTL to the acquisition of Plot A) had been "set up for investment into Cambodia market by a group of subscribers to these funds". It went on to state that decisions on investment opportunities would be made solely by Mr Tan, the director of WBL, which was described as "the company handling these funds".[175] Mr Tan confirmed on the stand that this accurately captured the arrangement between the parties.[176]

75 Thereafter, Plot B was identified as another potential investment site and it was purchased in March 2012. Mr Rai states that from late 2011 onwards, he, Mr Seah and Mr SCH were monitoring the situation to see if Plot B would become available for sale, and that sometime in May 2012 Mr Tan informed the three men that Plot B had become available.[177] Mr Tan disagrees, saying that

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173 Transcript, 30 July 2021 at p 32 lines 14–16.

174 Transcript, 10 August 2021 at p 34 lines 2–5.

175 1 AB 58 (cll 1 and 2).

176 Transcript, 5 August 2021 at p 94 lines 19–23 and p 95 lines 1–3; Transcript, 6 August 2021 at p 21 lines 19–23.

177 Mr Rai's AEIC at paras 87–89.

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Plot B was identified by Mr SCH when he went to Cambodia in 2012[178] and that he (Mr Tan), on behalf of WBL, then approached the individual investors who had invested in Plot A as well as other potential individual investors to invest in Plot B on the same terms as the investment in Plot A.[179] Even on Mr Tan's account, however, it is clear that the acquisition of Plot B was not driven by WBL, but instead by Mr SCH, one of the Singapore investors. As with Plot A, there is no documentary evidence of any communication from WBL to the investors informing them of this new investment opportunity and asking them if they were interested in subscribing to the fund.[180] Both accounts are consistent with Mr Rai's contention that the intention to acquire Plot B was formed between him, Mr Seah, and Mr SCH so that they could amalgamate it with Plot A in furtherance of their initial investment, and that WBL was once again merely the corporate vehicle for the Singapore investors to acquire the land in accordance with Cambodian legal requirements.[181]

76 What began as a capital appreciation project later became a development project in 2013, when it was found to be more profitable to develop the Land instead of selling it. In July 2013, Oxley Holdings and WBL entered into the JVA to develop the Land into The Bridge. Mr Seah and Mr Tan claim that Mr Tan and Mr Rithy came up with the idea to develop the Land because, while the price of the Land had appreciated and a profit could be made if the Land was sold, the area surrounding the Land was developing and had the potential to become a financial centre, and so significantly more profits could be made if

178 Mr Tan's AEIC at para 30.

179 Mr Tan's AEIC at para 31.

180 PWS at para 27.

181 PWS at paras 17 and 20.

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WBL were to develop the land instead of simply selling it.[182] According to Mr Seah and Mr Tan, Mr Tan and Mr Rithy had merely asked Mr Seah to introduce potential property developers because of his large network of business contacts.[183] Mr Tan then informed the individual investors of the proposal that the Land be jointly developed by WBL and Oxley Holdings, and gave them the option of cashing out their investment if they did not wish to proceed.[184] On the other hand, Mr Rai contends that the decision to develop the Land was made after discussions between himself, Mr Seah, Mr Tan and Mr SCH in late 2012 and early 2013. While Mr Rai left it to Mr Seah to select a property developer and Mr Tan was designated to negotiate the terms of the joint venture with Oxley Holdings' Mr Ching, Mr Seah and Mr Tan asked for Mr Rai's help in drafting and preparing the JVA as he was the only lawyer in the group of investors. Mr Rai then asked his brother, Mr DKR, to assist him on an informal basis as he had little experience in preparing such agreements.[185]

77 The evidence supports Mr Rai's account of the JVA between Oxley Holdings and WBL being driven by the Singapore investors, and not by WBL.

78 The first draft of the JVA dated 26 April 2013[186] was prepared by Mr DKR based on what Mr Rai had told him about the intended structure of the joint venture.[187] This is corroborated by Mr Rai's e-mail to Mr Tan dated

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182 Mr Tan's AEIC at para 39.

183 Mr Seah's AEIC at para 36; Mr Tan's AEIC at para 40.

184 Mr Tan's AEIC at paras 43–44.

185 Mr Rai's AEIC at paras 100–110, 115 and 117–119; Affidavit of Evidence-in-Chief of Devinder Kumar Rai dated 17 June 2021 ("Mr DKR's AEIC") at paras 9–10.

186 1 AB 103–121.

187 Mr Rai's AEIC at para 122; Mr DKR's AEIC at paras 8 and 15; Transcript, 23 July 2021 at p 51 line 16 to p 52 line 21 (Mr DKR).

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29 May 2013 with a covering message addressed to Mr Ching, stating that he was "enclosing the draft agreement for [his] perusal" and asking Mr Ching to "hand this agreement to [his] lawyers in Singapore and ask them to liaise with [Mr DKR]".[188] Although Mr Tan claimed in his AEIC that Oxley Holdings' lawyers had prepared the first draft of the JVA and Mr Rai was merely asked to "assist in the review" of the same,[189] Mr Tan admitted during cross-examination that he had no evidence to show that Oxley Holdings' lawyers had indeed prepared the first draft,[190] and that there was no evidence of Oxley Holdings' lawyers producing any draft on their own.[191] He eventually agreed that his AEIC needed to be corrected to reflect that Oxley Holdings' lawyers were merely responding to drafts supplied to them by Mr Tan.[192] These drafts from Mr Tan were, in turn, prepared or amended by Mr DKR. This is borne out by the drafts exchanged between the parties. Following the first draft of the JVA dated 26 April 2013, a second draft of the JVA dated 17 June 2013 was prepared with the amendments tracked.[193] This second draft was sent by Mr Vincent Lim, Oxley Holdings' lawyer,[194] to Mr Tan and Mr Ching (copying Mr Rithy) on 17 June 2013, and Mr Tan then forwarded it to Mr Rai on the same date asking if he could "help to check if this amended contract is fine".[195] Mr Rai then handed Mr DKR a hard copy of this second draft and they discussed the changes made, with Mr DKR hand-writing some further proposed amendments on the

188 Mr Rai's AEIC at paras 125–126; 1 AB 122.

189 Mr Tan's AEIC at para 46.

190 Transcript, 10 August 2021 at p 8 lines 1–15.

191 Transcript, 10 August 2021 at p 14 lines 9–11.

192 Transcript, 10 August 2021 at p 14 line 12 to p 15 line 11.

193 1 AB 124–141.

194 Transcript, 10 August 2021 at p 12 lines 17–20.

195 1 AB 142.

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document.[196] Mr Rai accepted these proposed amendments and added a further amendment. Mr DKR then amended the soft copy of the draft JVA accordingly and handed a third draft dated 28 June 2013 to Mr Rai.[197] It is not disputed that the final version of the JVA signed by Oxley Holdings and WBL on 15 July 2013 is substantially similar to the third draft of the JVA prepared by Mr DKR.[198]

79 The fact that Mr Tan turned to Mr Rai, instead of WBL or Oxley Holdings' lawyers, for help with the drafting of the JVA is more consistent with Mr Rai's contention that the joint venture was driven by the Singapore investors, and not by WBL. I accept Mr Rai's submission that if WBL or Mr Rithy was indeed the primary promoter of the investment or if the investment was driven by these Cambodian parties, one would have expected Mr Rithy to have been involved in directing lawyers to draft and negotiate the JVA.[199] Further, the contents of the JVA are more consistent with the investment being driven by the Singapore investors and not the Cambodian parties. All four drafts of the JVA provided that it would be governed by Singapore law and included an arbitration clause in favour of the Singapore International Arbitration Centre.[200]

80 The Bridge Investment Agreement is also consistent with Mr Rai's account. Although this document was under the WBL letterhead and was

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196 Mr DKR's AEIC at paras 20–33; 1 AB 143–160; 1 AB 124–141.

197 Mr DKR's Affidavit at paras 24–38; 1 AB 183–201.

198 Mr DKR's Affidavit at para 40; Transcript, 6 August 2021 at p 79 lines 1–11; Transcript, 10 August 2021 at p 14 lines 3–8.

199 PWS at paras 34–35.

200 PWS at para 35; 1 AB 113–114 (first draft of the JVA, cl 20); 1 AB 134 (second draft of the JVA, cl 20; 1 AB 193–194 (third draft of the JVA, cl 20); 6 AB 3253 (final draft of the JVA, cl 20).

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addressed to each individual investor, it was dated 31 December 2013, more than five months after the JVA was entered into on 15 July 2013. While cl 2 of the Bridge Investment Agreement states that WBL entered into the JVA with Oxley Holdings "with the consent of all the subscribers of this fund",[201] there is again no evidence of any communications from WBL to each subscriber seeking their consent to the JVA. The purpose of the Bridge Investment Agreement, according to Mr Tan, was to document the investment with the respective shares of each investor in the project, so that if anything should happen to Mr Tan himself, they would be able to prove the extent of their investments.[202] Mr Rai's version of events differs in that he claims that the Bridge Investment Agreement was drafted on his request after he was hospitalised and "at the brink of death", as evidence of how much he had invested so that his wife could handle his financial affairs if anything happened to him.[203] However, what is not disputed is that the Bridge Investment Agreement was created to retrospectively document each investor's investment so that they would have written evidence of their respective contributions to the Investment Fund in the event that something befell Mr Tan or any of the investors themselves. This points to the investment arrangement having been driven from the bottom up by the Singapore investors, rather than from the top down by WBL in the same way that it would have handled any other subscription arrangement.

The alleged Oral Understanding

81 In this context, I deal with the various positions that Mr Rai has taken in respect of the Oral Understanding. In my view, it is clear that there was an oral understanding of some sort between Mr Rai, Mr Seah, Mr Tan and Mr SCH

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201 1 AB 256.

202 Transcript, 6 August 2021 at p 75 lines 4–19.

203 Transcript, 28 July 2021 at p 51 line 19 to p 52 line 6 and p 54 lines 2–8.

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about the investment in Cambodia prior to the acquisition of Plot A in October 2011. As I have noted at [66] and [75] above, there is no contemporaneous evidence of any written communications between WBL and the individual investors around the time Plot A and Plot B were acquired, save for the Cambodian Investment Funds Document in December 2011 which merely recorded the contributions already made by the investors towards the acquisition of Plot A. The absence of any written documentation of the investors' contributions also formed part of the impetus for the Bridge Investment Agreement in December 2013, which was intended by Mr Tan to protect the investors in the event that something befell him (see [80] above). There is also no evidence of any written agreement between the investors themselves. The lack of written documentation coheres with both the relatively informal nature of an investment venture undertaken by a group of friends, and Mr Seah's *modus operandi* in his business dealings, which was to rely on oral agreements when doing business with his friends.

82 That this was Mr Seah's *modus operandi* is evidenced most clearly by his relationship with Mr Tan. After Mr Tan left the police force, he and Mr Seah came up with a profit-sharing arrangement whereby Mr Seah would provide the capital, Mr Tan would perform the work on the ground, and the two men would then share the profits equally.[204] This profit-sharing arrangement underpinned several business ventures that Mr Seah and Mr Tan entered into in Cambodia from early 2011 onwards, such as a home appliances company known as Sear Corporation[205] and a company known as Kerry Worldbridge Transport Ltd.[206]

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204 Transcript, 5 August 2021 at p 15 lines 12–19 and p 24 lines 2–8.

205 Transcript, 5 August 2021 at p 17 lines 9–19.

206 Transcript, 5 August 2021 at p 22 line 2 to p 24 line 8; Exhibit P4.

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Mr Seah said there was "nothing written" on this profit-sharing arrangement.[207] This was despite the fact that Mr Seah's capital contributions were substantial: around US$1m to US$2m for Sear Corporation[208] and at least US$4m to US$5m for Kerry Worldbridge Transport Ltd.[209]

83 In the case of the investment in the Land, it is undisputed that the Singapore investors (Mr Rai, Mr Seah, Mr SCH, Mr LEN, Mr TLL and Mr LTL) all contributed substantial sums of more than US$1.1m each towards the acquisition of Plot A. Mr Rai's contribution of US$1.904m was made in three instalments beginning on 10 October 2011, the date of the sale and purchase agreement for Plot A. Absent any written arrangement for the transfers of these sums of money, the very fact of the investors' substantial contributions towards the purchase price of Plot A indicates that there must have been some sort of prior oral understanding as to how much each investor would contribute and what each would receive in return. Mr Seah and Mr Tan, who deny the existence of the alleged Oral Understanding,[210] provide no explanation for how this group of Singapore investors came to invest in the Land in Cambodia, and adduce no evidence to show that the investors made their respective contributions pursuant to a contractual relationship with WBL.[211] Some written evidence would be expected if the investment arrangement was indeed made based on such an arm's-length contractual relationship between the investors and a foreign company like WBL. Instead, the dearth of written evidence is

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207 Transcript, 3 August 2021 at p 48 lines 8–13.

208 Transcript, 5 August 2021 at p 18 lines 4–10.

209 Transcript, 5 August 2021 at p 22 lines 15–25.

210 DWS at paras 18–19(a).

211 DWS at para 19(a).

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consistent with Mr Rai's position that the investment arrangement was a business venture between trusted friends.

84 Mr Seah and Mr Tan argue that Mr Rai's alleged Oral Understanding is "riddled with inconsistencies" and that his version of events should therefore be rejected, especially as Mr Rai relies solely on his own testimony to prove the existence of the Oral Understanding.[212]

85 The first inconsistency relates to when and how the Oral Understanding was formed.

(a) In Mr Rai's pleadings, Mr Rai said the Oral Understanding was formed at a meeting which took place at the Cape Inn Hotel in or around September or early October 2011, at which Mr Rai, Mr Seah, Mr SCH and Mr Tan were present. After the Oral Understanding was formed, Mr Rai, Mr Seah and Mr Tan then met with Mr Rithy in September or early October 2011 to discuss the investment in the land in Cambodia, and Mr Rithy agreed to join Mr Rai, Mr Seah and Mr SCH as partners to the Oral Understanding which had already been formed.[213] Thus, the Oral Understanding was formed at the Cape Inn Hotel meeting before Mr Rithy subsequently joined as a partner under the Oral Understanding alongside Mr Seah, Mr SCH and Mr Rai.[214]

(b) However, in Mr Rai's AEIC, he said that the Oral Understanding was formed over *two* critical meetings, with the first taking place at the Cape Inn Hotel between Mr Rai, Mr Seah, Mr SCH and Mr Tan between

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212 DWS at paras 40 and 62.

213 SOC at para 4, read with FBPs of SOC, p 2 at Answer (1); DWS at paras 41–42.

214 DWS at paras 45–46.

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June and September 2011, and the second taking place between Mr Rai, Mr Seah, Mr SCH and Mr Tan, either in Singapore or Cambodia.[215]

86 The second inconsistency relates to the terms of the Oral Understanding. As pleaded by Mr Rai in his Statement of Claim as it stood before the trial, the terms of the Oral Understanding were as follows:[216]

(a) The group would set up an investment fund for the purpose of land *development* in Cambodia.[217]

(b) The arrangement between the parties was to be a partnership for the specific objective of acquiring, *developing* and realising the land investment in Cambodia, using the moneys from the Investment Fund as capital.[218]

(c) Each member of the group would contribute to the Investment Fund and his share in the partnership assets and proceeds would be in accordance with the amount of their contribution to the Investment Fund.[219]

(d) Mr Rithy, Mr Seah and Mr Rai would identify the target land in Phnom Penh, Cambodia to acquire for the partnership.[220]

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215 Mr Rai's AEIC at paras 40–50; DWS at para 52.

216 DWS at paras 43–44.

217 Statement of Claim (Amendment No 1) ("SOC (Pre-Trial)") at para 5(a).

218 SOC (Pre-Trial) at para 5(c).

219 SOC (Pre-Trial) at para 5(b).

220 SOC (Pre-Trial) at para 5(d).

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(e) Mr Seah would be the custodian of the Investment Fund and would collect and administer all partners' contributions to the Investment Fund for the purchase of land and arrange for the remittance of the moneys. The partners agreed that Mr Seah was the person responsible and accountable to Mr Rai and Mr SCH.[221] As the custodian of the Investment Fund, it was an implied term of the Oral Understanding that Mr Seah had the following legal obligations:[222]

(i) to manage and invest the moneys in the Investment Fund on behalf of the partners;

(ii) to oversee the *development* of the land to be purchased using the moneys in the Investment Fund;

(iii) to supervise and monitor, on behalf of the partners, all expenses and receipt of sale proceeds in connection with the *development* of the land;

(iv) to distribute the profits due to the partners from the net sale proceeds from the *development* of the land; and

(v) do all other things necessary to meet the partnership objective as set out above.

(f) With the other partners' consent, Mr Seah engaged Mr Tan to assist him in discharging his duties and obligations outlined at [86(e)] above.[223]

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221 SOC (Pre-Trial) at para 5(e).

222 SOC (Pre-Trial) at para 5(f), read with FBPs of SOC, p 5 at Answers (2) and (3).

223 SOC (Pre-Trial) at para 5(fA).

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(g) Mr Seah, Mr Tan and Mr Rithy were jointly entitled to a management fee of 10% of the profit (after deducting all costs and tax) and after the return of capital to each partner, this return of capital being in accordance with their share of the contribution to the Investment Fund.[224] The remaining 90% of the profit was to be divided among the partners in accordance with their respective shares of the contribution to the Investment Fund.[225]

(h) Mr Seah, Mr Tan and/or Mr Rithy would, at all times, render a true and full account of the use of the moneys from the Investment Fund and the profits earned therefrom. This includes the moneys used to purchase the land; the costs and expenses of *developing* the land; the sale proceeds from the sale of the land *development*; and the profits due to each of the partners.[226] According to Mr Rai, this was an implied term in law in the Oral Understanding.[227]

87 However, Mr Rai's AEIC stated that at the first meeting at the Cape Inn Hotel between June and September 2011, Mr Tan informed Mr Seah, Mr SCH and Mr Rai that Plot A was available for purchase and that a sum of around US$9.5m would be needed to acquire it. Mr Seah, Mr SCH and Mr Rai then agreed that the investment would be locked in for a minimum period of two years and that the distribution of profits would be in proportion with each person's respective contributions, namely, 20% from Mr Rai, 10% from Mr SCH and the balance 70% from Mr Seah and his friends.[228] The first and

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224 SOC (Pre-Trial) at para 5(g).

225 SOC (Pre-Trial) at para 5(h).

226 SOC (Pre-Trial) at para 6.

227 FBPs of SOC, p 8 at Answer (1).

228 Mr Rai's AEIC at paras 41–44 and 54.

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second defendants point out that this was a departure from Mr Rai's pleadings where the target land was not identified at the point when the Oral Understanding was allegedly formed; there was no mention of the investment fund being US$9.5m; and there was no mention of the respective contributions of the partners. Further, in contrast to Mr Rai's pleadings, Mr Rai's AEIC minimised Mr Rithy's role from someone who was tasked with identifying the target land to someone who had no role save for that of a mere front, with Plot A instead having been identified by Mr Seah, Mr Rai and Mr SCH, and Mr Rithy not contributing to the Investment Fund at all.[229]

88 On 10 August 2021, the third last day of the trial, Mr Rai applied to make three categories of amendments to his Statement of Claim, most of which I allowed when the application was heard on 13 August 2021:[230]

(a) amendments made in the interests of consistency with his evidence at trial that the initial intention of the parties was limited to land investment in Cambodia, and did not yet extend to land *development*;

(b) amendments made in the interests of consistency with the evidence of his expert witness, Ms Sok, on Cambodian law on withholding tax and capital gains tax; and

(c) amendments arising from the documents he and his solicitors received from Mr Ching on 27 July 2021 pursuant to a subpoena to produce documents.[231]

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229 DWS at para 53, 56, 58(c) and 58(d).

230 HC/SUM 3758/2021.

231 HC/SBP 73/2021.

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89 In this amended Statement of Claim, Mr Rai clarified that the Oral Understanding did not relate to land *development*, which was not contemplated at the time, and removed the express term of the Oral Understanding that Mr Rithy, Mr Seah and Mr Rai would identify the target land.[232] However, as Mr Seah and Mr Tan point out, this amended Statement of Claim does not clarify whether, by the time of the Oral Understanding, Plot A had been identified, the partners had been informed that Plot A would cost US$9.5m, and the two-year lock-in period for the investment moneys had been agreed.[233] Further, this amended Statement of Claim still referred to Mr Rithy as a "partner" to the Oral Understanding.[234]

90 These inconsistencies highlighted by Mr Seah and Mr Tan are, however, relatively minor and do not alter the essence of the Oral Understanding. The essential terms are that each investor would receive a share of the profits from the Land in proportion to his monetary contribution to the Investment Fund; that Mr Seah (assisted by Mr Tan) would be the custodian of the Investment Fund; and that Mr Seah, Mr Tan and Mr Rithy would be jointly entitled to a management fee of 10% of the net profits. Further, as Mr Rai submits, these inconsistencies are not germane to whether Mr Seah and Mr Tan owe him fiduciary obligations, and it is understandable that Mr Rai's memory of the precise details and timing of the parties' discussions may have faded given that almost a decade has passed since the alleged Oral Understanding was formed.[235] It would mean, nonetheless, that where Mr Rai's case hinges on his memory alone, that aspect of his case would be less convincing. In order to assess

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232 SOC at paras 5(a), 5(c), 5(f) and 6; DWS at para 59.

233 DWS at para 60.

234 SOC at para 4A; DWS at para 61.

235 PWS at paras 225–226; Transcript, 30 September 2021 at p 80 line 29 to p 81 line 22.

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Mr Rai's assertions, I deal more fully with the facts pertaining to the respective roles of Mr Rithy, Mr Tan and Mr Seah.

What was Mr Rithy's role?

91 An assessment of Mr Rithy's role is appropriate because Mr Tan and Mr Seah's defences assert that Mr Rithy was the controlling voice of WBL. This was the basis on which Mr Tan argued that he owed no fiduciary obligations to Mr Rai despite his positions as director and shareholder or WBL and as director of Oxley Diamond.

92 Mr Rai describes Mr Rithy's role as being to "front" the purchase of the Land for the Singapore investors,[236] and points out that Mr Rithy was not assisting with the identification of the target land or contributing anything else apart from being a front.[237]

93 Mr Seah and Mr Tan, on the other hand, argue that it is "incredulous" that Mr Rithy would agree to risk his credibility and strong reputation, as well as the goodwill he had built around the Worldbridge brand, by being "a mere front for a group of foreigners, in return for a three-way share in 10% of the profits".[238] They rely on the fact that Mr Rithy was a person of great influence and reputation in Cambodia and the Worldbridge brand was established long before WBL was incorporated.[239] Mr Rai knew in 2011 that Mr Rithy was "powerful"[240] and "appeared to have strong political connections in

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236 See, *eg*, Mr Rai's AEIC at paras 46 and 49.

237 Transcript, 27 July 2021 at p 37 lines 14–19.

238 DWS at para 103.

239 DWS at paras 101–102.

240 Transcript, 27 July 2021 at p 73 lines 3–6.

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Cambodia";[241] and Mr Ching testified that even before Oxley Holdings entered into the JVA with WBL in July 2013, he was aware that Mr Rithy had established a successful business in the logistics sector under a company bearing the Worldbridge name.[242]

94 In my view, the evidence suggests that Mr Rithy was not a mere front or rubber stamp for the investment. I accept that Mr Rithy is a powerful and influential person in Cambodia and that he had made a name for himself even before any association with the Singapore investors. It is undisputed that Mr Rithy contributed US$542,470 towards the acquisition of Plot B. Mr Ching also testified that it was Mr Rithy and Mr Tan who were negotiating the JVA with Oxley Holdings on WBL's behalf, and that when Mr Ching visited Cambodia in 2012 or 2013, it was Mr Rithy who showed him the various plots of land and shared information with him about their potential.[243] Mr Ching said that he agreed to enter into the JVA with WBL primarily because of Mr Rithy, whose successful businesses in the logistics sector Mr Ching was already aware of.[244] Mr Ching's impression was that Mr Rithy played the "main role" while Mr Tan played the "supporting role", because the Singapore investors needed a "local partner" who had extensive knowledge of Cambodia and was able to solve any problems that arose, and it was "[i]mpossible" for Mr Rithy to have just been a rubber stamp.[245]

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241 Mr Rai's AEIC at para 18.

242 Transcript, 30 July 2021 at p 46 lines 2–8.

243 Transcript, 30 July 2021 at p 43 line 22 to p 44 line 19.

244 Transcript, 30 July 2021 at p 45 line 10 to p 46 line 8.

245 Transcript, 30 July 2021 at p 46 line 15 to p 47 line 3.

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95 Nevertheless, the fact that Mr Rithy was not merely a front or rubber stamp does not mean that Mr Seah and Mr Tan had marginal roles. As the Singapore investors were aware, they could only purchase the Land through a Cambodian company with at least 51% of its shares held by a Cambodian national. They would have needed a local partner in Cambodia, not only to satisfy this requirement of Cambodian law, but also to contribute local knowledge of the Cambodian market. Mr Rithy was that local partner. This does not mean that Mr Seah or Mr Tan (or both) were not a driving force behind the investment arrangement, or that they did not take on the role of custodian of the Singapore investors' funds. Mr Ching's dealings with WBL in 2012 or 2013 may have been primarily with Mr Rithy, but Mr Rai, Mr TLL and even Mr Seah all testified that they did not deal with Mr Rithy and that Mr Rithy did not feature in their decision to invest in the Land.[246]

96 To the contrary, both Mr Seah and Mr Tan played substantial roles, which I assess below. I deal with Mr Tan first and then Mr Seah.

What was Mr Tan's role?

97 Mr Rai submits that Mr Tan owed him fiduciary obligations in the care and management of his interests in the acquisition of the Land and the development of The Bridge. This submission was on the basis that Mr Tan was paid, either directly (through the 10% "director fees" provided for in cl 3 of the Cambodian Investment Funds Document) or indirectly (as a 49% shareholder of WBL, which was to be paid 10% of the net profit from The Bridge as management fees under cl 6 of the Bridge Investment Agreement), for his role

[246] Transcript, 28 July 2021 at p 30 lines 4–15 (Mr Rai); Transcript, 10 August 2021, p 101 lines 8–13 (Mr TLL); Transcript, 3 August 2021 at p 80 lines 8–11 and p 90 lines 8–11 (Mr Seah).

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in managing the investment and development by being on the board of directors of WBL and Oxley Diamond. Mr Tan was specifically designated this task by Mr Rai and Mr Seah because he was based in Cambodia.[247]

98 On Mr Rai's pleaded case, Mr Tan's fiduciary obligations to him arose from the Oral Understanding between them.[248] I have found that some sort of oral understanding plainly existed between Mr Rai, Mr Seah, Mr Tan and Mr SCH regarding their investment in Cambodia prior to the acquisition of Plot A: see [81]–[90] above. While there may be inconsistencies in the details of the Oral Understanding as pleaded by Mr Rai, Mr Tan's fiduciary obligations can nevertheless be established based on two crucial facts: first, Mr Rai and the other investors entrusted their moneys to Mr Tan to handle in the context of his role in managing the investment; and second, Mr Rai and the other investors depended on Mr Tan to act in their interests in managing the investment, including by providing them with material information relating to the investment.

(1) Entrustment of investment moneys to Mr Tan to manage

99 It is not disputed that Mr Rai handed a total of US$5,394,252 in cash cheques to Mr Seah for onward transmission to Mr Tan and WBL, as his contribution towards the acquisition of Plot A and Plot B.[249] Based on the Bridge Investment Agreement, this constituted a 31.2% share of the investment and entitled Mr Rai to 31.2% of the net profits generated.[250] It is also not disputed that Mr Tan received Mr Rai's contributions and used them in funding and

247 PWS at para 158.

248 PWS at para 159.

249 PWS at para 162.

250 1 AB 256 (cl 5); PWS at para 163.

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managing the investment. In exchange for his work in managing the investment, Mr Tan was entitled to a share of 10% of the net profit, either directly or indirectly (as explained at [97] above). The scope of Mr Tan's role and discretion was wide: under cl 2 of the Cambodian Investment Funds Document, decisions on investment opportunities and the amount of investment for each project were to be "solely decided" by Mr Tan.[251]

(2) Dependence on Mr Tan to act in the investors' interests in managing the investment

100 The evidence also supports Mr Rai's submission that, to him and the other Singapore investors, Mr Tan was the face of WBL. He was the person entrusted with a broad mandate to manage and administer their investment in Cambodia, and relied upon to keep them informed about the same. All of the investors dealt primarily with Mr Tan, not Mr Rithy.[252] This was confirmed by Mr Rai, Mr TLL, Mr LTL and even Mr Seah:

(a) Mr Rai emphasised that Mr Rithy was not in charge of the investment, and that the people he was dealing with were Mr Tan and Mr Seah.[253]

(b) Mr TLL said that the investors had agreed for Mr Tan to "run" the investment,[254] and that as far as he was concerned, Mr Tan was the

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251 1 AB 58.

252 PWS at paras 172 and 179.

253 Transcript, 28 July 2021 at p 30 lines 6–15.

254 Transcript, 10 August 2021 at p 115 lines 18–21.

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one managing this project in Cambodia.[255] Mr TLL also said he had "never spoken to [Mr] Rithy".[256]

(c) Mr LTL said that he never spoke personally with Mr Rithy and his impression was that Mr Tan, who was based in Cambodia, would be looking after the investment.[257] He said that it might have been Mr Seah who first told him that Mr Tan would be looking after the investment, and thereafter Mr Tan confirmed this impression.[258] Mr LTL also said that he "kn[e]w for a fact that Mr Tan would be … looking after the investment for the investors" and that he "ha[d] to trust him that he's not going to … syphon away the money".[259]

(d) Mr Seah testified that in the only person he dealt with and communicated with in this investment was Mr Tan, and that he "[did not] care about the rest".[260] It was Mr Tan who "manage[d]" the investment,[261] and Mr Seah "never talked much to [Mr] Rithy".[262]

101 It is also telling that, when Mr Tan was asked what led to the creation of the Bridge Investment Agreement in December 2013, he explained that he wished to document the respective shares of all the investors because he was concerned that they would be unable to prove the extent of their investments in

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255 Transcript, 10 August 2021 at p 101 lines 5–7.

256 Transcript, 10 August 2021 at p 101 line 13.

257 Transcript, 12 August 2021 at p 40 lines 8–11, p 50 lines 19–25 and p 52 lines 9–15.

258 Transcript, 12 August 2021 at p 26 lines 13–18.

259 Transcript, 12 August 2021 at p 24 lines 6–10.

260 Transcript, 3 August 2021 at p 80 lines 8–11 and p 90 lines 3–11.

261 Transcript, 4 August 2021 at p 13 lines 14–15.

262 Transcript, 3 August 2021 at p 89 lines 18–21.

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the project if anything untoward were to happen to him (see [80] above).[263] This reveals that Mr Tan viewed himself as being responsible for protecting the interests of the Singapore investors, because they had dealt primarily (if not exclusively) with him regarding their investment in Cambodia.[264]

102 Mr Tan who was the group's man on the ground in Cambodia in dealing with Mr Rithy and the affairs of WBL. Mr Rai, being based in Singapore and having no independent means of obtaining information relating to his investment in Cambodia while he was in Singapore, depended fully on Mr Tan to provide him with such information, and also depended on Mr Tan to properly manage the investment on a day-to-day basis and to look after his interests in doing so.[265] Mr Rithy himself deferred to Mr Tan where the management of WBL's accounts was concerned. When Mr Rai first contacted Mr Rithy to ask him to send over a statement of the accounts *via* e-mail, Mr Rithy said he would "find out the whole story with [Mr Tan]" and that he "need[ed] to consult with [Mr Tan] for all story".[266] However, Mr Rithy did not get back to Mr Rai on the accounts.[267]

(3) Conclusion on Mr Tan's fiduciary obligations

103 I therefore find that, in accepting his appointment as director of WBL and later Oxley Diamond, as well as his role as the person managing the investment in Cambodia on behalf of the Singapore investors, Mr Tan voluntarily placed himself in a position where he assumed responsibility in

263 Transcript, 6 August 2021 at p 75 lines 4–19.

264 PWS at para 30.

265 PWS at paras 182 and 185.

266 3 AB 1972–1973.

267 Mr Rai's AEIC at para 209; PWS at paras 72 and 76–77.

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respect of the conduct of the investment and undertook to act in the interests of the investors, including Mr Rai. These circumstances reflect all the hallmarks of a fiduciary obligation as elucidated by the Court of Appeal in *Tan Yok Koon*. Equity imposed fiduciary obligations upon Mr Tan in respect of his responsibilities to Mr Rai, including a fiduciary obligation to account for the moneys Mr Rai invested and the profits of the investment.

104 In the light of my finding that Mr Tan owes fiduciary obligations, it is not necessary for me to decide Mr Rai's contention that Mr Tan owed these duties as an agent. While an agent-principal relationship is one of the settled categories of fiduciary relationships, within which there is a strong but rebuttable presumption that fiduciary duties are owed, this does not mean that all such relationships are invariably fiduciary relationships. Equally, fiduciary duties may be owed even if the parties' relationship falls outside of the settled categories, provided that the circumstances and the nature of the parties' relationship justify the imposition of such duties: *Turf Club Auto Emporium* at [43]. The label of an agent is not itself definitive, and the question is whether a fiduciary obligation has been established on the facts of the case. In the present case, in any event, the scope of Mr Tan's duties as an agent was not defined neatly within a contractual document but was instead a factual matter; the duties conferred on Mr Tan under cl 2 of the Cambodian Investment Funds Document, which related only to the land investment in Plot A, were evidently not exhaustive of the duties Mr Tan in fact undertook to the investors and the authority that he in fact exercised.

What was Mr Seah's role?

105 In considering whether Mr Seah undertook fiduciary obligations, it is necessary to assess the role which he voluntarily assumed. It is not disputed that

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he undertook to act as a conduit for the transfer of money to and from WBL for the Singapore investors. Mr Seah's evidence is that he handled the remittances between WBL and the Singapore investors out of administrative convenience (see [31(a)] and [36] above).[268] At trial, Mr Seah maintained that he was "kind enough to help consolidate all these funds [from the investors] and then remit them over, and [he] had to bear all the bank charges for the remittances".[269] This was corroborated by Mr TLL, who said that he "only ha[d] one reason" for passing his contribution in cash to Mr Seah – that he "want[ed] convenience" and it was easier for Mr Seah, as someone "doing business", to remit the money on behalf of all the investors.[270] Similarly, Mr LTL testified that his understanding was that Mr Seah was collecting all the investors' contributions out of administrative convenience.[271]

106 The issue in dispute, however, is whether Mr Seah undertook any duties in making decisions on dividends or payouts. Mr Rai submits that Mr Seah owed him fiduciary duties because he and Mr SCH were among the first promoters of the investment; he played a large role in engaging Mr Tan, over whom he had influence and control, to help to implement the land investment and its subsequent development into The Bridge; he brought in three additional investors and Oxley Holdings as the developer under the JVA; and he was entrusted with investment moneys from Mr Rai and issued the payout cheques to Mr Rai and his nominees.[272] However, notwithstanding Mr Seah's early role, this role did not encompass the operational details that WBL and Mr Tan took

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268 DWS at paras 134 and 137.

269 Transcript, 3 August 2021 at p 78 lines 3–5.

270 Transcript, 10 August 2021 at p 108 lines 11–19.

271 Transcript, 12 August 2021 at p 21 lines 11–21.

272 PWS at paras 188–189.

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charge of. It is undisputed that Mr Seah was not involved with the day-to-day management and administration of the investment in Cambodia. Mr Rai's assertion that Mr Seah "was in charge of the macro matters, and [Mr Tan] was implementing it at a micro level on the ground"[273] is an attempt to hold Mr Seah responsible for WBL's and Mr Tan's fiduciary role. Was this indicative of the mutual trust and confidence that was reposed in Mr Seah by the Singapore investors?

107 I answer this query in the negative, for the following reasons. First, no documents or written communications indicate that Mr Seah was the one in charge. In this respect, Mr Rai's recollection that Mr Seah orally assured him that he would "take care" of the investment is not sufficient. In any event, Mr Rai's recollection was shown to be unreliable with the passage of time. While there were many text messages between Mr Rai and Mr Tan, Mr Ching and Mr Rithy placed before the court, there was nothing that was not of a social nature with Mr Seah. Mr Seah and Mr Rai communicated through WhatsApp messages that were largely personal in nature.[274] There is also no evidence that Mr Seah took on a leadership or organisational role in the project after its scope was expanded from land investment to land development, beyond introducing the possible developers for The Bridge.[275]

108 Second, Mr LTL's evidence provides third party insight into Mr Seah's role. Although he learnt of this investment opportunity from Mr Seah and dealt almost exclusively with Mr Seah on matters relating to the investment, the nature of his discussions with Mr Seah were just a "general kind of discussions"

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273 Transcript, 28 July 2021 at p 79 lines 1–6.

274 2 AB 1607–1610.

275 Transcript, 4 August 2021 at p 26 lines 2–18.

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on what Cambodia's situation was and who they would trust in Cambodia.[276] Mr LTL said he would direct any queries he had to Mr Seah first, but that he would accept it if Mr Seah did not have an answer because his impression was that "[they were] just all investing". His evidence was that for the details he would rely on Mr Tan, whom he expected to know the answers because he was "looking after the investments for us".[277] Mr Rai's initial suggestion that Mr Seah had control over Mr LTL's eventual exit from the group of investors was contradicted by both Mr Seah's evidence and Mr LTL's evidence that Mr LTL decided to exit the group of his own volition.[278]

109 In answering the query thus, I take into consideration that Mr Seah was not the mere subscriber that he painted himself to be. If Mr Seah was indeed simply another individual investor, he would have been keen to obtain a full account of the use of his moneys and any profits made from the investment. He, like Mr Rai, would have been perturbed to learn of the various alleged acts of wilful default on the part of Mr Tan (which I deal with at [114]–[132] below).[279] Yet he testified that it simply "didn't cross [his] mind" to ask Mr Tan for this information.[280] When Mr Rai's counsel asked Mr Seah whether, having understood the basis on which Mr Rai was seeking an account, he was prepared to work with Mr Rai to demand a full account from Mr Tan, Mr Seah said that while the thought had crossed his mind, he would "have to wait for the

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276 Transcript, 12 August 2021 at p 48 lines 22–23.

277 Transcript, 12 August 2021 at p 51 line 23 to p 52 line 1.

278 Transcript, 4 August 2021 at p 61 lines 17–21 (Mr Seah); Transcript, 12 August 2021 at p 29 lines 6–15 (Mr LTL).

279 PWS at paras 198–200.

280 Transcript, 4 August 2021 at p 78 lines 10–19.

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conclusion of this trial to get the verdict to know whether [Mr Rai's grievance] is a genuine grievance".[281]

110 Mr Seah's close relationship with Mr Tan also raises the possibility that he had influence over WBL's affairs. Mr Tan worked for Mr Seah in various capacities and on varied ventures. Mr Seah's *modus operandi* in his other business ventures with Mr Tan was that, under their profit-sharing arrangement, Mr Seah would contribute capital while Mr Tan would perform the work of managing the business or investment on the ground, with the two men sharing the profits equally (see [82] above). In many of the businesses they started together in Cambodia from early 2011 onwards, Mr Tan was appointed as a director to represent Mr Seah's financial interests on the board.[282] Mr Rai's submission[283] was that the structure of the investment in the Land and its development into The Bridge followed the same pattern, with Mr Seah contributing capital (US$2,856,000 to the acquisition of Plot A) and Mr Tan being appointed as the executive director of WBL and later a director of Oxley Diamond as well. Implicit in this arrangement is that Mr Seah must have exercised a significant degree of influence over Mr Tan, who would act consistently with his instructions and advance his interests in these business ventures. In this respect there was a distinct difference between this venture and the others, which was the 51% shareholding held by Mr Rithy. No doubt Mr Rai's assertion that Mr Rithy was a mere front, if proved, would have bolstered his case. However, I have held that Mr Rithy had a substantive role within WBL. At the same time, while Mr Seah aligned himself firmly with

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281 Transcript, 4 August 2021 at p 80 line 18 to p 81 line 3.

282 Transcript, 5 August 2021 at p 26 lines 10–14.

283 PWS at para 196.

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Mr Rithy and Mr Tan in this suit, there was no evidence that he was involved in the day-to-day management of WBL.

111 Notwithstanding these concerns, Mr Rai bears the burden of proof of showing that Mr Seah voluntarily assumed responsibilities appurtenant to WBL's and Mr Tan's, and the evidence is not sufficient for this finding to be made.

Returning to the Oral Understanding

112 From the various factual findings made, it is clear that I have not agreed on every point pertaining to the last-pleaded Oral Understanding in Mr Rai's Statement of Claim as amended after the trial. While Mr Rai, Mr Seah, Mr SCH and Mr Tan had planned to exploit the Cambodian investment opportunity together, the evidence is not sufficient to show that Mr Seah was responsible for all of Mr Tan's actions. The 10% management fee was owed to WBL; it was not proved that Mr Seah, Mr Rithy and Mr Tan would receive this sum jointly. Counsel for Mr Seah and Mr Tan contend that Mr Rai's whole claim should fail if I do not accept the Oral Understanding.[284] I do not agree. I have accepted parts of the case pleaded, and sufficient facts have been pleaded to ground the claims against WBL, Mr Tan and Mr Seah in the manner I have detailed.

Should an account be ordered, and if so on what basis?

113 A beneficiary is entitled to a common account as of right, without having to show any misconduct on the fiduciary's part: see *Cheong Soh Chin and others v Eng Chiet Shoong and others* [2019] 4 SLR 714 ("*Cheong Soh Chin (2019)*") at [72] and *UVJ and others v UVH and others and another appeal*

284 DWS at paras 26–27; Transcript, 30 September 2021 at p 4 lines 15–23.

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[2020] 2 SLR 336 ("*UVJ*") at [25]. This is because a critical aspect of the custodial fiduciary relationship is the fiduciary's duty to keep accounts of the trust and to allow the beneficiary to inspect them as requested. This accounting procedure serves both an informative purpose of allowing the beneficiary to know the status of the fund and what transformations it has undergone, and a substantive purpose of ensuring that any personal liability a custodial fiduciary may have arising out of maladministration is ascertained and determined (*Cheong Soh Chin (2019)* at [73], citing *Lalwani Shalini Gobind and another v Lalwani Ashok Bherumal* [2017] SGHC 90 ("*Lalwani*") at [16]). This duty to account is "continuous, on demand, and is not confined to being discharged only at the time of distribution of the trust assets" (*Cheong Soh Chin (2019)* at [75], citing *Lalwani* at [20]). Where the evidence shows misconduct (which includes a want of ordinary prudence) by the fiduciary, the account may be ordered on the basis of wilful default. To obtain an account on a wilful default basis, the beneficiary must allege and prove at least one act of wilful neglect or default: *Cheong Soh Chin (2019)* at [80] and *UVJ* at [25].

Mr Tan

114 I deal first with Mr Tan because of his greater role. Three acts of wilful default are alleged against Mr Tan.

Act (a): Improper deductions from Mr Rai's payouts

115 First, Mr Rai argues that Mr Tan made several improper deductions from the gross profits from the investment, such that he did not receive his full and proper entitlement in the Second, Third and Fourth Payouts.[285] In this regard, Mr Rai relied on the expert opinion of Ms Sok on Cambodian tax law.

[285] SOC at paras 32 (Second Payout), 32B (Third Payout) and 34B (Fourth Payout).

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A copy of Ms Sok's expert opinion dated 20 May 2021 was sent to Mr Seah and Mr Tan, but they did not adduce any expert opinion to refute Ms Sok's evidence on these points.[286] The defendants' Cambodian law expert, Mr Lor Sok, was only asked to give his opinion on two issues: the effectiveness of Mr Tan's resignation from the board of directors of Oxley Diamond, and what banking regulations (if any) restricted WBL from remitting the payouts of the profits from The Bridge directly to the Singapore investors.[287]

(1) Capital gains tax

116 The first improper deduction relates to the capital gains tax of 20% deducted from the Second[288] and Third[289] Payouts. Mr Rai argues that this deduction was wrongful as Cambodia does not impose capital gains tax on companies. Instead, companies in Cambodia are liable to be taxed on all their profits as income, after removing all deductibles permitted by the relevant Cambodian tax laws.[290] This was confirmed by Ms Sok, who gave evidence that there is no existing requirement under Cambodian law for any Cambodian natural persons or companies to pay capital gains tax.[291] Capital gains tax of 20% was introduced on 1 April 2020 but will not be implemented until 1 January 2022; and even then, it will only apply to resident taxpayers who are natural persons, and not to companies.[292]

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286 PWS at para 241.

287 Affidavit of Evidence-in-Chief of Lor Sok dated 16 July 2021 at para 2.

288 SOC at para 30A(a).

289 SOC at para 32B, read with para 30A(a).

290 SOC at para 31; PWS at paras 239–240.

291 Ms Sok's AEIC at p 14, para 3; Transcript, 11 August 2021 at p 11 lines 2–5.

292 Ms Sok's AEIC at p 14, para 3; Transcript, 11 August 2021 at p 12 lines 11–18, p 26 lines 18–20; p 43 lines 6–12.

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117 Mr Tan submits that Cambodian companies such as WBL nevertheless had to pay an annual income tax of 20%, which would include a tax on capital gains.[293] Here, Mr Tan appears to be referring to the 20% tax on net profits derived from all sources of income, including but not limited to capital gains from land sales, which Ms Sok said a company like WBL would be subject to instead of capital gains tax.[294] However, Ms Sok explained that this 20% profit tax would only be payable when there was a transaction, which refers to a transfer in ownership. As WBL remained the legal owner of the Land throughout the relevant time, there was no relevant transaction on the Land, and there would be no profit to be taxed unless there was such a transfer of ownership.[295] Ms Sok also clarified that WBL would only be subject to the 20% profit tax on the dividends received from Oxley Diamond if Oxley Diamond did not pay any tax on the profits before distributing these dividends to WBL.[296] The profit tax would therefore not apply in the present case. In any event, prior to their written submissions, Mr Seah and Mr Tan had never sought to assert that the deductions of 20% were properly made as profit tax rather than capital gains tax.[297] This argument appeared to be merely an afterthought.

118 Consequently, I find that the deductions of 20% from the Second and Third Payouts were improper.

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293 DWS at para 190.

294 Ms Sok's AEIC at p 15, para 4.

295 Transcript, 11 August 2021 at p 50 lines 6–23 and p 59 line 2 to p 60 line 9; PWS at para 243(a).

296 Transcript, 11 August 2021 at p 61 line 25 to p 62 line 14; PWS at para 243(b).

297 PWS at para 244.

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(2) Withholding tax

119 The second improper deduction relates to the withholding tax of 15% deducted from the Second,[298] Third[299] and Fourth[300] Payouts, which Mr Rai argues should only have been 14%.[301] In her expert opinion, Ms Sok confirmed that withholding tax applied at a rate of only 14%, not 15%.[302]

120 In response, Mr Tan relies on Ms Sok's evidence that liability for withholding tax is imposed on individual investors, but the company is responsible for withholding the same and paying the tax authorities.[303] However, this does not address the issue of the correct rate of tax that WBL should have withheld. It is therefore clear that the deductions of 15% from the Second, Third and Fourth Payouts were also improper.

(3) Whether these improper deductions were Mr Tan's acts of wilful default

121 It was Mr Tan who informed Mr Rai of the amount of each of his payouts through a series of WhatsApp text messages. For the Second Payout, Mr Tan informed Mr Rai of the 20% deduction for capital gains tax and 15% deduction for withholding tax in his WhatsApp messages dated 27 March 2018.[304] For the Third Payout, the relevant WhatsApp messages sent by Mr Tan

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298 SOC at para 30A(c).

299 SOC at para 32B, read with para 30A(c).

300 SOC at para 34A(b).

301 SOC at para 31; PWS at paras 239 and 245.

302 Ms Sok's AEIC at p 15, para 6; Transcript, 11 August 2021 at p 21 lines 6–8; PWS at para 245.

303 DWS at para 190; Transcript, 11 August 2021 at p 20 lines 11–17.

304 3 AB 1890.

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to Mr Rai on 5 June 2018 do not contain a detailed breakdown.[305] For the Fourth Payout, Mr Tan specified that 15% withholding tax had been deducted.[306] The deductions were then effected by Mr Seah when he issued the cheques for the sums after deduction in favour of Mr Rai or his wife.

122 Mr Tan argues that he was not personally involved in calculating the deductions from the payouts and that these calculations were done by WBL's finance team in Cambodia in accordance with the Cambodian tax authority's requirements and regulations, and communicated to him thereafter.[307] This argument was reiterated in Mr Seah and Mr Tan's written submissions, which argued that there is "no evidence or basis for [Mr Rai's] claim that [Mr Tan] is personally responsible for the correct determination of the taxes to be paid when those taxes were paid or withheld by [WBL]".[308] However, the defendants have not adduced any documentary evidence of the calculations done by WBL,[309] in spite of the specific discovery order made on 5 July 2021 ("the Second Discovery Order") ordering Mr Tan to disclose his correspondence with WBL's finance team in relation to the calculation of the payouts.[310] During his cross-examination, Mr Tan initially claimed that the instructions were given to him by WBL's finance team "verbal[ly] during the meeting";[311] but when questioned further on the chronology of events, Mr Tan changed his story to say that the table of calculations was given to him in a thumb drive which had since been

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305 3 AB 1890.

306 3 AB 1891.

307 Mr Tan's Defence at para 49; Mr Tan's AEIC at para 61.

308 DWS at para 190.

309 PWS at para 248.

310 PWS at para 249; 5 AB 3126 and 3129 (HC/ORC 4027/2021, Schedule 2, s/n 11).

311 Transcript, 6 August 2021 at p 57 lines 17–22.

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lost.[312] Mr Tan does not appear to have made any attempt to ask WBL's finance team to provide him with these calculations again.[313]

123 Further, Mr Tan admitted during his cross-examination that, even after the issue of the correct rates of tax was raised by Mr Rai, Mr Tan did not do anything to verify with WBL's finance team whether these alleged taxes had indeed been paid or ask for the tax receipts.[314] This is especially curious because, as Ms Sok testified, there would be documentation in the form of a tax assessment raised by the Cambodian government and a tax receipt stamped by Cambodia's General Department of Taxation as proof of payment of tax, and Cambodian tax law requires companies to retain these records for ten years.[315] Mr Tan's explanation was that he "never doubt[ed] in" the finance team's calculations and Mr Rithy's dealings with the tax department.[316] I did not find this explanation convincing. Given the allegations of wilful default made against Mr Tan personally, it would have behoved him to seek an explanation from WBL's finance team and procure the necessary documentation to address these allegations. However, Mr Tan made no attempt to do so. His rather flimsy excuse was that Mr Rai had "sued [him] for the suit but [he] didn't sue [him] for doing the calculation of these taxes".[317]

124 I therefore find that the improper deductions from Mr Rai's payouts constituted acts of wilful default by Mr Tan.

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312 Transcript, 6 August 2021 at p 59 line 8 to p 60 line 20.

313 PWS at para 250.

314 Transcript, 6 August 2021 at p 46 lines 8–13.

315 Transcript, 11 August 2021 at p 29 lines 5–24 and p 48 lines 3–6; PWS at para 247.

316 Transcript, 6 August 2021 at p 46 lines 8–18.

317 Transcript, 6 August 2021 at p 48 lines 16–25.

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Act (b): Failure to account for dividend payments received by WBL from Oxley Diamond

125 The second allegation of wilful default made by Mr Rai is that Mr Tan has failed to provide an account of the net profits earned by Oxley Diamond from The Bridge and the appropriate amount which is Mr Rai's share, even though The Bridge was completed in the first half of 2018.[318] It was revealed in the course of the trial that Oxley Diamond had made seven dividend payments amounting to US$45m to WBL under cl 11.3(d) of the JVA, as distributions of profits generated from The Bridge.[319] These dividend payments were made between 20 April 2018 and 22 August 2019,[320] and were made by Oxley Diamond without imposing any condition on Oxley Holdings and WBL.[321] However, neither Mr Tan nor Mr Seah disclosed these dividend payments to Mr Rai, either before this suit was commenced or at any time thereafter. These seven dividend payments only came to light when Mr Ching's subpoenaed documents were produced on 27 July 2021.[322] Mr Rai alleges that the defendants failed, wilfully refused and/or neglected to inform him of these seven dividend payouts received by WBL from Oxley Diamond.[323]

126 On the other hand, Mr Tan avers that Mr Rai never made any direct request to WBL for an account of the details of the purchase of the Land, the construction costs and other expenses relating to The Bridge, the sale proceeds of The Bridge and the profits made from the development of The Bridge.

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318 SOC at para 41(c).

319 SOC at para 40A(a).

320 6 AB 3291; PWS at para 252.

321 SOC at paras 40A(b); Transcript, 5 August 2021 at p 153 lines 6–10 and 24–25, and p 154 line 1.

322 PWS at para 253.

323 SOC at paras 40A(c) and 41(cA).

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Further, during his coffee meetings with Mr Rai, Mr Tan had informed him that he needed to wait for the calculation of the gross rental returns due to the office and residential unit owners before the project account could be finalised. Further or in the alternative, Mr Rai had visited Cambodia frequently (at least once every two months) over the years, and had visited WBL's office in Cambodia on numerous occasions. He therefore had access to the office and staff of WBL, yet never requested any information pertaining to the project from WBL.[324]

127 The fact that seven dividend payments amounting to US$45m had been received by WBL was plainly material information which should have been disclosed and accounted for to the investors, who were – under cl 5 of the Bridge Investment Agreement – each entitled to a share of the profits proportionate to the sums they had contributed. Mr Tan agreed that the investors were the principal beneficiaries of the profits, and that (under cl 6 of the Bridge Investment Agreement) WBL's interest in the profits was limited to management fees of 10% of the net profits after deducting all costs and taxes.[325] Mr Tan was a director of WBL and Oxley Diamond at the material time and did not deny that he was aware of these dividend payments when they were received by WBL. Yet, he insisted that he was under no obligation to inform the investors of this on behalf of WBL,[326] because of "the structure of the investment".[327] Mr Tan's position was that nothing in the Bridge Investment Agreement obliged him to inform the investors of this.[328] He had not received any legal advice on

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324 Mr Tan's Defence at para 57.

325 Transcript, 5 August 2021 at p 135 lines 7–11 and p 136 lines 1–5.

326 Transcript, 5 August 2021 at p 134 lines 19–25.

327 Transcript, 5 August 2021 at p 136 lines 6–11; Transcript, 6 August 2021 at p 9 lines 8–10 and p 10 line 23 to p 11 line 2.

328 Transcript, 5 August 2021 at p 137 lines 2–12 and p 144 lines 13–18.

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this position.[329] He was also unable to provide any explanation for his failure to disclose in his AEIC that he had knowledge of the US$45m dividend payments from Oxley Diamond – when asked about this, he merely said "I didn't state it, that's it" and "I just didn't state it in the affidavit".[330]

128 This was plainly a further act of wilful default on the part of Mr Tan. Mr Tan's non-disclosure of the significant sum of dividend payments received by WBL smacks of dishonesty. Even if Mr Tan acted honestly and did not appreciate that he should have informed the investors of these dividend payments, his non-disclosure indicates, at the minimum, a clear want of ordinary prudence. I therefore find that Mr Rai's second allegation of wilful default is established against Mr Tan.

Act (c): Wrongful retention of US$35m of the profits received by WBL from Oxley Diamond

129 It is not disputed that, out of the seven dividend payments amounting to US$45m which WBL received from Oxley Diamond, only US$10m was paid out to the investors.[331] Mr Rai's third allegation of wilful default is that Mr Tan unilaterally decided to retain the remaining US$35m of the dividend payments received by WBL from Oxley Diamond, representing the profits from The Bridge, without consultation with him, and without his knowledge or consent.[332] Mr Rai contends that Mr Tan has also failed, wilfully refused and/or neglected to declare any further payout to him.[333]

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329 Transcript, 5 August 2021 at p 136 lines 12–14.

330 Transcript, 6 August 2021 at p 11 lines 14–22 and p 13 line 15.

331 DWS at para 193.

332 SOC at paras 40A(d) and 41(cB).

333 SOC at para 41(cB).

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130 Mr Tan denies this.[334] He argues that the project has not been completed yet as the defect rectification period has not yet lapsed and not all the units of The Bridge have been handed over, and contends that this sum of US$35m was retained by WBL in anticipation of the contribution it might need to make towards the guaranteed rental returns payable by Oxley Diamond for The Bridge.[335] Mr Tan relies on Mr Rai's testimony that he was aware of the guaranteed rental returns that had been promised by Oxley Diamond to the purchasers of various units of The Bridge under the guaranteed rental returns scheme ("the GRR Scheme"),[336] with guaranteed rental returns periods of three years and ten years having been given to the purchasers of the office/residential and retail units respectively,[337] and that Oxley Diamond was required to ensure that certain payments were made in accordance with its obligations under the GRR Scheme pursuant to the JVA.[338] On this basis, Mr Tan argues that Mr Rai would have been aware that any distribution of profits to the investors would only be made when the costs associated with The Bridge and the gross rental returns had been accounted for.[339]

131 However, I agree with Mr Rai's submission[340] that the decision to retain the US$35m of dividend payments was not one that should have been made by WBL or Mr Tan unilaterally, without consultation with the investors. Mr Tan admitted that the dividend payments were given by Oxley Diamond to WBL

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334 Mr Tan's Defence at paras 59–60.

335 Mr Tan's Defence at para 56; DWS at para 193.

336 Transcript, 29 July 2021 at p 64 line 21 to p 65 line 9.

337 Mr Tan's Defence at para 56.

338 Transcript, 29 July 2021 at p 67 lines 5–10.

339 DWS at para 194.

340 PWS at para 264.

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and Oxley Holdings without imposing any condition that they should not be distributed to WBL's investors and Oxley Holdings' shareholders respectively.[341] Mr Tan agreed that it was "fair" that, in managing the funds that rightly belonged to the investors, he should have informed them that the additional US$35m had been received by WBL but that it might need to be retained in anticipation of WBL's liability as regards the guaranteed rental returns, and should have discussed with the investors how much should be retained by WBL for this purpose and for how long.[342] This was clearly an act of wilful default on the part of Mr Tan. Mr Tan was a director of WBL at the material time and he knew that these dividend payments had been received by WBL but were being retained. Mr Tan sought to shift the blame to Mr Rithy by claiming that it was he who had made the decision for WBL to retain the US$35m.[343] This does not, however, absolve him of his own responsibilities as a director of WBL and as the person managing the investment in Cambodia on behalf of the Singapore investors.

132 Mr Tan's account should, therefore, be on a wilful default basis.

Mr Seah

133 Mr Seah was not in charge of the investment project as a whole, and there is no evidence that he supervised Mr Tan in his day-to-day operations work at WBL. There is no evidence that Mr Seah benefitted in any way from WBL's 10% management fee. There is no evidence that Mr Seah had knowledge of or played any part in Mr Tan's three acts of wilful default. His

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341 Transcript, 5 August 2021 at p 153 line 6 to p 154 line 1 and p 158 lines 1–7 and 12–20.

342 Transcript, 5 August 2021 at p 150 line 24 to p 151 line 5 and p 158 line 21 to p 159 line 14.

343 Transcript, 10 August 2021 at p 92 lines 6–13.

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role was limited to issuing cheques for the post-deduction sums as advised by Mr Tan. Associated with this, there is therefore no evidence of any breach of any duty of good faith that could be argued to exist between Mr Rai and Mr Seah as joint venture partners. Therefore, the scope of Mr Seah's liability to account would be restricted to the scope of his fiduciary obligation; and as there is no evidence of wilful default on his part, this account ought to be taken on a common basis, for the moneys he received from Mr Rai in 2011 and 2012 for onward transmission to WBL and the moneys he received from WBL or Mr Tan in 2015 and 2018 for onward transmission to Mr Rai.[344]

134 While the court has discretion not to order a common account where it is oppressive to require the fiduciary to do so, or for some other good reason (*Cheong Soh Chin (2019)* at [75]), no such reason was suggested in the present case. I therefore order Mr Seah to furnish a common account of the moneys he received from Mr Rai in 2011 and 2012 for onward transmission to WBL, and the moneys he received from WBL or Mr Tan in 2015 and 2018 for onward transmission to Mr Rai. In giving this account, Mr Seah must, at the minimum, give proper, complete and accurate justification and documentation for his actions in relation to these moneys (*Cheong Soh Chin (2019)* at [76], citing *Lalwani* at [23]).

WBL

135 WBL was responsible for Mr Rai's investment and there is no dispute that WBL has a duty to account. Further, WBL has not provided any account over and above whatever has been provided by Mr Tan. In so far as Mr Tan is in wilful default by reason of the three acts considered above, WBL would also

344 PWS at para 268.

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be in wilful default. The account against WBL should therefore be taken on a wilful default basis.

Should any interim payment orders be made?

136 In addition to the orders for accounts to be taken on a wilful default basis, Mr Rai seeks interim payment orders for Mr Tan and WBL to pay him the following specific sums after this trial:[345]

(a) an order for Mr Tan to pay Mr Rai the sums improperly deducted from the Second, Third and Fourth Payouts, amounting to S$1,179,575 and US$28,080;[346]

(b) an order for WBL to pay Mr Rai his share of the US$35m of dividend payments received by WBL from Oxley Diamond, and an order for Mr Tan to procure WBL to pay this amount;[347] and

(c) in the alternative to (b) above, if the court is not minded to order an immediate payout, an order for WBL and Mr Tan to account for the guaranteed rental returns sums due to purchasers of the units of The Bridge.[348]

137 Mr Rai relies on the Court of Appeal's decision in *Dextra Partners Pte Ltd and another v Lavrentiadis, Lavrentios and another appeal and another matter* [2021] SGCA 24 ("*Dextra*"),[349] where the High Court had directed that

345 PWS at para 281.

346 PWS at paras 289 and 295.

347 PWS at paras 300–302.

348 PWS at paras 303 and 308–309.

349 PWS at para 282.

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the relevant accounts be taken at trial instead of in separate proceedings. The Court of Appeal held that the High Court Judge had been entitled to so direct. In this case, the accounting party had accepted that it had a duty to account to the beneficiary, and its arguments were focused on demonstrating that it had discharged its duty to furnish accounts and that the moneys had been properly applied. All parties were aware that the trial would involve the taking of accounts and no prejudice was suffered as a result of the taking of the accounts at trial (*Dextra* at [16]–[17], [22] and [29]). At [32] of *Dextra*, the Court of Appeal also cited with approval the decision of the Hong Kong Court of Final Appeal ("HKCFA") in *Libertarian Investments Ltd v Thomas Alexej Hall* [2014] 1 HKC 368 ("*Libertarian Investments*") for the proposition that it is unnecessary for a separate account to be conducted.

138 To appreciate when it will and will not be necessary for orders for interim payment of specific sums to be made at the end of trial, instead of in separate proceedings after the taking of the account, it is necessary to examine the first instance and Hong Kong Court of Appeal judgments that preceded the HKCFA's decision in *Libertarian Investments*.

(a) At first instance, in *Libertarian Investment Limited v Thomas Alexej Hall* [2011] HKCU 379 at [167], [170] and [172(i)], Stone J had considered it inappropriate to "jump the 'account fence'" by ordering the payment of specific sums on the basis of the available evidence already before the court, *except* in relation to a sum of £5,474,247.35 which, on the defendant's own case, represented funds which were available to return to the plaintiff and which had not been so returned. Stone J therefore ordered the defendant to pay the plaintiff the sum of £5,474,247.35 within 21 days of the date of the order.

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(b) On appeal, in *Libertarian Investments Limited v Thomas Alexej Hall* [2012] HKCU 253 (*Libertarian Investments (HKCA)*), the Hong Kong Court of Appeal ("HKCA") found that Stone J had taken into account inadmissible evidence derived from without prejudice negotiations between the parties (*Libertarian Investments (HKCA)* at [89]–[90]). The HKCA then considered the question of "whether it was demonstrated that there was a sum of money to which the plaintiff was *undoubtedly entitled* which the Judge could and should have ordered the defendant to pay on an interim basis pending the taking of the account", on the basis that "only such sum as is *obviously due* to the plaintiff … should be ordered to be paid over at this stage" in the context of an interim payment [emphasis added] (*Libertarian Investments (HKCA)* at [97] and [100]). Thus, the HKCA varied Stone J's interim payment order downwards to £4,823,768.51, based on the sum put forward by the defendant's counsel as the amount admittedly due from the defendant to the plaintiff as an 'overpayment' received (see *Libertarian Investments (HKCA)* at [99] and [102], and *Libertarian Investments* at [47]).

(c) On the parties' further appeal, the HKCFA "[did] not consider it necessary or desirable for an overall accounting exercise on the lines ordered by Stone J and confirmed by the [HKCA] to be undertaken". Such an exercise was unnecessary because the parties had each put forward their own account of the funds paid into, withdrawn from and repaid into the trust account, such that the differences between them could "readily be identified and dealt with on principle" (*Libertarian Investments* at [130]–[131]). Accordingly, the HKCFA made an immediate award of equitable compensation in the total sum of £19,007,620.23 (before giving credit for the sum of £4,823,768.51 already paid) (*Libertarian Investments* at [140]). Lord Millett NPJ

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> (concurring) similarly observed that "[a]t every stage the plaintiff can elect whether or not to seek a further account or inquiry. The amount of any unauthorised disbursement is often established by evidence at the trial, so that the plaintiff does not need an account but can ask for an award of the appropriate amount of compensation … though the court will always have the last word" (*Libertarian Investments* at [172]).

139 Lord Millett NPJ's remarks in *Libertarian Investments* were cited with approval by the Court of Appeal in *UVJ* at [27] and again in *Dextra* at [32].

140 Thus, for an order for interim payment to be made without (or prior to) the taking of the account in separate proceedings, Mr Rai must show that the precise amounts of the improper deductions from the Second, Third and Fourth Payouts and the dividend payments from Oxley Diamond which were wrongfully retained by WBL have been established by evidence in the course of this trial. The court will only make interim payment orders in respect of sums that are *undoubtedly* or *obviously* due to Mr Rai.

141 In the present case, I do not think it appropriate to grant the interim payment orders sought by Mr Rai as the sums in question are not undoubtedly or obviously due to Mr Rai based on the evidence presently before me in this trial. In *Libertarian Investments*, the parties had put before the court their respective accounts of the funds paid into, withdrawn from and repaid into the trust account. The facts of the present case are very different. Although Mr Rai has put forward some calculations of the amounts improperly deducted from his payouts and his share of the dividend payments WBL received from The Bridge, there are still various uncertainties surrounding the precise amounts owed. These include:

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(a) First, the respective purchase prices of Plot A and Plot B. While copies of the relevant sale and purchase agreements were tendered by Mr Seah and Mr Tan during the trial, Mr Rai's position is that the contents of these sale and purchase agreements have not been sufficiently proven because the original documents were not produced for the court's inspection and no presumption arises as to the genuineness of the certified copies produced under s 81(1) of the Evidence Act (Cap 97, 1997 Rev Ed) because they were not certified by any public officer in Singapore or authorised officer in Malaysia, but instead by a notary public in Cambodia.[350] There is thus still some uncertainty regarding the total purchase price of Plot A and Plot B, and therefore the percentage of this sum contributed by Mr Rai. Related to this is the amount of Mr Rithy's contribution towards the purchase price of Plot A, which remains unproven to date.[351] While Mr Seah and Mr Tan's position is that Mr Rithy contributed US$2.38m (approximately 20% of the purchase price of Plot A),[352] this is inconsistent with Mr Tan's AEIC evidence that Mr Rithy "decided to personally invest US$2,856,000".[353]

(b) Second, whether the 10% management fee ought to have been deducted from the Second,[354] Third[355] and Fourth[356] Payouts and paid to

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350 Letter from Drew & Napier LLC to the Supreme Court Registry dated 29 September 2021 at paras 3–6; Transcript, 30 September 2021 at p 98 line 30 to p 100 line 28.

351 PWS at paras 314–315.

352 Mr Tan's Defence at para 13; Transcript, 5 August 2021 at p 4 lines 4–6 and p 70 lines 1–12; DWS at para 6(c).

353 Mr Tan's AEIC at para 15.

354 SOC at para 30A(b).

355 SOC at para 32B, read with para 30A(b).

356 SOC at para 34A(a).

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WBL *before* or *after* deducting all costs and taxes. Mr Rai initially contended in his pleadings that the deduction of 10% from the *gross* profit breached cl 6 of the Bridge Investment Agreement because WBL's 10% management fee should have been deducted from the *net* profit remaining after deducting other costs and taxes.[357] Mr Rai did not pursue this point on the order of deductions further in his submissions. However, the fact remains that the precise quantum of the improper deductions from Mr Rai's payouts remains unclear.

(c) Third, the amount of the gross rental returns payable to purchasers of units of The Bridge under the GRR Scheme. The GRR Scheme expires for the residential and "SoHo" units in 2021 and for the retail units in 2027,[358] and the precise quantum of guaranteed rental returns that will need to be paid out to these purchasers has yet to be established with any certainty. Indeed, Mr Rai's pleadings and submissions acknowledge that the costs of The Bridge, including the costs associated with the GRR Scheme, have yet to be ascertained.[359] This will affect the amount of the dividend payments from Oxley Diamond that WBL ought to have distributed to the investors, and of which Mr Rai is entitled to a 31.2% share.

In view of these uncertainties, any payment orders should be made only after the taking of the various accounts against the defendants.

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357 SOC at paras 31A, 34B and 41(b).

358 PWS at para 308(a).

359 SOC at paras 31A and 34B; PWS at para 308.

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SUM 2708

142 In SUM 2708, Mr Tan seeks three declarations:

(a) that the First Discovery Order does not require him, a minority shareholder of WBL, to influence WBL to comply with it;

(b) that the First Discovery Order cannot be enforced by an order of committal against him; and

(c) that the service of the First Discovery Order and penal notice on him on 26 May 2021 was improper.

143 The requirements for declaratory relief were set out by the Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 at [14] and are not in dispute. In the present case, the dispute centres upon whether the declarations sought by Mr Tan are justified by the circumstances of the case. Mr Rai submits, first, that SUM 2708 should be dismissed because there is a *prima facie* case that the requirements of s 6(2) of the Administration of Justice (Protection) Act 2016 (Act 19 of 2016) ("the AJPA") have been met and that Mr Tan is guilty of the same contempt of court as WBL is in breaching the First Discovery Order; and second, that the service of the First Discovery Order on him was not improper.[360] On the other hand, Mr Tan submits that the conditions for the grant of declaratory relief are made out because he is not a party to the First Discovery Order obtained by Mr Rai against WBL and s 6(2) of the AJPA is inapplicable.[361]

144 I consider the three declarations sought by Mr Tan in turn.

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360 PWS at paras 337 and 340.

361 DWS at paras 208–209.

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The first and second declarations

145 The first declaration sought by Mr Tan is a declaration that the First Discovery Order does not require Mr Tan, who is a minority shareholder of WBL, to influence WBL to comply with the order. The second declaration sought is a broadly worded declaration that the First Discovery Order "cannot be enforced by an order of committal against [Mr Tan]".

146 It is not disputed that WBL is in contempt of court as it has failed to take any steps to comply with the First Discovery Order to date.[362] Under O 24 r 16(2) of the ROC, WBL is therefore *prima facie* liable to committal. For a *prima facie* case of contempt to be established against Mr Tan, s 6(2) of the AJPA must be satisfied. This provision states:

> **Contempt by corporations**
>
> **6.**— … (2) Where a corporation commits contempt of court under this Act, a person —
>
> (*a*) who is —
>
> (i) an officer of the corporation, *or a member of a corporation whose affairs are managed by its members*; or
>
> (ii) *an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the contempt of court*; and
>
> (*b*) who —
>
> (i) consented or connived, or conspired with others, to effect the commission of the contempt of court;
>
> (ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the contempt of court by the corporation; or

362 PWS at para 341.

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> (iii) *knew or ought reasonably to have known that the contempt of court by the corporation* (or contempt of court of the same type) would be or is being committed, and *failed to take all reasonable steps to prevent or stop the commission of that contempt of court,*
>
> shall be guilty of the same contempt of court as is the corporation, and shall be liable on being found guilty of contempt of court to be punished accordingly.
>
> [emphasis added]

147 Two requirements must be satisfied under s 6(2) AJPA: first, Mr Tan must be a person falling within s 6(2)(*a*) ("the Capacity Requirement"); and second, Mr Tan must have done one of the acts or omissions specified in s 6(2)(*b*) ("the Conduct Requirement").

The Capacity Requirement

148 Mr Tan submits that the Capacity Requirement is not satisfied because he is not an officer of WBL, and Mr Rai has not shown evidence that WBL is a corporation whose affairs are managed by its members or evidence that Mr Tan is involved in the management of WBL and is in a position to influence WBL's conduct in relation to the commission of the contempt.[363]

149 I disagree. In my view, while Mr Tan is not an "officer" of WBL (as he had resigned from his role as director of WBL even before the First Discovery Order was made), the second limb of s 6(2)(*a*)(i) and s 6(2)(*a*)(ii) of the AJPA are *prima facie* satisfied.

150 First, Mr Tan is a 49% shareholder of WBL. The holder of the remaining 51% of WBL's shares is Mr Rithy, and WBL's day-to-day affairs

363 DWS at para 209.

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were managed by Mr Tan and Mr Rithy. Mr Tan's attempt to characterise himself as a mere minority shareholder of WBL is disingenuous given that he owned 49% of WBL's shares – the maximum shareholding he could own in order for WBL to be able, under Cambodian law, to acquire and own land in Cambodia. Mr Tan is therefore "a member of a corporation whose affairs are managed by its members" within the meaning of the second limb of s 6(2)(*a*)(i) of the AJPA.[364]

151 Second, even if WBL is not a company whose affairs are managed by its members, Mr Tan is an individual involved in the management of WBL and in a position to influence its conduct in relation to its breach of the First Discovery Order, under s 6(2)(*a*)(ii) of the AJPA.[365] Mr Tan submits that it is "beyond doubt" that he was not managing the affairs of WBL after his resignation as director, relying solely on Mr Ching's corroborative evidence that Mr Tan was no longer involved in the JVA after his resignation and that he communicated only with Mr Rithy.[366] However, on the contrary, the evidence indicates that notwithstanding his resignation, Mr Tan has continued to be involved in the management of WBL and remains in a position to influence WBL's conduct in relation to its compliance with its discovery obligations.

152 In this regard, a key issue is the significance of Mr Tan's resignation from his role of director of WBL on 19 August 2020. The reason given by Mr Tan for his resignation was that his travelling patterns had changed as a result of the COVID-19 pandemic and he was no longer able to manage the operations of WBL on the ground in Cambodia or serve as one of the two

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364 PWS at para 342(a).

365 PWS at para 342(b).

366 DWS at paras 213–214; Transcript, 30 July 2021 at p 49 lines 3–20.

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signatories signing cheques and other "approvals" on behalf of WBL.[367] However, Mr Tan was unable to explain why he could not have appointed Mr Chin Keng Wai ("Mr Chin"), who had been the project manager of The Bridge since Oxley Diamond was incorporated in 2013,[368] as another director or as an alternate signatory instead of having Mr Chin replace him as the second director of WBL, apart from claiming that he did not know that these options were open to him at the time.[369] Mr Tan then said he would still have needed to resign because his work with WBL was "more than signing cheques" and required him to be involved in "active operation on the ground".[370] However, when questioned further on this, Mr Tan admitted that his supervisory role in Cambodia could still have been performed by Mr Chin[371] and that the role of taking care of the project and ensuring its smooth completion could be played by Mr Rithy.[372] Mr Tan's testimony at trial therefore shed no light on his true reasons for resigning from his role as a director of WBL. While I would not go so far as to conclude that (as Mr Rai submitted) Mr Tan's resignation was "an artifice", "purely tactical in nature", or "contrived as part of the [d]efendants' scheme to deny [Mr] Rai information and documents",[373] the circumstances do suggest that Mr Tan's resignation did not signify a true relinquishment of his involvement and influence within WBL.

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367 Transcript, 5 August 2021 at p 35 lines 5–25; Transcript, 10 August 2021 at p 77 line 19 to p 78 line 8 and p 78 line 19 to p 79 line 6.

368 Mr Rai's AEIC at para 15.

369 Transcript, 5 August 2021 at p 39 line 11 to p 40 line 11.

370 Transcript, 5 August 2021 at p 36 lines 13–21 and p 54 lines 19–22.

371 Transcript, 5 August 2021 at p 58 lines 11–16.

372 Transcript, 5 August 2021 at p 61 lines 18–25.

373 PWS at paras 352 and 95.

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153 I also accept Mr Rai's submission, which the defendants have not challenged, that several of the 16 documents disclosed by WBL in its list of documents dated 6 January 2021 were identical to the documents Mr Tan had disclosed in his list of documents dated 5 April 2019, including the redactions made to these documents.[374] Mr Rai also points out that, in Lee & Lee's letter to his solicitors dated 4 February 2021, Lee & Lee stated that some of the redactions made to certain documents that WBL had disclosed "were also made by [Mr Tan] in the documents disclosed by him" in 2019, yet Mr Rai "had not taken issue with the redactions".[375] Lee & Lee also stated that Mr Tan had only disclosed copies of certain documents in WBL's list of documents in his own lists of documents in 2019 and 2020, yet Mr Rai did not dispute such disclosures.[376] WBL was not party to this suit in April and August 2019 when Mr Tan's first two lists of documents were produced; it was only added as the third defendant in this suit in December 2019 (see [25] above). The irresistible inferences to be drawn are that Mr Tan informed and instructed WBL on his own position as regards discovery, including providing copies of his own documents to WBL to disclose to discharge its discovery obligations in this suit, and that Mr Tan was able to influence WBL's conduct in relation to its discovery obligations even after he had resigned from the role of director of WBL on 19 August 2020.[377]

154 This inference is further supported by Mr Tan's ability to procure certified true copies of the sale and purchase agreements for Plot A and Plot B, and English translations of the same, from WBL in the middle of the trial. WBL

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374 PWS at para 356(a).

375 4 AB 2985 (at para 3); PWS at para 357.

376 4 AB 2986 (at para 4); PWS at para 357.

377 PWS at paras 356(c), 356(e) and 358–359.

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had previously been ordered to disclose these sale and purchase agreements in the First Discovery Order made on 16 April 2021.[378] However, these documents were not forthcoming. It was only after counsel for the defendants wrote to WBL on behalf of Mr Tan on 11 July 2021 requesting copies of the sale and purchase agreements for Plot A and Plot B[379] that copies of these sale and purchase agreements were disclosed to Mr Rai's counsel in July 2021, and the notarised certified true copies of these sale and purchase agreements were produced only on 10 August 2021.[380] When he was cross-examined on this, Mr Tan admitted that he "did speak to [Mr] Rithy" to persuade him to provide these documents.[381]

The Conduct Requirement

155 The above circumstances are also relevant to the Conduct Requirement. Mr Rai argues that s 6(2)(*b*)(iii) of the AJPA is satisfied because Mr Tan knew or ought reasonably to have known that WBL would be or was in breach of the First Discovery Order, yet failed to take all reasonable steps to prevent WBL from committing this breach.[382] Mr Tan has made no attempt to argue that the Conduct Requirement is not satisfied.

156 I find that the Conduct Requirement is *prima facie* satisfied in the present case. Counsel for Mr Seah and Mr Tan attended the hearing on 16 April 2021, at which the First Discovery Order was made, on watching brief.[383] It is

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378 4 AB 2692 and 2694 (Schedule, s/n 4).

379 3 AB 2540 (at para 4).

380 Transcript, 10 August 2021 at p 3 lines 4–9 and p 47 lines 20–24.

381 Transcript, 10 August 2021 at p 48 lines 1–23; PWS at para 364.

382 PWS at para 360.

383 PWS at para 361.

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not disputed that the First Discovery Order and the penal notice were served on Mr Tan at his registered home address on 26 May 2021.[384] Mr Tan admitted that he called Mr Rithy after receiving these documents, but did not ask Mr Rithy to procure WBL's compliance with the First Discovery Order.[385] In particular, he did not ask Mr Rithy to supply any of the information specified in the First Discovery Order.[386] Mr Tan therefore knew about the discovery order that had been made against WBL but failed to take any steps to prevent WBL from breaching its discovery obligations by declining to supply the documents sought.

Conclusion on the first and second declarations

157 For the above reasons, the fact that Mr Tan is a minority shareholder of WBL does not mean that he cannot be held liable for failing to influence WBL to comply with the First Discovery Order. I therefore decline to grant the first declaration.

158 As there is a *prima facie* case of contempt against Mr Tan based on s 6(2) of the AJPA, leave may be granted to Mr Rai to commence committal proceedings against Mr Tan under O 52 r 2(1) of the ROC. There is thus no basis for granting the second declaration that the First Discovery Order cannot be enforced by an order of committal against Mr Tan, and I decline to grant the second declaration.

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384 PWS at para 362; 4 AB 2579–2584; Transcript, 10 August 2021 at p 54 lines 6–10.

385 Transcript, 10 August 2021 at p 54 line 16 to p 55 line 4; PWS at paras 363 and 365.

386 Transcript, 10 August 2021 at p 55 lines 14–18.

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The third declaration

159 The third declaration sought by Mr Tan is a declaration that the service of the First Discovery Order and penal notice on Mr Tan on 26 May 2021 was improper.

160 Mr Tan submits that the First Discovery Order and the penal notice were improperly served on him because they were served out of time. Mr Tan argues that O 45 r 7(3) of the ROC applies because the First Discovery Order was made only against WBL and there was no order requiring Mr Tan to produce the relevant documents.[387] Order 45 r 7(3)(*b*) of the ROC required these documents to have been served on him "before the expiration of the time within which the body [corporate] was required to do the act". As WBL was required to comply with the First Discovery Order within seven days from the date of the First Discovery Order (that is, within seven days from 16 April 2021), but these documents were only served on Mr Tan on 26 May 2021, the time stipulated in the First Discovery Order for WBL to comply with the same had expired.[388] Further, Mr Tan submits that O 45 r 7(3)(*a*) was not complied with because he was no longer an "officer" of WBL at the time these documents were served on him.[389]

161 The First Discovery Order contained the following orders:[390]

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387 Transcript, 30 September 2021 at p 127 lines 2–11.

388 Second Defendant's Written Submissions in for HC/SUM 2708/2021, HC/SUM 2846/2021 and HC/SUM 2849/2021 filed on 25 June 2021 ("Mr Tan's Submissions (SUM 2708)") at para 42.

389 Mr Tan's Submissions (SUM 2708) at para 44.

390 4 AB 2692–2693; 4 AB 2579–2580 (copy served on Mr Tan).

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(a) an order for WBL to file and serve on Mr Rai a supplemental list of documents and an affidavit verifying that list of documents, within seven days from the date of the order;

(b) an order for WBL to produce copies of those documents for inspection by Mr Rai and/or Mr Rai's solicitors and to permit them to make copies of those documents, within 14 days from the date of the order; and

(c) if any of the documents had been but were no longer in WBL's possession, custody or power, an order for WBL to file and serve an affidavit stating when the documents were parted with and what had become of them, within seven days from the date of the order.

162 The penal notice that was served on Mr Tan together with a copy of the First Discovery Order stated as follows:[391]

> If [WBL] neglects to obey this order by the time therein limited, you, [Mr Tan], a member of [WBL] whose affairs are managed by its members and/or an individual who is involved in the management of [WBL] and is in a position to influence its conduct in relation to the commission of the contempt of court, will be liable to process of execution and/or contempt of Court for the purpose of compelling the said [WBL] to obey the same.

163 It is clear from the wording of the First Discovery Order that the orders therein were made against WBL, and not against Mr Tan. They were therefore orders "requiring *a body corporate* to do or abstain from doing an act" [emphasis added] under O 45 r 7(3) of the ROC, and cannot be enforced under O 45 rr 5(1)(ii) or 5(1)(iii) unless two conditions are satisfied:

391 4 AB 2584.

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> **Service of copy of judgment, *etc.*, prerequisite to enforcement under Rule 5 (O. 45, r. 7)**
>
> **7.**— … (3) Subject as aforesaid, an order requiring a *body corporate* to do or abstain from doing an act shall not be enforced as mentioned in Rule 5(1)(ii) or (iii) unless —
>
> (*a*) *a copy of the order has also been served personally on the officer against whom an order of committal is sought*; and
>
> (*b*) in the case of an order requiring the body corporate to do an act, the copy has been so served *before the expiration of the time within which the body was required to do the act.*
>
> [emphasis added]

164 When the First Discovery Order and penal notice were served personally on Mr Tan on 26 May 2021, he was no longer an "officer" of WBL within the meaning of O 45 r 7(3)(*a*) as he had resigned as director, even though (as I have found at [148]–[154] above) the more broadly worded Capacity Requirement in s 6(2)(*a*) of the AJPA is satisfied. Mr Rai did not provide any evidence that a copy of the First Discovery Order was also served personally on Mr Rithy, as the only remaining director of WBL. Further, under O 45 r 7(3)(*b*), where a specified time is limited for doing the act required, the order must be served within that time, or else a supplemental order extending the time fixed must be obtained: *Singapore Civil Procedure 2021* (Cavinder Bull SC gen ed) (Sweet & Maxwell 2021) at para 45/7/4. In the present case, service on Mr Tan took place more than three weeks after the expiration of the time within which WBL was required to comply with the orders contained within the First Discovery Order. The penal notice did not provide for any further period of time after 26 May 2021 for Mr Tan to procure WBL's compliance with the First Discovery Order. In a letter dated 28 May 2021 from Mr Rai's counsel to Mr Tan's counsel, Mr Tan was asked to procure WBL's full compliance with the First Discovery Order by 2 June 2021, this being seven days from the date of service of the First

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Discovery Order and penal notice on him.[392] However, this does not alter the fact that the First Discovery Order was not served on Mr Tan before the expiration of the time within which *WBL* was required to comply with the First Discovery Order, as required by O 45 r 7(3)(*b*).

165 The consequence of this non-compliance with O 45 r 7(3) is that the First Discovery Order cannot be enforced by an order of committal against "any director or other officer" of WBL, under O 45 r 5(1)(ii), and the service of the First Discovery Order and penal notice on Mr Tan on 26 May 2021 was improper to that extent. However, service on Mr Tan was not improper for the purposes of any committal proceedings against Mr Tan himself under O 52. What must be personally served on the person sought to be committed under O 52 is the *ex parte* originating summons or summons for an order of committal, the statement and supporting affidavit under O 52 r 2(2), the order granting leave to commence committal proceedings and the application for the order of committal: O 52 r 3(4). The ROC does not expressly require an O 52 r 2(2) statement to set out whether and how the relevant order of court was served on the person against whom an order of committal is sought for breach of that order: *BMP v BMQ and another appeal* [2014] 1 SLR 1140 ("*BMP*") at [28]. While the court at the leave stage must be satisfied *prima facie* that the court order which is the subject of the committal proceedings has been duly served on the respondent or that the respondent has received notice of the court order, and evidence of service must be included in the affidavit supporting the leave application (see *BMP* at [31]), there is no requirement that the order must have been served on an "officer" of the body corporate concerned, or that service must have been effected before the expiration of the time within which WBL

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392 Statement filed pursuant to Order 52 rule 2 of the Rules of Court on 17 June 2021 in HC/SUM 2849/2021 at para 38; 17th affidavit of Ratan Kumar Rai dated 17 June 2021 at p 95, para 9.

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was required to comply with the First Discovery Order (as is required under O 45 r 7(3)).

166 In view of the above, I do not think the circumstances of the case justify a declaration that the service of the First Discovery Order and penal notice on Mr Tan on 26 May 2021 were "improper", and I decline to grant this declaration.

Conclusion and orders

167 In conclusion, I order an account to be taken on a wilful default basis in respect of Mr Tan and WBL. I order a common account to be taken as against Mr Seah in respect of funds received from Mr Rai and on behalf of Mr Rai. I dismiss SUM 2708. I shall hear counsel on costs and any consequential directions required.

Valerie Thean
Judge of the High Court

Jimmy Yim Wing Kuen SC, Dierdre Grace Morgan, Chloe Shobhana Ajit, Eunice Lau Guan Ting, Erroll Ian Joseph (Drew & Napier LLC) for the plaintiff;
Renganathan Nandakumar, Sharon Chong Chin Yee, Nandhu, Cheung Le Ying Lorraine, Gayathri Sivasurian and Renee Sim (RHTLaw Asia LLP) for the first and second defendants;
The third defendant absent and unrepresented.

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